

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 9, 1989,
at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al
Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike
Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault
and Bill Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee
Secretary Rosemary Jacoby

Announcements/Discussion: None

HEARING ON HOUSE BILL 204

Presentation and Opening Statement by Sponsor:

Representative John Cobb of Augusta, District 42,
opened the hearing. He said the bill was to allow the
placing of an SRS or county lien on, rather than
subrogation interest in, a third-party recovery by a
recipient whose medical expenses were paid by the
department or county. He said that SRS and AFDC may be
paying benefits for a party on welfare. If that person
wins a lawsuit for a large amount of money, this bill
will grant SRS authority to ask for some recovery by
allowing a lien to be used to obtain the money. The
hospitals and doctors already have this right and the
SRS should also, he stated. The House amended the bill
to provide that, unless the SRS pays the attorney fees,
then the SRS is only entitled half of the recovery.
This would make the SRS pay the attorneys fees which
the hospitals and the doctors don't have to do, he
added.

List of Proponents:

Russell Cater, Social and Rehabilitative Services

Michael Sherwood, Montana Trial Lawyers Association
Jacqueline Tirrell, American Insurance Association

List of Opponents: None

Testimony:

Russell Cater said the medicaid program is a joint federal and state and the general relief medical program is a 100% state-funded program. The general relief program is actually paying for the cost of medical records of indigents who are not eligible for federal programs, but who are in need of medical assistance. The department collected \$630,000 as the result of the current law which allows the department to obtain a subrogation right against medical assistance from 3rd party, liable parties.

The typical case would be a welfare recipient who was injured in an auto accident, he said. That individual would receive medical assistance in a hospital and the hospital would bill the state of Montana for those services. A typical case would be about \$5200, he told the committee. Some time later, the department might learn that the injured party was in the process of suing the party who caused the accident. The department would then insert its rights, usually against the insurance company.

The department is interested in the state's ability to recoup from the settlement the amount paid the individual for the cost for treatment of the injury. Currently the department has a subrogation right -- an "equitable" right, not an absolute right. A judge or jury, therefore, might decide that the injured party was not made "whole" by the settlement; therefore, the department should not receive any amount or maybe a just a fraction of the amount paid for medical assistance. In a case in Great Falls, there was an \$875,000 settlement. The attorney and the judge determined that the SRS should not receive any amount whatsoever, in spite of the fact that they had contributed \$177,000 for medical assistance. As an attorney for the state, he felt it was his right to plug "loop holes" to assure the state's recovery in cases such as these. He presented written testimony to the committee with additional information (Exhibit 1) The department, he said, would be willing to pay reasonable attorney fees and costs.

Rep. Addy and Rep. Rice tacked on the amendment in the House committee and he thought there had been some misunderstanding on some portions of the bill. Since then,

he said, he had talked with Rep. Addy about another amendment (Exhibit 1, page 5) which would take care of his concerns, as well as some of the department's concerns. The representatives, he said, wanted the department to commit itself to payment of the attorney fees, whether or not the department received any money whatsoever. This would make the department responsible for the investigation which could be difficult to conduct. He said Worker's Comp has this problem and have opted to settle for 50%, rather than investigate. He felt SRS should not be in that same situation. If they did, it would cost a considerable amount out of the general fund of the state of Montana. (Exhibit 1, p. 3). Federal regulations might allow only 50% reimbursement, rather than the normal 70%, he said, if the bill was left in its present form. Other provisions put Montana statute in compliance with federal law, he stated. He urged support of the bill.

Michael Sherwood said he opposed the bill when it was in the House because SRS would have approval of settlement power and a liability would be placed on the plaintiff's attorney when, in fact, he (the attorney) didn't know of the presence of a lien. When (House) amendments were made regarding those points, he no longer opposed the bill, he said.

Jacqueline Tirrell reiterated Michael Sherwood's views and no longer opposed the bill.

Questions From Committee Members: Senator Mazurek asked if Mike Sherwood supported Mr. Cater's new amendments. Mr. Sherwood said he had not been concerned with the 50% lien that the House Judiciary Committee had objected to and did not object to the new amendments being proposed. Jacqueline Tirrell said she would review them.

Senator Mazurek said there was no requirement that the notice by the county of the recipient be in writing. He asked if Mr. Caters would object to placing that requirement in subsection (1) of Section 1. Russell Caters said there were other provisions on page 7, line 16 requiring a certified letter or "actual" notice. He said that, in some instances, it was not known by the department that a law suit had been filed. It would be difficult for the department to give notice when it wasn't aware of the suit. However, when a welfare recipient comes into the office, he stated, he is required to sign a form making him aware of the rights of the state to recover costs in a case.

Senator Halligan asked if using a lien didn't take longer to process than using subrogation rights. Russell Cater said

that some lien laws require a lengthy requirements, but in this situation, that would not apply. In 99% of the cases, the parties don't go to court, he stated.

Senator Crippen asked about the amendment limiting attorneys' liability. Russell Cater said they did not have any opposition to changing the definition of "legal representative" to "attorney".

Closing by Sponsor: Representative Cobb closed the hearing.

DISPOSITION OF HOUSE BILL 204

Discussion: None

Amendments and Votes: Senator Mazurek MOVED the amendments proposed by the SRS. (Exhibit 7) The MOTION CARRIED UNANIMOUSLY.

Senator Bishop MOVED the Crippen amendment MOVED to amend on p. 8, l. 25 through p. 9, line 3, following "attorney" to strike the remainder of line 25 through "corporation" on p. 9, line 3, to answer concerns he had regarding too much responsibility on the legal representative. He said he had talked with the department about that and they had no problem with his suggestion.

Recommendation and Vote: Senator Jenkins MOVED that House Bill 204 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 206

Presentation and Opening Statement by Sponsor:

Representative Budd Gould of Missoula, District 61, opened the hearing. He said the bill was simply a housekeeping measure. Its purpose was to suspend a driver's license for failure to appear and to pay for proof of insurance.

List of Testifying Proponents and What Group they Represent:

Peter Funk, Department of Justice
Wallace Jewell, Montana Magistrates Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Peter Funk said the bill was requested by the Department of Justice. He said the statute involved was adopted by the 1982 Legislature and essentially allows the department to suspend a driver's license in a variety of circumstances. In addition to being guilty of a particular offense, an individual must (under (2)), fail to appear in court, or must forfeit a bond. And, they must receive signed notice of this particular process. Sub paragraph 1 was intended to be inclusive of all potential motor vehicle offenses. Potentially everything in the motor vehicle code, except offenses found in Chapter 6, were included by the 1987 Legislature, he said. Chapter 6 relates to the requirement of mandatory liability insurance and states that those individuals are required to have proof of financial responsibility. The bill is to include violations which relate to a person's carrying or lack of carrying of liability insurance.

Line 15 "or chauffeur" is stricken because the 1987 Legislature deleted all references to a chauffeur's license. That term is no longer used anywhere in code so, to be consistent, it should be taken out in this part of statute. The other change is on line 20, striking "Chapter 12, Part 6", he told the committee. That is being stricken because Chapter 12, Part 6 was repealed in the Motor Vehicle Code and no longer exists, he stated.

Wallace Jewell presented written testimony to the committee (Exhibit 2).

Questions From Committee Members: None

Closing by Sponsor: Rep. Gould closed.

DISPOSITION OF HOUSE BILL 206

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Harp MOVED that House bill 206 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 326

Presentation and Opening Statement by Sponsor:

Representative Jim Rice of Helena, District 43, said the bill dealt with exempting certain paralegals, legal assistants and law students from the laws regulating private investigators and patrolmen, specifically concerning internships. They were exempt prior to 1987, but that exemption was taken out at that time. He felt it was probably an oversight since the law provides no provision for reviewing their status or to being registered. They don't carry guns or do things that investigators do, he commented. They usually work for lawyers in law firms, under the lawyer's direction and liability.

List of Testifying Proponents and What Group they Represent:

Becky Coppel, legal assistant in the Crowley Law Firm in Billings and chairman of the Montana Paralegal Association
Carol Bronson, certified legal assistant in Great Falls
Mike Sherwood, Montana Trial Lawyers Association.

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Becky Coppel presented written testimony to the committee (Exhibits 3, 4 and 5).

Carol Bronson presented written testimony to the committee (Exhibit 6).

Mike Sherwood said he supported the bill wholeheartedly. He said the bill was important and should be clarified for the paralegal possession.

Questions From Committee Members: None

Closing by Sponsor: Rep. Rice closed the hearing

(NOTE: Exhibits 8, 9 and 10 were distributed to the committee. There was no personal presentation of the testimony, but it is being entered into the record as the request of those submitting the exhibits.)

DISPOSITION OF HOUSE BILL 326

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Mazurek MOVED that House Bill 326 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 135

Presentation and Opening Statement by Sponsor: Senator Crippen presented the bill for Representative Mercer of Polson, District 50, who did not appear at the hearing. He opened the hearing and read the title: An act providing that in wrongful death cases, a decedent's cause of action survives his death even if his death was instantaneous.

List of Testifying Proponents and What Group they Represent:

Michael Sherwood, Montana Trial Lawyers Association

List of Testifying Opponents and What Group They Represent:

Gene Phillips, National Independent Insurers
Jacqueline Tirrell, American Insurance Association

Testimony: Michael Sherwood appeared as a proponent and said an action could be brought for a person who has suffered a loss of their loved one. An action can also be brought for a person's estate if he survives, but may lose wages for several years. The bill provided that there won't be a difference if a person survives for an arbitrary time, but allows a survival action and a wrongful death action, he said.

Gene Phillips appeared as an opponent. The survivorship action is intended to compensate his estate for the period of his survival for the suffering and for the loss of wages he may have experienced. He told about the wrongful death action, saying it could be brought about by a widow, for loss of the victim's presence, the loss of his consortium etc. He said he felt the bill creates a fiction for the purpose of recovering damages. It opens the door to a double recovery of damages resulting from a wrongful death.

Jacqueline Tirrell opposed the bill. She echoed the comments given by Mr. Phillips. She said it was her understanding that Rep. Mercer was going to withdraw the bill and asked that it be put in a subcommittee for further study.

Questions From Committee Members: Senator Halligan asked for Mike Sherwood's view of the "double recovery" comments by the opponents. Mr. Sherwood felt there was no overlap of damages, that these were two distinct sorts of actions. It did expand liability against someone who had committed a civil wrong. Right now, he stated, the law said if a person were to die in a car wreck and didn't survive with an instantaneous death, the wife and children would be able to bring an action against the person who caused the accident as a result of negligence. They could recover what they would have received if the husband and father had survived. Action could be brought for lost wages or emotional loss. If the man had survived for perhaps 10 days and then died, the estate could bring action for pain and suffering and for additional lost wages, if it could be shown that not all of the lost wages went to the support of the children, he said.

Senator Mazurek asked if the bill allows a claim for pain and suffering for instantaneous death even when there was none. Mike Sherwood said "arguably" none, but "pragmatically" possibly some pain and suffering. It does expand the ability to obtain economic damages for a survivor action.

Closing by Sponsor: Representative Mercer arrived at the hearing and told the committee he had intended to cancel the bill. He asked that the bill be tabled.

DISPOSITION OF HOUSE BILL 135

Discussion: Representative Mercer explained that the bill had arisen out of an accident in which a truck killed a man. He said that discussion had hinged on whether or not the victim had survived 2 or 3 minutes or 10 seconds. But, at this point, he said he had learned of many problems with the bill and hoped that the bill would be Tabled by the committee. He said he had earlier asked that the bill not be assigned to committee and he was surprised when it was scheduled for hearing.

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that House Bill 135 BE TABLED. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE SESSION

DISPOSITION OF HOUSE BILL 295:

Discussion: Senator Mazurek who had offered to carry the bill explained the amendments. He said there were two kinds of reports -- by drivers and by investigating officers. In Section 9, he told the committee, it provided that individuals do not have to make reports if the investigating officers do make them. The drafter saw the need for confidentiality and admissibility to be clarified for both the investigative and the personal reports.

Amendments and Votes: Senator Mazurek MOVED the Amendments. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Mazurek MOVED that House Bill 295 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

Senator Mazurek asked if the committee report could be held giving him additional time to satisfy one concern he had with the bill. Chairman Crippen agreed to do that.

DISPOSITION OF HOUSE BILL 312:

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Halligan MOVED that House Bill 312 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL 386:


Discussion: Senator Bishop commented that he had received a letter from a Mr. Mateucci who had good reason for opposing the bill.

Amendments and Votes: None

Recommendation and Vote: Senator Bishop MOVED that House Bill 386 BE TABLED. The MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 11:30 a.m.

A handwritten signature in black ink, appearing to read "Bruce D. Crippen", written in a cursive style.

SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj
minrj.309

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-9-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 10, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 204 (third reading copy -- blue), respectfully report that HB 204 be amended and as so amended be concurred in:

Sponsor: Cobb (Crippen)

1. Page 3, line 6.

Following: "~~and~~"

Insert: "and"

2. Page 3, lines 8 through 12.

Following: "±" on line 8

Strike: remainder of line 8 through "ACTION" on line 12

3. Page 4.

Following: line 23

Insert: "(d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien."

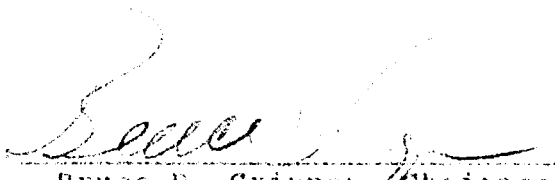
4. Page 8, line 25 through page 9, line 3.

Following: "attorney" on line 25

Strike: remainder of line 25 through "corporation" on page 9, line 3

AND AS AMENDED BE CONCURRED IN

Signed


Bruce B. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT

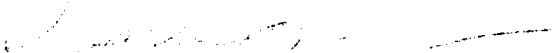
March 9, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 206 (third reading copy -- blue), respectfully report that HB 206 be concurred in.

Sponsor: Gould (Harp)

BE CONCURRED IN

Signed: 

Bruce B. Crippen, Chairman

J.C. 67
3/14/89
9:20 p.m.

SENATE STANDING COMMITTEE REPORT

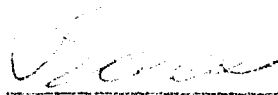
March 9, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 326 (third reading copy -- blue), respectfully report that HB 326 be concurred in.

Sponsor: Rice (Hazurek)

BE CONCURRED IN

Signed: 

Bruce D. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT

page 1 of 2
March 14, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 295 (third reading copy -- blue), respectfully report that HB 295 be amended and as so amended be concurred in:

Sponsor: Addy (Mazurck)

1. Title, line 10.

Strike: "SECTION"

Insert: "SECTIONS 61-7-109 AND"

2. Page 1.

Following: line 12

Insert: "Section 1. Section 61-7-109, MCA, is amended to read:

"61-7-109. Written reports of accidents -- additional information -- form of report. (1) The operator of any motor vehicle which is in any manner involved in an accident within this state in which any person is killed or injured or in which damage to the property of any one person in excess of \$400 is sustained shall, within 10 days after such accident, report the matter in writing to the department unless the accident was investigated and reported by a law enforcement officer as provided in subsection (3).

(2) The department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient and may require witnesses of accidents to render reports.

(3) Every law enforcement officer who in the regular course of duty investigates a motor vehicle accident in which any person is killed or injured or in which damage to the property of any person exceeds \$400, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, shall within 10 days after completing the investigation forward a written report of the accident to the department.

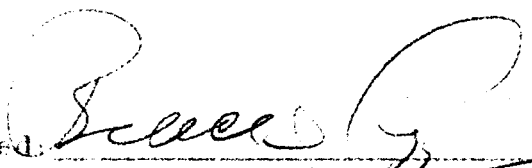
(4) The form of the accident report required under this section shall contain information sufficient to enable the department to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in this part.

(5) A report required by subsection (1) or (2) may not be used as evidence in any trial, civil or criminal, arising out of an accident."

Remember: subsequent sections

3. Page 2, lines 16 through 24.
Strike: subsection (3) in its entirety

AND AS AMENDED BE CONCURRED IN

Signed: 
Bruce D. Crippen, Chairman

4/10/18
3115 40
11:20 AM

SENATE STANDING COMMITTEE REPORT

March 9, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 312 (third reading copy -- blue), respectfully report that HB 312 be concurred in.

Sponsor: Connelly (Brown)

BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

4/13/89
J.C.
2:20 p.m.

scribble312

HOUSE BILL 204SUMMARY OF AN ACT AMENDING SECTION 53-2-612, MCA
(Medical assistance lien)

Present law grants SRS a subrogation interest in recipient recoveries against liable third parties to the extent the department has paid medical benefits. The right of subrogation is an equitable right and, under current law, SRS recovers nothing until the recipient is "made whole". Thus, even though SRS has paid, for example, \$150,000 in medical expenses and the recipient recovers \$500,000 from a liable third party, the department may receive none of the \$500,000 recovery because the recipient may have a right to proceed against yet another third party or the \$500,000 may have been allocated by the court or by agreement of the parties to non-medical damages. SRS believes the liable third party, rather than medicaid or the general relief medical program, should bear the cost of the recipient's medical expenses.

This Act would assure repayment to SRS upon a recipient's recovery from a liable third party. This would be accomplished by the following provisions of the bill:

(1) Change the right of subrogation to a lien taking effect upon notice as defined in the Act. A lien would attach to the proceeds of any recovery and would not be subject to reduction based upon other potential recovery by the recipient or allocations of damages by the court or parties. A county paying medical public assistance benefits would be entitled to the same lien. The bill would place SRS on an equal footing with hospitals and other health care providers who are granted liens under existing law. The department would retain the discretion to accept less than full payment in hardship cases.

(2) Strengthen notice requirements for recipients and their representatives, including attorneys, who assert claims or file suits for recovery and establish liability for failure to notify. The recipient or his representative would be required to notify SRS and the liable third party or his insurer. If the liable third party or his insurer were not given notice by the recipient or his legal representative and then paid the claim without paying SRS, the recipient and his legal representative would be liable to SRS for the amount it would have otherwise been entitled to recover. Liability exists only if the legal representative or recipient has actual notice that SRS or the county paid the medical expenses.

(3) Remove provision guaranteeing 1/3 of settlement or recovery to recipient. Although SRS believes this provision creates an extra incentive for recipients to seek recovery, the federal government has notified SRS that this provision is contrary to federal law. That is, the federal government calculates the repayment due to it from SRS based upon the entire amount

SENATE JUDICIARY

EXHIBIT NO. 1, 2

DATE 3-9-89

BILL NO. HB 204

received by the recipient, rather than the amount remaining to SRS after payment of attorney fees, costs and the 1/3 minimum recipient's share. If the current 1/3 provision is retained, the state may be required to refund to the federal government more money than SRS in fact receives from a recipient's recovery. This would in turn preclude any recovery for the state general fund in some cases and may even require additional general fund expenditures to make up the full share of the federal government's recovery.

(4) Priority of lien. SRS lien is on the same priority as the medical provider liens. An attorney's lien, however, has a higher priority.

(5) Estate recovery. Existing statutes on SRS lien rights and estate recovery rights are clarified and brought into conformance with federal law. This bill removes the authority of SRS to file a lien against a deceased person's property when a surviving spouse is residing in the home. See 53-2-611(2) [page 12] and 53-6-143 (2)(b) [page 10-11].

(6) Fiscal impact. The fiscal note contains a very conservative estimate of increased revenues based upon HB 204's stricter notice requirements. Failure to change the state and counties subrogation right to a lien could drastically reduce the monies recouped from liable third parties and their insurers. One case last year resulted in SRS's failure to recoup \$177,458. A lien rather than subrogation would have required re-payment to SRS.

Medicaid recovered \$630,000.00 last year from tort cases alone. The same is expected this year and future years could reach the million dollar mark. Without this legislation these recoveries would be jeopardized.

Submitted by: *Russell E. Coon*
Department of Social &
Rehabilitation Services

Fiscal Analysis of Amendments Added by the
House Judiciary Committee to HB 204

The House Judiciary Committee added an amendment to HB 204 which will reduce the amount of recoupment allocated to the department of Social and Rehabilitation Services for medical expenditures. Recoupment is required if a third party (or their insurer) is responsible for injuries caused to a recipient of medicaid or general relief medical. The amendment adds subsection (3)(iii). (See page 3, l. 9-12, third reading copy.)

The amendment requires the department to guarantee the payment of "costs and expenses" (i.e. attorney fees) whether the claim is successful or not. If this guarantee is not made the department will receive only 50% of medical payments paid. The intent of the House Judiciary Committee amendment was to equate welfare recoupment of medical expenses with the system used by Workers' Compensation. There are two main differences in the two programs. First, neither welfare recipients or their employers are paying premiums to become eligible; secondly, medicaid and general relief medical are already required by law to pay a pro rata share of attorney fees and costs if money is received. (See 53-2-612(e) now subsection (c) on page 4.) The department is willing to continue this approach to the sharing of costs and fees but opposes payment if the department is to receive nothing from the claim.

The department cannot enter into contracts with attorneys in medicaid lien cases for the following reasons:

1. The department does not have the staff to investigate and evaluate whether contracted services are more beneficial to the state than acceptance of a 50% return on medical expenses paid.
2. The department does not have the appropriation to pay fees and costs up front.
3. The department is not in a position to risk Federal and General Fund dollars on unsuccessful cases.
4. By entering into contracts, the department will be required to report recoveries under a specific federal rule which allows federal reimbursement for only 50% of administrative expenses. The department currently receives 70% federal reimbursement because a different reporting method is allowed for recoveries or payments of benefits. Contracting with attorneys would result in \$68,706 less General Fund recovery per year.

If the department does not enter into contracts to guarantee payment of fees and costs, it would recover medical payments based on the provision allowing recovery of 50% of the department's claim. Use of this provision would result in \$38,691 less

General Fund recoveries per year. The total reduction (federal and state) in recoveries would be \$128,970 per year. Or arguably, if attorney fees and costs are subtracted from the department's recovery amount, then General Fund recoveries would be \$90,741 less per year. (See 53-2-612(3)(e) new subsection (c) on page 4 of HB 204.)

CONCLUSION

The department recommends adoption of the attached amendments to offset the detrimental fiscal impact resulting from the amendments added by the House Judiciary Committee. These amendments address the concerns of the House Judiciary Committee that the department contribute to attorney fees and costs. The amendments, however, also place the department in a better position to offset the federal sanctions. This is accomplished not by requiring the department to enter into a contract prior to a settlement, but rather by requiring a reduction in the actual amount to be received by the department based upon a pro rata sharing of costs and attorney fees.

Submitted by: *Russell E. Carter*
Department of Social and
Rehabilitation Services

PROPOSED AMENDMENT TO HOUSE BILL 204
(Third Reading Copy)

1. Page 3, line 8
Strike: "; AND"
Add: "."

2. Page 3, lines 9 through 12
Strike: lines 9 through 12 in their entirety

3. Page 4, following subsection (3)(c)
Insert: "(d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (c), but the department or county shall not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien."

Rationale: The proposed amendment would strike subsection (3)(a)(III) which suggests that participation by the department or county in attorney fees and costs is optional. New subsection (3)(d) would clarify that whenever a recipient recovers on a claim and payment to the department or county is required, the amount of the payment must be reduced by a pro rata share of attorney fees and costs. The new subsection would also clarify that the department or county is not required to share in attorneys fees and costs unless it receives full or partial payment of its lien.

Submitted by:
Department of Social and
Rehabilitation Services

Montana Magistrates Association

9 March 1989

Testimony offered in support of HB206, a bill for an act entitled: "An act to provide for mandatory suspension of a driver's license for failure to appear or pay a fine for a violation of the motor vehicle financial responsibility laws."

Given before the Senate Judiciary Committee by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The judges of the limited jurisdiction courts support this measure. In many courts the offense of failing to show proof of liability insurance is the most prevalent of offenses due in part to the high cost of liability insurance. In many instances the individual who is charged does not obtain insurance because it is easier and cheaper to take a chance on not getting a ticket than it is to purchase the insurance.

Once cited, many of these individuals simply do not bother to appear in court to answer the charges or do not bother to appear to pay their fines. If they were to lose their driver's license for failing to appear or for failing to pay a fine for failing to show proof of liability insurance there is a possibility the number of these offenses would decrease.

The judges of the limited jurisdiction courts of Montana feel that the operation of a motor vehicle is a privilege granted by the state to certain persons through a driver's license. As such, when a person fails to acknowledge the responsibilities that go hand in hand with the operation of a motor vehicle the privilege to operate that motor vehicle should be forfeit.

We urge your agreement and your giving this measure a do concur recommendation from the committee.

Wallace A. Jewell

CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH

BRUCE R. TOOLE
JOHN M. DIETRICH
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February 27, 1989

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Sen. Bruce D. Crippin
Chairman, Senate Judiciary Committee
Capitol Station
Helena, Montana 59620

Re: House Bill 326

Dear Senator Crippin:

I am writing in support of House Bill 326, particularly as it amends 37-60-105(4)(b) to exempt legal assistants from the ambit of licensure for private investigators. This portion of HB. 326 restores the exemption for legal assistants which was removed from the law in 1987.

I am a lawyer in private practice in Billings, with a firm that utilizes legal assistants extensively. I also teach classes in the paralegal training program at Rocky Mountain College, including a course in Interviewing, Investigation and Evidence. After the 1987 amendment, I was made aware by legal assistants in our office and by my students that private investigators in Billings were asserting that legal assistants, in the course of working for lawyers in particular lawsuits, could not engage in investigation or interviewing of potential witnesses unless licensed under the Act.

Legal assistants in Montana engage in investigation and interviewing. They are trained in a number of fashions--formal training (through programs such as Rocky Mountain College and the College of Great Falls offer in-state) and on-the-job training being the most important. The kinds of investigative work a legal assistant will do depend upon the kinds of cases the attorney (or agency or other employer) handles. The work is done in the context of a particular set of facts and parties, with emphasis upon the legal issues and formal procedures pertinent to that case. Obviously, a lawyer can chose to hire a private investigator when that meets the client's needs, but the 1987 amendment (according to at least some vocal private

Sen. Gene Thayer
February 27, 1989
Page 2

SENATE JUDICIARY
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DATE 3-9-89
BILL NO. HB 326

investigators) mandates use of a private investigator even when a competent legal assistant is available and capable of doing the work.

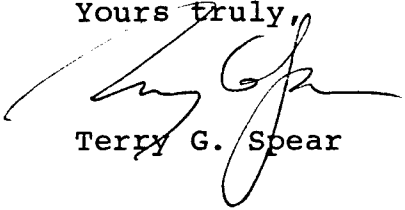
Legal assistants are not presently licensed in Montana. However, legal assistants are regulated through the Montana Supreme Court's power to govern the practice of law. In fact, the State Bar Association's Ethics Committee has issued opinions outlining the scope of permissible work by legal assistants. There is no reason to vest this power in a regulatory agency involved in governing a different occupation altogether.

Since the legal assistant is responsible to the supervising attorney (who, in turn, is responsible to the client and to the Court) for actions undertaken, this regulation (as "private investigators") is redundant. More importantly, it can result in unnecessary increased expense for the parties, if indeed a private investigator must be hired to do at a greater cost the work of finding the facts which a competent legal assistant can do more quickly and less expensively in many instances.

I do not believe the 1987 change was explained to that Legislature as an attempt to expand the business opportunities of private investigators and limit the power of lawyers to utilize trained support staff to provide needed services to clients more quickly and cheaply. As far as I can ascertain, that is the only purpose for which the 1987 change has been used. The legal profession is already a very expensive service industry. Increasing that expense to the consumer for the benefit of private investigators without adding anything of value for the consumer does not seem to me to be in the public interest.

I urge the Committee's approval of H.B. 326. Thank you for your attention.

Yours truly,


Terry G. Spear

TGS:ixt

CC: Senate Judiciary Committee members

Copple

EXHIBIT NO. 410.1

DATE 3-9-89

CALL NO. HB 326

Occupational Outlook Handbook

1988-89
Edition



U.S. Department of Labor
Ann McLaughlin, Secretary

Bureau of Labor Statistics
Janet L. Norwood, Commissioner

April 1988

Bulletin 2300

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3-9-89
HB 326

ufacturing, mainly in the electrical and electronic machinery and equipment, transportation equipment, and machinery industries. Over one-fifth worked in service industries, mostly in engineering or business services companies who do engineering work on contract for government, manufacturing, or other organizations.

In 1986, the Federal Government employed about 64,000 engineering technicians. Almost two-fifths worked for the Department of Defense; others worked for the Departments of Transportation, Agriculture, and Interior, the Tennessee Valley Authority, and the National Aeronautics and Space Agency. State governments employed about 35,000 and local governments about 22,000.

Training, Other Qualifications, and Advancement

Although persons can qualify for engineering technician jobs through many combinations of work experience and education, most employers prefer applicants with technical training. This training is available at technical institutes, junior and community colleges, extension divisions of colleges and universities, and public and private vocational-technical schools. Persons with college courses in science, engineering, and mathematics may also qualify for some positions but may need additional specialized training and experience.

Training can also be obtained on the job or through apprenticeship programs or correspondence schools. Some types of Armed Forces training and experience also may qualify one for some engineering technician jobs.

Many types of publicly and privately operated schools provide technical training. The kind and quality of programs can vary considerably. Therefore, prospective students should be careful in selecting a program. They should contact prospective employers regarding their preferences and ask schools to provide information about the kinds of jobs obtained by graduates, instructional facilities and equipment, and faculty qualifications.

Technical institutes offer intensive technical training but less theory and general education than junior and community colleges. Many offer 2-year associate degree programs, and are similar to or are part of a community college or are part of State university systems. Other technical institutes are run by private, often for-profit, organizations, sometimes called proprietary schools; their programs vary considerably in length and types of courses offered. Some are 2-year associate degree programs.

Junior and community colleges offer curriculums similar to those in technical institutes but may include more theory and liberal arts. Often there may be little or no difference between technical institute and community college programs. However, courses taken at junior or community colleges are more likely to be accepted for credit at 4-year colleges than those at technical institutes. After completing the 2-year program, some graduates qualify for

jobs as engineering technicians while others continue their education at 4-year colleges.

Four-year colleges usually do not offer engineering technician training, but college courses in science, engineering, and mathematics are useful for obtaining a job as an engineering technician.

Area vocational-technical schools are post-secondary public institutions that serve local students and emphasize training needed by local employers. Most require a high school diploma or its equivalent for admission.

Other training may be obtained in the Armed Forces in technical areas which can be applied in civilian engineering technician jobs. Some additional training may be needed, depending on the military skills acquired and the kind of job, but often this is gained on the job. Some correspondence schools also offer training for engineering technicians.

Prospective engineering technicians should take as many high school science and math courses as possible. Engineering technicians need an aptitude for mathematics and science. For design work, creativity also is desirable. They should be able to work well with others since they are often part of a team of engineers and other technicians. Those in sales and service should be able to work independently and deal effectively with customers.

Engineering technicians usually begin doing routine work under the close supervision of an experienced technician, engineer, or scientist. As they gain experience, they are given more difficult assignments with only general supervision. Some engineering technicians eventually become supervisors, and a few, engineers.

Job Outlook

Employment of engineering technicians is expected to increase much faster than the average for all occupations through the year 2000 due to anticipated increases in research and development expenditures and expected continued rapid growth in the output of technical products. Competitive pressures and advancing technology will force companies to improve and update manufacturing facilities and product designs more rapidly than in the past.

Despite the projected much faster than average growth, most job openings will be to replace technicians who transfer to other occupations or leave the labor force.

Many technician jobs are defense related; cutbacks in defense spending could result in layoffs.

Earnings

Median annual earnings of full-time engineering technicians were about \$24,400 in 1986; the middle 50 percent earned between \$18,000 and \$30,400. Ten percent earned less than \$14,000, and 10 percent earned over \$36,600.

In the Federal Government, engineering technicians could start at \$11,802, \$13,248, or \$14,822 in 1987, depending on their education and experience.

Related Occupations

Engineering technicians apply scientific and engineering principles usually acquired in post-

secondary programs below the baccalaureate level. Occupations of a similar nature include science technicians, drafters, surveyors, broadcast technicians, and health technologists and technicians.

Sources of Additional Information

For information on a career as an engineering technician, contact:

The National Engineering Council for Guidance, 1420 King St., Suite 405, Alexandria, VA 22314.

For information on engineering technicians specializing in electronics, contact:

International Society of Certified Electronics Technicians, 2708 W. Berry, Suite 3, Fort Worth, TX 76109.

Electronics Technicians Association, International, 604 North Jackson St., Greencastle, IN 46135.

Legal Assistants

(D.O.T. 119.267-022 and -026)

Nature of the Work

Not all legal work requires a law degree. In recent years, lawyers have increasingly used legal assistants—also called "paralegals" or "legal technicians"—to provide legal services to more persons at less cost.

Legal assistants work directly under the supervision of a lawyer. While the lawyer assumes responsibility for the legal assistant's work, a legal assistant is often allowed to perform all the functions of a lawyer other than accepting clients, setting legal fees, giving legal advice, or presenting a case in court.

Legal assistants generally do background work for the lawyer. To help a lawyer prepare litigation for trial, a legal assistant investigates the facts of the case to make sure that all relevant information is uncovered. The legal assistant may conduct research to identify the appropriate laws, judicial decisions, legal articles, and other material that will be used to determine whether or not the client has a good case. After analyzing all the information, the legal assistant may prepare a written report that is used by the attorney to decide how the case should be handled. If the attorney decides to file a lawsuit on behalf of the client, the legal assistant may prepare legal arguments, draft pleadings to be filed with the court, obtain affidavits, and assist the attorney during the trial. The legal assistant also may keep files of all documents and correspondence important to the case.

Besides litigation, legal assistants may also work in areas of the law such as bankruptcy, criminal law, employee benefits, patent and copyright law, and real estate. They help draft documents such as contracts, mortgages, separation agreements, and trust instruments. They may help prepare tax returns and plan estates. Some legal assistants coordinate the activities of law office employees and keep the financial records for the office.

Legal assistants who work for corporations

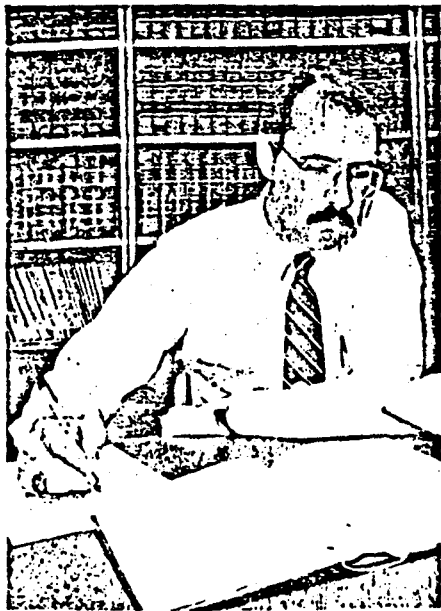
help attorneys handle corporate matters such as employee contracts, shareholder agreements, stock option plans, and employee benefit plans. They may help prepare and file annual financial reports, maintain corporate minute books and resolutions, and secure loans for the corporation. Legal assistants may also review government regulations to make sure that the corporation operates within the law.

The duties of legal assistants who work in government vary depending on the type of agency that employs them. Generally, legal assistants in government analyze legal material for internal use, maintain reference files, conduct research for attorneys, collect and analyze evidence for agency hearings, and prepare informative or explanatory material on the law, agency regulations, and agency policy for general use by the agency and the public.

Legal assistants employed in community legal service projects help the poor, the aged, and other persons in need of legal aid. They file forms, conduct research, and prepare documents. When authorized by law, they may represent clients at administrative hearings.

Some legal assistants, usually those in small and medium-sized law firms, have varied duties. One day the legal assistant may do research on judicial decisions on improper police arrests and the next day may help prepare a mortgage contract. This requires a general knowledge of many areas of the law.

Some legal assistants work for large, departmentalized law firms, government agencies, and corporations and specialize in one area of the law. Some specialties are real estate, estate planning, family law, labor law, litigation, and corporate law. Even within specialties, functions often are broken down further so that a legal assistant deals with one narrow area of the specialty. For example, legal assistants who specialize in labor law may deal exclusively with employee benefits.



To help lawyers prepare a case, legal assistants do research on relevant laws and judicial decisions.

A growing number of legal assistants are using computers in their work. Computer software packages are increasingly used to search legal literature stored in the computer and identify legal texts relevant to a specific subject. In litigation that involves many supporting documents, legal assistants may use computers to organize and index the material. Legal assistants may also use computer software packages to perform tax computations and explore the consequences of possible tax strategies for clients.

Working Conditions

Legal assistants do most of their work at desks in offices and law libraries. Occasionally, they travel to gather information and perform other duties. They may work alone or with others.

Most legal assistants work a standard 40-hour week. Sometimes, they work very long hours and are under pressure to meet deadlines. At some law firms they do not get paid for overtime work, although they may receive compensatory time off.

Legal assistants handle many routine assignments. Some find that these assignments offer little challenge and become frustrated with their duties. On the other hand, legal assistants usually assume more responsible tasks as they gain experience. Furthermore, as new laws and judicial interpretations emerge, legal assistants are exposed to many new legal problems that make their work more interesting and challenging.

Employment

Legal assistants held about 61,000 jobs in 1986. Private law firms employed the vast majority; most of the remainder worked for various levels of government. Legal assistants are found in nearly every Federal Government agency; the Departments of Justice, Treasury, Interior, and Health and Human Services and the General Services Administration are the largest employers. State and local governments and publicly funded legal service projects employed legal assistants as well. Banks, real estate development companies, and insurance companies also employed small numbers of legal assistants.

Training, Other Qualifications, and Advancement

There are several ways to enter the legal assistant profession. Increasingly, employers require formal legal assistant training. However, some employers prefer to train their legal assistants on the job. Entrants to this occupation include legal secretaries and high school and college graduates with no legal experience. Other entrants have experience in a technical field that is useful to law firms, such as a background in tax preparation for tax and estate practice or nursing or health administration for personal injury practice.

Several hundred formal legal assistant training programs are offered at 4-year colleges and universities, law schools, community and junior colleges, business schools, proprietary schools, and legal assistant associations. In

1986, nearly 100 programs had been approved by the American Bar Association (ABA); although approval by the ABA is neither required nor sought by many programs, graduation from an ABA-approved program can enhance one's employment opportunities. The requirements for admission to formal training programs vary widely. Some require some college courses or a bachelor's degree. Others accept high school graduates or persons with legal experience. A few schools require standardized tests and personal interviews.

Most legal assistant programs are completed in 2 years, although some take as long as 4 years and others only a few months. Some schools offer general legal assistant training with courses in many different areas of the law, including legal research techniques. Others provide training in specialized areas of the law, such as real estate, estate planning and probate, litigation, family law, contracts, criminal law, and income taxation. Many employers prefer applicants with training in a specialized area of the law. Some legal assistant training programs include an internship in which students gain practical experience by working in a law office, corporate legal department, or government agency. Depending on the program, graduates may receive a certificate, an associate degree, or, in some cases, a bachelor's degree.

The quality of legal assistant training programs varies; the better programs generally emphasize job placement. Prospective students should examine the experiences of recent graduates of programs in which they are considering enrolling.

Currently, legal assistants need not be certified. The National Association of Legal Assistants, however, has established standards for voluntary certification which require various combinations of education and experience. Legal assistants who meet these standards are eligible to take a 2-day examination given by the Certifying Board of Legal Assistants of the National Association of Legal Assistants each year at several regional testing centers. Persons who pass this examination may use the designation Certified Legal Assistant (CLA). This designation is a sign of competence in the field and may enhance one's employment and advancement opportunities.

Legal assistants must be able to handle legal problems logically and effectively communicate (both orally and in writing) their findings and opinions to their supervising attorney. They must understand legal terminology and have good research and investigative skills. Familiarity with the operation and applications of computers in legal research is increasingly important. Legal assistants must always stay abreast of new developments in the law that affect their area of practice.

Because legal assistants often deal with the public and other employees, they must be courteous and uphold the high ethical standards of the legal profession. A few States have established ethical guidelines that legal assistants in the State must follow.

Experienced legal assistants usually are given progressively more responsible duties and less

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revision. In large law firms, corporate legal departments, and government agencies, experienced legal assistants may supervise other legal assistants and delegate work assigned by attorneys. Advancement opportunities include promotion to managerial and other law-related positions within the firm or corporate legal department.

Outlook

The number of job openings for legal assistants is expected to increase significantly through the year 2000, but so will the number of persons pursuing this career. Thus, competition for jobs should increase as the number of graduates from legal assistant training programs rises. Overall, job prospects are expected to be good for graduates of highly regarded formal programs. Employment of legal assistants has grown tremendously since the emergence of this occupation in the late 1960's. Employment is expected to continue to grow much faster than the average for all occupations through the year 2000. The emphasis on hiring legal assistants should continue in both legal and law-related fields so that the cost, availability, and efficiency of legal services can be improved. Besides jobs arising from growth in demand for legal assistants, numerous job openings are expected to arise as persons leave the occupation for various reasons.

Private law firms will continue to be the largest employers of legal assistants as a growing population sustains the need for legal services. The growth of prepaid legal plans also should contribute to the demand for the services of law firms. Other organizations, such as corporate legal departments, insurance companies, real estate and title insurance firms, and banks will continue to hire legal assistants. Job opportunities are expected to expand throughout the private sector as companies become aware of the value of legal assistants.

Job opportunities for legal assistants will expand even in the public sector. Community social service programs—which provide assistance to the poor, the aged, minorities, and middle-income families—operate on limited budgets and will need more legal assistants to keep expenses down without having to limit services. Federal, State, and local government agencies, consumer organizations, and the courts also should continue to hire legal assistants in increasing numbers.

To a limited extent, legal assistant jobs are affected by the business cycle. During recessions, the demand for some discretionary legal services, such as planning estates, drafting wills, and handling real estate transactions, declines. Corporations are less inclined to initiate litigation when falling sales and profits lead to a tight belt tightening. As a result, legal assistants employed in offices adversely affected by recession may be laid off. On the other hand, during recessions, corporations and individuals face other legal problems, such as bankruptcies, foreclosures, and divorces, that require legal solutions. Furthermore, the continuous emergence of new laws and judicial interpretations creates new business for lawyers and

legal assistants without regard to the business cycle.

Earnings

Earnings of legal assistants vary greatly. Salaries depend on the training and experience the legal assistant brings to the job, the type of employer, and the geographic location of the job. Generally, legal assistants who work for large law firms or in large metropolitan areas earn more than those who work for smaller firms or in less populated regions.

Legal assistants had an average annual salary of about \$22,200 in 1986, according to a utilization and compensation survey by the National Association of Legal Assistants. Starting salaries of legal assistants averaged \$17,200, while legal assistants with from 3 to 5 years of experience averaged \$21,400 a year. Salaries of legal assistants with over 10 years of experience averaged \$25,200 annually, according to the same survey.

Legal assistants hired by the Federal Government in 1987 started at \$14,800 or \$18,400 a year, depending on their training and experience. The average annual salary of legal assistants who worked for the Federal Government in 1986 was about \$28,600.

Related Occupations

Several other occupations also call for a specialized understanding of the law and the legal system but do not require the extensive training of a lawyer. Some of these are abstractors, claim examiners, compliance and enforcement inspectors, occupational safety and health workers, patent agents, police officers, and title examiners.

Sources of Additional Information

General information on a career as a legal assistant and a list of legal assistant schools approved by the American Bar Association are available from:

Standing Committee on Legal Assistants, American Bar Association, 750 North Lake Shore Dr., Chicago, IL 60611.

For information on certification of legal assistants, schools that offer training programs in a specific State, and standards and guidelines for legal assistants, contact:

National Association of Legal Assistants, Inc., 1420 South Utica, Tulsa, OK 74104.

Information on a career as a legal assistant, training programs, and local legal assistant associations can be obtained from:

National Federation of Paralegal Associations, Suite 201, 104 Wilmor Rd., Deerfield, IL 60015-5195.

General information about job opportunities for legal assistants is available from:

Legal Assistant Management Association, P.O. Box 40129, Overland Park, KS 66204.

For information on legal assistant careers, training programs, and job opportunities, contact:

National Paralegal Association, P.O. Box 629, Doylestown, PA 18901.

Library Technicians

(D.O.T. 100.367-018)

Nature of the Work

Library technicians perform many support activities needed for the smooth operation of a library. They help librarians acquire, prepare, and organize material, and help users find materials and information. Technicians in small libraries handle a wide range of duties; those in large libraries usually specialize.

Library technicians are also known as *library technical assistants*. They answer questions about use of the card catalog, direct library users to standard references, organize and maintain periodicals, perform routine cataloging of library materials, file cards, verify information on order requests, and sometimes supervise other support staff. Some library technicians operate and maintain audiovisual equipment such as projectors and tape recorders. They may also assist library users with microfilm or microfiche readers, or retrieve information from a computer data base. Technicians sometimes work on special projects such as the design of posters that promote library services or displays on topics of current interest.

Those in school libraries teach students to use the school library/media center and encourage them to do so. They also help teachers get instructional materials and help students with special assignments. Some work in special libraries maintained by government agencies and corporations, as well as by law firms, advertising agencies, museums, professional societies, medical centers, and research laboratories. They conduct literature searches, compile bibliographies, and prepare abstracts, usually on subjects of particular interest to the organization.

Working Conditions

The job requires standing, stooping, bending, lifting, and reaching. Some duties like calculating circulation statistics can be repetitive and boring. Others, such as computer searches using local and regional library networks and cooperatives, can be interesting and challenging.

Library technicians in schools work regular school hours. Those in public libraries and college and university (academic) libraries may work weekends and evenings. Library technicians in special libraries—in government agencies, businesses, law firms, and medical and research centers—usually work a regular 40-hour week.

Employment

Library technicians held about 51,000 jobs in 1986. Most worked in school, academic, or public libraries.

The Federal Government employed about 3,600 library technicians. Most worked in Department of Defense libraries or in the Library of Congress.

Copple

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 3-9-89

BILL NO. HB 326

MONTANA PARALEGAL ASSOCIATION
STATEMENT OF SUPPORT FOR HOUSE BILL 326
March 9, 1989

The Montana Paralegal Association submitted House Bill 326 for consideration by the 1989 Legislature and urges its adoption in order to clarify an ambiguity in the Montana Code concerning the licensing requirements for private investigators. In 1987, when Chapter 60 of the Montana Code was revised, paralegals and legal assistants were omitted from the list of occupations that are excluded from the licensing provisions for private investigators. House Bill 326 would restore the language of § 37-60-105(4), MCA, so that paralegals and legal assistants, like attorneys, are allowed to do investigative work without the requirement of a license.

Paralegals and legal assistants work under the direct supervision of attorneys, who are excluded from such licensure, although attorneys are often required to conduct "investigations" as the term is defined in § 37-60-101, MCA, in order to properly represent clients. When paralegals and legal assistants do investigative work, they do so at the direction of their employers and in the context of legal proceedings and procedures. The attorney is ultimately responsible for the work of the paralegal or legal assistant and attorneys are regulated by the Supreme Court of Montana. Rule 5.3 of the Montana Rules of Professional Conduct for attorneys specifically sets forth the responsibilities of attorneys who employ or retain nonlawyer assistants.

Investigative work is only one aspect of the job of paralegals and legal assistants. Depending on the specialty of the attorneys for whom they work (litigation, probate, commercial, family law, and so forth), paralegals and legal assistants may be responsible for document organization and analysis, may draft correspondence and legal documents, do library, computer and document research, assist an attorney in trial or hearing preparation, manage files and maintain contact with clients, witnesses and other persons who play a role in an attorney's practice.

We urge the Senate Judiciary Committee to recommend passage of House Bill 326.

Becky Copple
Chairperson
Legislative Action Committee
Montana Paralegal Association

Branson

SENATE JUDICIARY

EXHIBIT NO. 6

DATE 3-9-89

BILL NO. HB 326

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

March 9, 1989

Because of an ambiguity in the Montana statutes regulating private investigators, some private investigators in Montana have said that because paralegals do investigation, they should be subject to regulation by the Board of Private Security Patrolmen and Investigators. As a result of these contentions, the Montana Paralegal Association asked that legislation be drafted and introduced into the 1989 Legislature in order to resolve the ambiguity. That legislation, House Bill 326, exempts paralegals, legal assistants and law students from the licensure requirements for private investigators.

The legal assistant profession began in the early 1970's as a way to lower the cost of rapidly rising legal fees. Skilled paraprofessionals could perform most of the duties of an attorney, but at a much lower cost to the client. The attorney, who is regulated by Montana's Supreme Court, is ultimately responsible for all of a legal assistant's work. (See RULE 5.3 Responsibilities Regarding Nonlawyer Assistants, Rules of Professional Conduct, adopted by the Montana Supreme Court, June 6, 1985.)

As § 37-60-105, Montana Code Annotated now reads, the responsibility for supervision of a legal assistant appears to have been shifted from the attorney to the Board of Private Security Patrolmen and Investigators. The situation is complicated by the fact that one interpretation of the statute suggests that paralegals have to become private investigators in order to carry out the investigation necessary in many facets of legal work. But to become a licensed private investigator takes so much time (with a substantial amount of money paid to the private investigators' Board) that a legal assistant working full-time cannot become one.

Thus, attorneys are conceivably faced with a dilemma: In order to prepare the background research necessary for a case, they must either do the investigation themselves (at a

greater cost to the client) or hire a private investigator (at a greater cost to the client than if a legal assistant did it.) Either way, the client loses and the cost of litigation rises.

It should be noted, however, that a legal assistant's job is much broader in scope than just investigation. They are hired for their writing and communication skills, as well as their ability to determine what investigation is needed in terms of a case's legal issues. A legal assistant performs substantive legal work that requires knowledge of legal concepts and that is customarily performed by a lawyer.

The private investigators appear to have tried to limit the legal assistant's proven abilities, not out of a desire to protect consumers, but to prevent them from pursuing their vocation. This has the effect of decreasing legitimate competition and raising the cost of legal services. The private investigators will argue that they are trying to "regulate" the profession. Legal assistants respond by saying that, pursuant to the Rules of Professional Conduct, it is the attorneys responsibility to monitor our activities and the Montana Supreme Court's responsibility to monitor the attorneys.

House Bill 326 must be passed: The private investigators cannot be allowed to "regulate" another profession.

Carol A. Bronson,
Certified Legal Assistant
733 32nd Avenue N.E.
Great Falls MT 59404

RULES OF PROFESSIONAL CONDUCT ADOPTED BY THE NO. HB 326MONTANA SUPREME COURT ON JUNE 6, 1985

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligation of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligation of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

SENATE JUDICIARY

EXHIBIT NO. 7

DATE 3-9-89

BILL NO. HB 204

Amendments to House Bill No. 204
Third Reading Copy (BLUE)

Requested by Senator Crippen
For the Committee on Judiciary

Prepared by Valencia Lane
March 7, 1989

1. Page 8, line 25 through page 9, line 3.
Following: "attorney" on line 25
Strike: remainder of line 25 through "corporation" on page 9,
line 3

*Didn't appear
at hearing*

SENATE JUDICIARY
EXHIBIT NO. 8
DATE 3-9-89
HB 326
TELEPHONE (406) 245-9934

Frat Building, Suite 205
2817 Second Avenue North
P.O. Box 1179
Billings, Montana 59103-1179

March 8, 1989

The Honorable Bruce D. Crippen
Chairman, Judiciary Committee
Montana State Senate
Capitol Station
Helena, MT 59620

RE: House Bill 326

Sir:

It is my understanding a possible deterrent to the passage of House Bill 326 as proposed may exist because of your committee's concern regarding expansion of the definition of "legal assistants," or "paralegals," to include free-lance paralegals, who are not employed by law firms but who are employed as independent contractors. As a salaried paralegal with the Crowley Law Firm for many years and now as the president of a free-lance paralegal company employing four "free-lance" paralegals, I wish to address your concerns as well as the opposition to the passage of this bill by the Montana Association of Private Investigators, and encourage your support of House Bill 326.

The paralegal profession began when attorneys realized that many of their duties could be profitably delegated to a para-professional who could not command the salary paid to a law school graduate or set up an independent practice of law. Not only could the attorney maintain control of his/her work product through the employment of a paralegal, but the reduced costs of client representation could be passed through to the public consumer. This attorney's control of the work product is not limited to a staff paralegal but to a free-lance paralegal as well, as free-lance paralegals contract with the attorney and not with the attorney's client. To substantiate my statement, consider the reaction of the Montana Bar Association to a practice of a free-lance paralegal contracting legal work directly with the public. That practice is commonly referred to as "practicing law without a license," a practice most assuredly not encouraged by any Bar

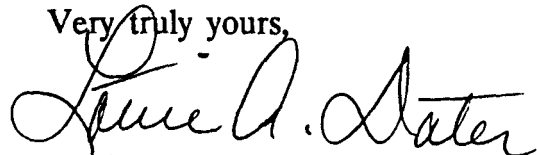
The Honorable Bruce D. Crippen
March 8, 1989
Page 2

Association or any paralegal association.

Consider, as well, the absurdity of the content of the prior statute prohibiting paralegals from performing any "investigative" duties except if they are licensed as private investigators. Does a private investigator possess the qualifications necessary to "investigate" (obtain and analyze) financial statements, bank records, prior tax returns, etc., so the tax paralegal's supervising attorney can represent his/her client at an IRS audit? Or does that private investigator possess the skills required to "investigate" the chain of title to mineral interests so the oil and gas attorney can prepare a Title Opinion or Status Report for an oil company? If House Bill 326, as presented, is not passed, not only will that defeat impact a trial attorney's practice, but also the attorney's practice in the areas of probate and estate, tax, oil and gas, real estate, corporate, anti-trust, etc., etc., etc. Regardless of the area of specialty, paralegals "investigate." That is our job in addition to possessing writing, communication and legal skills. Paralegals always function at the direction of and under the supervision of an attorney, whether or not that paralegal works for one or innumerable firms. I honestly believe that any attorney possesses far, far more formal education in the art and practice of investigation than any private investigator. Furthermore, were the paralegal profession abandoned or so many constraints placed upon the duties of a paralegal, as promulgated by the Montana Association of Private Investigators, so as to render employment of a paralegal more of a nuisance than a practicality, attorneys would have no alternative but to resort to practice of old -- they would do it themselves at twice to three times the cost. Cost to whom? You and the public. Cost to you in the event you die. Cost to you in the event you are sued. Cost to you when you decide to sell the ranch. Cost to you the next time you buy a gallon of gasoline because paralegals are employed in many, many business entities, including oil companies. Without the paralegal, it will simply be more expensive for an attorney to prepare a quality legal representation of you or that oil company to produce a gallon of oil.

Therefore, I strongly urge you to support House Bill 326 as amended.

Very truly yours,


Lottie A. Dater, President
LEGAL TECH

*Didn't appear
at hearing*

SENATE JUDICIARY

EXHIBIT NO. 9

DATE 3-9-89

BILL NO. HB 326

NFPA

National Federation of Paralegal Associations

104 Wilmot Rd., Suite 201 • Deerfield, IL 60015-5195 • (312) 940-8800

PLEASE REPLY TO:

Jolene Miller
The Atchison, Topeka &
Santa Fe Railway
Law Department
P.O. Box 1738
Topeka, Kansas 66628
(913) 357-3389

March 3, 1989

The Honorable Bruce D. Crippen
Chairman, Senate Judiciary Committee
Capitol Station
Helena, MT 59620

RE: Testimony on House Bill No. 326

Dear Sen. Crippen:

I am forwarding copies of the written testimony for the National Federation of Paralegal Associations on HB No. 326 which we ask be made part of the record on this bill. In the event you have any questions regarding this testimony, please do not hesitate to contact me.

Sincerely,

Jolene Miller

Jolene Miller
First Vice President - Policy

jm

enclosures

cc Lu Hangle
Carolyn McKown
Sheila Wertz

SENATE JUDICIARY
EXHIBIT NO. 10
DATE 3-9-89
BILL NO. HB 326

WRITTEN TESTIMONY OF
THE NATIONAL FEDERATION OF PARALEGAL ASSOCIATIONS, INC.

TO THE SENATE JUDICIARY COMMITTEE
THE HONORABLE BRUCE D. CRIPPEN, CHAIRMAN

MARCH 9, 1989
HELENA, MONTANA

* * * * *

Chairman Crippen, Members of the Committee:

Thank you for allowing the National Federation of Paralegal Associations, Inc. (NFPA) to present this written testimony on House Bill 326.

Founded in 1974, the NFPA is the oldest and largest non-profit professional association representing over 14,000 paralegals nationwide. The NFPA supports increased quality, efficiency and accessability in the delivery of legal services. In addition, it promotes the growth, development and recognition of the profession as an integral partner in the delivery of legal services.

In March 1987, at the NFPA's annual meeting the following definition of a paralegal/legal assistant was adopted:

A Paralegal/Legal Assistant is a person, qualified through education, training or work experience, to perform substantive legal work, that requires knowledge of legal concepts, and is customarily, but not exclusively, performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency or other entity or may be authorized by administrative, statutory or court authority to perform this work.

This definition, although quite broad in nature, reflects the diversity of the NFPA's membership.

Legal assistants perform tasks delegated to them by attorneys. Attached is the NFPA's Index to Legal Assistant Duties which is used by many paralegal educators and members of the American Association for Paralegal Education in their classrooms. As you can see, in nearly every practice area, paralegals perform services for attorneys that could be construed as some type of investigative activity. The American Bar Association Code of Professional Responsibility and Canons of Judicial Ethics states:

. . . Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product.

The scope of the tasks that a paralegal may perform are outlined in Opinion 316 of the American Bar Association's Committee on Professional Ethics. The opinion reads as follows:

We do not limit the kind of assistance that a lawyer can acquire in any way to persons who are not admitted to the Bar, so long as the non-lawyers do not do things that lawyers may not do or do the things that lawyers only may do.

The economic advantages derived from employing legal assistants are becoming widely known within the legal and business communities. At a time when clients are concerned about the delivery of cost-effective legal services, attorneys are using paralegals to perform tasks--including investigations requisite with the prosecution or defense of a client's case--once accomplished by associates. Through the use of legal assistants, law offices, corporations, government agencies, public law offices, etc. are able to provide their clients with a higher caliber work product at a lower cost. In fact, because of the increased demand for affordable legal services, the U.S. Department of Labor in 1987 found the

paralegal profession was one of the fastest growing professions in this country. By the year 2000 the Department estimates 117,000 individuals will be employed as legal assistants, an increase of 104% between the years 1986 and 2000.

It is with this background the NFPA urges you to include paralegals/legal assistants in the exemptions found at M.C.A. 37-60-105. The stated purpose of the statutes regulating private investigators and patrolmen found at M.C.A. 37-60-103 is: ". . . to safeguard the public health, safety and welfare against illegal, improper or incompetent actions. . .". The NFPA respectfully submits that the attorney, through whom the legal assistant provides services, is fully liable to the client and to the public for all investigatory work performed by that individual. To exclude legal assistants from the exemptions found at M.C.A. 37-60-105, thereby forcing them to have a license to perform investigatory tasks unnecessarily increase the cost of legal services to the consumer; is cumbersome; hinders the efficient, cost effective delivery of legal services; places an undue hardship on the attorney; and does not have any benefit to the public.

To leave the statute in its current form--with paralegals/legal assistants excluded from the exemptions--in essence establishes a protected class of individuals--private investigators--and creates a monopoly for that profession.

Consequently, for the foregoing reasons, the NFPA urges the favorable passage of HB 326.

Respectfully submitted,


JOLENE MILLER

First Vice President - Policy

EX #10

3/9/89

HB 326

INDEX TO
LEGAL ASSISTANT DUTIES

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LEGAL ASSISTANT DUTIES

The tasks listed below are a compilation of discrete activities that can be and are performed by legal assistants in various specialty areas of law. This list is not meant to be all-inclusive, but is an example of the types of assignments that can be delegated to legal assistants.

GENERAL

Conduct interviews with clients to gather background information.

Correspond with clients, counsel, others on factual matters.

Inform client periodically of case/matter status.

Draft pleadings and documents.

Organize and maintain form and client files.

Index or summarize documents or transcripts.

Assemble and analyze records from courts or agencies relevant to your case or client.

Prepare clients for court hearings.

Assist in administering law library.

Review legal periodicals and material relevant to your area of law.

Maintain current binders of court rules.

Maintain calendar or tickler system.

Administer paralegal program.

Legal research, including procedural, administrative or case law research.

Legislative reporting -- keep track of pending legislation that may affect clients.

BANKRUPTCY

Interview client to obtain information for filing petition and schedules.

Give client written lists of documents, etc. needed, i.e., tax returns, certificate of title, life insurance, liabilities, etc.

Obtain list of assets.

Arrange appropriate UCC and real property searches, appraisals, etc.

Review forms to obtain all necessary data.

Familiarize client with general procedures at bankruptcy court hearings, meetings and motions.

Draft and file petitions and schedules.

Draft and file proofs of claim.

Meet with clients for execution of documents.

Handle incoming and outgoing routine calls and correspondence to creditors, creditors' committee chairperson and attorney, trustee and client.

Attend court hearings with attorney and client in effort to facilitate flow of documents and information.

Keep track of timetable, i.e., when to file motions and serve motions.

Draft motions for avoidance of liens and reaffirmation agreements and arrange for execution of same.

Draft, serve and file debtor's monthly financial statements in Chapter 11 cases.

Draft, serve and file complaints in adversary proceedings.

Draft and file attorneys' fee applications.

Attend Section 341(a) meeting.

Attend Chapter 13 Plan confirmation hearing.

Maintain log to check off discharge and status of bankruptcy.

BUSINESS

Check availability and reserve corporate name.

Draft and file articles of incorporation.

Complete and file qualification of foreign corporations.

Obtain good standing certificates from Secretary of State.

Draft bylaws.

Draft notices and minutes, or consents of organization meeting.

Draft Subscription Agreements.

Issue and transfer stock, prepare stock and shareholder registers, prepare and maintain analyses and charts of outstanding securities.

Draft banking resolutions.

Prepare necessary documents for opening of corporate bank account.

Draft Shareholder Agreements.

Draft Buy-Sell Agreements.

Draft Employment Agreements.

Complete and file any assumed name certificates.

Complete and file election by small business corporation and subsequent shareholders' consents to such election.

Complete and file application for employer identification number.

Complete and file application for workers' compensation.

Notify State Tax Commission of stock book location.

Prepare and file DISC elections.

Complete and file application for unemployment insurance.

Complete and file application for employer withholding tax registration.

Complete and file application for appropriate licenses to operate specific businesses.

Complete and file trade name applications, copyright applications and financing statements.

Order minute book, stock book and seal.

Draft and file application for proper licensing when forming professional or special purpose corporation.

Draft response to auditors' request for information.

Prepare and file annual reports.

Maintain a tickler system for annual meetings.

Draft notices, proxy materials, ballots, affidavits of mailing and agendas for annual meeting and special meetings.

Draft resolutions to be considered by directors.

Draft oaths and reports of judges of election for annual meeting.

Draft shareholders and directors minutes.

Draft written consents in lieu of meetings.

Draft documents and correspondence necessary to effect dissolution and liquidation, merger and sale of substantially all of the assets of corporations.

Draft stock option plan, maintain stock option registers and related charts.

Collect information, draft documents and correspondence necessary to adopt qualified profit-sharing and pension plans and related trust agreements and other documents. Submit such materials to I.R.S. for determination letters.

Draft and organize closing papers on corporate acquisitions.

Draft lease agreements.

Qualify corporation under state law.

Draft Articles of Merger, Plan of Merger.

Draft closing checklists and closing memoranda.

Prepare closing files and assist in closing.

Draft articles of dissolution.

Due diligence investigation.

Compile and index documents in corporate transactions.

Draft partnership agreements and amendments.

Draft statements of partnership and certificates of limited partnership.

Draft certificates of amendment to certificates of limited partnership.

Prepare and publish Notice of Substance of Certificates of General and Limited Partnership.

Draft minutes of partnership meetings.

Draft non-competition agreements for selling partners.

Draft Agreement for Dissolution of Partnership.

Draft and publish Notice of Termination of Partnership (or Continuation of Successor Business).

Draft certificates or cancellation of certificates of limited partnership.

Draft and file trade name documents, amended trade name documents.

Draft analysis in connection with tax planning, draft state and federal tax returns and prepare for audit.

Prepare documents for qualification to do business in foreign jurisdictions.

Prepare necessary documents to amend and restate Articles of Incorporation and amend bylaws.

File and terminate UCC Financing Statements with state and county offices.

Search state and county offices for federal tax liens, UCC filings, deeds mortgages and judgments.

Prepare and file DBAs, certificates of trade names and certificates of assumed names with the appropriate state office.

Prepare and file governmental applications and reports.

Collect information from and verify filings with the Secretary of State and other state and local agencies.

Change registered office or agent.

COLLECTIONS

Initial review of documents provided by client.

Conduct asset investigation.

Draft demand letter to debtor.

Draft summons and complaint.

Draft motions for or in opposition to summary judgment, including memoranda and affidavits in support.

Draft judgment, cost bill, and other supporting pleadings.

Maintain judgment account worksheet to record payments, collection costs and court costs.

Draft notice of demand to pay.

Draft, file and serve documents for judgment debtor examination.

Appear in court at hearing for initial claim of plaintiff.

Draft, have issued and serve writ of garnishment.

File request for dismissal form.

Draft, have issued and serve order to release garnishment.

Draft, have issued and serve order of examination.

Appear in court and conduct examination.

Draft, have issued and serve writ of execution.

Arrange for indemnity bond for sheriff.

Arrange for posting of notice of sale or publication of notice of sale.

Maintain communication with sheriff re levy on personal property.

Prepare bid and attend sheriff's sale on real property.

Obtain certified copy of judgment transcript.

Transfer judgment transcript to a different court.

Obtain exemplified copy of foreign judgment.

Prepare affidavit for transfer of a foreign judgment.

Register judgment in a different state.

Prepare and file satisfaction of judgment.

CRIMINAL

Investigate facts re decision to prosecute or prepare defense.

Interview client with attorney.

Make bail arrangements.

Gather information for plea bargaining and prepare charges or plea for arraignment.

Prepare for preliminary hearing or grand-jury presentation.

Obtain discovery (police reports, search warrant, affidavit).

Draft motion compelling discovery.

Draft testimony of defendant.

Analyze case based on discovery.

Research law for filing of pretrial motions.

Draft Motion for Change of Venue.

Draft Demurrer.

Draft Motions to Set Aside Indictment, to Suppress, to Controvert, for Civil Compromise, for Diversion, In Limine, for Return of Property, to Postpone Trial, to Disqualify Judge, to Withdraw as Attorney of Record.

Subpoena and interview witnesses.

Examine physical evidence; tangible objects.

Examine and photograph scene of alleged crime.

Draft and respond to interrogatories.

Draft deposition questions; summarize depositions.

Coordinate and arrange for outside investigators and experts.

Prepare trial notebook.

Arrange for diversion.

Arrange civil compromise.

Arrange work release.

Draft Supplemental Memoranda of Law.

Draft Trial Memorandum.

Attend conference with prosecutor.

Attend pretrial conferences with judge and attorneys.

Draft jury instructions.

Attend and assist at trial.

Draft Motions in Arrest of Judgment, for New Trial, for Release Pending New Trial/Appeal.

Attend conference with client regarding pre-sentence report.

Prepare sentencing information and work with probation officers.

Draft Petition for Leniency/Probation.

Draft Notice of Appeal.

Research law regarding appealable issues.

Draft assignments of error and arguments.

EMPLOYEE BENEFITS

Draft qualified plan documents, trust agreements, custodial agreements, money purchase, 401(k), stock bonus, defined benefit plans and IRA plans.

Draft amendments and restatements to plans to bring into compliance with new law and regulations.

Draft Summary Plan Descriptions.

Draft deferred compensation plans including nonqualified executive compensation, stock option and medical reimbursement plans.

Draft Affiliate Adoption Statement.

Draft Notification of Participation, Election to Participate, Beneficiary Designation, election out of qualified joint and survivor annuity, Application for Benefits and Election to Contribute.

Draft Summary Annual Report.

Draft Benefit Statement.

Draft promissory note and salary assignment for participant loans.

Draft Board of Directors resolutions for plan adoption, adoption of amendments, and fixing contributions.

Prepare and file application for IRS Determination Letter.

Prepare and file annual report (5500 series and related schedules).

Prepare PMGC premium forms.

Monitor progress of implementation of new plans and amendments to verify required actions occur on schedule.

Coordinate general notice mailings to clients about potential impact of new legal developments on plans.

Develop and maintain checklists, sets of model plans, administrative documents and letters and update as new material is developed.

Research interpretive questions on prohibited transactions and qualified and nonqualified plans.

Calculate employer contributions and forfeitures and allocate to participant accounts.

Determine valuation adjustments and allocate to participant accounts.

Calculate participant's Years of Service for eligibility and vesting.

Calculate benefit for terminated participant.

Test plan for discrimination, top-heaviness, or Section 415 limits.

FAMILY LAW

Attend initial interview with attorney and client; identify non-legal problems that can be referred to other entities.

Collect background information on client, including marriage certificates, sources of support, residence, assets, number of children, etc.

Determine if grounds for divorce or dissolution exist.

Participate in discussion of other remedies, including counseling, separation, reconciliation, mediation, etc.

Draft petition for dissolution or response.

Complete domestic relations questionnaire form.

Draft temporary motions, affidavits and orders.

Draft notice to produce.

Draft property settlement agreement.

Determine support needs.

Draft decree of dissolution, accompanying motions and affidavits.

Draft motion and affidavit for modification.

Serve notice on opposing counsel.

Arrange for service of documents.

Obtain settings for court hearings.

Maintain contact with client and handle calls when legal advice is not needed.

Assist client in preparation of monthly income and expense sheet.

Arrange for appraisers for real property and personal property.

Draft subpoenas and arrange for service.

Schedule expert witness interviews and availability at trial.

Obtain information for discovery, organize, categorize and determine completeness of discovery.

Draft proposed stipulations.

Draft petition for adoption and consent for adoption, decree of adoption.

Draft petition for name change.

FORECLOSURE

Order foreclosure report.

Review foreclosure report with respect to priority of lienholders and determine parties to be served.

Draft foreclosure complaint.

Draft trustee's notice of sale and arrange for publication.

Prepare and serve trustee's notice of sale on grantors and subsequent lien creditor.

Draft motion and supporting documents for summary judgment.

Draft motion and order for default.

Draft decree of foreclosure.

Record all proofs of service, affidavits of mailing and publication prior to sale.

Check for federal tax liens 30 days prior to sale.

Draft and serve notice of nonjudicial sale on IRS if appropriate.

Draft bid sheet for sale.

Draft deed in lieu of foreclosure.

Draft post-sale documents, including motion for writ of assistance.

Appear at time and place set for sale to postpone sale.

Draft and record trustee's deed after sale.

Draft and record notice of maritime lien.

Draft complaint, satisfaction and decree for foreclosure of maritime lien.

Draft correspondence to occupants giving 10 days to vacate.

Take possession, satisfy and transmit promissory note and original trust deed to trustee.

INTELLECTUAL PROPERTY

Prepare patent and/or trademark status summary reports.

Docket and/or maintain docket system for due dates for responses, renewals, oppositions, Sections 8 and 15 filings, use affidavits and working requirements.

Docket and/or maintain docket system for payment of patent annuities in foreign countries.

Conduct patent/trademark searches.

Conduct on-line computer information searches of technical literature for patent/trademarks.

Draft trademark registration application, renewal application.

Draft registered user agreements.

Draft power of attorney.

Draft copyright applications.

Research procedural matters, case law and unfair competition matters.

Prior art search, patent/trademark searches.

Assist in opposition, interference, infringement and related proceedings.

Arrange for visual aids/models/mock-ups for trial use.

Maintain files of new products and invention development.

Review patent filings with engineers.

Draft licenses/agreements regarding proprietary information/technology.

LITIGATION

Draft complaint, bill of particulars.

Draft answer and/or other defensive pleadings.

Draft interrogatories, requests for admission, requests for production of documents, requests for examination.

Review client files, gather and organize factual data.

Respond to interrogatories, requests for admission and requests for production of documents.

Review, index, gather, summarize documents produced by opposing and third parties.

Examine premises, locations, objects: take notes and/or photos.

Draft discovery motions.

Locate, interview and obtain witness statements.

Arrange for expert witnesses, interview, prepare written reports.

Arrange for outside investigator.

Obtain/examine public records.

Prepare and serve subpoena duces tecum.

Prepare summons and service of process.

Draft deposition questions and prepare deposition outline.

Prepare witnesses for deposition.

Arrange for court reporter, determine need for computerized transcript.

Attend depositions, take notes, organize exhibits.

Index and summarize depositions, index deposition exhibits.
Follow up after depositions for additional information.
Obtain, review and analyze medical records.
Compile records of patent of product, history, information regarding similar products.
Analyze/summarize factual information.
Prepare statistical/factual memoranda.
Prepare market surveys and gather industry statistics.
Draft affidavits.
Arrange for extensions of time by telephone, letter and/or motions.
Draft demand letters and subpoenas.
Trace documents and other physical evidence.
Develop information retrieval systems, including computerized systems.
Supervise computerized or other system.
Draft legal memoranda and/or briefs.
Review briefs for accuracy of factual information.
Check cites and/or shepardize; proofread.
Prepare and organize trial exhibits.
Prepare trial notebooks and witness files.
Draft list of documents and testimony to use in impeaching opposition witnesses.
Draft pretrial statements and settlement conference memoranda.
Obtain jury list, biographical information on jurors.
Draft jury instructions and voir dire.

Coordinate witness attendance at trial.

Prepare charts/graphs for use at trial.

Attend trial, noting developments of the case as well as reactions of jurors, witnesses and opposing counsel during trial.

Maintain list of exhibits as mentioned, offered, admitted or objected to.

Draft cost bill.

Prepare settlement calculations.

Prepare comparative analysis of terms of potential settlement agreements.

Draft settlement documents, including releases and dismissals.

Draft notice of appeal.

Prepare record on appeal.

Organize appendix for appeal brief.

Draft factual information for appeal brief.

Order hearing transcripts and prepare recap or outline of transcripts.

Set up time table for filings.

Prepare releases, settlement documents, entries of dismissal or satisfaction.

PROBATE AND ESTATE PLANNING

Meet with client and attorney at initial meeting.

Prepare and maintain a calendar system.

Notify heirs and devisees of probate proceeding.

Publish notice to interested persons.

Collect information and/or assets for preparation of inventory and tax returns.

Accompany fiduciary and court representative to bank for removal of will from safety deposit box.

Value assets (date of death and alternate valuation date).
Draft inventory.
Maintain financial records of estate.
Prepare and file probate documents in administration of estate or to relieve estate from administration.
Surrender insurance policies.
File life insurance claims and other death benefit claims.
Verify bank balances.
Interpret will provisions.
Prepare preliminary tax and cash estimate.
Obtain tax releases.
Prepare income projection.
Draft state inheritance tax and federal estate tax returns.
Draft decedent's final federal and state individual income tax returns.
Draft state and federal fiduciary income tax returns.
Draft petitions and orders for partial distribution.
Draft accountings.
Assist in audit of tax returns.
Draft distribution schedule.
Draft closing documents.
Draft federal and state gift tax returns.
Review documents and tax returns in connection with an ancillary proceeding.
Draft tax returns for nonprobate estate.
Collect data for estate planning.
Draft wills and trusts.

- Draft court documents for conservatorship.
- Draft inventory for conservatorship.
- Draft accountings for conservatorship.
- Draft federal and state tax returns for conservatorship.
- Draft court documents for guardianships.
- Make post-mortem planning calculations.

PUBLIC BENEFITS

- Represent claimants at SSI (Supplementary Security Income) hearings.
- Represent claimants at SSD (Social Security Disability) hearings.
- Research appropriate Social Security law.
- Assist with Medicare waivers and Medicare appeals.
- Assist with Social Security overpayment waivers.
- Locate medical information.
- Review Social Security file and obtain documentation.
- Negotiate with landlord and tenant to resolve problems.
- Assist with consumer fraud complaints and forward to Consumer Protection Division.
- Obtain documentation for unemployment claim.

REAL PROPERTY

- Draft subdivision, condominium and timeshare registrations for in-state and out-of-state registrations.
- Draft registrations of recreational subdivisions for federal registrations.
- Organize recording procedures for large-scale recording and prepare draft of opinion letters.
- Perform financial calculations (amortization, net present value, discounting, APR).
- Conduct a title search in the records office or order title search and updates.

Prepare a preliminary abstract of title and opinion on the title.

Arrange for the purchase of title insurance.

Assist a client in obtaining mortgage financing.

Review mortgage applications for clients that sell mortgages.

Assist in recording mortgages.

Assemble tax receipts.

Adjust property taxes for closing.

Record capital gain or loss in client's income tax return.

Prepare appropriate capital gains tax affidavit.

Draft Truth-in-Lending Disclosure Statements.

Draft and review permits and easements.

Draft, review and plot legal descriptions.

Draft trust, warranty and other deeds.

Draft leases, assignments, extensions, amendments.

Draft contracts, assignments, modifications.

Blackline changes in documents as each is revised.

Draft and arrange for filing of UCC filing, amendments, extensions, terminations.

Draft escrow instructions.

Analyze and digest leases, assignments, extensions, amendments and deeds.

Review and determine validity of mineral claims through search of BLM records.

Check and review zoning and comprehensive plan designations; obtain letters on designation as closing requirements.

Review surveys and condominium plats.

Draft closing statements and arrange closing date.
Notify all parties involved of closing date.
Order amortization table.
Prepare equalization form.
Arrange for discharge of mortgage.
Obtain closing figures from bank, and prorate all closing figures.
Appear or assist attorney at closing.
Notarize documents at closing.
Follow up on post-closing items.
Assist client in obtaining liability insurance (e.g., homeowners' policy).
Coordinate office handling of insurance claims of client.
Prorate real and personal property taxes.

SECURITIES/MUNICIPAL BONDS

Draft registration statement and prospectus.
Organize filing the registration statement.
Draft 1934 Act Reports.
Draft questionnaire for officers, directors and principal shareholders.
Draft promissory notes.
Draft underwriting agreements.
Draft Trust Indentures.
Draft Bond Purchase Agreements.
Draft Blue Sky memoranda and Blue Sky Registration.
Review status of Blue Sky application.

Draft Legal Investment Survey.

Notify State Securities Administrators of SEC effectiveness.

Draft and file dealer and/or salesmen registration documents.

Perfect securities or dealer exemptions.

Prepare memoranda on the availability of exemptions.

Draft and file documents for registering broker/dealers and/or salesmen with NASD, SEC and state securities commissions.

Draft and file documents for renewing or withdrawing the registration of broker/dealers with salesmen.

Qualify dealer corporations where applicable.

Draft Forms 3, 4, 8-K, 10-K, 10-Q.

Draft Form 144 and related documentation.

Draft Lease Agreement, Loan Agreement, Agreement of Sale, Facilities Financing Agreement Ordinance or Contracts.

Draft Indenture.

Draft Security Agreements (Deed, Guaranty, Mortgages).

Review Bond Purchase Agreement or Underwriting Agreement.

Draft summaries of documents for use in preparing Preliminary Official Statement and Official Statement.

Coordinate with underwriter the accuracy of the statements.

Finalize basic documents and distribute for execution.

Draft necessary resolutions authorizing the issuance of the Bonds.

Send bond form to printer.

Proof first galley of the bonds and check manufacturing schedule, coupon amounts and CVSIP numbers.

Check bonds at time of closing and read bond numbered 1.

Draft closing papers for issuer including authorizing resolutions, Authentication Order to Trustee, Incumbency Certificate, Nonarbitrage Certificates and CVSIP numbers.

Draft company authorizing resolutions and Officers' Certificates.

Prepare tax election (if applicable) and arrange for appropriate filing.

Draft recording certificate.

Draft financing statements.

Obtain certificates from state agencies with respect to good standing of company and certified corporate documents.

Attend closing, checking all certificates and opinions, insurance policies, legal descriptions.

Compile the closing transcript, prepare index and organize closing binders.

TAX

Maintain records and draft returns for following taxes: corporate income, franchise, individual income, partnership income, estate, estate income, gift.

Draft supporting documents for refunds.

Gather information for audits and reviews.

WORKERS' COMPENSATION

Obtain copy of accident report.

Prepare LS-203 form, LS-18 form and transmit to Dept. of Labor.

Draft Request for Hearing or Response.

Draft Application to Schedule Date or Reply.

Draft Motion to Postpone or Response.

Draft Demand for Documents.

Draft Trial Brief.

Organize medical reports.

Schedule doctor appointments.

Schedule meetings and interview doctors.
Request employer medical mileage reimbursement.
Prepare narrative case evaluation.
Supervise compliance with Demand for Documents.
Evaluate disability utilizing WCB (BWC) rules and guidelines.
Research claim options.
Prepare exhibit list.
Check average weekly wage calculations.
Negotiate settlement.
Assist attorney at WCB (BWC) hearings.
Draft Petition for Review (WCB or BWC).
Draft appellate brief.
Draft Petition for Judicial Review.
Draft Statement of Case.
Draft Issue and Fact section of appellate brief.
Draft Motion for Reconsideration.
Draft affidavit regarding attorney's fees.

Incl in 3-8
x 3-9

SENATE JUDICIARY

EXHIBIT NO. 11

DATE 3/9/89

BILL NO. HB 386

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Senator Al Bishop
Vice Chairman
Senate Judiciary Committee
Capitol Station
Helena, Montana 59620

Re: House Bill 386: An Act Dividing Liability for Taxes on
Personal Property Sold Under the Bankruptcy Laws

Dear Al:

As you suggested, Valencia Lane called me for comments concerning proposed House Bill No. 386. I have reviewed the bill and I have the following observations:

1. Federal bankruptcy law preempts state law in a number of ways. State legislatures may not impose additional duties on bankruptcy trustees. A trustee's duties are defined in the Bankruptcy Code and trustees are subject only to the direction of the bankruptcy court. The provision in the proposed bill which suggests that a trustee in bankruptcy must provide a verification to a taxing authority is unenforceable and inappropriate.
2. There are four chapters of the Bankruptcy Code which authorize different types of bankruptcy cases. A trustee is not appointed in each type of case. Therefore, any bill which ties benefits to the actions of a bankruptcy trustee would be discriminatory.

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3. Reference to the "bankruptcy laws" is problematic. There are a number of "bankruptcy laws" which may affect the sale and distribution of property included in bankruptcy estates. There are a variety of circumstances in which estate property may be "sold" or otherwise distributed or conveyed including by auction, by repossession of a secured party, by abandonment of the trustee if the property is of inconsequential value to the estate, as well as by public or private sale by the trustee, a debtor in possession or by a third party with approval of the bankruptcy court. The proposed bill does not begin to address the variety of circumstances which may occur in bankruptcy cases.
4. In many situations there are no records kept of the purchasers of property from a bankruptcy estate.
5. Although debtors are not relieved of personal liability for taxes under certain circumstances, this is an extremely complex area of bankruptcy law. Without substantial research it is impossible to determine whether the proposed bill would be beneficial or detrimental to most debtors in bankruptcy cases.
6. It seems likely that the proposed bill would create havoc in the offices of taxing authorities. There is no mechanism for resolving the innumerable issues which would become apparent if governmental entities attempted to apply this legislation.

After review, I recommend that this bill be killed. The situation which it is apparently intended to rectify arises infrequently; the chaos which would result upon enactment of this bill would affect every debtor in bankruptcy and every taxing authority.

If the intention of the sponsor of the legislation is to provide relief from personal property tax liability to debtors who have been discharged from personal liability under Chapter 7 of the Bankruptcy Code, that objective could be accomplished with language something like the following:

If, on or before the second Monday in July, the department or its agent receives a certified copy of an order of discharge under Chapter 7 of Title 11, United States Code, personal liability for payment of property taxes assessed prior to

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entry of the order of discharge shall be extinguished.

If the legislature is not in favor of the idea of eliminating personal liability for these taxes, you might consider reducing the liability by 50%. A bill along the lines I have suggested would be relatively easy to administer, free from legal defects, and would accomplish the purpose of providing relief to persons who have lost their property through a bankruptcy proceeding. The taxing authority would continue to have a lien on property to the extent provided under federal bankruptcy law. There would be some obvious fiscal impact on taxing authorities; however, my guess is that the loss of tax revenue would be minimal.

I hope these comments are beneficial to you and to the committee. If you have any questions or would like to discuss these issues further, please give me a call.

Sincerely yours,



SHERRY SCHEEL MATTEUCCI

SSM/ajr