

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS & INDUSTRY**

**Call to Order:** By Chairman J.D. Lynch, on February 12, 1991, at 10:00 a.m.

#### **ROLL CALL**

**Members Present:**

J.D. Lynch, Chairman (D)  
John Jr. Kennedy, Vice Chairman (D)  
Betty Bruski (D)  
Eve Franklin (D)  
Delwyn Gage (R)  
Thomas Hager (R)  
Jerry Noble (R)  
Gene Thayer (R)  
Bob Williams (D)

**Members Excused:** None

**Staff Present:** Bart Campbell (Legislative Council).

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

**Announcements/Discussion:** None

#### **HEARING ON HOUSE BILL 209**

##### **Presentation and Opening Statement by Sponsor:**

Representative Norm Wallin, sponsor of the bill, stated that HB 209 is a result of a bankruptcy law that currently exists. It is a necessity to see that the liens on automobiles are protected. The dealer or individual who is the seller of a vehicle has four days to transfer the title to the county courthouse. The buyer then has twenty days to purchase a license plate. In that period of time it is possible that the buyer doesn't get the license within twenty days. The bankruptcy law says that the liens in the cases of title transfer have to be recorded within ten days from the date of the sale. The people that loan the money are in jeopardy at least for another ten days that they might lose their collateral, and have to declare bankruptcy. This bill permits the county treasurer to accept those papers on the date that they are recorded.

##### **Proponents' Testimony:**

John Cadby, with the Montana banker's association, spoke in favor of the bill (See Exhibit 1, 1A).

Jim Cowin, first valley bank in Seeley Lake, went on record in support of the bill.

Bob Spannagel, first citizens bank in Billings, went on record in support of the bill.

Larry Moore, stockmen's bank in Cascade, went on record in support of the bill.

Tom Harrison, on behalf of the Montana auto dealers association, stated that they are in favor of the bill and endorse the amendments.

Bob Pyfer, vice president of the Montana credit unions league, spoke in favor of the bill. He stated that this is not a case of the bankruptcy law favoring the debtor, this is not a creditor debtor bill.

Bud Schoen, with the department of justice, motor vehicle division, stated that they are in support of the bill.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Gage stated that every time they get a bill in dealing with motor vehicles, the next session they have bills coming in dealing with the recreational vehicles, snowmobiles, motorbikes, etc. He asked if this bill cover these as well, or will there be a wrap next time.

Bill Leary replied that this bill does not cover those, they were overlooked when the bill was drafted. The next session they will have to correct it by including them. The primary concern are the more expensive motor vehicles, and motor homes which this bill does cover.

Senator Thayer asked if all the proponents agree with the amendment being offered (See Exhibit 1, page 3).

All of the proponents agree on the amendment.

Closing by Sponsor:

Representative Norm Wallin closed by saying that there is a fiscal statement attached.

He then stated if the bill passes, Senator Thayer will carry it.

HEARING ON HOUSE BILL 14

Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody, sponsor of the bill, stated that in the last session of the legislature, HB 326 was passed. This bill exempted paralegals from licensing requirements under

the board of private investigators. In drafting the rules, the board in purpose of complying with section 36-60-101 the word paralegal would be interpreted to mean a paralegal employed by only one law firm. Paralegals employed by more than one firm, at the same time will be required to be licensed under title 17. History: this rule in under advisory only. In the law that was passed last session actually under 1-2-105 singular means plural, but for the board they interpret it to mean singular. This bill would mean that all paralegals would be exempt either private paralegals, contractors, or those who work for a firm.

Proponents' Testimony:

None

Opponents' Testimony:

None

Questions From Committee Members:

None

Closing by Sponsor:

Representative Cody closed by saying that the only way of doing things is fill out specifically when they attach a rule to something what the intentions are. Senator Williams would carry HB 22.

HEARING ON HOUSE BILL 14

Presentation and Opening Statement by Sponsor:

Representative Ray Peck, sponsor of the bill, stated that HB 14 is at the request of the state auditor's and secretary of security's department. This bill would control some of the boiler room telephone operations that sell precious metals in Montana. These operations are generally the high pressure telephone calls that sell silver, platinum, gold, and other precious metals. They will get the Montanan to agree to a fairly low down payment like 20%. They will set up a contract to be carried by an out of state bank, and there would be some excess of commissions involved in the sale. There would be some loan fees and interests that are higher than what they could do in state. The bill only applies only to non-registered out of state promoters. It is a good consumer bill.

Proponents' Testimony:

Robyn Young, deputy commissioner of securities, spoke in favor of the bill (See Exhibit 2).

Bill Leary, representing the Montana bankers association,

stated that they don't envision that they will be loading up on their bank volts with these metals. The bill is well worked out and they support it.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Gage asked if collectors coins tied in with this at all.

Robyn Young stated that collectors coins are exempt.

Senator Gage asked in the case for instance where a person has borrowed money from a non resident bank, is the bank going to require that the metals stay there.

Robyn Young stated that they would have to file with the securities department and register that contract.

Closing by Sponsor:

Representative Peck closed by saying that this is a relatively simple bill. It is a consumer bill. Senator Lynch has agreed to carry the bill on the floor.

EXECUTIVE ACTION ON HOUSE BILL 14

Motion:

Senator Thayer moved that HB 14 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

HB 14 was concurred in unanimously with Senator Lynch to carry it.

EXECUTIVE ACTION ON HOUSE BILL 22

Motion:

Senator Williams moved that HB 22 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

HB 22 was concurred in unanimously with Senator Williams to carry it.

EXECUTIVE ACTION ON HOUSE BILL 209

Motion:

Senator Thayer moved that HB 209 be amended.

Discussion:

None.

Amendments, Discussion, and Votes:

The amendments for HB 209 passed unanimously.

Senator Noble moved that HB 209 be concurred in as amended.

Senator Gage stated that the proponents indicated that it is too late to do anything about the other vehicles. He is not sure it is too late. It is as good as time as any to put those vehicles in here.

Bart Campbell stated that they would be expanding the bill.

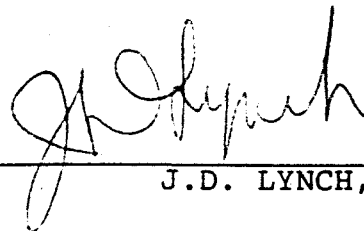
Senator Gage stated that they might as well make any changes now.

Senator Noble withdrew his motion for HB 209 be concurred in as amended.

Recommendation and Vote:

ADJOURNMENT

Adjournment At: 10:30 a.m.



J.D. LYNCH, Chairman



DARA ANDERSON, Secretary

JDL/dia

ROLL CALL

Business&IndustryCOMMITTEE

DATE 2/12/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Bruski	X		
Senator Franklin	X		
Senator Gage	X		
Senator Hager	X		
Senator Noble	X		
Senator Thayer	X		
Senator Williams	X		
Senator Kennedy	X		
Senator Lynch	X		

Each day attach to minutes.

## BUSINESS & INDUSTRY

# VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)



ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/12/91 Bill No. HB14 Time 10:00

NAME	YES	NO
Senator Bruski	✓	
Senator Franklin	✓	
Senator Gage	✓	
Senator Hager	✓	
Senator Noble	✓	
Senator Thayer	✓	
Senator Williams	✓	
Senator Kennedy	✓	
Senator Lynch	✓	

Dara Anderson

Secretary

JD Lynch

Chairman

Motion: BE CONCURRED IN

TESTIMONY

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 2/12/91

BILL NO. HB 14

February 12, 1991

Senate Business & Industry Committee

House Bill 14

Robyn J. Young, Deputy Securities Commissioner

Montana Securities Department

For the record, my name is Robyn Young. I am the Deputy Commissioner of Securities. I am here representing the State Auditor and Montana Securities Department in support of House Bill 14. This bill was requested by the Securities Department to prevent a specific type of securities fraud that has been prevalent in Montana, especially during the past two years.

Last year, Montana residents lost over a million dollars to out-of-state firms offering bank financed precious metals contracts. Salesmen for these firms used high-pressure telephone sales tactics to lure Montana victims into purchasing silver and platinum contracts where the investor paid only 20% of the purchase price as a down payment with the remaining balance financed by an out-of-state bank.

The victims were not told that the metals that they were purchasing would be used to secure a bank loan, and that a decline in the value of the metal could result in the investor being required to deposit additional funds with the bank. If the investor failed to deposit the necessary funds the bank had the authority to sell the metal to insure that the investor's equity remained at the required level. Other material facts that were not disclosed included the excessive commissions or markups paid on the metals prices; the loan fees and interest charges from the bank; and the custodial fees charged by the banks.

## Section 1

The only substantive change involves 30-10-105(19), MCA. A new subsection (c) has been added that, and I quote, "requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection (19)(b)(i) and (19)(b)(ii), to be physically located within Montana at all times after the 7-day delivery period provided in subsection (19)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period."

House Bill 14 amends the "exemption from registration" that past fraudulent promoters used to avoid the registration requirements of the Securities Act. 30-10-105(19), MCA, currently provides an exemption from registration for bank financed precious metal contracts where, within seven days after purchase, either the purchaser receives physical delivery of the metals, or the metals are delivered into the possession of a "depository". We have added subsection (c) to require that the precious metals purchased must be physically located within this state at all times subsequent to the seven day delivery period.

It would still be possible for the out-of-state promoters to register in order to sell these contracts in Montana. It is not likely that the fraudulent promoters will want to bother with the disclosure involved with our registration requirements. If they do attempt to register, we can use provisions contained in the Securities Act that allow the Commissioner the authority to deny an offering that either "tends to work a fraud upon purchasers", or involves "unreasonable promoter's profits or commissions".

The perpetrators of past fraudulent securities transactions were unscrupulous out-of-state firms. The Montana Securities Department believes that requiring the metals to be physically located in Montana will prevent questionable firms from victimizing Montana

residents. However, regulation must be reasonable and Montana investors will still have the opportunity to enter into these highly speculative leveraged precious metal purchase contracts, with the added protection this bill provides to ensure that a Montana depository is involved to store the metals.

The State Auditor and Montana Securities Department urge a "do pass" on House Bill 14. Thank you for your time and consideration. I would be happy to answer any questions you may have.

RY/mep(HB14.tst)

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

Name: MAXWELL SUDA

Address: Box 361  
Helena, MT

Telephone Number: \_\_\_\_\_

Representing whom? (SELF)

Appearing on which proposal? 209  
HRB 22

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

The public ~~is~~ is protected as to the competence of paralegals performing investigative work by the supervising attorney. A paralegal can do legal investigation only under the supervision of an attorney or it amounts to (illegal) practice of law. It is inconsistent to ~~oppose~~ exempt paralegals working for one firm or agency and not to exempt paralegals working for more than one law firm or agency. In both cases the <sup>rationale</sup> ~~basis~~ for exemption is the same - supervision by an attorney. Clay

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

### WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 12 day of Feb, 1991.

Name: SUSAN D. REBER

Address: 801 Flowerree Helena

Telephone Number: 442-8560

Representing whom?

Gough SHANAHAN JOHNSON & WATKINSON

Appearing on which proposal?

HB22

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

A PARALEGAL Acts UNDER the supervision  
of AN ATTORNEY, thus, UNDER his/her  
direction, AND his/her licensure, A  
PARALEGAL's duties are protected.

A paralegal HAS NO public dealings unless  
she/he is directed to do so by their  
ATTORNEY.

Licensure of PARALEGALS to perform certain  
duties would only CREATE more PAPER WORK  
AND UNNEEDED BUREAUCRACY.

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/12/91 Bill No. H322 Time 10:00

NAME	YES	NO
Senator Bruski	X	
Senator Franklin	X	
Senator Gage	X	
Senator Hager	X	
Senator Noble	X	
Senator Thayer	X	
Senator Williams	X	
Senator Kennedy	X	
Senator Lynch	X	

Dara Anderson

JD Lynch

Secretary

Chairman

WILLIAMS

Motion: BE CONCURRED IN

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date 2/12/91 Bill No. HB 209 Time 10:00

NAME	YES	NO
Senator Bruski	X	
Senator Franklin	X	
Senator Gage	X	
Senator Hager	X	
Senator Noble	X	
Senator Thayer	X	
Senator Williams	X	
Senator Kennedy	X	
Senator Lynch	X	

Dara Anderson

Secretary

JD Lynch

Chairman

*Thayer*  
Motion: TO AMEND



JOHN CADBY  
MT BANKERS ASSOC.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 2/12/91

BILL NO. HB 209

PERFECTION OF MOTOR VEHICLE LIENS

HOUSE BILL 209

by Montana Bankers Association

Mr. Chairman and Members of the Senate Business and Industry Committee:

HB 209 changes the time and place of perfecting a lien on transfers of ownership of a motor vehicle from the registrar's office in Deer Lodge to the county. The county will issue a receipt to the lender when they receive the title and lien. The purpose is to speed up perfection of liens so as to comply with the federal bankruptcy law which only allows 10 days for perfection.

Last year the federal bankruptcy court in Montana ruled against a credit union on a \$13,480 motor vehicle loan only because the lien had not been perfected in time. In this case, on February 13, 1989 the debtors purchased a 1989 Mazda. The application for title and lien documents were delivered to the county on March 1 as required by Montana law. The registrar at Deer Lodge did not receive the documents until June 5. The actual title and date the lien was perfected was August 4. The debtor filed a bankruptcy petition on August 31.

The bankruptcy judge ruled that the credit union's lien on the Mazda was void and gave the vehicle to the trustee to sell. The credit union lost \$13,480 through no fault of its own.

This past year, representatives of Montana Bankers Association, Montana Auto Dealers Association, and Montana Credit Union Network met with the Attorney General's Motor Vehicle

Division and Registrar of Motor Vehicles on numerous occasions to come up with a solution. HB 209 is a simple solution which will protect all lien holders' rights.

Admittedly this is not the total solution because Montana law does allow the purchasers of motor vehicles 20 days to register at the county. On the other hand most motor vehicle sales are handled by dealers and they customarily get the necessary paperwork to the county courthouse within a few days after the purchase. This law will encourage both dealers and lenders to work together to see that the paperwork is expedited and in the hands of the county as soon as possible after the sale of the motor vehicle.

The proposed amendments simply make sure the title accompanies the lien papers to save the county treasurers some time and labor. They also cover those liens (about 40,000) which are filed direct with the Registrar by lenders when someone comes in to borrow money and uses their motor vehicle (with a clear title) as collateral. These "collateral loans" are not now going through the counties so there is no change in present procedures.

We urge you to pass HB 209.

Amendment to House Bill 209

Amend page 3, Section 1 (5), line 12, after the word "notice" add: "AND THE CERTIFICATE OF OWNERSHIP OR MANUFACTURERS' STATEMENT OF ORIGIN", and after the word "treasurer" delete "." and add: "EXCEPT THOSE SECURITY INTERESTS OR OTHER LIENS NOT REQUIRING A TRANSFER OF OWNERSHIP."

Add on page 3, line 20, a new subsection:

"(6) SECURITY INTERESTS OR OTHER LIEN FILINGS THAT DO NOT REQUIRE TRANSFER OF OWNERSHIP SHALL BE PERFECTED WHEN RECEIVED BY THE DEPARTMENT. ON THAT DATE, THE DEPARTMENT SHALL ISSUE TO THE SECURED PARTY A RECEIPT EVIDENCING THE PERFECTION. PERFECTION UNDER THIS SECTION CONSTITUTES CONSTRUCTIVE NOTICE TO SUBSEQUENT PURCHASERS OR ENCUMBRANCES, FROM THE DATE OF DELIVERY OF THE LIEN NOTICE TO THE DEPARTMENT, OF THE EXISTENCE OF THE SECURITY INTEREST."

And renumber remaining subsections.

Purpose of Amendments:

These amendments require motor vehicle titles accompany lien filing with county and Registrar of Motor Vehicles. Subsection (6) provides for perfection of liens filed direct with the Registrar of Motor Vehicles. There are about 40,000 such liens a year for the owners of motor vehicles who obtain a loan and use his motor vehicle as collateral.

Amendment to House Bill 209

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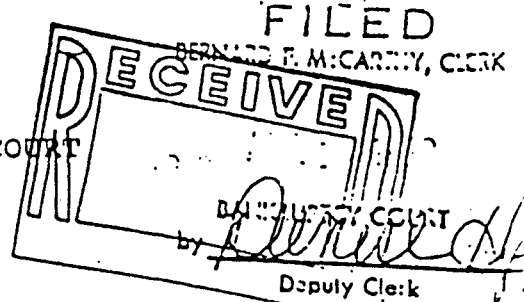
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EXHIBIT NO. 1A

DATE 2/12/91

BILL NO. HB 209

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MONTANA



In re

JAMES R. STEERS, and  
JOY L. STEERS,

Case No. 89-41193-007

Debtors,

GARY S. DESCHENES,  
Trustee,

Plaintiff,

-vs-

Adversary Proceeding  
No. 289/0119

FIRST LIBERTY FEDERAL  
CREDIT UNION,

Defendant.

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ORDER

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At Butte in said District this 19th day of April, 1990.

On November 7, 1989, the Chapter 7 Trustee/Plaintiff filed a Complaint to Avoid Preferential Transfer in Personal Property and for Turnover of Vehicle. The Defendant filed an Answer on January 2, 1990, admitting most of the material allegations, yet asserting that the Trustee/Plaintiff should take nothing through the Complaint. The parties then filed a Stipulation whereby this matter would be submitted on Stipulated Facts and simultaneous Briefs. This Court approved the Stipulation and the Stipulated Facts and Briefs were filed on or before February 7, 1990. The Complaint is based on § 547 of the Code. Subsequent to the filing of the parties' Briefs, Amicus Curiae Briefs were filed by First Bank Montana, N. A. (First Bank) and

Ross Richardson, panel Trustee. First Bank's Brief supports the Defendant's position and Richardson's Brief supports the Trustee/Plaintiff's position. Upon review of the record, this Court deems this case ripe for decision.

The Stipulated Facts of the Parties are as follows: On February 13, 1989, the Debtors executed and delivered to Defendant a Security Agreement granting a security interest in a 1989 Mazda. The security interest was granted as security for a loan extended to the Debtors in the amount of \$13,480.00 to purchase the vehicle. The appropriate title and lien documents were delivered to the Cascade County Treasurer on March 1, 1989 as required by statute. Despite the fact that the registration documents were deposited with Cascade County on March 1, 1989, the State Department of Motor Vehicles (Department) did not receive the registration documents until June 5, 1989. The actual title for the vehicle, noting the Defendant's lien, was subsequently issued by the Department on August 4, 1989. The parties are unaware of any facts indicating that the Defendant caused any of the administrative delay from the registration date of March 1, 1989, to the issuance of title on August 4, 1989. While the parties stipulated Debtors filed a Bankruptcy Petition for relief under Chapter 7 on September 12, 1989, the actual petition date is August 31, 1989.

The Trustee/Plaintiff asserts that the Defendant's lien was not perfected until August 4, 1989, and therefore, the lien is subject to the Trustee's avoidance powers under § 547(b). The Defendant and Amicus First Bank argue that § 547(c) overcomes the

Plaintiff's contentions and case law, together with § 105 of the Code, buttress their positions.

Section 547(b) of the Code provides:

"(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property--

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made--

- (A) on or within 90 days before the date of the filing of the petition;
  - or

- (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

- (5) that enables such creditor to receive more than such creditor would receive if--

- (A) the case were a case under chapter 7 of this title;

- (B) the transfer had not been made; and

- (C) such creditor received payment of such debt to the extent provided by the provisions of this title."

The Stipulated Facts satisfy each of the elements of § 547(b) since under sections 61-3-201(2) and 61-3-103(5), Mont. Code Ann. (1989) perfection of the security interest occurred on August 4, 1989, within 90 days of the filing of the Debtors' Petition. The pertinent Montana Code sections provide for the transfer of title documents to be sent to the county treasurer within 20 days of sale and the transfer documents together with security agreements are then forwarded by the treasurer to the State Motor Vehicles

Department, which issues the new title. Pertinent to this case is 61-3-103(5), which provides:

"The filing of a security interest or other lien, as herein provided, perfects a security interest which has attached at the time the certificate of ownership noting such interest. Issuance of a certificate of ownership constitutes constructive notice to subsequent purchasers or encumbrances, from the time of filing, of the existence of the security interest."

Under such statutory scheme, the lien is not perfected until endorsed on the title by the Department of Motor Vehicles. In re Davis, 1 Mont. B.R. 79 (1985).

Therefore, the issue before the Court is whether § 547(c)(1) or (c)(3) except the Trustee's § 547 avoidance powers in this case. Section 547(c)(1) and (3) provide:

"(c) The trustee may not avoid under this section a transfer --

(1) to the extent that such transfer was

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and

(B) in fact a substantially contemporaneous exchange;

\* \* \* \*

(3) that creates a security interest in property acquired by the debtor --

(A) to the extent such security interest secures new value that was--

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;



(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property;

(iv) in fact used by the debtor to acquire such property; and

(B) that is perfected on or before 10 days after the debtor receives possession of such property;"

In Matter of Vance, 721 F.2d 259, 261-62 (9th Cir.

1983), the Ninth Circuit Court of Appeals aptly addressed the interaction between § 547(c)(1) and (3), stating:

"There is no indication in the legislative history that Congress intended section 547(c)(1) to be a general exception covering a variety of transactions. Rather, the legislative history indicates that Congress designed section 547(c)(1) to exclude check or other cash equivalent transactions from the trustee's avoiding powers. Thus, applying section 547(c)(1) to purchase money security interests would expand the scope of the exception far beyond the contemplation of Congress.

Congress specifically provided preference protection for purchase money security interests in section 547(c)(3). That section provides that the security interest must be perfected before 10 days after such security interest attaches. This exception does not protect the Bank's security interest in Vance's trailer because the security interest was perfected fourteen days after the security interest attached.

Even if section 547(c)(1) were to be construed as a general exception for those situations not specifically contemplated by the authors of the Bankruptcy Code, the existence of section 547(c)(3), which

specifically applies to purchase money security transactions, would preclude the application of the general exception to transactions specifically provided for in subsection (c)(3). As the bankruptcy court stated in In re Enlow:

' The explicit reference by Congress in Section 547(c)(3) to enabling loans lends further support to the conclusion that Section 547(c)(1) is not applicable to the instant transaction. Through its enactment of Section 547(c)(3) Congress intended to make that section -- not Section 547(c)(1) --applicable to an enabling loan situation.'

20 B.R. at 483. The bankruptcy court in another case applied the traditional maxim 'expressio unius est exclusio alterius' and concluded:

'11 U.S.C. § 547(c)(3) provides a mechanism by which liens to secure enabling loans might be excepted from avoidance. In so doing it negates the availability of other means of exception. 11 U.S.C. § 547(c)(1) is general; 11 U.S.C. § 547(c)(3) is specific; it refers to "a security interest" such as in this adversary proceeding.'

In re Davis, 22 B.R. at 649. This application of statutory construction techniques is persuasive that Valley Bank should not be able to take advantage of section 547(c)(1).

The Bank contends, however, that subsections (c)(1) and (c)(3) are not mutually exclusive. The Bank refers to the following statement from the legislative history:

'Subsection (c) contains exceptions to the trustee's avoiding power. If a creditor can qualify under any one of the exceptions, then he is protected to that extent. If he can qualify under several, he is protected by each to the extent he can qualify under each.'

H.R.Rep. No. 95-595, 95th Cong., 1st Sess., reprinted in 1978 U.S. Code Cong. & Ad. News at 6329. The Bank argues that this legislative history indicates that Congress did not intend that section 547(c)(3) be the exclusive exception for purchase money security transactions.

The Bank places too much reliance on this legislative history. As one bankruptcy court commented:

'The legislative history does not reveal which sections might provide multiple protection or why a transferee would desire to qualify under more than one section because satisfaction of any section excepts the entire transfer from avoidance. Assuming some purpose for multiple protection, however, the legislative history cannot be interpreted, as FMCC argues, to suggest that all exception in § 547(c) are interchangeable and overlap. Each section has distinct prerequisites and to the extent one of those elements is absent, the section is inapplicable. Similarly, those sections that are inconsistent with each other will not be applied to one another.'

In re Murray, 27 B.R. at 449 n. 7. The legislative history does not explicitly state that subsections (c)(1) and (c)(3) overlap. The legislative history does explicitly state that Congress intended section 547(c)(1) to except certain transactions involving payment by check and that section 547(c)(3) excepts certain transactions involving enabling loans. These are distinct types of transactions. The cited legislative history is not persuasive for the proposition that section 547(c)(1) and section 547(c)(3) overlap in their coverage of transactions.

Our conclusion is further supported by the fact that applying section 547(c)(1) to enabling loan transactions would make section 547(c)(3) superfluous. See in re Christian,

8 B.R. at 819. If the contemporaneous exchange exception of section 547(c)(1) were applicable to all purchase money security transactions, then the more specific provisions of section 547(c)(3), such as the 10-day perfection requirement, would be meaningless. We are not persuaded that Congress intended this result."

The Vance decision was followed by this Court in In re Northwest Erection, Inc., 56 B.R. 612, 614-15, 1 Mont. B.R. 305, 308 (Bankr. Mont. 1986), wherein this Court stated that it was:

" \* \* \* bound by the law of this circuit which clearly holds that the perfection of the security interest must be made within 10 days in order to rely on the contemporaneous exchange exception to the preference rule."

In this case, the loan transaction on February 13, 1989, was a purchase money security transaction. As such, § 547(c)(1) is not an applicable exception in this case. Vance, supra at 260-61. The Defendant did not have a perfected security interest within 10 days of the Debtors receiving possession of the 1989 Mazda.<sup>1</sup> It is noteworthy that § 547(c)(3)(B) uses the term "possession," not legal title. The Debtor took possession of the vehicle on February 13, 1989. Accordingly, § 547(c)(3) does not avail the Defendant of an exception to the Trustee's avoidance powers. Northwest Erection, supra at 615.

The Defendant and Amicus First Bank assert that the

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<sup>1</sup>In fact, the necessary registration and title documents were not filed with the Cascade County Treasurer until 15 days after the Debtors received possession of the 1989 Mazda.

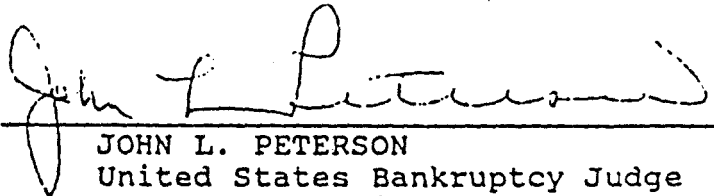
Trustee/Plaintiff's position will overrule the intent of the parties who were involved in the subject transactions. This Court is aware that the parties' intent is of critical inquiry under § 547(c)(1). In re Wadsworth Bldg. Components, Inc., 711 F.2d 122, 124 (9th Cir. 1983). As noted above, subsection (c)(1) does not apply to the facts in this case. Moreover, under § 61-3-103, supra, perfection does not relate back to the transaction date. Williamson v. Skerritt, 141 Mont. 422, 378 P.2d 215 (1963). The holding of In re Damon, 34 B.R. 626, 629 (Bankr. Kan. 1983) is thus appropriate.

"If the creditor fails to perfect within 10 days, § 547(c)(3) is inapplicable; the transfer is deemed to be made whenever perfection occurs, pursuant to § 547(e)(2), the transfer is on account of an antecedent debt, pursuant to § 547(b)(2), and the transfer is avoidable. Creditors failing to perfect within 10 days have argued, however, that even though they failed to comply with § 547(c)(3), the transfer was substantially contemporaneous to the loan advance pursuant to § 547(c)(1). Courts are divided but the better view holds that when funds are advanced at the time or after a purchase money security interest is granted, but the purchase money security interest is not perfected within 10 days after the security interest attaches, the creditor cannot successfully argue the transfer was nevertheless substantially contemporaneous under § 547(c)(1). (citing cases)"

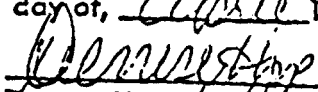
Accordingly, the Trustee's avoidance powers overcome the Defendant's security interest, and as such, the Defendant's lien

is void.

IT IS ORDERED that the Defendant's lien on the Debtors' 1989 Mazda, Title No W166014, is hereby voided and said vehicle shall be turned over to the Trustee/Plaintiff for sale, subject to any proper exemption of the Debtor.



JOHN L. PETERSON  
United States Bankruptcy Judge  
215 Federal Building  
Butte, Montana 59701

Cony mailed to Counsel of  
Record and Trustee this 10th  
day of, April 1990  
  
Deputy Clerk (Clerk of U.S.  
Dist. Ct.)

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 12, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 22 (third reading copy -- blue), respectfully report that House Bill No. 22 be concurred in.

Signed: 

John "J.D." Lynch, Chairman

1/11 2-12-91  
And. Coord.

SB 2-12 11:15  
Sec. of Senate

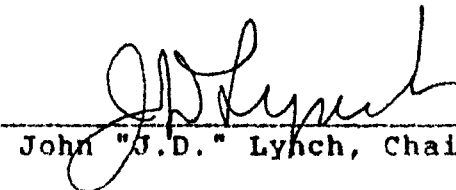
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 12, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 14 (third reading copy -- blue), respectfully report that House Bill No. 14 be concurred in.

Signed: 

John "J.D." Lynch, Chairman

RB 2-12-91  
And. Coord.

SB 2/12 11:15  
Sec. of Senate