MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 20, 1991, at 8:12 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Keller

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON SB 379

Motion: REP. BROWN MOVED SB 379 DO BE CONCURRED IN.

Motion: REP. WYATT moved to amend SB 379. **EXHIBIT 1**

Discussion:

REP. WYATT stated that the training program of probation and parole officers is inadequate. She stated that most of her amendment addresses some of the training and the other part of

the amendment deals with payment of partial salary if the officer is injured in performance of duty.

Terry Minnow, Montana Federation of State Employees Parole Officers, stated that she appreciates the intent of the amendments by **REP. WYATT** but felt the wording of the bill as written was just fine.

CHAIRMAN STRIZICH felt that the bill should be left as it is also. He stated that although it is well intended, he didn't think it was necessary because most of the problems covered in the amendment have already been taken care of by the Department of Institutions or in another bill.

REP. BROWN stated that the Board of Crime Control will sit down with the Department of Institutions and set standards they need to meet. He stated that it is implicit in the bill already and is just a matter of setting it up.

REP. WYATT stated that she felt that what the committee heard in terms of testimony was that the Department of Institutions has not been providing some of these things. Rep. Wyatt said, " The reality is that the probation and parole officers haven't gotten the training they need."

REP. CLARK stated that there isn't any reason why parole officers need radar training or accident investigation training. He felt that the Board of Crime Control will be brought in to work with the Department of Institutions to develop a program that is better fit to probation and parole officers.

Vote: Motion failed.

Discussion:

John MacMaster stated that on page 2, line 10, SB 379 amends 46-1-201 and it clarifies what courts that is referenced in title 46. He stated that SB 51 repeals that section and has a new definition of that section for purposes of title 46 and clears up the problem of what courts are included. He felt that the amendments in SB 379 in regards to that section were not needed. He stated that the other amendment that isn't needed is on page 2, line 3 where a peace officer is defined as including a probation or parole officer. He felt that the committee needed to have coordination instructions in SB 379.

Motion/Vote: **REP. LEE** moved to amend SB 379 with the amendment stated by **John MacMaster.** Motion carried.

Discussion:

REP. GOULD stated that the Department of Institutions number one problem seemed to be that in the future the probation and parole officers be given police officer status which includes a 20 year

retirement. He asked if any of the committee members had any comments on that.

REP. BROWN stated that there was a misunderstanding that peace officer status somehow elevated probation or parole officers into sheriffs, highway patrolmen, or cops extraordinare, but that it didn't have any of those connotations. He stated that it frees probation and parole officers up for training at the police academy for fire arms which they are not allowed to do now. He stated that this bill does not give them any more benefits than they already have in their negotiated contracts with the state of Montana and that they cannot use it to get anymore benefits.

REP. WYATT asked if the committee is interested in her proposed new section of amendments. **EXHIBIT 1**

REP. LEE stated that it would be something he would like to discuss.

Motion: **REP. WYATT** moved to amend SB 379 with the new section of her amendments. **EXHIBIT 1**

Discussion:

REP. RICE asked if the new section is a benefit that is available to other peace officers if they are injured?

REP. WYATT stated that it was and the local government passed it for the Fire Departments.

Vote: Motion carried 18 to 2 with Rep's: Measure and Johnson voting no.

Motion: **REP. BROWN MOVED DO BE CONCURRED AS AMENDED.**

Discussion:

REP. LEE stated that the justification for granting Police Officer status to probation and parole officers is to get at the training. He felt that there could never be too much training for those people in the situations they encounter. He stated he was concerned about the grant of peace officer status to parole officers. He stated that having worked in law enforcement and worked with a lot of law enforcement people, that there is a substance difference when that status is granted. He felt it will present a conflict for some, but not all, in their minds as to how they view themselves in the job they would now do. He stated that the job probation and parole officers were hired to do is to assist people who are not functioning in a normal capacity in society and their approach might be slightly different after receiving a police officer status. He stated that the committee can give training privileges to probation and parole officers without granting them police officer status and he felt that is what should be done.

REP. BROWN stated that probation and parole officers already operate with all the ingredients that are required of a normal law enforcement officer at the present time. "They have arrest authority, they deliver warrants, they do damn near all the things that a normal law enforcement officer needs to do and in most cases they do it under circumstances that are a lot more hazardous than half of normal law enforcement activity." He stated that given the number of case loads the officers are carrying, between 90-125 individual per probation and parole officer on a monthly basis, they are justified in receiving police officer status.

REP. STICKNEY stated that it is hard to deal with a persons state of mind. She felt that most people come to the job from social worker training background and if they are put in police officer status so they can get the appropriate training for the part of the job that is hazardous, that it will be part of the training that they maintain the social work more than the police officer status. She stated that she didn't think the committee can legislate a state of mind. "We can only enable them to receive the training they need to strengthen that part of their work."

REP. MEASURE stated that SB 379 sends messages to the people of Montana. He stated that one message would be "why not go out and be a cop, even if you are a social worker" and another message would be "whenever you get discrumtled, run to the legislature, because we will get another department to come in and intervene between the Department of Institutions and whoever the benefactor is." He stated that the Department of Institutions has been ill-effective in getting training that these people need when it is quite obvious that it is necessary. He felt that this was not the bill to do those things.

Motion/Vote: **REP. WYATT** moved to amend SB 379 on page 6, line 8, changing "may" to "shall". Motion carried 19 to 1 with Rep. Johnson voting no.

Motion: **REP. BROWN MOVED SB 379 DO BE CONCURRED IN AS AMENDED.**

Discussion:

REP. JOHNSON stated that he felt the committee shouldn't legislate mind sets with SB 379. He stated that he didn't know what kind of hand holding they need but that this legislation was not it. He felt that the committee got blind sided by the probation and parole officers that testified as proponents to SB 379. Rep. Johnson said, "If there is a problem with the Board of Institutions then we should address the Board of Institutions, not in this particular manner." He stated that he wanted to support their training but not by granting them police officer status. He said further, "If you want to be a police officer, then make the application and go into that business."

CHAIRMAN STRIZICH stated that there is a dilemma in a philosophy in the state of Montana. "Unfortunately where the probation and parole officers are right now, is a lot different from where they were 10 years ago, because of what we have done in this legislature they have police officer problems and responsibilities and they want to be recognized for that." He stated that probation and parole officers are far more educated that some people currently holding police officer status. Rep. Strizich said, "Not once was anyone misrepresenting the position of the probation and parole officer."

REP. MEASURE stated that if the committee wants to train probation and parole officers then why don't they draft a bill that would do that without involving the Board of Crime Control.

CHAIRMAN STRIZICH stated that the Board of Crime Control has been a clearing house and a resource, at many different levels, for many criminal justice agencies. He stated that the Department of Institutions has used that resource to the extent they should have. He stated that the committee is making a policy decision about whether or not the Department of Institutions needs some help. Rep. Strizich said, "I think they probably do in this instance." He stated that they have been unable to develop a training program and they Board of Crime Control does assist in developing training programs routinely.

REP. LEE stated that this bill is needed in some form.

Motion: **REP. LEE** moved to amend SB 379 by taking out police officer status in sections 1 and 2 and that the language on page 7 makes sure the training gets done at the police academy.

Discussion:

REP. BROWN stated that Rep. Lee's amendment essentially neutralizes the bill. He stated that there has been proposed legislation pertaining to this for 10 years and that for 10 years the Department of Institutions has refused to do anything about it.

Vote: Motion carried 10 to 9. **EXHIBIT 2**

Motion/Vote: **REP. LEE MOVED SB 379 DO BE CONCURRED IN AS AMENDED.** Motion carried.

EXECUTIVE ACTION ON SB 154

Motion: **REP. NELSON MOVED SB 154 DO BE CONCURRED IN.**

Motion: **REP. MEASURE** moved to amend SB 154. (Refer to Standing Committee Report)

Discussion:

REP. MEASURE stated that his amendment deals with the Senate amendments to include the operation of 911 Emergency Telephone Service. He stated that with Rep. Bradly's bill, this particular portion of the bill is no longer needed and doesn't belong in the bill in the first place.

REP. STICKNEY stated that Rep. Bradly's bill only deals with the companies that serve rural areas.

REP. MEASURE stated that was probably true, but this deals with governmental agencies.

Motion: Motion carried 10 to 9. **EXHIBIT 3**

Motion: **REP. GOULD MOVED SB 154 DO BE CONCURRED IN AS AMENDED.**

Motion: **REP. TOOLE** move to amend SB 154 by striking lines 9, 10, and 11 on page 3.

Discussion:

REP. TOOLE stated that SB 154 allows immunity in a very large why and to have something in the bill that deals with waiver of immunity is irrelevant.

REP. BROWN stated that Alec Hanson said to be sure the bill doesn't come out of committee without the provision for waiver of immunity because it was absolutely critical to the local governments. Rep. Brown said, "I suggest that we defeat the amendment."

REP. TOOLE asked **REP. BROWN** what Alec Hanson's reason was for making that statement?

REP. BROWN stated that without that amendment in the bill there is no guarantee that their self-insurance policies would apply because of the CROWL decision and regardless of anything else, they needed to be sure they weren't penalized for trying to self-insure for as much as they could.

John MacMaster stated that it is very important that the subject be addressed by saying "you waive immunity by purchasing insurance" or "you don't waive immunity by purchasing insurance." He stated that the whole point of that decision was "was immunity waived by the purchase of the insurance or wasn't it". He stated that the courts say it isn't clear. He felt that whichever way the committee goes with this, it should be stated in the bill that "does not waive immunity provided by the section, unless the insurance policy specifically states that the immunity is waived." He felt that the way the subsections reads as it is, it states that the acquisition of insurance does not waive immunity and it will be interpreted to mean the mere or sole fact that you

bought insurance doesn't waive that immunity.

Motion/Vote: **REP. LEE MADE A SUBSTITUTE MOTION** to amend SB 154 with the amendment proposed by John MacMaster. Motion failed on a tie vote. **EXHIBIT 4**

Vote: Motion failed 5 to 13. **EXHIBIT 5**

Motion/Vote: **REP. GOULD MOVED SB 154 DO BE CONCURRED IN AS AMENDED.** Motion carried 19 to 1 with Rep. Clark voting no.

HEARING ON SB 198
CORRECT HOUSING DISCRIMINATION CITATION ERROR

Presentation and Opening Statement by Sponsor:

SEN. BROWN, SENATE DISTRICT 2, stated that this was requested by the Commission on Human Rights. He stated that SB 198 corrects an incorrect citation in the Federal Law. The 1990 Legislature enacted legislature that prohibited discrimination in housing for families with children, but the legislature recognized an exception to that in places where housing is primarily for Senior Citizens. He stated that in the citation that reflected that exception was adopted by reference and cited in the law. "The problem was that it was an incorrect citation." He stated that this bill corrects that citation and makes the bill retroactive on its applicability in the event someone refused to allow a family with children from living in an apartment complex that was for Senior Citizens only.

Proponents' Testimony: NONE

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor: NONE

HEARING ON SB 199
AMEND HOUSING DISCRIMINATION LAWS TO CONFORM TO FEDERAL LAW

Presentation and Opening Statement by Sponsor:

SEN. BROWN, SENATE DISTRICT 2, stated that this bill was at the request of the Human Rights Commission. He stated that SB 199 is an act that amends housing discrimination laws and makes them substantially equivalent to Federal Discrimination Laws.

Proponents' Testimony:

Ann MacIntyre, Administrator - State's Human Rights Commission,

gave written testimony in favor of SB 199. **EXHIBIT 6**

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor: NONE

HEARING ON SB 87
INTERPLEADER ACTION IN JUSTICE'S COURT SMALL CLAIMS DIVISION

Presentation and Opening Statement by Sponsor:

SEN. BROWN, SENATE DISTRICT 2, stated that SB 87 provides for an interpleader action in Justice's Court small claims procedures. He stated that this bill will allow a third party to hold the money in a real estate deal so the realtor will not be subject to a law suit. He stated that there is some ambiguity in the law about where the bidding for this rests and the purpose of SB 87, is to clarify that.

Proponents' Testimony:

Tom Hopgood, Montana Association of Realtors, stated that a bill was passed in 1987 for the purpose of allowing interpleader actions to proceed in courts of limited jurisdiction. He explained that an interpleader action is where somebody has a fund of money and doesn't know who to pay it to in the case of a realtors deal going bad. The interpleader action provides that the third party can deposit the money to the court and the court will issue a summons to both the buyer and the seller and setforth their claims and the court then determines who is actually entitled to the funds. Mr. Hopgood said, "It is a good bill as it stands now and shouldn't bring any difficulty to anybody."

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor: NONE

HEARING ON SB 125
REQUIRE LOAN AND CREDIT AGREEMENTS TO BE IN WRITING TO BE ENFORCEABLE

Presentation and Opening Statement by Sponsor:

SEN. BROWN, SENATE DISTRICT 2, stated that SB 125 has been in the Legislature before this session. He stated that SB 125 is an act requiring loan and credit agreements to be in writing to be enforceable. "The purpose of this legislation is to avoid litigation and misunderstanding by putting borrowers and lenders

on notice in the law that loan and credit agreements must be in writing for it to be enforceable.

Proponents' Testimony:

George Bennett, Montana Bankers Association, stated that the Montana Bankers Association is made up of state and national banks and they are a major lender in Montana. He stated that he has a great deal of respect for the Montana Trial Lawyers Association because they are a good organization with highly qualified and ethical lawyers as its members. He stated that what has happened in the area being discussed is there is a flood of law suits against banks and other lenders. He feels that this bill address all the concerns of the people interested in the bill. He gave an exhibit to the committee. **EXHIBIT 7.** He felt that the bill is far superior than the model act in some of the other 31 states that adopted some form of legislation in the same area.

Jock Anderson, Montana League of Savings Institutions, stated that the Institution supports SB 154 in the same light as the comments made by George Bennett.

Roger Tippy, Montana Independent Bankers, stated that the common law as declared by the Montana Supreme Court is a shifting sort of thing. He stated that it would be helpful to get this statue enacted to clear up any misunderstandings. "I would hope you will give this bill a do concur in."

Gene Phillips, First Interstate Bank Of Montana, stated that the First Interstate Bank of Montana does make large loans and they are always drafted to cover all the provisions of a loan. He felt that this bill would protect the interests of the consumer as well as the banks by getting everything in writing.

Opponents' Testimony:

Michael Sherwood, Montana Trial Lawyers Association, gave written testimony opposing SB 125 and a copy of Rep. Stimatz testimony in 1989 which played some part of the bills death. **EXHIBIT 8 & 9**

Dennis Olsen, Northern Plains Resource Council, stated that he is in opposition of SB 125.

Questions From Committee Members: NONE

Closing by Sponsor:

SEN. BROWN stated that this bill will clear up any misunderstandings in regards to lending money because everything will be in writing. He asked the committee to do concur SB 125.

EXECUTIVE ACTION ON SB 198

Motion/Vote: **REP. STICKNEY MOVED SB 198 DO BE CONCURRED IN.** Motion carried 19 to 1 with Rep. Brown voting no.

EXECUTIVE ACTION ON SB 87

Motion: **REP. GOULD MOVED SB 87 DO BE CONCURRED IN.**

Discussion:

REP. MEASURE stated that Realtors already have the right to file interpleader action in small claims court in the District Court for almost any amount of money they want to if that is what they choose. He stated that they cannot do it in Justice Court or Small Claims Division because all interpleader are denied in Justice Courts by statute. He felt that what happens to people that want to save a few dollars is that they are suing Justice Courts over the deposits from the buyer to the lender and people are not putting as much down on homes as they used to. He stated that it is basically the buyer and seller arguing over who has the right to the deposit and the person who would know more than anyone else about the situation would be the realtor. He felt that whoever drafted the current code spent a lot of time figuring out what should and shouldn't go into it and this was one thing they didn't want in the code because it would confuse the concept. He stated that he was not in favor of SB 87.

REP. LEE asked if there would be a problem if the committee were to give the jurisdiction to the lower courts?

REP. MEASURE stated that lower courts do not record their cases so that the person will not have a record to review to determine how the funds were distributed. He felt that was one big problem with giving jurisdiction to lower courts.

REP. MEASURE asked **Tom Hopgood** if this bill was the original intent of the law in 1987? **Mr. Hopgood** stated that he felt that it was the intent of the law in 1987 based on conversation from people that were running around the legislature back in 1987.

REP. WHALEN stated that **REP. MEASURE** has a problem with the fact that Justice Courts are not a court of record and that it caused him concern also. He felt that the Small Claims Division in District Court, which is a court of record, should be set up to handle small claims and limit themselves to that duty. **REP. WHALEN** asked **Tom Hopgood** how he felt about that? **Mr. Hopgood** stated that is already current law.

Vote: Motion carried 17 to 3 with Rep's: Measure, Wyatt and Brown voting no.

EXECUTIVE ACTION ON SB 125

Motion: **REP. JOHNSON MOVED SB 125 DO BE CONCURRED IN.**

REP. MEASURE stated that he took Michael Sherwood's, of the Montana Trial Lawyers, explanation to heart. He stated that what bankers do now and often do is have a provision that says "any agreement outside of this agreement is void". He felt that banker's are in a position that they can decide what they want on the agreement.

Motion: REP. MEASURE MADE A SUBSTITUTE MOTION THAT SB 125 DO NOT PASS.

Discussion:

REP. WHALEN stated that SB 125 is a lender's bill and is not designed to provide protection to anybody other than the lender. He stated that he was in agreement with **REP. MEASURE'S** comments.

REP. RICE stated that the bill does not talk about big banks vs. little consumer and by the definition of "debtor" on page 3, the bill talks about a loans not under $50,000. He stated that this bill is not dealing with small loans. He felt that the problem was law suits by borrowers saying they signed the agreement but the bank lender had told them something different. He felt this was a good problem to try to correct.

REP. JOHNSON stated that he agrees with **REP. RICE.** He felt the committee shouldn't blow the bill out of proportion. He stated that the bill doesn't protect small consumers because small consumers do not borrow $50,000. He felt that the bill clears up a problem that is evident in the banking and lending community currently.

Motion/Vote: REP. WHALEN MOVED SB 125 BE TABLED. Motion carried 12 to 8 with Rep's: Johnson, Gould, Nelson, Lee, Rice, Boharski, Messmore and Clark voting no.

ADJOURNMENT

Adjournment: 11:12 a.m.

BILL STRIZICH, Chair

JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL **DATE** 3.20.91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER			✓
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

EXHIBIT 2
DATE 3-20-91
SB 379

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 **BILL NO.** SB379 **NUMBER**

MOTION: Lee amendment

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN		/
REP. ROBERT CLARK		/
REP. PAULA DARKO		/
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER	/	
REP. THOMAS LEE	/	
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON	/	
REP. JIM RICE	/	
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE		/
REP. TIM WHALEN	—	—
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN		/
TOTAL	10	9

EXHIBIT 3
DATE 3-20-91
SB 154

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 3-20 **BILL NO.** SB 154 **NUMBER** _____

MOTION: Measure Amendment

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	—	
REP. ARLENE BECKER	—	
REP. WILLIAM BOHARSKI		—
REP. DAVE BROWN		—
REP. ROBERT CLARK		—
REP. PAULA DARKO	—	
REP. BUDD GOULD		—
REP. ROYAL JOHNSON		—
REP. VERNON KELLER		—
REP. THOMAS LEE		—
REP. BRUCE MEASURE	—	
REP. CHARLOTTE MESSMORE		—
REP. LINDA NELSON		—
REP. JIM RICE	—	
REP. ANGELA RUSSELL	—	
REP. JESSICA STICKNEY	—	
REP. HOWARD TOOLE	—	
REP. TIM WHALEN	—	—
REP. DIANA WYATT	—	
REP. BILL STRIZICH, CHAIRMAN	—	
TOTAL	10	9

EXHIBIT 4
DATE 3-20-91
HB 154

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 **BILL NO.** SB 154 **NUMBER**

MOTION: Rep. Lee motion to amend

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN	/	
REP. ROBERT CLARK	/	
REP. PAULA DARKO		/
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER	/	
REP. THOMAS LEE	/	
REP. BRUCE MEASURE		/
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON		/
REP. JIM RICE	/	
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE		/
REP. TIM WHALEN		/
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN		/
TOTAL	10	10

EXHIBIT 5
DATE 3-20-91
~~SB~~ SB 154

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 3-20 **BILL NO.** SB 154 **NUMBER** _____

MOTION: Toole Amen

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN		/
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON		/
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	/
TOTAL	8	12

HOUSE STANDING COMMITTEE REPORT

April 8, 1991

Corrected Copy

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 379 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Bill Strizich, Chairman

Carried by: Rep. McCarthy

And, that such amendments read:

1. Title, lines 4 through 9.
Strike: "PROVIDING" on line 4 through "AUTHORITY" on line 9
Insert: "RELATING TO THE AUTHORITY OF PROBATION AND PAROLE OFFICERS"

2. Title, line 10.
Strike: "AUTHORIZING"
Insert: "REQUIRING"

3. Title, line 11.
Following: "OFFICERS"
Insert: "AND REQUIRING THE OFFICERS TO RECEIVE THE TRAINING"
Following: ";"
Insert: "PROVIDING A DISABILITY BENEFIT FOR PROBATION AND PAROLE OFFICERS INJURED ON THE JOB AND UNABLE TO RETURN TO WORK;"

4. Title, line 12.
Strike: "45-8-317, 46-1-201,"

5. Page 2, line 3 through page 4, line 19.
Strike: sections 1 through 3 in their entirety
Renumber: subsequent sections

6. Page 6, line 8.
Strike: "may"
Insert: "shall"

7. Page 7, line 4.
Following: "44-4-301."
Insert: "The training must be at the Montana law enforcement academy unless the board finds that training at some other place is more appropriate."

8. Page 7.
Following: line 4
Insert: "NEW SECTION. Section 4. Payment of partial salary to probation or parole officer injured in performance of duty. (1) A probation or parole officer who is injured in the performance of duty must be paid by the department of institutions at the times he would have otherwise received his paychecks. He must receive his salary minus amounts equal to income taxes that he need not pay due to the injury and minus any amount received from workers' compensation until he is able to return to work, as determined under the workers' compensation laws, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the payments provided for in subsection (1), the probation or parole officer must require medical or other remedial treatment and must be incapable of performing his duties as a result of the injury."

Renumber: subsequent section

9. Page 7, lines 6 and 8.
Strike: "1"
Insert: "4"

S...
3-21-91
JDB

HOUSE STANDING COMMITTEE REPORT

March 21, 1991

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 154 (third reading copy -- blue) be concurred in as amended .

Signed: Bill Strizich
Bill Strizich, Chairman

Carried by: Rep. Toole

And, that such amendments read:
1. Title, line 10.
Following: "ACTIONS"
Strike: "OTHER THAN OPERATION OF A 911 EMERGENCY TELEPHONE SERVICE"

2. Page 3, line 2,
Strike: Subsection (4) in its entirety.
Renumber: subsequent subsections

HOUSE STANDING COMMITTEE REPORT

March 20, 1991

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 198 (third reading copy -- blue) be concurred in .

Signed: _____
Bill Strizich, Chairman

Carried by: Rep. Stickney

HOUSE STANDING COMMITTEE REPORT

March 20, 1991

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 87 (third reading copy -- blue) be concurred in .

Signed: _____
Bill Strizich, Chairman

Carried by: Rep. J. Rice

EXHIBIT 1
DATE 3-20-91
SB 379

Amendments to Senate Bill No. 379
Third Reading Copy

Requested by Rep. Wyatt
For the Committee on the Judiciary

Prepared by John MacMaster
March 17, 1991

1. Page 7.
Following: line 4
Insert: "(3) Each probation and parole officer must successfully complete, within one year of the day on which he begins work, the standard Montana law enforcement academy training course for law enforcement officers.

(4) Each probation and parole officer must take the same periodical firearms use, proficiency, and firing test or tests as are required of highway patrol officers and is subject to the same successful completion and passing requirements as are highway patrol officers.

(5) The employment of a probation or parole officer who does not successfully comply with subsection (3) or (4) must be terminated within 30 days of the failure to comply.

NEW SECTION. **Section 7. Payment of partial salary to probation or parole officer injured in performance of duty.**

(1) A probation or parole officer who is injured in the performance of duty must be paid by the department of institutions, at the times he would have otherwise received his paychecks, his salary, minus amounts equal to income taxes that he need not pay due to the injury, and minus any amount received from workers' compensation, until he is able to return to work, as determined under the workers' compensation laws, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the payments provided for in subsection (1), the probation or parole officer must require medical or other remedial treatment and must be incapable of performing his duties as a result of the injury."

Renumber: subsequent section

2. Page 7, line 6.
Strike: "[Section 1] is"
Insert: "[Sections 1 and 7] are"

3. Page 7, line 8.
Strike: "section 1"
Insert: "sections 1 and 7"

EXHIBIT 6
DATE 3-20-91
SB 199

Summary of Senate Bill 199
Prepared by Anne L. MacIntyre
March 20, 1991

SB199 makes the following substantive changes in the housing discrimination provisions of the Human Rights Act:

1. Specific provisions are added concerning housing discrimination on the basis of handicap, including:

•a requirement that housing providers permit reasonable modifications to housing accommodations, at the expense of the handicapped person. Page 5, lines 13-23.

•a requirement that housing providers make reasonable accommodations in rules, policies, practices, and services. Page 5, line 24 through page 6, line 2.

•a requirement that all new construction of housing accommodations with four or more units be done in a manner to make the housing accessible and adaptable. Page 6, line 2, through page 7, line 5.

2. A provision is added making it unlawful to represent because of race, sex, etc., that a housing accommodation is unavailable when it is in fact available. Page 3, line 25 through page 4, line 5.

3. A provision is added prohibiting blockbusting, that is to induce a person to sell or rent a housing accommodation or property based on representations that a person of a particular race, sex, etc. is moving into the neighborhood. Page 4, lines 6-11.

4. A provision is added making it clear that discrimination on the basis of race, sex, etc. is prohibited in real estate related transactions such as financing, selling, brokering, and appraising. Page 7, line 12 through page 8, line 3. Although section 49-2-306, MCA, prohibits discrimination in financing and credit transactions on the basis of race, sex, etc., it is a poorly drafted section and would need to be completely reworked if we were to amend it for this purpose. Further, section 49-2-306, MCA does not cover real estate related transactions other than financing and does not prohibit discrimination on the basis of familial status.

5. A provision is added prohibiting discrimination in membership or participation in real estate industry organizations on the basis of race, sex, etc. Page 8, lines 4-13.

6. A provision is added prohibiting coercion, intimidation, etc. against a person attempting to exercise his or her rights to be free of housing discrimination on the basis of race, sex, etc. Page 8, lines 14-19. While this provision may seem somewhat duplicative of the provisions of sections 49-2-301 and 49-2-302, MCA, it is added here to insure that we have a state provision which mirrors the federal.

7. Specific criminal sanctions for intimidation or interference in the right to be free of housing discrimination are added. Page 23, line 15 through page 25, line 6.

8. Former subsection (c) of 49-2-305, MCA is amended. At the present time, this provision makes it unlawful to make a written or oral inquiry or record of the race, sex, etc. of a person seeking housing. As amended, the provision makes it unlawful to make such an inquiry for the purpose of discriminating on the basis of race, sex, etc., unless based on reasonable grounds. The amended provision would also permit the making of a record. There can be valid reasons for making the inquiry or record, even when relying on the information for a discriminatory purpose would be unlawful. The existence of the existing provision is a detriment to the efforts of some real estate industry groups to engage in voluntary affirmative marketing and efforts to monitor the existence of housing discrimination. Page 3, lines 11-15. The reasonable grounds language is at page 2, line 22.

9. The bill also amends section 49-4-212 by deleting a subsection in existing law which states that a housing provider is not required to modify property in any way for a person with a handicap because this provision conflicts with the provisions of the bill. Page 25, lines 13-17.

SB199 also makes a number of procedural changes in the laws prohibiting discrimination. The following are the most significant:

1. A provision is added allowing the Commission to award civil penalties after a finding of unlawful housing discrimination. The penalties are discretionary and the dollar amounts are maximum amounts. Page 10, line 3 through page 11, line 6. Under the federal law, these penalties are placed into the U.S. Treasury, not awarded to the complainant. A similar provision is appropriate here, with the penalties to be placed in an earmarked revenue account. Page 16, lines 2-5.

2. A provision is added allowing either party to make an election for a trial of the housing discrimination claim

in a civil action instead of in a hearing before the Commission. Page 11, line 22 through page 12, line 20. The Human Rights Act presently has a provision something like this at section 49-2-509, MCA. However, section 49-2-509, MCA, differs from the federal law in enough respects that it seems more appropriate to except housing discrimination claims from the provisions of section 49-2-509, MCA (at page 18, lines 23-24) and establish a procedure specifically for housing complaints. Note that if the Commission staff finds cause to believe discrimination occurred as a result of its investigation, the Commission staff must represent the complainant in the civil action. This is a specific requirement of the HUD regulations.

3. A provision is added allowing the complainant to pursue a civil action for housing discrimination without recourse to the Commission. Page 12, line 21 through page 14, line 18. The court is specifically authorized to award punitive damages. Page 14, lines 19-25.

4. The statute of limitations is modified to increase the time for filing to 1 year. Page 9, line 20 through page 10, line 2. The bill originally proposed to increase the statute of limitations for all complaints from 180 days to one year but the Senate Judiciary Committee felt this was outside the scope and purpose of the bill and amended it so that the statute of limitations is increased only for housing complaints.

5. The authority of a court to award temporary injunctive relief in a case of alleged discrimination is modified to make it conform to the normal statutory rules governing such actions. Page 17, line 12 through page 18, line 8 and page 22, line 18 through page 23, line 14.

EXHIBIT 1
DATE 3-20-91
SB 125

WITNESS STATEMENT

NAME George T. Bennett BILL NO. SB125

ADDRESS P. O. Box 1705, Helena 59624 (442-3691) DATE 3/20/91

WHOM DO YOU REPRESENT? Montana Bankers Association

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Please see attached article

Lender Liability News Part 2

Volume 3, Number 1 June 13, 1990

LENDER LIABILITY LIMITATION AMENDMENTS TO STATE STATUTES OF FRAUDS*

By: John L. Culhane, Jr.** and Dean C. Gramlich***

In the typical lender liability complaint, a borrower's claims frequently are premised on some form of breach of an oral commitment to lend, to refinance an existing loan, or to forbear from enforcing contractual remedies. In some cases, oral statements made by a lender in the context of loan or workout negotiations have led to judgments of monumental proportions.[1]

This report addresses the major legislative reaction to the lender liability phenomenon: the enactment of laws that require loan agreements to be in writing — in the form of amendments to existing statutes of frauds or independent laws on enforceable loan agreements. Minnesota, North Dakota, and South Dakota led the way, enacting laws in 1985, while California, Georgia, and Kansas followed with law enacted in 1988. The trend accelerated in 1989, when 19 other states enacted laws barring the enforcement of oral lending agreements in the absence of a signed writing.

Some of the new laws may have have unintended effects. For example, some laws could make it difficult for lenders to enforce credit card or other consumer line of credit agreements unless the agreement is signed by the borrower (Colorado) or signed by both borrower and lender (Kansas prior to its 1989 amendment). In March 1989 the American Bankers Association issued a warning about possible complications on consumer lending caused by the new statutes.[2] A discussion of the problem by members of the American Bar Association Consumer Financial Services Committee in 1989 led to the formation of a Task Force[3] authorized to: conduct a survey of existing lender liability limitation statutes, review the issues to be considered in drafting such statutes, and create a proposed "model statute."

Task Force survey results showed that at the end of 1989, 25 states had enacted new laws, while another eight states had considered but failed to enact them. So far in 1990, six more states have enacted such laws, and bills are pending in New Jersey, Hawaii, South Carolina, and possibly other states as well[4]. With regard to drafting, the Task Force considered questions of scope (e.g., whether the statute should apply only to pre-closing commitments to lend), coverage (e.g., whether the statute should apply to actions by the borrower only), specific requirements (e.g., whether delivery of an agreement is essential evidence of the parties' intent to be bound), and exemptions (e.g., whether consumer loan transactions should be entirely exempted). Committee comments on a draft model statute submitted in the fall of 1989 led to the improved version included here.

This article discusses the case law that prompted the new laws and the issues facing state legislatures when they try to draft a lender liability limitation statute. It also includes the model statute drafted by the Task Force, with a discussion of its provisions.

The chart printed at the end of the article shows readers which states have enacted lender liability limitation statutes and what each statute contains. Reference to the chart will provide ready information about almost all aspects of the various statutes enacted by 31 states.

I. EXISTING STATUTES AND THEIR EFFECTS

The Statute of Frauds as a Limitation on Contractual Liability. Traditional common law requirements for enforceable contracts have always included the assent of the parties, offer and acceptance, definite contractual terms, and consideration. However, the common law did not require execution of a writing and thus recognized the enforceability of oral contracts to lend. The Statute for the Prevention of Frauds and Perjuries, enacted in 1677, required a signed writing for specific types of contracts, including transfers of interests in real estate and agreements that cannot be performed in a year's time.[5] Some version of the original statute is on the books of every state. Although its purpose was to prevent perjured testimony regarding certain types of agreements, the statute can work injustice in some cases.[6] To prevent unfairness, the courts have developed ways to take an agreement "out of" the statute, such as part performance,[7] promissory estoppel, and equitable estoppel.[8]

Liability for Oral Commitments to Lend. Existing requirements for a written contract apply to many types of commercial loan documents. Mortgages and guaranty agreements fall within the applicable state version of the statute

---

** This article, a condensed and updated version of the report submitted by the Task Force to the American Bar Association Committees on Consumer Financial Services and Commercial Financial Services and published in* The Business Lawyer, *is printed with the permission of the ABA. Neither the article nor its proposed model statute has been endorsed by the ABA or any of its Divisions, Sections, or Committees.*

***John L. Culhane, Jr. of Wolf, Block, Schorr and Solis-Cohen, Philadelphia, is chairman of the ABA's Task Force on Lender Liability Limitation Amendments to State Statutes of Frauds.*

****Dean C. Gramlich of Winston & Strawn, Chicago, is a member of the Task Force.*

0898-7645/90/$0+.50

of frauds, promissory notes and personal property security agreements fall within the writing requirements of the UCC,[9] and many loans that cannot be performed within a year also are subject to the statute of frauds.[10]

The question thus arises: if existing law already bars the enforcement of many types of commercial loans unless there is a signed writing, why have the states been so quick to enact lender liability limitation statutes? A major reason is that the commercial lending industry has gotten into the habit of helping borrowers finalize complex and multi-faceted transactions by providing them with oral loan commitments.

One example of how oral commitments to lend have increased the liability exposure of banks is the decision of the U.S. Court of Appeals for the Tenth Circuit in *National Farmers Organization, Inc. v. Kinsley Bank*,[11]. In that case, an established bank customer claimed the bank had orally agreed to lend the money he needed to buy more than 150,000 lambs, even though the loan exceeded the bank's lending limits under state law. At trial the borrower showed the bank had provided him with a downpayment for the livestock purchase, taking back a note, but then refused to lend any more. The Tenth Circuit held that the oral agreement was sufficiently definite to be enforceable, despite the parties' failure to agree on such terms as the amount of the loan, its date, the interest rate, or a repayment schedule. The court ruled that the jury could have supplied the missing terms by looking to "standard commercial practice and . . . customary practice between the bank" and the borrower. The bank's part performance of the loan — a traditional means of taking a contract out of the statute of frauds — undoubtedly influenced the court's decision to enforce the loan.

Another example is the decision of the U.S. Court of Appeals for the Ninth Circuit in *Landes Construction Co. v. Royal Bank of Canada*,[12] which denied a statute of frauds defense and held a lender liable for a $10 million judgment on an oral loan commitment. In *Landes*, the borrower claimed a bank officer had made an oral promise to finance a purchase of real estate. Just as in *Kinsley*, the bank had partially performed by advancing part of the purchase price but subsequently refused to provide further funding. The Ninth Circuit rejected the bank's claim that the loan obligation could not be enforced without a writing, ruling that the bank's oral promise to lend was separate from the borrower's promise to mortgage the real estate. Thus, the court held that the statute of frauds did not apply — even though the loan was for the purchase of real property.[13]

The case law also shows that a statute of frauds defense will not always protect a lender from oral representations that give rise to independent torts. For example in *Frame v. Boatmen's Bank of Concord Village*,[14] the Missouri Court of Appeals held that the statute of frauds did not protect a bank from claims of negligent misrepresentation even though the defense was effective to bar contract claims for wrongful refusal to honor an oral loan commitment. The court held that the borrower should be permitted to try his claim that a bank officer had wrongfully neglected to tell him a loan for the purchase of a bowling alley would not be final until it had received approval from a parent bank. Similarly, in *Barrett v. Bank of America*,[15] the California Court of Appeal reinstated a couple's claim of constructive fraud based on a loan officer's alleged promise to release their personal guaranties once they agreed to merge their family business with another. The court found that the relationship of trust and confidence between the bank and the couple justified submission of the fraud claim to the jury.

Claims for breach of oral commitments to lend have produced multi-million dollar jury verdicts against banks. In *LeMaire v. MBank Abilene*,[16] a California jury returned a $69.4 million verdict against a lender for breach of an oral commitment to lend. In *Banco de Brasil v. Latian, Inc.*,[17] a California jury returned a $28 million verdict, including $22 million in punitive damages, for breach of an oral promise to extend a future line of credit.

On review, however, appellate courts have begun to take a close look at these verdicts. In *Kruse v. Bank of America*,[18] for example, the California Court of Appeal overturned a $37 million jury verdict, including $20 million in punitive damages, to a borrower claiming breach of an oral promise to provide long-term financing for an apple processing business. The *Kruse* court held the evidence did not support the borrower's claim that he justifably relied on a bank officer's promise because the borrower knew the loan was subject to final approval at higher levels within the bank. The court also held there was no contract because discussions on the loan had not gone beyond preliminary negotiations.

It is clear that the practice of providing oral commitments to prospective borrowers has increased the liability exposure of banks, threatening their continued solvency in some instances. Although the cases themselves have been tried on a wide variety of legal theories, state legislatures have focused on the statute of frauds as the solution for limiting exposure based on oral commitments. Now we will examine the issues raised by these new statute of fraud enactments.

II. THE ISSUES ADDRESSED BY STATE LEGISLATURES IN CONSIDERING LENDER LIABILITY LIMITATION STATUTES

The goal for any state legislature drafting a lender liability limitation statute should be to protect lenders against claims raised by sophisticated borrowers, who have the means to protect themselves by employing legal counsel and using their bargaining power to insist on written agreements. At the same time, the proposed statute should protect the interests of less sophisticated borrowers, who cannot afford legal counsel and lack the bargaining power to insist on written agreements. Finally, the proposed law must take existing methods of documenting commercial and consumer loans into account.

The Task Force has identified seven basic issues the states have considered when they sought to accommodate these goals:

(1) What types of agreements will be covered by the statute?

(2) Will the statute apply both to an agreement and to any changes or modifications to that agreement?

0898-7645/90/$0+.50

(3) What underlying transactions will be covered by the statute?

(4) Will the statute apply equally to all lenders and all borrowers?

(5) What requirements must the written agreement satisfy before an action may be brought upon the agreement?

(6) What transactions should be exempt from the operation of the statute?

(7) Should the statute curtail common law means of avoiding a statute of frauds defense and/or alternative legal theories based on the same set of facts alleged in support of a breach of oral contract claim?

A state's decision on one issue may force consideration of another issue. For example, if a decision is made to require the signatures of both borrower and lender, the issues of who should be deprived of a right of action to sue for enforcement and whether there should be an exemption for certain agreements customarily not signed by both borrower and lender instantly beg for attention.

Although the Task Force surveyed the resolution of these issues by all states that had adopted laws by the end of 1989, the discussion here will focus on the laws enacted by California, Colorado, Georgia, Illinois, Kansas, Minnesota, North Dakota, Oregon, and Texas. Together the statutes passed by these nine states present a representative sampling of the types of laws that have been enacted.

(1) Nature of the Agreements Covered by the Statute. Whether a state legislature chooses to paint with "a broad brush or a narrow brush" has a lot to do with its perception of the problem. If the problem is perceived as burgeoning litigation on pre-closing loan commitments, the legislative solution may be, like the Georgia law, a narrowly drawn statute affecting loan commitments only.[19] But if the problem is perceived as extending beyond oral commitments, the legislative solution may be a statute like the laws enacted by Kansas and Minnesota, which require written loan agreements.[20] A more cautious approach to the problem could result in a statute like the Illinois law, which applies to both commitments and agreements,[21] or a statute like the North Dakota law, which applies to promises and agreements.[22] Concern over judicial attempts to evade the statute of frauds with unfounded characterizations of loan agreements will result in an even broader statute. The legislative solution may be like the Oregon law, which applies to an agreement, promise, or commitment[23]; the California and Colorado laws, which apply to any contract, promise, undertaking, commitment, or any offer (Colorado only)[24]; or the Texas law, which applies to one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination the above.[25]

(2) Changes or Modifications to the Agreement. Once a decision has been made regarding the types of agreements to be covered, the next issue for consideration is the extent to which changes or modifications to the agreement will also be covered. The laws of California, Georgia, Kansas, and North Dakota do not provide explicit coverage of changes or modifications to the underlying agreement.[26] The Texas law merely provides that an agreement may not be varied by any oral agreements or discussions that occur before or contemporaneously with execution of the agreement.[27]

In contrast, other states have enacted statutes with specific provisions for changes or modifications to an existing agreement. The Minnesota law applies to an agreement to enter into a new agreement, a forbearance of action on rights under a prior agreement, and an extension of time for installment payments on the debt.[28] The Oregon law applies to modifications and amendments to the agreement, as well as to agreements to release guarantors or co-signers.[29] The Colorado law applies to any amendment, cancellation, waiver, or substitution of any or all terms or provisions of the agreement.[30] The Illinois law expressly applies to extensions, agreements to enter into a new agreement, modifications, amendments and the rescheduling of installment payments.[31]

(3) Transactions Covered by the Statute. A state legislature must also determine what underlying transactions should be covered by the requirement for a signed writing. The Georgia law applies only to a loan of money,[32] while the California and North Dakota laws apply both to the loan of money and to an extension of credit.[33] The Illinois law covers a delay or forbearance in repayment,[34] while the Colorado, Kansas, Minnesota, Oregon, and Texas laws reach even further by covering agreements concerning any other financial accommodation.[35]

(4) Parties. The legislature must consider whether it should extend the statute's scope to all lenders and all borrowers or limit coverage to specified lenders or borrowers. The Colorado, Kansas, and Oregon laws provide protection to financial institution lenders only, thereby excluding insurance companies.[36] The California and Illinois laws are broader, extending protection to persons engaged in the business of lending.[37] This language would seem to exclude a casual lender that also deserves protection.

Another issue on coverage of parties is whether the statute should bar lawsuits by lenders as well as borrowers. The Illinois and Minnesota laws specifically limit the statutory bar on enforcement to actions by borrowers.[38] Although this limitation avoids conflicts between the requirement for a writing and existing consumer and commercial lending practices, it raises a problem of unequal treatment and has not been followed by most states.

(5) Requirements to Be Satisfied by the Writing. It is important to specify clearly the requirements that a written agreement must satisfy in order to be enforceable. Provisions that the various states have adopted to address this issue vary widely. The California, Colorado, Georgia, and North Dakota laws have followed the lead of the original statute of frauds by simply requiring that the agreement be in writing and signed by the party to be charged.[39] The Kansas, Illinois, Oregon, and Minnesota laws demand more: an

agreement signed by both parties (Kansas),[40] an agreement setting forth terms and conditions (Illinois)[41] an expression of consideration (Oregon),[42] and an agreement meeting all the requirements listed above (Minnesota).[43]

To protect unsophisticated borrowers, a state legislature may also consider adopting a requirement that lenders provide (in or along with the agreement) a special notice informing borrowers of the effect of the signed writing requirement. Such a notice would warn the borrower not to rely on the lender's oral representations unless they are reduced to writing. The Kansas, Oregon, and Texas laws have notice requirements.

Under the Kansas law, the notice in the agreement must be a clear, conspicuous, and printed warning that the agreement is the final expression of the understanding between the parties and that it may not be contradicted by evidence of any prior or contemporaneous oral agreements. In addition, the agreement must contain sufficient space for the insertion of non-standard terms, including written descriptions of prior oral agreements and affirmations by both borrower and lender that no unwritten oral agreement exists.[44]

The Oregon law requires prominent notice of the lender liability statute either in the agreement or in a separate document referring back to the agreement. The notice must state: "Under Oregon law most agreements, promises or commitments made by us after the effective date of this act concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by the borrower's residence must be in writing, express consideration and be signed by us to be enforceable." The lender also must have the borrower sign the original document containing the notice and give the borrower a copy. In addition, the Oregon law reguires lenders to develop and implement programs to inform borrowers about the writing requirement, including distribution of a brochure or other written material containing the notice to be made available at each branch, office, or other location from which a lender provides loans or other extensions of credit covered by the law.[45]

The Texas law requires the provision of a notice with the loan agreement and the posting of a lobby notice. The agreement notice must be in a separate document, set out from the surrounding written material, and signed by both borrower and lender. The lobby notice must be conspicuously posted and must inform borrowers of the provisions of the law.[46]

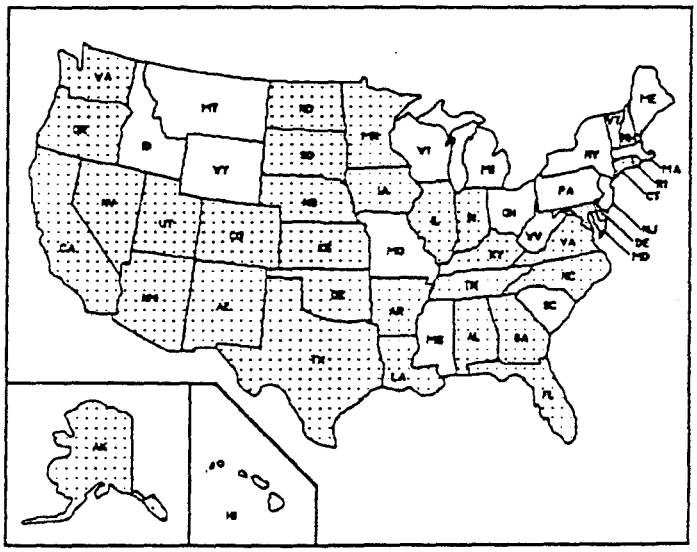
(6) **Exemptions.** In determining what transactions to include within the scope of a lender liability limitation statute, the legislature must identify transactions for which protection may not be necessary and those for which coverage would create unfairness to the borrower. The legislature must also consider exemptions for transactions where application of a writing requirement could undo customary commercial and consumer loan agreements (especially for statutes that require the signatures of both borrower and lender).

One approach to exemptions is to specify a dollar threshhold below which a borrower may still allege an oral agreement. For example, in Colorado the transaction must be over $25,000 to trigger coverage,[47] in Texas the transaction must be over $50,000,[48] and in California the transaction must be over $100,000.[49] This approach has not been followed in all states; the Georgia, Illinois, Kansas, Minnesota, and Oregon laws do not establish dollar thresholds.[50]

The California, Illinois, and Oregon laws also contain exemptions for transactions for personal, family, or household purposes.[51] Other state laws contain lists of transactions that are outside the scope of the statute, apparently to avoid interference with common consumer or commercial practices and conflicts with existing statutes of frauds. The Illinois and Texas laws specifically exclude credit cards,[52] while the Oregon law excludes real estate mortgages and credit cards.[53] The Kansas law has the most exhaustive list of exclusions, including promissory notes, real estate mortgages, security agreements, guaranty agreements, letters of credit, student loans, and credit cards.[54]

(7) **Curtailment Of Common Law Defenses and Alternative Legal Theories.** Finally, a state legislature must decide if the statute should bar reliance on traditional common law exceptions to a statute of frauds (part performance, promissory estoppel, or equitable estoppel) and pursuit of alternative legal theories using the same facts that would support a claim for breach of an oral agreement to lend (breach of fiduciary duty, negligent misrepresentation, or fraud). The California, Georgia, Kansas, Oregon, and Texas laws do not restrict these defenses or other legal theories.[55] In contrast, the Illinois law bars any action based on financial advice given by the lender or consultations between lender and borrower.[56] The Minnesota law bars any action based on the existence of a fiduciary or other relationship.[57] Finally, the broadest restriction is in the Colorado law, which bars actions based on part performance or promissory estoppel and states that an agreement may not be implied under any circumstances.[58] None of the states has gone so far as to bar actions based on negligent misrepresentation or fraud.

States with Lender Liability Limitation Laws



0898-7645/90/$0+.50

III. MODEL STATUTE

Once it had reviewed the policy choices made by the various state legislatures and considered other alternatives not contained in existing laws, the Task Force drafted its own "model statute."[59]

Text of Statute:

(1) No person may maintain an action for legal or equitable relief or a defense based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment or agreement:

(a) to lend or to borrow money;

(b) to defer or forbear in the repayment of money; or

(c) to renew, modify, amend or cancel a loan of money or any provision with respect to a loan of money involving in any such case a principal amount in excess of $_____; unless the party seeking to maintain the action or defense has received a writing from the party to be charged containing the material terms and conditions of the promise, undertaking, accepted offer, commitment or agreement and the party to be charged, or its duly authorized agent, has signed the writing.

(2) Failure to comply with Section 1 shall preclude an action or defense based on any of the following legal or equitable theories:

(a) an implied agreement based on course of dealing or performance or on a fiduciary relationship;

(b) promissory or equitable estoppel;

(c) part performance, except to the extent that part performance may be explained only by reference to the alleged promise, undertaking, accepted offer, commitment or agreement; or

(d) negligent misrepresentation.

(3) Sections 1 and 2 do not apply to:

(a) a loan of money used primarily for personal, family or household purposes;

(b) an agreement or change in the terms of an agreement relating to a line of credit, lender credit card or similar arrangement;

(c) an overdraft on a demand deposit or other bank account; or

(d) promissory notes, real estate mortgages, security agreements, guaranty and surety agreements and letters of credit.

(4) In the event of a conflict between this statute and any other statute of this state relating to the requirement of a signed writing, the provisions of [this statute] [the other statute] shall control.

IV. SELECTED ISSUES ADDRESSED BY THE MODEL STATUTE

Changes or Modifications to the Agreement. The Task Force supports extending the statute beyond commitments or agreements to lend to include deferrals and modifications. Some lender liability cases have arisen in that context.[60]

Transactions Embodied in the Agreement. The Task Force does not believe it is necessary to extend coverage to transactions other than those related to loans. Allegations of oral agreements and allegations of oral modifications to agreements seem to be rare in contexts other than loans. Also, sales of personalty and sales of goods have their own statutes of frauds in the UCC.[61] If, however, the Permanent Editorial Board Study Committee for UCC Article 2 recommends repeal of the statute of frauds for the sales of goods,[62] state legislatures may want to consider coverage of credit sales of goods such as business equipment. Also, if allegations of oral agreements or oral modifications to leases or credit sales of services become a problem, legislatures may want to consider coverage of these types of transactions.

Parties. The Task Force has found no legal impediment to restricting application of the statute to actions by borrowers. Research suggests that the present statutes barring only borrowers' lawsuits will survive any constitutional challenge based on the equal protection clause. The goal behind the statutes is to protect lenders from the recent trend for awards of unprecedented magnitude. This purpose should satisfy the rational relationship test enunciated in numerous Supreme Court equal protection cases.[63] Although a one-sided bar on lawsuits could raise issues of mutuality of obligations under the common law of some states, the Task Force expects this problem to be of small significance.[64]

Apart from the legality question, however, the Task Force does not support a lender-oriented statute for reasons of fairness. For example, the Task Force sees inequity in barring a borrower from suing a lender for breach of an alleged oral agreement to provide additional funding and, at the same time, permitting a lender to sue a borrower for breach of an alleged oral agreement to pay additional fees in connection with the funding. Accordingly, the Task Force has chosen a statute that applies to both sides of a lending transaction.

Requirements. Traditional statutes of frauds do not require the signatures of both parties, and the Task Force sees no reason to deviate from that approach. However, the Task Force notes that signature requirements should be reviewed very carefully to determine their effect on commercial and consumer loan transactions.

Several existing statutes require the writing to state the material terms of the agreement,[65] even though sales agreements typically are enforceable even when material terms are missing.[66] The Task Force believes loan agreements are sufficiently different from sales agreements to justify this requirement. Commercial loan agreements are carefully crafted documents, which result from negotiations over items such as interest rate, duration, and collateral. In contrast, sales agreements frequently arise from a telephone conversation or a prior course of dealing. The Task Force believes a more exacting standard for loan agreements accurately reflects normal practices and the intent of commercial lenders.

The Task Force sees no need to dictate the terms necessary to evidence an intent to enter into a loan agreement.

Case law may provide some guidance on this point.[67]

The Task Force has also added a requirement that the party seeking to enforce the agreement be the recipient of the written agreement from the other party. This "delivery" requirement is intended to bar lawsuits based on personal notes, confidential memoranda, or drafts (any of which may have been signed by the party to be charged) that may come to light in discovery.[68]

Exemptions. States have incorporated monetary thresholds ranging from $10,000 to $250,000. The Task Force believes that having a uniform figure is not important and that a state should have the flexibility to set a threshold which reflects local conditions, such as the amount of the average commercial loan and the litigation experience in the state. Because consumer purpose transactions are exempt under the model, the monetary figure should not be set with an eye towards excluding these transactions.

Although the large jury verdicts on oral loan commitments have involved commercial or agricultural loans, a surprising number of states have adopted statutes technically applicable to consumer loans. The Task Force ultimately concluded that consumer loans should be exempt because it would be unwise to extend the "remedy" provided by the statute beyond the scope of the problem.

Suits by consumer borrowers claiming breach of an oral contract would most likely arise over mortgage loans. Future cases may involve disputes over a lender's alleged failure to refinance an adjustable rate mortgage loan, to refinance a variable rate home equity line of credit, to extend a balloon payment, or to provide favorable financing terms on a purchase money mortgage loan.[69] To date there has been no ground swell of litigation in this area.

The exemption for consumer loan transactions uses the phrase "personal, family or household purposes" borrowed from Section 103(h) of the Truth-in-Lending Act.[70] Questions of interpretations should be resolved in a manner consonant with TILA and Section 226.2(a)(12) of its implementing regulation, Regulation Z.[71]

Consistent with the exemption for consumer loans, the Task Force has provided an exemption for business lines of credit, credit cards, and similar arrangements. The exemption is intended to permit borrowers and lenders to sue to enforce a line of credit or credit card agreement, which technically may not be signed by either party.

Similarly, because overdraft agreements may not be signed by either party, the Task Force has added a specific exemption for overdrafts that exceed the dollar threshold. Without this exemption, an overdraft agreement might have to comply with the requirements of the statute in order for either the borrower or the lender to enforce the agreement. The writing requirement could apply to overdraft agreements on the ground that an overdraft is a loan agreement[72] established by a pattern of overdrafts.[73]

Finally, the Task Force has added a "laundry list" of exemptions to avoid making common commercial agreements unenforceable. Without this exemption, a borrower might not be able to enforce a provision in a promissory note if the note was not signed by the lender. States considering such laundry lists should be careful not to exempt the very situations intended to be covered by the statute. The laundry list is intended to exclude only the specific agreements listed. Oral promises surrounding the execution of a promissory note, mortgage, security agreement, guaranty, surety agreement, or letter of credit should still be subject to coverage under the statute.

Curtailment of Common Law Defenses and Alternative Legal Theories. The model statute seeks to foreclose "end runs" under the defenses of part performance, promissory estoppel, and equitable estoppel.[74] Without a provision restricting these defenses, the case law shows that borrowers will seek such relief and that courts will give it.[75]

The Task Force believes that part performance, when its only explanation was an intent to carry out the alleged agreement, should continue to be a substitute for the writing. There are many cases on this doctrine to provide guidance. However, the Task Force does not support expansion of the part performance theory beyond its equitable underpinnings.[76] The reference to "part" performance is intentional; the model would not affect the validity of loan agreements fully performed by both sides.

After careful consideration, the Task Force decided not to preclude allegations of fraud, even where the alleged fraud is that a lender never intended to perform the alleged oral promise, undertaking, accepted offer, commitment, or agreement. The Task Force believes a bar against related fraud actions is not necessary due to exacting standards for proof of fraud. To establish fraud, the borrower must prove a lender's "scienter" — knowledge or belief that a representation is false, lack of knowledge that a representation is accurate, or knowledge that the basis for a representation does not exist — as well as the lender's intent to induce the borrower to act on the misrepresentation.[77]

Conflicts with Other Statutes. If another statute also requires a writing for a specific transaction, the state legislature must choose which law controls.

V. CONCLUSION

The expansion of common law contract and tort theories, as well as other statutory claims, to the lender-borrower relationship has been answered by legislation requiring a writing for enforceable loan agreements. After examining the issues and developing a model lender liability limitation statute, the Task Force is persuaded that states must act deliberately and thoughtfully in their efforts to protect lenders against the claims of sophisticated borrowers. At the same time, states must be mindful of the need to protect less sophisticated borrowers and the marketplace by preserving the ability of lenders and borrowers to enforce commercial and consumer loan agreements in their customary form. Whether such statutes will be effective, or will only shift the lender liability battleground from one location to another, remains to be seen.

0898-7645/90/$0+.50

FOOTNOTES

1. *See, e.g.*, Banco de Brasil v. Latian, Inc., Calif SuperCt, LACty, No. 532005, 7/12/89 (LLN, July 26, 1989, p. 1) ($28 million verdict, including $22 million in punitive damages, based on oral promise to extend future line of credit).

2. American Bankers Ass'n, Memorandum to State Ass'n Executive Vice Presidents on Legislative Alert Effect of Lender Liability Amendments on Account Collectability (March 1, 1989).

3. The Task Force members included John L. Culhane Jr., L. Richard Fischer, Mark W. Grobmeyer, and Fred H. Miller from the Committee on Consumer Financial Services; Dean C. Gramlich and John E. Murdock III from the Committee on Commercial Financial Services.

4. N.J. Sen. Bill No. 2009 (1990); Haw. House Bill No. 1660 (1990); S.C. Sen. Bill No. 1409 (1990).

5. 29 Chas. II Cap. 3; *see also* 6 Holdsworth, *History of English Law* 396. The operative section of the original statute was Section 4. All provisions of the English Statute of Frauds, except the parts relating to contracts for the sale of land and to answer for the debt of another, were repealed in the Law Reform Act of 1954, 2 & 3 Eliz. II c. 34.

6. Professor Corbin has commented that "even as narrowly interpreted and applied, the statute perpetuates more injustice than it prevents; and its entire repeal has been advocated." 2 *Corbin on Contracts* §275. On the other hand, Professor Karl Llewellyn found considerable value in the statute. See Llewellyn *What Price Contract?—An Essay in Perspective*, 40 Yale L.J. 704, 746-47 (1931) ("[N]o system of promise enforcement can do its work without taking account of the fact that existence of forms commonly sufficient to enforcement may be produced by illicit means, so no system may ignore the value of forms as records and vouchers that a deal has actually been made").

7. *See, e.g.*, Dobbs v. Vornado Inc., 576 FSupp 1072 (DC ENY 1983) (part performance can defeat a statute of frauds defense if the contract is clearly proven, the plaintiff's reliance is reasonable, and the action in reliance is directly linked to the existence of a contract); *See also Restatement (Second) of Contracts* §129 (1981).

8. *See, e.g.*, Alaska Airlines Inc. v. Stephenson, 217 F2d 295 (CA 9 1954).

9. UCC §3-104(1), 9-203(1).

10. *E.g.*, M & S Construction & Engineering Co. v. Clearfield State Bank, 426 P2d 227 (Utah 1967) (jury should decide whether bank's oral agreement to advance money to contractor "as needed" until final payment by owner could be performed within one year). *But see*, Purity Maid Products Co. v. American Bank & Trust Co., 14 NE2d 755 (Ind AppCt 1938) (mortgage loan with notes that might all be paid in one year).

11. 731 F2d 1464 (CA 10 1984).

12. 833 F2d 1365 (CA 9 1987).

13. *See also* Wait v. First Midwest Bank/Danville, 491 NE2d 795, (Ill AppCt, 4th Dist, 1986) (plaintiff farmer sufficiently alleged breach of oral contract to lend money in future). However, banks have won several important cases on the grounds that the commitments were too indefinite to constitute a contract. *See* Willowood Condominium Ass'n v. HNC Realty Co., 531 F2d 1249 (CA 5 1976) ("ordinary business practice convinces us that a loan of such an amount [$4.7 million] is not a casual thing, but an enterprise carefully entered into by each party"); Champaign Nat'l Bank v. Landers Seed Co., 519 NE2d 957 (Ill AppCt, 4th Dist, 1988).

14. LLN, Nov. 29, 1989, p. 3 (Mo CtApp, No. 55839, 10/24/89).

15. 183 CalApp3d 1362 (4th Dist 1986).

16. No. 52,567 (Texas DistCt 1986). On appeal the Texas Court of Appeals reduced the judgment to $18.5 million (LLN, April 19, 1989, p.1)

17. *See supra* note 1.

18. 202 CalApp3d 38 (1st Dist 1988).

19. Ga. Code Ann. §13-5-30(7).

20. Kan. Stat. Ann. §16-118(a); Minn. Stat. Ann. 513.33 subd.2.

21. Ill. Rev. Stat. ch. 17 para. 7101(1).

22. N.D. Cent. Code §9-06-04(4).

23. Or. Rev. Stat. §41.580(1)(h).

24. Cal. Civ. Code §1624(g); Colo. Rev. Stat. §38-10-124(1)(a)(I).

25. Tex. Bus. & Com. Code Ann. §26.02(a)(2).

26. Cal. Civ. Code §1624(g); Ga. Code Ann. §13-5-30(7); Kan. Stat. Ann. §16-118; N.D. Cent. Code §9-06-04(4).

27. Tex. Bus. & Com. Code Ann. §20.06(d).

28. Minn. Stat. Ann. §513.33 subd. 3(a)(3).

29. Or. Rev. Stat. §41.580(1)(h).

30. Colo. Rev. Stat. §38-10-124(1)(a)(II).

31. Ill. Rev. Stat. ch. 17 para. 7103(3).

32. Ga. Code Ann. §13-5-30(7).

33. Cal. Civ. Code §1624(g); N.D. Cent. Code §9-06-04(4).

34. Ill. Rev. Stat. ch. 17 para. 7101(1).

35. Colo. Rev. Stat. §38-10-124(1)(a)(I); Kan. Stat. Ann. §16-117(a); Minn. Stat. Ann. §513.33 subd. 1(1); Or. Rev. Stat. §41.580(1)(h); Tex. Bus. & Com. Code Ann. §26.02(a)(2).

36. Colo. Rev. Stat. §38-10-124(1)(b),(d); Kan. Stat. Ann. §§16-117(b),(d); Or. Rev. Stat. §41.580(1)(h)(A).

37. Cal. Civ. Code §1624(g); Ill. Rev. Stat. ch. 17 para. 7101(2).

38. Ill. Rev. Stat. ch. 17 para. 7102; Minn. Stat. Ann. §513.33 subd. 2.

39. Cal. Civ. Code §1624(g); Colo. Rev. Stat. §38-10-124(2); Ga. Code Ann. §13-5-30(7); N.D. Cent. Code §9-06-04(4).

40. Kan. Stat. Ann. §16-118(a).

41. Ill. Rev. Stat. ch. 17 para. 7102.

42. Or. Rev. Stat. §41.580(1).

43. Minn. Stat. Ann. §513.33 subd. 2.

44. Kan. Stat. Ann. §16-118(b).

45. Or. Rev. Stat. §41.580(3).

46. Tex. Bus. & Com. Code Ann. §§26.02(e),(f),(g). The Texas State Finance Commission has adopted regulations setting forth the language to be used in the lobby notice and requiring that the notice be posted in the public lobby of each of the offices of the lender. Tex. Admin. Code tit. 7, §3.34.

47. Colo. Rev. Stat. §38-10-124(2).

48. Tex. Bus. & Com. Code Ann. §26.02(b).

49. Cal. Civ. Code §1624(g).

50. Ga. Code Ann. §13-5-30(7); Ill. Rev. Stat. ch. 17 para. 7102; Kan. Stat. Ann. §16-118; Minn. Stat. Ann. §513.33 subd. 2; Or. Rev. Stat. §41.580(1)(h).

51. Cal. Civ. Code §1624(g); Ill. Rev. Stat. Ann. Ch 17 para. 7101(1); Or. Rev. Stat. §41.580(1)(h)(B).

52. Ill. Rev. Stat. Ann. ch. 17 para. 7101(1); Tex. Bus. & Com. Code Ann. §26.02(a)(2)(B).

53. Or. Rev. State. §§41,580(1)(h)(B),(C).

54. Kan. Stat. Ann. §16-117(a).

55. Cal. Civ. Code §1624(g); Ga. Code Ann. §13-5-30(7); Kan. Stat. Ann. §16-118; Or. Rev. Stat. §41.580(1)(h); Tex. Bus. & Com. Code Ann. §26.02(b).

56. Ill. Rev. Stat. Ann. ch. 17 paras. 7103(1),(2).

57. Minn. Stat. Ann. §513.33 subd. 3(b).

58. Colo. Rev. Stat. §38-10-124(3).

59. The principal drafters of the model statute are Fred H. Miller and Dean C. Gramlich.

60. *See, e.g.*, First National Bank v. Twombly, 689 P2d 1226 (Mont 1984).

61. UCC §§1-206, 2-201, 8-319.

62. The Tentative Report of the Article 2 Study Committee of the Permanent Editorial Board (1990) indicates that repeal may be recommended.

63. *See, e.g.*, U.S. v. Kras, 409 US 434 (US SupCt1973).

64. *See* Consolidated Laboratories Inc. v. Shandon Scientific Co., 413 F2d 208 (CA 7 1969) (mutuality of obligations not essential if contract supported by consideration); *Restatement (Second) of Contracts* §79(c) (1981).

65. Fla. Stat. §687.0304; Ill. Rev. ch. 17 paras. 7101-03; Ind. Code §32-2-1.5; La. Rev. Stat. Ann. §§6:1121-6:1123; Md. Cts. & Jud. Proc. Code Ann. §5-315; Minn. Stat. Ann. §513.33; Neb. Rev. Stat. §§45-1, 112-115; Utah Code Ann. §25-5-4(6).

66. UCC §2-204(3).

67. *See* McErlean v. Union Nat'l Bank, 414 NE2d 128 (Ill AppCt, 1st Dist 1980) (material terms of loan agreement include term of loan, interest rate or basis for ascertaining interest rate, maturity date, and repayment mode).

68. Only the Tennessee law has a delivery requirement, Tenn. Code Ann. §29-2-101(b)(2).

69. *See* Ferleger v. First American Mortgage Co., 662 FSupp 584 (DC NIII 1987) (holding that plaintiffs had stated a claim for violation of the Racketeer Influenced and Corrupt Organizations Act by alleging that a mortgage loan broker invited applications for loans and then delayed processing until certain favorable terms had expired); High v. McLean Financial Corp., 659 FSupp 1561 (DC DC 1987) (upholding claims of fraud, breach of fiduciary duty, negligence, and failure to comply with the Equal Credit Opportunity Act based on allegations that a mortgage loan broker had falsely assured borrowers that their application had been approved and that processing fees had been paid); Jacques v. First Nat'l Bank of Maryland, 488 A2d 210 (Md CtApp 1985) (holding bank that had promised to process a mortgage loan application and "lock in" the interest rate to a duty of due care in processing).

70. 15 USC 1602(h)

71. 12 CFR 226.2(a)(12).

72. UCC §4-401, Comment 1.

73. *See, e.g.*, In re Smith, 51 BR 904 (US BankrCt DC MGa 1985).

74. Fronning v. Blume, 429 NW2d 310 (Minn CtApp 1988) (LLN, Oct. 19, 1988, p. 3) (declining to apply the doctrine of equitable estoppel under Minnesota law).

75. Hormann v. Federal Land Bank, Minn CtApp, No. C5-88-1677, 3/6/89 (rejecting a lender's bid for summary judgment and ruling that the Minnesota statute could be circumvented by application of principles of equitable estoppel).

76. *See* Becker v. First American State Bank, 420 NW2d 239 (Minn 1988) (refusing to apply part performance to avoid application of the Minnesota statute because the borrowers had brought an action at law for money damages).

77. *Restatement (Second) of Torts* §§526, 531 (1977).□

STATE LENDER LIABILITY LIMITATION STATUTES

prepared by John L. Culhane, Jr. ©

SCOPE	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	IL	IN	IA	KS	KY	LA
Contract			X	X	X	X		X					X		X	
Promise			X	X	X	X		X							X	
Undertaking			X	X	X	X		X							X	
Offer						X										
Commitment	X		X	X	X	X		X		X	X				X	
Agreement	X	X		X			X		X		X	X		X	X	X
Other																

MODIFICATION	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	IL	IN	IA	KS	KY	LA
Extension			X						X		X	X				X
Renewal			X	X												
Agreement to enter into new agreement									X		X	X				X
Modification	X		X	X				X			X	X				
Amendment						X					X	X				
Cancellation						X										
Waiver						X							X			
Substitution						X										
Forebearance									X		X	X				X
Other											X[3]		X[4a]			

TRANSACTION	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	IL	IN	IA	KS	KY	LA
Loan money	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Extend credit		X	X		X	X		X	X		X	X	X	X	X	X
Forebear repayment/ defer debt	X			X		X			X		X	X		X		X
Other financial accommodation						X			X			X		X	X	X
Other													X[4b]			

PARTIES	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	IL	IN	IA	KS	KY	LA
Applies to financial institution lender only						X						X[4]		X		
Applies to person engaged in business of lending only		X			X			X			X		X			
Applies to action by debtor only									X			X				X

REQUIREMENTS	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	IL	IN	IA	KS	KY	LA
In writing	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Express consideration	X								X							X
Set forth terms & conditions									X		X	X	X			X
Signed by party to be charged	X	X	X	X	X	X	X	X		X			X		X	
Signed by both parties									X		X	X		X		X
Signed by creditor																
Special notice requirement													X[4c]	X[5]		

0898-7645/90/$0+.50

STATE LENDER LIABILITY LIMITATION STATUTES

prepared by John L. Culhane, Jr.

Exhibit # 7
3-20-91 SB 125

SCOPE	MD	MN	NE	NV	NM	NC	ND	OK	OR	SD	TN	TX	UT	VA	WA
Contract	X		X		X										
Promise	X		X	X	X		X		X		X	X		X	X
Undertaking	X		X									X			
Offer															
Commitment	X		X	X	X	X			X	X	X				X
Agreement	X	X					X	X	X			X	X	X	X
Other												X[27]			

MODIFICATION	MD	MN	NE	NV	NM	NC	ND	OK	OR	SD	TN	TX	UT	VA	WA
Extension		X			X			X			X				
Renewal					X			X			X				
Agreement to enter into new agreement		X													
Modification								X	X		X		X		X
Amendment			X						X		X				X
Cancellation			X												
Waiver			X												
Substitution			X												
Forebearance		X						X							
Other	X[7]								X[20]		X[25]		X[32]		X[20]

TRANSACTION	MD	MN	NE	NV	NM	NC	ND	OK	OR	SD	TN	TX	UT	VA	WA
Loan money	X	X	X	X	X		X	X	X	X	X	X	X	X	X
Extend credit	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Forebear repayment/ defer debt	X	X	X					X	X			X	X		X
Other financial accommodation	X	X	X					X	X			X	X		X
Other															

PARTIES	MD	MN	NE	NV	NM	NC	ND	OK	OR	SD	TN	TX	UT	VA	WA
Applies to financial institution lender only	X		X[8]		X[14a]	X		X	X[21]			X[28]	X		
Applies to person engaged in business of lending only				X											
Applies to action by debtor only		X								X					

REQUIREMENTS	MD	MN	NE	NV	NM	NC	ND	OK	OR	SD	TN	TX	UT	VA	WA
In writing	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Express consideration	X	X	X						X				X		
Set forth terms & conditions	X	X	X										X		
Signed by party to be charged	X			X	X	X	X	X	X	X	X	X	X[33]	X	
Signed by both parties		X	X[9]												
Signed by creditor															X
Special notice requirement			X[10]		X[14b]				X[22]			X[29]	X[34]		X[36]

EXEMPTIONS	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	IL	IN	IA	KS	KY	LA
Personal, family or household purpose	X[1]	X	X		X			X			X				X	
$10,000 or less				X												
$15,000 or less																
$25,000 or less	X[1]					X										
$50,000 or less		X					X	X								
$100,000 or less					X											
$250,000 or less			X													
Credit actually extended				X												
Promissory note														X		
Real estate mortgage		X[2]			X[2]			X[2]						X		
Security agreement														X		
Guaranty agreement														X		
Letter of credit														X		
Student loans														X		
Credit cards											X		X	X[6]	X	
Lines of credit													X[4d]			
Other													X[4e]			
Overdrafts of deposit accounts																

NO IMPLIED AGREEMENT	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	IL	IN	IA	KS	KY	LA
Under any circumstance						X										
Due to fiduciary relationship						X			X							X
Due to other relationship						X			X							X
Due to performance						X										
Due to partial performance						X										
Due to course of conduct																
Due to promissory estoppel						X							X			
Due to rendering of financial advice									X		X		X			X
Due to consultation									X		X					X

Alabama — Ala. Code §8-9-2(7) (Acts 89-430) (effective 5/3/89).

1. Exempts only "consumer loans" (a term not defined in the statute) with a "principle amount financed less than $25,000."

Alaska — Alaska Stat. §09.25.010(a)(13) (1989 ch. 31) (applies to agreements entered into on or after 1/1/90).

2. A contract, promise, undertaking or commitment to loan money secured solely by residential property consisting of one to four dwelling units is deemed to be for personal, family or household purposes.

Arizona — Ariz. Rev. Stat. Ann. §44-101(9) (1989 ch. 60) (effective 4/20/89).

Arkansas — Ark. Stat. Ann. §4-59-101 (1989 no. 530) (in full force and effect from and after its passage and approval on _____, 1989).

California — Cal. Civ. Code §1624(g) (1984 chs. 1096, 1368) (although stated to be effective 1/1/89, may not be effective until 1/1/90).

2. A contract, promise, undertaking or commitment to loan money secured solely by residential property consisting of one to four dwelling units is deemed to be for personal, family or household purposes.

Colorado — Colo. Rev. Stat §38-10-124 (1989 _____) (H.B. 1116) (applies to credit agreements entered into on or after 7/1/89).

Connecticut — Conn. Gen. Stat. §52-550(a)(6) (Act 89-338) (effective 10/1/89).

Delaware — Del. Code Ann. tit. 6, §2714(b) (1990 ch. 189) (effective 3/29/90).

2. A contract, promise, undertaking or commitment to loan money secured solely by residential property consisting of one to four dwelling units is deemed to be for personal, family or household purposes.

Florida — Fla. Stat. §687.0304 (1989 ch. 130) (effective 10/1/89).

Georgia — Ga. Code Ann. §13-5-30(7) (1988 Act 1164) (effective 7/1/88).

Illinois — Ill. Rev. Stat. ch 17 paras. 7101-03 (Public Act 86-613) (effective 9/1/89).

3. "Rescheduling installments" does not give rise "to a claim, counter-claim, or defense by a debtor that a new credit agreement is created" unless the specified requirements are met.

Indiana — Ind. Code §32-2-1.5 (Act 89-1234) (applies to credit agreements entered into on or after 7/1/89).

4. Applies to: (1) a bank, savings bank, trust company, S&L, credit union, industrial loan and investment company, or any other financial institution regulated by any agency of the United States or any state, including a consumer finance institution licensed to make supervised or regulated loans; (2) a person authorized to sell and service loans for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, issue securities backed by the Government National Mortgage Association, make loans insured by the Department of Housing and Urban Development, make loans guaranteed by the Department of Veterans Affairs, or act as a correspondent of loans insured by the Department of Veterans Affairs; and (3) an insurance company or its affiliates.

Iowa — Iowa Code §535.17 (1990 _____) (H.F. 677) (effective 1/1/91).

4a. Also includes any "change, addition . . . rescission, and any other variation . . . whether expressly made or implied by, or inferred from conduct of any kind."

0898-7645/90/$0+.50

EXEMPTIONS	MD	MN	NE	NV	NM	NC	ND	OK	OR	SD	TN	TX	UT	VA	WA
Personal, family or household purpose	X		X[11]		X	X[15]			X						X[37]
$10,000 or less															
$15,000 or less								X							
$25,000 or less			X[11]		X		X[17]							X[17]	
$50,000 or less						X						X			
$100,000 or less				X[14]											
$250,000 or less															
Credit actually extended			X												
Promissory note								X			X[26]				
Real estate mortgage			X[12]					X	X[23]						
Security agreement			X					X							
Guaranty agreement			X												
Letter of credit			X												
Student loans															
Credit cards			X			X		X[18]	X	X		X[30]			X
Lines of credit						X		X[19]		X[24]		X[31]			
Other			X[13]			X[16]		X[13]			X[26]		X[35]		
Overdrafts of deposit accounts				X						X[24]	X		X		

NO IMPLIED AGREEMENT	MD	MN	NE	NV	NM	NC	ND	OK	OR	SD	TN	TX	UT	VA	WA
Under any circumstance															
Due to fiduciary relationship		X	X										X		
Due to other relationship		X	X										X		
Due to performance															
Due to partial performance															X
Due to course of conduct															
Due to promissory estoppel															
Due to rendering of financial advice	X	X	X										X		
Due to consultation		X	X										X		

4b. Also includes a contract "to finance a transaction."

4c. If notice is given, a credit agreement cannot be modified unless the modification complies with the law. The notice must be conspicuous. It may be included among the terms of the credit agreement, on a separate form, or together with other disclosures provided when the agreement is made. It can also be given wholly apart from the agreement after the agreement is made. Any notice binds both creditor and debtor, and may apply to all credit agreements then in effect between them. If in bold, ten-point type, this notice satisfies the law: "Important: Read before signing. The terms of this agreement should be read carefully because only those terms in writing are enforceable. No other terms or oral promises not contained in this written contract may be legally enforced. You may change the terms of this agreement only by another written agreement."

4d. Exempts both open-end lines of credit and home equity lines of credit.

4e. Also exempts consumer rental purchase agreements.

Kansas — Kan. Stat. Ann.§§16-117, 16-118 (1988 Laws ch. 55 as amended by 1989 Laws ch. 70) (as amended, effective 1/1/89).

5. All credit agreements must contain a clear, conspicuous and printed notice to the debtor stating that the written credit agreement is a final expression of the credit agreement and that such written credit agreement may not be contradicted by evidence of any prior or contemporaneous oral credit agreement. A written credit agreement must contain a sufficient space for the placement of nonstandard terms, including the reduction to writing of a previous oral credit agreement and an affirmation, signed or initialed by the debtor and the creditor, that there is no unwritten oral credit agreement between the parties. If these requirements are not met, the Kansas Attorney General has said the agreement will still be enforceable; however, parol evidence may be used to show that fraudulent misrepresentations were made during contract negotiations.

6. Exempts only lender credit cards as defined in the state Uniform Consumer Credit Code.

Kentucky — Ky. Rev. Stat. Ann. §371.010(9) (1990 _____) (H.B. 406) (effective 7/13/90).

Louisiana — La. Rev. Stat. Ann. §§6:1121-6:1123 (1989 No. 531) (effective _____, 1989).

Maryland — Md. Cts. & Jud. Proc. Code Ann. §5-315 (1989 ch. 682) (effective 7/1/89).

7. "Credit agreement" includes "agreeing to take or not to take certain actions . . . in connection with an existing or prospective credit agreement."

Minnesota — Minn. Stat. Ann. §513.33 (1985 Laws ch. 245) (applies to all actions commenced after 5/29/85).

Nebraska — Neb. Rev. Stat. §§45-1, 112-15 (Laws 1989 L.B. 606 as amended by Laws 1990 L.B. 1199) (as originally amended, applied to agreements entered into on or after 1/1/90; as amended, applies to agreement entered into on or after three months, after adjournment of the Nebraska Legislature).

8. As originally enacted applied to "bank or banking corporation" as defined in state law; as amended applies to a state or federal bank, savings bank, building and loan association, credit union, industrial loan company, or S&L, or a holding company or affiliate or subsidiary of such an institution..

9. Legislative history indicates that creditor need not physically sign as long

as document contains some form of printing intended to authenticate it. For example, a credit agreement generated by a computer pursuant to duly licensed software of a creditor and a credit agreement showing a signature of a creditor but which is transmitted by telephone or copier machine would both be deemed to be signed by the creditor.

10. Statute may be made applicable to exempt transactions if at the time of the initial loan of money or grant of extension of credit, the creditor gives the debtor a written notice, which is then signed or initialed by the debtor. The suggested notice is: "To protect you and us from any misunderstandings or disappointments, any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan must be in writing to be effective."

11. Exemption applies to loans which are both used for personal, family or household purposes *and not in excess of $25,000*.

12. Exemption applies to loan used for the purchase of and secured *solely* by the principle residence of the debtor or debtors.

13. Exempts credit extended on an "account" as defined in state law.

Nevada — Nev. Rev. Stat. §111.220(4) (1989 ch. 128) (effective on passage and approval on 5/10/89).

14. Exempts loans less than $100,000.

New Mexico — N.M. Stat. Ann. §_____ (1990 ch. 45) (effective 3/1/90).

14a. Applies to a bank, savings and loan association or credit union authorized to transact business in New Mexico.

14b. To take advantage of statute, financial institution must be "able to produce a statement signed by the borrower or recipient of loan monies on credit that he or she is aware of the provision of [the laws]."

North Carolina — N.C. Gen. Stat. §22-5 (1989 ch. 678) (applies to commercial loan commitments entered into on or after 10/1/89).

15. Applies to commercial loan commitments for business or commercial purposes only and not to "consumer" (undefined) accounts.

16. Also exempts consumer accounts and offers, agreements, commitments or contracts to extend credit primarily for agricultural or farming purposes.

North Dakota — N.D. Cent. Code §9-06-04(4) (1985 ch. ___) (effective 7/1/85).

17. Exempts transactions less than $25,000.

Oklahoma — Okla. Stat. tit. 15, §140 (1989 ch. 148) (effective with respect to credit agreements entered into after 5/8/89).

13. Exempts credit extended on an "account" as defined in state law.

18. Exempts "lender credit cards" as defined in the state Uniform Consumer Credit Code provided that the terms or conditions relevant thereto are in writing and are provided to the borrower prior to his or her usage of the card or account or otherwise in accordance with applicable law.

19. Exempts "revolving loan accounts" as defined in the state Uniform Consumer Credit Code provided that the terms or conditions relevant thereto are in writing and are provided to the borrower prior to his or her usage of the account or otherwise in accordance with applicable law.

Oregon — Or. Rev. Stat. §41.580 (1989 ch. 967) (applies to agreements, promises and commitments entered into after 10/3/89).

20. Also applies to agreement to release any guarantor or cosigner.

21. Applies only if a party to the agreement is a "financial institution," "consumer finance company" or "mortgage banker" as defined under state law.

22. The creditor must, not later than the time the loan or extension of credit is initially made, include within the loan or credit document, or within a separate document which identifies the loan or extension of credit, a statement, underlined or in at least 10-point bold type, which says: "Under Oregon law, most agreements, promises and commitments made by us after the effective date of this Act concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by the borrower's residence must be in writing, express consideration and be signed by us to be enforceable." The creditor must also obtain the borrower's signature on the original document and give the borrower a copy. The creditor must also develop and implement a program reasonably designed to inform existing and potential commercial borrowers about the law. Each program shall at a minimum include making available to existing and potential commercial borrowers, on a continuing basis for a period ending not sooner than three years after the effective date of the law, a brochure or other written material containing the required statement set forth above. The statement must be underlined or be in at least 10-point bold type. The creditor must make the brochure available at each branch, office or other location from which it makes loans or other extensions of credit. If the creditor does so, the creditor is not precluded from relying on the law because any particular existing or potential commercial borrower did not receive the brochure or material.

23. Exempts loans secured soley by residential property consisting of one to four dwelling units, one of which is the principal residence of the debtor.

South Dakota — S.D. Codified Laws Ann. §53-8-2(4) (1985 ch. 381) (effective _____).

24. Exempts a *bank* revolving loan account arrangement with a debtor which permits the debtor to obtain loans by cash advance, credit card, check-credit, overdraft checking or other similar credit plan.

Tennessee — Tenn. Code Ann. §29-2-101(b) (1989 ch. 88) (effective 7/1/89).

25. Also applies to promise or commitment to alter or supplement any written promise, agreement or commitment to lend money or extend credit.

26. Exempts a promise or commitment in the form of a promissory note or other writing that describes the credit or loan and that by its terms: (i) is intended by the parties to be signed by the debtor and not by the lender or creditor; (ii) has actually been signed by the debtor; and (iii) delivery of which has been accepted by the lender or creditor.

Texas — Tex. Bus. & Com. Code Ann. §26.02 (1989 ch. 831) (applies to loan agreements executed on or after 9/1/89).

27. Applies to one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents.

28. Applies to a state or federally chartered bank, savings bank, savings and loan association, or credit union, a holding company, subsidiary, or affiliate of such an institution, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the National Housing Act.

29. Requires both a notice with the loan agreement and a lobby notice. The notice with the agreement must be in a separate document signed by the debtor or obligor or incorporated into the loan agreement. The notice must be in type that is bold-faced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. The suggested notice is: "This written loan agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties." Apparently the notice must be signed by both the debtor or obligor and by the financial institution. If the notice is not given on or before execution of the loan agreement or is not conspicuous, the law does not apply to the loan agreement, although the validity and enforceability of the loan agreement and the rights and obligations of the parties are not impaired or affected as a result. Also all financial institutions must conspicuously post lobby notices in such a manner and in places in the institution so as to fully inform borrowers of the provisions of the law. The Finance Commission of Texas is to prescribe the language of this notice. The consequences of failing to provide the lobby notice are not specified.

30. Exempts a promise, promissory note, agreement, undertaking, document or commitment relating to credit cards or charge cards.

31. Exempts a promise, promissory note, agreement, undertaking, document or commitment relating to an open-end account, as that term is defined by Article 1.01, Tit. 79, Revised Statutes (Tex. Rev. Civ. Ann. art 5069-1.01 (Vernon)), intended or used primarily for personal, family, or household use.

Utah — Utah Code Ann. §25-5-4(6) (1989 S.B. 141) (effective 4/24/89).

32. Applies to agreement to delay an obligation to repay money, goods, or things in action.

33. A signed application is deemed to constitute a signed agreement if the creditor does not customarily obtain an additional signed agreement from the debtor when granting the application.

34. Each credit agreement must contain a clearly stated typewritten or printed provision giving notice to the debtor that the written agreement is a final expression of the agreement between the creditor and the debtor and the written agreement may not be contradicted by evidence of any alleged oral agreement. The provision does not have to be on the promissory note or other evidence of indebtedness that is tied to the credit agreement.

35. Excludes the usual and customary agreements related to deposit accounts or other terms associated with deposit accounts.

Virginia — Va. Code Ann. §11-2(9) (1990 ch. 570) (efective 7/1/90).

17. Exempts transaction less than $25,000.

Washington — Wash. Rev. Code §_____ (1990 ch. 211) (effective 7/1/90).

20. Also applies to agreement to release any guarantor or cosigner.

36. Notice complying with the law must be given simultaneously with or before credit agreement is made in order for lender to rely on law. Notice, once given to debtor, is effective as to all subsequent credit agreements and is effective against the debtor, and its guarantor, successors, and assigns. Notice may be on a separate document or may be incorporated into one or more of the documents relating to a credit agreement. Notice must be conspicuous (by bold-faced type, capitalization, underlining, etc.) and must state substantially the following: "Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law."

37. Exempts a loan of money or extension of credit to a natural person that is primarily for personal, family or household purposes and not primarily for investment, business, agricultural, or commercial purposes.

0898-7645/90/$0+.50

EXHIBIT 8
DATE 3-20-91
HB 125

Testimony of Michael Sherwood, MTLA

OPPOSING Senate Bill 125

My first experience with this bill was in 1989 when it was introduced as Senate Bill 138. The Montana Supreme Court had just decided First Bank v. Clark, 45 State Reporter 2294, in December of 1988. Clark had been sued by the bank for a deficiency judgment and raised as a defense the Bank's commitment to release Clark from a personal guaranty of a corporate debt if Clark gave them a trust indenture in real property held by Clark and his children.

Clark granted a trust indenture based on a handshake with a bank officer. The Bank denied that the oral offer had been accepted by Clark. A jury found that Clark was not obligated as guarantor of the note and awarded Clark $100,000 in damages for the bad faith and constructive fraud of the bank. The decision was reversed by the Montana Supreme Court which held that the jury had been wrongfully instructed as to bad faith. The court held that a fiduciary relationship does not exist between a bank and its debtor unless there are special circumstances indicating exclusive and repeated dealings where the bank acts as financial advisor in some capacity other than that common in the usual arms-length debtor/creditor relationship.

In spite of the favorable ruling by the Montana Supreme Court the Montana Banker's Association urged the passage of SB 138 in order to avoid any suits based upon alledged oral agreements. SB 138 passed the Senate and died a swift death in the House Business Commitee where it met with stiff opposition from businessmen who felt that a Banker ought to be good for his word. Then Representative Bruce Simon, a member of that committee, testified against the bill. I have attached a copy of his testimony to this testimony.

Since 1989 the case of LACHENMAIER V. FIRST BANK SYSTEMS, INC., 47 State Reporter 2244 was decided by the Supreme Court in December of 1990. I have attached a copy of that Case to my testimony as well. In that case the district court granted summary judgment in favor of the bank and the Supreme Court affirmed. At page 2246 of that case the Court held that Section 28-2-903 MCA precluded the Lachenmaiers from alleging a course of dealing here amounting to an oral agreement for continued financing. Now, in spite of this highly favorable ruling the Montana Banker's Association is back again.

In his testimony in 1989, George T. Bennett, Counsel for the Montana Banker's Association, indicated that the major purpose of the bill was to eliminate unnecessary and expensive litigation where sophisticated parties should have, and could have, reduced their agreements to writing. I suggest that a $50,000 limitation

on this legislation does not guarantee that the debtor is a sophisticated party. In fact, no party dealing with a bank will have the sophistication and bargaining power of the bank. No debtor appears at the bank with a stack of written forms for the bank officer to complete and sign. The bank, however, insists that debtors execute documents of commitment as a matter of course. I also agree with Representative Simon that if a lending institution wishes to avoid allegations of oral commitments to lend money or forbear collection it need merely advise its loan officers and collections personnel not to make such commitments.

Please table this bill or pass it out of committee with a recommendation that the house not concur.

Rep. Simon wanted to go on record as strongly opposing this bill. I have been victimized in this system and I know how difficult it is to pursue legal action against a financial institution based on this kind of action. I thought I was going to be in court a few weeks ago, only to have a summary judgment brought against me. Now I have to take this issue to the Supreme Court before I can even get my day in court. This is a difficult thing to pursue for someone like myself or any other business person, this suing a bank, they are very sophisticated, they are very well financed. If they don't want their loan officers making verbal agreements then they should tell them to not make verbal agreements. They don't have to put it in Montana codes. All they have to do is tell their loan officers not to make verbal agreements. I urge the committee to give this bill a fair hearing and then let it hang.

EXHIBIT 9
DATE 3-20-91
SB 123

ıg loan
to be

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB #198

DATE 3-20-91 SPONSOR(S) Sen. Brown

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Anne MacIntyre	Human Rights Commission	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB# 199

DATE 3-20-91 SPONSOR(S) SEN. Bracon

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Kate Cholewa	MT Womens Lobby	X	
Anne MacIntyre	Human Rights Commission	X	
Marcia Dias	Mt. Low Income Coal.	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB 87

DATE 3-20-91 SPONSOR(S) Sen. Brown

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Grace Berger	Dept. of Commerce	information		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB # 125

DATE 3-20-91 SPONSOR(S) Sen. Brown

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jock Anderson, Helena	MT League of Sav. Inst.	✓	
Mike Sherwood	MTLA		✓
George Bennett	Mt. Banker Assn.	✓	
Wohn Crosby	Mt. Bankers Assn.	✓	
Roger Tippy	Mt Independent Bankers	✓	
GEORGE T. BENNETT	MONT. BKS ASSN	✓	
GENE PHILLIPS	FIRST INTERSTATE BANK OF MT.	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.