MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 13, 1989, at 10:00 a.m.

ROLL CALL

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

Members Excused: Senators Bob Brown and John Harp

Members Absent: None

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

Announcements/Discussion: None

HEARING ON HOUSE BILL 489

Presentation and Opening Statement by Sponsor:

Representative Jim Rice of Helena, District 43, opened the hearing. He said the reading of the title may cause some confusion, but it simply meant "bomb threat." The title read "an act deleting the transmission of a false report or warning of an impending explosion from the list of acts that constitute disorderly conduct. The proposal would make the act a felony for many good reasons, he said. He said it would delete the offense as a misdemeanor, he said. The need had arisen out of school bomb threats which cause fear and are interruptive. County attorneys across the state will still have the discretion to plea bargain as they see fit, he commented. The bill was to make a statement, he said, about the seriousness of bomb threats.

List of Testifying Proponents and What Group they Represent:

Bruce Moerer, Montana School Boards Association

Martin Carter, Principal of the Laurel Middle School
Richard Webb, Superintendent of Sweet Grass Schools
Lee Kinney, Principal, Capital High School (Helena)
Peter Funk, Montana County Attorneys Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Bruce Moerer said the bill arose out of the school boards association convention last October. Several bomb threats have been made in schools throughout the state, he said, and nothing had been done for all practical purposes. School administration wished to impress on people that even the threats can be dangerous. And, at times, the threats turn out to be real bombs. Students who do this should not go unpunished and should receive more than a "handslap," he felt.

Martin Carter, said that on April 28, 1988, there was a bomb scare at his school at 12:28 p.m. The sixth grade was eating lunch and the seventh grade was in class. The school was evacuated and the students experienced fear and trauma. One asthmatic had to go on medication, he said, as a result of the threat. The city fire department and police department had to be called and the county sheriff's department had to send a bomb squad, all of which have a direct affect of the taxpayer, he said. Luckily, he said, the City of Laurel and the school was not assessed for lost class time by OPI, but that is something that could happen. He felt that students who want time off from school should be sent a message that threats were serious through passage of the bill.

Richard Webb presented written testimony to the committee (Exhibit 1). The letter told of a bomb threat which occurred on a hot day. The students had to sit in the hot sun for over an hour, he said, and they were not very happy about it. He felt that was one of the reasons the culprits were apprehended. He believed bomb threats were serious and urged passage of the bill.

Lee Kinney said his school had a bomb implanted in which the device was put in a lavatory. He said that the device planted in the school was a gasoline bomb in a pop bottle with an M-80 firecracker taped to the outside, with a candle taped at an angle. When the candle burned down, it lighted

the fuse of the firecracker. Six students were in the lavatory who could have been hurt, he said, but one heard the fuse burning and removed it.

Peter Funk said that the current felony intimidation statute has existing language that allows the charging for felony intimidation for false warning for an explosion. If this bill passes, he said, the ability to charge as a misdemeanor would be eliminated. He wanted to point out that present statute allows for some flexibility. If the bill passed, he said, the charge would have to be for a felony offense.

Questions From Committee Members: Senator Beck asked if this change to a felony would be an imprisonment offense. Peter Funk said yes, it would.

Senator Crippen asked if any of these bomb threats been prosecuted as felonies and, if not, why not. Bruce Moerer said he didn't know, but understood there had only been minor punishments. He said that prosecutors tend to do plea bargaining. If it is handled as a misdemeanor, the punishment can be $100 or 10 days in jail for disorderly conduct. Some misdemeanors receive $500 or 6 months in jail. He thought there would still be some flexibility. The school boards association wants to make a statement that this is serious, he said. Senator Crippen felt a jury might not want to sentence a youth seriously for a threat, when a bomb wasn't actually in existence.

Bruce Moerer said his group had been asked if they would object to changing the threat to a high misdemeanor instead of disorderly conduct. He said they would have no problem with that, that the main purpose of the bill was to get the attention of people who might make a bomb threat. However, he thought the law would still be flexible if it were named as a felony.

Senator Crippen asked Mike McGrath to comment on the statute being amended. Mike McGrath felt there would still be flexibility. Personally, he felt it was inappropriate to leave in the present statute.

Senator Pinsoneault asked if there was much difference in prosecuting a youth for a felony or misdemeanor. Mr. McGrath said no, not in terms of youth court offending.

Closing by Sponsor: Rep. Rice felt the bomb threat caused the kind of repercussions that should make the offense a felony. He urged passage of the bill.

Discussion: Chairman Crippen commented that some consideration could be taken regarding the term "high misdemeanor." If the committee would want to place the offense in another part of statute, that could be done, he said. Chairman Crippen asked Valencia to look into that. He said that if it were a "misdemeanor", it should be as "tough" as possible.

HEARING ON HOUSE BILL 57

Presentation and Opening Statement by Sponsor:

Representative Bob Marks of Clancy, District 75, opened the hearing said the purpose of HB 57 was to eliminate a measure of concern for liability by providers for emergency situations in hospitals and doctors' offices i.e. clinical settings. The state already has a "good Samaritan law" which takes care of people who are "found in the field", so to speak, he said. This bill addresses some of the same things. It eliminates some of the high hazards in clinical settings. When a doctor is called upon to treat a patient in an emergency setting without any background knowledge of that patient, he is at a disadvantage. Rural settings have experienced many problems, particularly with obstetrical cases. He said the bill was drawn with a very limited exemption to keep liability insurance from increasing even further. The bill, he said, was amended some in the House. He concurred with some of the amendments, but asked the committee to seriously consider omitting an amendment starting on p. 5, line 25 continuing through (b), reinserting the stricken language, and striking the additional language. He felt that amendment neutered the bill. He said he understood that there would be people testifying who would ask for further amendment. He would not object to their proposal, he told the committee.

List of Testifying Proponents and What Group they Represent:

Steve Browning, Montana Hospital Association
Jerry Loendorf, Montana Medical Association
Larry Akey, Montana Health Network

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Steve Browning said the hospital association board of directors approved this legislation prior to the session. At the time it was proposed, it was understood to be an attempt at dealing with the obstetrical crisis in rural Montana. Montana has 65 hospitals, 35 of which are not delivering babies at present. When the bill went through the House, a concern was expressed on the limitations of liability were broader than the problems which were being addressed -- obstetrical care. The House, therefore, moved the standard care to what it is presently. The amendments he proposed (Exhibit 2) limit the immunity to emergency obstetrical care. The immunity will not extend where there is a prior existing responsibility to the people who have been regularly been receiving health care. He provided the committee with copies of the amendments (Exhibit 2).

Jerry Loendorf supported the bill, provided that it would be amended as suggested either by Rep. Marks or by the hospital association. The bill in its current form did nothing, he said, other than what present law did. He agreed that the bill was too broad in its original form to be considered fair. The original requirements were that the patient required immediate services for the alleviance of pain or requires immediate diagnosis and treatment without which he would likely suffer serious disability or death. This was too broad as many health care providers regularly provide care in emergency situations. One condition added, he said, was one in which a provider would not ordinarily attempt to treat but would refer the patient to another provider. A person might walk into a family provider with a piece of metal in his eye and it's would be too late to send him to the nearest opthamologist in a distant town. The second situation would be one in which a patient has a condition he is aware of but doesn't go to a physician until emergency situations are needed i.e. pregnancy. The amendment of the hospital would turn the bill into a positive piece of legislation. He encouraged adoption of those amendments.

Larry Akey said the Health Network was a group of mostly rural hospitals throughout the state. They support the bill with Rep. Marks' amendment.

Questions From Committee Members: Senator Beck asked Rep. Marks if he wanted to eliminate p. 2, lines 2 through 6 and insert the original language. Rep. Marks said yes, that it would return the bill into its original context. He said

the hospital association amendment would not be objectionable, as well.

Senator Halligan asked where the House amendments originated. Rep. Marks said they were inserted in the House committee. He thought the trial lawyers had given suggestions to that effect. He said he did not object strenuously on the Floor of the House because he hadn't had much time to study the amendments thoroughly.

Senator Mazurek asked if Rep. Marks asked if he would object to the Statement of Intent prepared by the hospital association. Rep. Marks thought it could be helpful.

Closing by Sponsor: Rep. Marks closed. He said the idea came from some people who expressed the high cost of malpractice insurance. They told Rep. Marks that California had a bill like the one proposed. He said that he thought the MMA bill (on obstetrics) was in deep discussion in the House. In the event that did pass, this would give a small measure of support, he said.

Senator Crippen said he had asked Staff Attorney Valencia Lane to review the bill thoroughly. He announced that action would not be taken on the bill this day.

Discussion: Chairman Crippen commented that he understood that there was a coordinating bill. Valencia said she thought HB 57 was to be a substitute bill. If you coordinate it into the existing bill, it wouldn't need the definition sections, she said. Chairman Crippen said he felt Rep. Marks wanted the bill to stand on its own. He asked Valencia to study the amendments suggested by Rep. Marks for action at a further meeting. Senator Mazurek offered to work with Valencia on the amendments.

HEARING ON HOUSE BILL 169

Presentation and Opening Statement by Sponsor:
Representative Tom Lee of Bigfork, District 49, opened the hearing. He said that several people in his area decided they would request this legislation. The Attorney General also requested similar legislation, he said, but that was a different bill. This bill attempts to correct major problems on state and local level regarding the expungement statute which was amended in 1987. The statute, as it now reads, has been interpreted to read that every record on the state and local level that has been completed relating to a

defendant (after he has completed his sentence on a felony) must be destroyed. This includes all references to the defendant and the charge itself. This has created some problems for the state and local officials, he said. The expunged record is no longer available for future sentencings if the defendant gets into trouble again, he commented. And there is also a loss of information for intelligence purposes. He told of a motorcycle accident in which the motorcycle was hit by a drunk driver who had just completed serving a sentence for drunk driving, yet there was no record of it. He, therefore, received another deferred sentence.

Section 46-18-201 states that no one can receive more than one deferred sentence. If the record is destroyed, there is no way of knowing about the first deferred sentence, he said. All records of the sheriff, clerk and recorder, county attorney, identification bureau, and department of Justice must be located and destroyed, he said. This is difficult to do and many local governments are ignoring the law, he told the committee. He said the bill is a fair compromise and allows access only for legitimate law enforcement agencies. Even the defendant himself would not have access without a court order, he said. The effect of the amendments is to afford the same legal protection for his records as is given to adopted children. The amendment on p. 2, lines 1 through 9 became the heart of the bill because it was felt that casual access to the information would defeat the purpose of the bill.

List of Testifying Proponents and What Group they Represent:

Peter Funk, Department of Justice
Mike McGrath, Lewis and Clark County Attorney, appearing for the Montana County Attorneys Association
Senator Fred VanValkenburg, Missoula County Attorney
Wallace Jewell, Montana Magistrates Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Peter Funk supported the bill. He said the statute regarding expungement was inserted by the 1987 Legislature.

There is no existing definition for the term of expungement in Montana statute, he said. That created a problem. An opinion issued by the Attorney General stated that all of the records be physically destroyed. That opinion has generated a great deal of concern among all levels of law enforcement and prosecution, he said. He felt the bill cured the problems caused by the 1987 amendments to the statute.

Mike McGrath said that, if a person was given a deferred sentence and the record is destroyed, the person could get a second deferred sentence for a future offense. And, there is no allowance in statute for a second deferred sentence, he said. He agreed that expungement was a serious record-keeping problem.

Senator Fred VanValkenburg supported the bill for the reasons previously reiterated. He wanted to inform the committee that present law seriously limits prosecutors in asking for sentences. He felt the bill would not inhibit legitimate rights of criminal defendants or innocent individuals. He volunteered to carry the bill on the Floor of the Senate.

Wallace Jewell presented written testimony to the committee (Exhibit 3).

Questions From Committee Members: Senator Halligan asked why the bill couldn't have an immediate effective date. Fred Van Valkenburg urged that it be done.

Senator Mazurek asked why didn't the legislature realize the problems that would result from the legislation passed last session. He remembered hearing testimony was that too much information was getting "out."

Senator VanValkenburg said the main problem stems from the use of the word "expungement." He said there were fairly severe punishments for dissemination of information which should take care of the other problem.

Senator Crippen asked about 44-5-103. Senator VanValkenburg said that was the section that defined criminal justice information. The same statute provides penalties for giving out unauthorized information.

Closing by Sponsor: Rep. Lee closed.

DISPOSITION OF HOUSE BILL 169

Discussion: None

Amendments and Votes: Senator Jenkins MOVED that House Bill 169 have an immediate effective date. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Jenkins MOVED that House Bill 169 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 368

Presentation and Opening Statement by Sponsor:
Representative Vicki Cocchiarella of Missoula, District 59, opened the hearing. She said the bill would provide license revocation and 12 points for negligent vehicular assault. She said it was a simple, housekeeping bill which amended statute existing as a result of an oversight when a 1985 law was passed. She said persons guilty of negligent vehicular assault were: Guilty of driving a vehicle in a negligent manner, driving under the influence of alcohol or drugs or having conduct which causes bodily injury to others. She said that sometimes injuries are worse than death and she felt the offense was serious enough to ask for the license revocation. The oversight was that the traffic points were not being applied as provided for in another section, and felt the 12 points were the correct number to require.

List of Testifying Proponents:

Peter Funk, Department of Justice

List of Testifying Opponents:

None

Testimony:

Peter Funk supported the bill. He said that DUI or causing bodily injury were both worthy of drivers license revocation. He also agreed with the appropriateness of the 12 points for the offenses. He felt the bill could eliminate some of the problems that had occurred.

Questions From Committee Members: Senator Jenkins asked about the DUI statute. Peter Funk said the offense -- negligent vehicular assault -- was defined in Title 45 of the Criminal Code. This bill does not propose to change that offense, he said.

Senator Jenkins asked if vehicular assault would be charged when a death occurred in a non-alcohol related accident. Mr. Funk said no, that probably negligent homicide or reckless driving would probably be charged.

Closing by Sponsor: Rep. Cocchiarella closed the hearing.

DISPOSITION OF HOUSE BILL 368

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Halligan MOVED that House Bill 368 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE SESSION

HOUSE BILL 122

Discussion: Senator Bishop said that he had discussed the amendments with Rep. Spaeth.

Amendments and Votes: Senator Bishop MOVED that the Amendments (Exhibit 4) be adopted. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Bishop MOVED that House Bill 122 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HOUSE BILL 349

Discussion: Senator Yellowtail asked that action on the bill be postponed for further study. The committee agreed.

HOUSE BILL 350

Discussion: Senator Mazurek said there had been some concern that limits and amounts of fees were different. He asked that the standing committee report be held until he had some time to review the bill further.

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that House Bill 350 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HOUSE BILL 351

Discussion: Senator Halligan said he was concerned that there was no definition for "rifles" in statute.

Recommendation and Vote: Senator Halligan MOVED that House Bill 351 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HOUSE BILL 598

Recommendation and Vote: Senator Pinsoneault MOVED that House Bill 598 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HOUSE BILL 651

Discussion: Chairman Crippen said that Mike Sherwood had submitted new amendments (Exhibit 5) for House Bill 651 as he sensed that the committee was not interested in the original amendments. Mr. Leary, he said, had spoken as though he objected to the "laundry list" approach, but he did indicate that the bill should not apply to the exemptions Mike had listed. Mike felt that the injured victim would be the one who suffered from the "laundry list" approach. He said he had gone through the list and condensed it as best as he could. He felt the amendments addressed the intention as stated by Mr. Leary. He commented that he was concerned there may be some inconsistency. If a section requires 20-ft. high power lines .030 might override that requirement. Then, in a situation where cranes were being moved that were 40 ft., the amendment would apply.

Carla Gray said she had just received the amendments and had little time to study them. Her initial response was that the Spaeth amendments were more acceptable than either set of amendments offered by Mr. Sherwood. She said the Spaeth amendments were more straightforward, less wordy and didn't bring in unrelated matters to the NECA safety codes. She felt they clarified what the bill did as opposed to the infinity of things that it does not do. She recommended that the Spaeth amendments be adopted. She mentioned that if "due care" was established under one code, she didn't feel it would be in violation with another code. She also had a problem with a deletion of "safety" in about the 7th line of the amendment. She wondered if there was some unknown intent of that.

Barry Hjort said he agreed with Carla Gray's testimony.

Senator Pinsoneault said he didn't know how a judge could phrase a decision using the MTLA amendment. He suggested inserting "due care" on line 25.

Carla Gray said that would "gut the bill" and take away the balance they were attempting to establish with relation to the second portion of the Martell decision. She said that the industry would be left in a situation where a lack of compliance would be "negligence" per se, and compliance by the industry would not constitute defense to that violation of the NESC standards.

Senator Mazurek asked if the Spaeth Amendment would put Montana outside of the mainstream so far as safety laws were concerned. Barry Hjort said he didn't know.

Senator Crippen said he would be inclined to agree with Carla Gray's comments.

Mike Sherwood said that one specific code section said that lines were to be inspected, and another sections that said lines are to be inspected once a year, and yet another section said that construction and maintenance should be done in accordance with accepted practice. He felt that the Senator's opinion was that compliance with the law that says inspection is done once a year isn't going to let you out of one of the other requirements. Mike said the supreme court might not agree with that opinion unless the language was inserted.

Senator Crippen asked if Mr. Sherwood thought one section contradicted the other -- one requires one-year inspections

and the other requires less than a year. Mike said his amendment does not contradict what Senator Crippen said, but just made it more clear. He said he had a legitimate concern regarding this language. He felt his amendment clarified the intent.

Senator Crippen asked if Mike agreed with the Spaeth amendments and he answered that they help.

Senator Yellowtail asked how Carla Gray would feel if part of the Sherwood amendment were used, specifically, "alleging a violation of that standard" rather than "allege a code violation." Carla said she wouldn't have a particular problem with that. She said that, in the drafting of the Spaeth amendments, they used "violations" (plural) because earlier on in statute, it mentioned "requirements of NESC standards." It was just an attempt to stay with the plural reference in existing statute.

Senator Mazurek asked about "proof of compliance is a requirement of applicable NESC standards." He asked if "due care" was in defense of the negligence action or alleging a code violation. If a person alleged a code violation, wouldn't the bill create a defense of the entire action, he asked. Carla said that was correct. But, she stated, she felt he was suggesting that there might be a complaint which has alternative counts: One might be a code violation - negligence per se - and one might be a common law negligence count. She said the intent was a defense to a negligence per se result from an NESC violation. She suggested he read on in the Spaeth amendment "action alleging a code violation." She didn't think it would "flop" over.

Senator Crippen asked if "action" would be plural. Mike agreed with the senator's concern. He said he would prefer to leave in the language of the first sentence in the MTLA amendment. He felt the singular made it more clear.

Carla said she had no problem with Senator Yellowtail's suggestion. But it occurred to her, she said, that if there was any argument to be made, sections of the code were in fact "standards" and other segments might be introductory if singular were used.

Amendments and Votes: Senator Yellowtail MOVED to adopt amendments of MTLA (EX. 5) to the end of "standard" and in addition on p. 2, line 1, strike "action"and insert "claim".

Mike Sherwood he agreed with Senator Yellowtail's intent. Senator Halligan said he preferred the Spaeth Amendments.

Valencia read Senator Yellowtail's amendment. Senator Mazurek said the amendment would take this statute out of the construction context and put it in a civil claim setting.

The amendment CARRIED by a vote of 7 to 2 with Senators Jenkins and Halligan voting NO.

Recommendation and Vote: Senator Brown MOVED that House Bill 651 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT: Chairman Crippen announced that the next meeting would be held in Room 413 (March 14).

ADJOURNMENT

Adjournment At: 12:07 p.m.

SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj

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ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-13-89

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 14, 1989

MR. PRESIDENT:
We, your committee on Judiciary, having had under consideration HB 169 (third reading copy -- blue), respectfully report that HB 169 be amended and as so amended be concurred in:

Sponsor: Lee (Van Valkenburg)

1. Title, line 8.
Strike: "AND"

2. Title, line 9.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 2.
Following: line 9
Insert: "NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval."

AND AS AMENDED BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT

March 13, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 368 (third reading copy -- blue), respectfully report that HB 368 be concurred in.

Sponsor: Cocchiarella (Halligan)

BE CONCURRED IN

Signed: Bruce D. Crippen, Chairman

3-13-89

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SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 122 (third reading copy -- blue), respectfully report that HB 122 be amended and as so amended be concurred in:

Sponsor: Spaeth (Bishop)

1. Title, line 7.
Following: "ASCERTAINABLE;"
Insert: "REVISING THE TIME LIMITATIONS ON PRESENTATION OF CLAIMS;"
Strike: "SECTION"
Insert: "SECTIONS"
Following: "72-3-801"
Insert: "THROUGH 72-3-803, 72-3-808, AND 72-3-1004"

2. Page 1, lines 19 and 20.
Following: "barred" on line 19
Strike: remainder of line 19 through "clerk" on line 20

3. Page 1, line 21 through page 2, line 4.
Strike: subsection (2) in its entirety
Insert: "(2) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within 4 months from the published notice if given as provided in subsection (1) or within 30 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (1) or a similar notice.

(3) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section."

4. Page 2.
Following: line 4
Insert: "**Section 2.** Section 72-3-802, MCA, is amended to read:

"**72-3-802. Statutes of limitations -- waiver -- suspension.** (1) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

(2) The running of any statute of limitations measured from some other event than death ~~and advertisement for claims against a decedent~~ or the giving of notice to creditors is suspended during the 4 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow.

(3) For purposes of any statute of limitations, the proper presentation of a claim under 72-3-804 is equivalent to commencement of a proceeding on the claim."

Section 3. Section 72-3-803, MCA, is amended to read: "72-3-803. Nonclaim -- limitations on presentation of claims -- exceptions. (1) ~~With the exception of claims for taxes and claims founded on tort, all~~ All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented ~~as follows~~ within the earlier of the following time limitations:

(a) ~~within 4 months after the date of the first publication of notice to creditors if notice is given in compliance with 72-3-801, provided claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state; or~~

~~(b) within 3 years~~ 1 year after the decedent's death ~~if notice to creditors has not been published~~; or

(b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time provided in 72-3-801(1) for all creditors barred by publication. However, claims barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors in this state are also barred in this state.

(2) ~~With the exception of claims for taxes and claims founded on tort, all~~ All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within the latter of 4 months after it arises or the time specified in subsection (1)(a).

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate."

Section 4. Section 72-3-808, MCA, is amended to read:
"72-3-808. Payment of claims. (1) Upon the expiration of 4 ~~months from the date of the first publication of the notice to creditors~~ the earlier of the time limitations provided in 72-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration.

(2) By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(3) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority."

Section 5. Section 72-3-1004, MCA, is amended to read:
"72-3-1004. Closing estate by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court, no earlier than 6 months after the date of original appointment of a general

personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has:

(a) ~~published notice to creditors as provided by 72-3-801 and that the first publication occurred more than 6 months prior to the date of the statement~~ determined that the time limitation for presentation of creditors' claims has expired;

(b) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration, and estate, inheritance, and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled; if any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees, or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities;

(c) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby; and

(d) complied with the provisions of 72-3-1006.

(2) If no proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.""

AND AS AMENDED BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

SENATE STANDING COMMITTEE REPORT

March 15, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 350 (third reading copy -- blue), respectfully report that HB 350 be amended and as so amended be concurred in:

Sponsor: Stikich (Hazurek)

1. Page 1, line 16.
Following: "paying"
Strike: ", after all restitution is paid,"

AND AS AMENDED BE CONCURRED IN

Signed: Bruce D. Crippen, Chairman

3/15/89

scrhb350.315

SENATE STANDING COMMITTEE REPORT

March 13, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 351 (third reading copy -- blue), respectfully report that HB 351 be concurred in.

Sponsor: Strizich (Halligan)

BE CONCURRED IN

Signed: Bruce D. Crippen/Chairman

scrhb351.313

3-13

SENATE STANDING COMMITTEE REPORT

March 13, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 598 (third reading copy -- blue), respectfully report that HB 598 be concurred in.

Sponsor: Strizich (Pinsoneault)

BE CONCURRED IN

Signed: Bruce D. Crippen, Chairman

3-13-89

sconhb598.413

SENATE STANDING COMMITTEE REPORT

March 14, 1989

MR. PRESIDENT:
We, your committee on Judiciary, having had under consideration HB 651 (third reading copy -- blue), respectfully report that HB 651 be amended and as so amended be concurred in:

Sponsor: Spaeth (Bishop)

1. Title, line 5.
Following: "WITH"
Insert: "A"
Strike: "STANDARDS"
Insert: "STANDARD"

2. Title, line 6.
Strike: "ACTION"
Insert: "CLAIM ALLEGING A VIOLATION OF THAT STANDARD"

3. Page 1, line 24.
Following: "of"
Insert: "an"

4. Page 1, line 25.
Strike: "standards"
Insert: "standard"

5. Page 2, line 1.
Strike: "action"
Insert: "claim alleging a violation of that standard"

AND AS AMENDED BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

3-14-89

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-13-89
BILL NO. HB 489

Sweet Grass County High School

P.O. Box 886
Big Timber, Montana
59011

OFFICE OF THE PRINCIPAL

HIGH SCHOOL BOARD:
RICK JARRETT
BILL DONALD
KEVIN HALVERSON
BILL FRAZIER
DORIS ROOTS
BILL FERGUSON
DON KINSEY
MABEL ABNEY, CLERK

February 9, 1989

House Judiciary Committee
Capitol Building
Helena, MT 59620

Committee Members:

Regarding: HB 489

On Monday, May 16, 1988, Sweet Grass County High School received a telephone call stating the presence of a bomb in the building. The Sheriff and Fire Chief were notified, the building was evacuated, and searched. The students returned to their classes following a one (1) hour disruption.

The people involved with the bomb threat were apprehended. There were three students (all juveniles) and a former student (adult).

Our Sheriff's office and fire department were called in on a hoax. They could have been injured while responding. In addition our students' educational process was interrupted for at least one (1) hour.

The threat of a bomb is a serious offense and should be treated as such. I would encourage you to vote for HB 489 which would make a bomb threat a felony.

Sincerely,

Richard L. Webb
Superintendent

SENATE COMMITTEE
EXHIBIT NO. 2
DATE 3-13-89
BILL NO. HB 57

MONTANA HOSPITAL ASSN
(3/13/89)

PROPOSED AMENDMENTS TO HOUSE BILL 57

Page 3

Line 24

Insert: New Section, Section 2

Notwithstanding the provisions of Section 1, (1)(a), a health care provider who in good faith renders emergency obstetrical services to a person shall not be liable for any civil damages as a result of any negligent act or omission by the health care provider in rendering the emergency obstetrical services. The immunity granted by this section shall not apply to acts or omissions constituting gross negligence, recklessness, or willful misconduct.

(b) The protections of subsection(1)(a) shall not apply to the health care provider in any of the following cases:

(1) The health care provider had provided prior medical diagnosis or treatment to the same patient for a condition having a bearing on or relevance to the treatment of the obstetrical condition which required emergency services.

(2) Before rendering emergency obstetrical services, the health care provider had a contractual obligation or agreement with the patient, another health care provider, or a third-party payer on the patient's behalf to provide obstetrical care for the patient.

(c) "Health care provider" means:

(1) A physician, registered professional nurse, licensed practical nurse, or physician's assistant, duly licensed under the provisions of Title 37; or

(2) A hospital.

(d) "Hospital" means a licensed hospital, infirmary, or health care facility as defined in 50-5-101.

(e) "Emergency obstetrical care" means a situation occurring either in a physician's office or a hospital that requires immediate services for the alleviation of severe pain or immediate diagnosis and treatment of medical conditions that, if not immediately diagnosed and treated, would lead to severe disability or death of either the patient or the unborn child.

STATEMENT OF LEGISLATIVE INTENT

This Legislature finds and declares that there is a crucial need for the people of this state to receive knowledgeable and experienced emergency medical care. The Legislature further finds that physicians who serve on an "on-call" basis to hospital emergency rooms are frequently required to provide obstetrical care to persons with whom they have no preexisting physician-patient relationship. It is the public policy of this state to provide incentive and protection for physicians and other health care providers, who, despite these hardships, respond to calls to provide emergency medical care.

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 3-13-89
BILL NO. HB 169

Montana Magistrates Association

13 March 1989

Testimony offered in support of HB 169, a bill for an act entitled: "An act providing that when imposition of a sentence is deferred, the deferral period has passed, and the charges are dismissed, the defendant's record may not be expunged; providing for notice of dismissal; restricting access to the records."

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

The Montana Magistrates Association supports HB169.

Under current statute and in light of the recent Attorney Generals opinion "to expunge " means to destroy even the original citation. Limited jurisdiction courts have followed the letter of the law and have had difficulty explaining to the auditors the existence of certain moneys; it is especially difficult to explain where the money came from when even the original order mandating the expungement must be destroyed. The limited jurisdiction court has money in the ledger but no original citation to show why the money was collected and no order to explain why that citation was destroyed.

This particular statute has created some bookkeeping headaches for our courts. We urge you to give it a favorable recommendation and to vote for its adoption into law.

Wallace A. Jewell

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 3-13-89
BILL NO. HB 122

Amendments to House Bill No. 122
Third Reading Copy (BLUE)

Requested by Senator Bishop
For the Committee on Judiciary

Prepared by Valencia Lane
March 10, 1989

1. Title, line 7.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "72-3-801"
Insert: "THROUGH 72-3-803, 72-3-808, AND 72-3-1004"

2. Page 1, lines 19 and 20.
Following: "barred" on line 19
Strike: remainder of line 19 through "clerk" on line 20

3. Page 1, line 21 through page 2, line 4.
Strike: subsection (2) in its entirety
Insert: "(2) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within 4 months from the published notice if given as provided in subsection (1) or within 30 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (1) or a similar notice.

(3) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section."

4. Page 2.
Following: line 4
Insert: "**Section 2.** Section 72-3-802, MCA, is amended to read:
"**72-3-802. Statutes of limitations -- waiver -- suspension.** (1) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

(2) The running of any statute of limitations measured from some other event than death ~~and advertisement for claims against a decedent~~ or the giving of notice to creditors is suspended during the 4 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow.

(3) For purposes of any statute of limitations, the proper presentation of a claim under 72-3-804 is equivalent

to commencement of a proceeding on the claim."

Section 3. Section 72-3-803, MCA, is amended to read:

"72-3-803. Nonclaim -- limitations on presentation of claims -- exceptions. (1) ~~With the exception of claims for taxes and claims founded on tort, all~~ All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented ~~as follows~~ within the earlier of the following dates:

(a) within ~~4 months after the date of the first publication of notice to creditors if notice is given in compliance with 72-3-801, provided claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state; or~~

~~(b) within 3 years~~ 1 year after the decedent's death ~~if notice to creditors has not been published~~; or

(b) within the time provided by 72-3-801(2) for creditors who are given actual notice, and within the time provided in 72-3-801(1) for all creditors barred by publication; provided, claims barred by the non-claim statute at the decedent's domicile before the giving of notice to creditors in this state are also barred in this state.

(2) ~~With the exception of claims for taxes and claims founded on tort, all~~ All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within the latter of 4 months after it arises or the time specified in subsection (1)(a).

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; ~~or~~

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the

personal representative of the estate."

Section 4. Section 72-3-808, MCA, is amended to read:
"**72-3-808. Payment of claims.** (1) Upon the expiration of 4 ~~months from the date of the first publication of the notice to creditors~~ the earlier of the time limitations provided in 72-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration.

(2) By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(3) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority."

Section 5. Section 72-3-1004, MCA, is amended to read:
"**72-3-1004. Closing estate by sworn statement of personal representative.** (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court, no earlier than 6 months after the date of original appointment of a general personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has or have:

(a) ~~published notice to creditors as provided by 72-3-801 and that the first publication occurred more than 6 months prior to the date of the statement~~ determined that the time limitation for presentation of creditors' claims has expired;

(b) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration, and estate, inheritance, and other death taxes, except as

specified in the statement, and that the assets of the estate have been distributed to the persons entitled; if any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees, or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities;

(c) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby; and

(d) complied with the provisions of 72-3-1006.

(2) If no proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.""

SENATE JUDICIARY
EXHIBIT NO. 5
DATE 3-13-89
BILL NO. HB 651

Second proposed amendment to HB 651
Submitted by Michael Sherwood, MTLA

Page 1, Line 24:

Insert after "of": "an"

Page 1, Line 25:

Strike the letter "s" at the end of the word "standards"

Page 2, line 1:

Insert after "action": "alleging a violation of that standard. Such proof does not establish due care in the defense of a negligence action alleging a failure to comply with another applicable standard of the national electrical safety code; another applicable industry standard; an applicable federal, state or local law or regulation; or a common law duty of due care not addressed by the national electrical safety code

SO THAT THE AMENDMENT LANGUAGE IN 69-4-201 MCA WOULD READ:

"Proof of compliance with the requirements of AN applicable national electrical safety code standards establishes due care in the defense of a negligence action ALLEGING A VIOLATION OF THAT STANDARD. SUCH PROOF DOES NOT ESTABLISH DUE CARE IN THE DEFENSE OF A NEGLIGENCE ACTION ALLEGING A FAILURE TO COMPLY WITH ANOTHER APPLICABLE STANDARD OF THE NATIONAL ELECTRICAL CODE; ANOTHER APPLICABLE INDUSTRY STANDARD; AN APPLICABLE FEDERAL, STATE OR LOCAL LAW OR REGULATION; OR A COMMON LAW DUTY OF DUE CARE NOT ADDRESSED BY THE NATIONAL ELECTRICAL SAFETY CODE."

DATE 3-13-89

COMMITTEE ON Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppo
Richard L. Webb	Sweet Grass Co High School	HB 489	✓	
Steve Browning	MT Hospital Assn	HB 57	✓	
Marvin Carter	Laurel Schools	HB 489	✓	
Lee Kenney	Capital High School	HB 489	✓	
Michael J. Sherwood	MTLA	HB 57		
Thomas N. Lee	HD 49, Bigfork	HB 169	✓	
Jerry Loendorf	Mt. Med. Assn	HB 57	amend	
Bob Marks	Rep	HB 57		
LARRY AKEY	MT HEALTH NETWORK	HB 57	✓	
Jim Ahrens	Mt Hosp Assoc	HB 57		
Fred Van Valkenburg	Senate Dist. 30	HB 169	✓	
Peter Funk	Dept. of Justice	HB 489	✓	
		HB 169	✓	
		HB 368	✓	

(Please leave prepared statement with Secretary)

DATE March 9, 1989

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Rich Merdinger	SRS-	H.B 204	✓	
Miss Cater	SRS	HB 204	✓	
Darrell Beckstrom	Driver Improvement	HB 206	✓	
Carol Bronson	Montana Paralegal Assn	HB326	✓	
Becky Cipple	Mt. Paralegal Assoc.	H 326	✓	
Michael Sherwood	MTLA	204	✓	
" "	" "	326	✓	
" "	" "	135	✓	
Jacqueline Terrell	Am. Ins. Assoc.	HB 204	✓	
"	"	135		✓
Peter Funk	Dept. of Justice	HB 206	✓	
Wally Jewell	Mt. Mags. Assoc	HB206	✓	
Gene Phillips	N. A. II	HB135		✓

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-13-89 House Bill No. 651 Time

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN absent		
SEN. HALLIGAN		✓
SEN. HARP	✓	
SEN. JENKINS		✓
SEN. MAZUREK	✓	
SEN PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	
	7 to	2

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Senator Yellowtail - amendment (see minutes)

SF-3 (Rev. 1987)