

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 23, 1991,
at 7:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

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

Announcements/Discussion:

EXECUTIVE ACTION ON SENATE BILL 31

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe explained the amendments which, he said, were the consensus of the people working on the bill. He said the Subcommittee thought about clear changes outlining immunity for testers, pre-employment testing, and random testing (Exhibit #1). Senator Towe advised the Committee that these were changed without compromising what Dan Edwards asked for, and said the amendments

make no provision for immunity, random testing or post-accident testing. He stated the amendments do have a pre-employment test on the condition that the employer has a comprehensive drug and alcohol program in place (section 1, (B) and (C) of the gray bill).

Chairman Pinsoneault commended the work of Steve Browning and Dan Edwards on SB 31.

Senator Towe went on to state that testers must use NIDA-certified labs, and that language is the same for verification of tests (4)(a). He explained that NIDA cut-off levels were taken out, and that section 2 (page 6) contains definitions taken from SB 138. Senator Towe said section 3 contains qualifications for a testing program from SB 138.

Senator Towe advised the Committee that the main change is (I) on page 8 of the gray bill, and that language was changed to "individual particularized suspicion" on lines 11-12, page 9. He said mostly new language on page 10 deals with samples and chain of custody and deals with responsibilities of medical review officers on pages 12-13. Senator Towe went on to state that section 4 addresses confidentiality with language from SB 138, and that section 5 (alcohol testing) is not as sophisticated.

Senator Halligan asked if the bill made provision for AIDS testing. Senator Towe replied it is not covered, but is not prohibited either.

Senator Halligan asked about confidentiality on page 9. Senator Towe replied that no one can get information except for incidents involving death, property damage over \$5,000, or an accident involving drugs or alcohol. He said evidence of fault is necessary. Dan Edwards added that page 7 speaks to samples which might includes AIDS tests.

Senator Towe made a motion that the proposed amendments be approved (Exhibit #2).

Senator Svrcek said he believes the bill is a significant change to state law, as it opens the door to pre-employment drug testing. He stated no one has demonstrated that present law is not working.

Senator Svrcek made a substitute motion to TABLE SB 31 AS AMENDED. The motion failed 6-6 in a roll call vote (attached).

Senator Towe's motion to amend carried with all members voting aye except Senators Brown, Doherty, Halligan, Svrcek, and Yellowtail who voted no.

Recommendation and Vote:

Senator Towe made a motion that SB 31 DO PASS AS AMENDED. The motion carried 7-5 (roll call vote).

EXECUTIVE ACTION ON SENATE BILL 342

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Brown made a motion to approve the amendments requested by Senator Harp (Exhibit #3), to include an immediate effective date and severability.

The motion carried with all members voting aye except Senator Crippen who voted no.

Recommendation and Vote:

Senator Brown made a motion that SB 342 DO PASS AS AMENDED. The motion carried with all members voting aye except Senator Crippen who voted no.

EXECUTIVE ACTION ON SENATE BILL 138

Motion:

Senator Mazurek made a motion that SB 138 be TABLED.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Mazurek carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 145

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Svrcek explained his proposed amendments to the bill (Exhibit #4). He said the amendments make a two-state process of gambling expansion and require a referendum to be submitted by the Legislature to the voters.

Senator Svrcek made a motion to approve his amendments to SB 145. The motion carried 8-4 in a roll call vote (attached).

Senator Brown stated he wanted this issue discussed on the Senate floor as a proposal for constitutional amendment.

Recommendation and Vote:

Senator Brown made a motion that SB 145 DO PASS AS AMENDED.

Senator Doherty advised the Committee that the "prior to 12-31-92" language means none of the little housekeeping bills such as the "carnival bill" will be easily done. Senator Brown replied that problem would exist with any date used.

Senator Mazurek stated the delayed date would allow for an increase in lobbying to expand gambling even more.

Senator Harp said he would have to vote no on the bill. He told the Committee he believes the legislative process does work, and added that he usually agrees with Senator Brown. Senator Halligan seconded Senator Harp's comments. Senator Brown replied he believes the people will vote gambling issues down, while the Legislature will continue to expand gambling.

Senator Brown added that he generally shares Senator Harp's philosophies, and said this issue is more important to him this time.

The motion made by Senator Brown failed 5-7 in a roll call vote (attached).

Senator Halligan made a motion that SB 145 DO NOT PASS AS AMENDED. The motion carried 7-5 in a reversed vote.

EXECUTIVE ACTION ON SENATE BILL 315

Motion:

Senator Pinsoneault made a motion that SB 300 be TABLED.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Pinsoneault carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 410

Motion:

Senator Towe made a motion that SB 410 be TABLED.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Towe carried with all members voting aye except Senator Doherty who voted no.

EXECUTIVE ACTION ON SENATE BILL 388

Motion:

Senator Harp made a motion that SB 388 DO PASS.

Discussion:

Senator Towe commented that there are comprehensive departmental rules in place. Senator Halligan replied that probation and parole officers may only use ammunition issued by the Department.

Senator Towe made a substitute motion that SB 388 DO NOT PASS.

Senator Mazurek said he did not believe the Legislature should be putting makes and models of firearms into the statute.

The motion made by Senator Towe failed 3-9 in a roll call vote (attached).

Amendments, Discussion, and Votes:

Senator Grosfield proposed to amend the bill by reinserting stricken language on page 1, lines 20-22, and adding "consistent with sections 2 and 3"; inserting "when authorized to do so by the Department or district court" following "firearm" on page 2, line 5; striking ", as provided in subsection 3," on page 2, lines 20-21; and striking subsections 3, 4, and 5 in their entirety on page 2, beginning with line 23.

Senator Grosfield said he believes these amendments would help probation and parole officers to go through the Department or the district court to obtain permission to use firearms.

Senator Crippen asked what would happen if the Department said no and the court said yes.

Senator Mazurek commented that the bill should be left as it is.

Senator Grosfield withdrew his proposal.

Recommendation and Vote:

Senator Harp made a motion that SB 388 DO PASS. The motion carried with all members voting aye except Senators Mazurek, Towe, and Yellowtail who voted no.

EXECUTIVE ACTION ON SENATE BILL 453

Motion:

Senator Doherty made a motion that SB 453 DO PASS.

Senator Mazurek made a substitute motion that SB 453 be TABLED.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Mazurek carried with all members voting aye except Senators Svrcek, Rye, and Doherty who voted no.

EXECUTIVE ACTION ON SENATE JOINT RESOLUTION 19

Motion:

Discussion:

Chairman Pinsoneault advised the Committee that desecration of the flag has been on military books for some time, and said he believed the military justice system is most fair.

Senator Mazurek stated that the last time this legislation was passed, the bill urged Congress to "consider" the initiative.

Senator Crippen told the Committee that a bald eagle was protected as the national bird, long before it was an endangered species. He asked why the flag should not then be protected.

Amendments, Discussion, and Votes:

Senator Mazurek made a motion to strike "propose" and to insert "consider" on page 1, line 6 and page 2, line 8 of the bill. The motion carried 6-4 in a roll call vote (attached).

Recommendation and Vote:

Senator Halligan made a motion that SJR 19 DO PASS AS AMENDED. The motion carried 7-5 with all members voting aye except Senators Yellowtail, Svrcek, Rye, Towe, and Doherty who voted no.

EXECUTIVE ACTION ON SENATE BILL 441

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Mazurek said the amendments strike subsection 2 on page 4, and said it is not needed; insert workers' compensation judge on page 4, lines 19-25; require the Commission to provide letters and public comments along with their nomination on page 5; and strike "4" and insert "3" on page 5, line 15.

Senator Crippen stated he had concerns come up with some nominations of people who are not anywhere near the caliber of people who are omitted from nomination.

Chairman Pinsoneault said he had no problem with people rotating on the Commission.

Senator Mazurek commented that he believes "former Governor Schwinden felt the same frustration". He said the major thrust of the bill is to open up the nomination process. He said term limits are almost a "shadow" issue.

Senator Harp asked if the Governor ultimately has the decision.

Senator Crippen said he would like to see the Commission give reasons why it makes a nomination and why others are not chosen. Senator Mazurek replied that is in the bill.

Senator Grosfield asked how the Commission is appointed. Senator Mazurek replied it is not any different than any other bureau appointment. He said one judge is elected to the Commission by the district judges.

Senator Grosfield asked if the Governor had no discretion, and had to pick from the nomination list. Senator Mazurek replied that was correct, and said it is almost the opposite of the federal system.

Senator Mazurek made a motion to approve the proposed amendments. The motion carried unanimously.

Senator Mazurek addressed the Governor's amendments and said he wants them to apply to terms after December 31, 1988.

Senator Crippen made a motion to approve 1, 2, and 3 of the Governor's amendments.

Senator Mazurek stated he would be against the amendments as the Chief Justice and the Nominating Committee thought a deal was struck. He said every draft was delivered to Rick Bartos, and that "this is not done on any other Boards".

The motion made by Senator Crippen failed 5-7 in a roll call vote (attached).

Senator Crippen made a motion to adopt 8 of the Governor's amendments.

Senator Mazurek told the Committee he disagreed with policy, and not the effect.

The motion made by Senator Crippen failed 6-6 in a roll call vote (attached).

Senator Grosfield made a motion to approve 4 of the Governor's amendments.

The motion made by Senator Grosfield carried 8-4 with all members voting aye except Senators Mazurek, Pinsoneault, Towe, and Doherty who voted no.

Recommendation and Vote:

Senator Doherty made a motion that SB 441 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 321

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Harp made a motion to approve the amendments drafted by Bart Campbell (Exhibit #5). The motion made by Senator Harp carried unanimously.

Senator Grosfield reminded the Committee that Senator Fritz had suggested amending the surcharge from \$150 to less than \$50 or about \$30-35.

Senator Harp made a motion to amend the surcharge from \$150 to \$35. The motion carried with all members of the Committee voting aye except Senator Grosfield who voted no.

Recommendation and Vote:

Senator Svrcek made a motion that SB 321 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 331

Motion:

Discussion:

Amendments, Discussion, and Votes:

Valencia Lane provided amendments for SB 331 (Exhibit #6) which were requested by the Montana Coroners Association and Mike McGrath, Lewis and Clark County Attorney. She advised the Committee that the amendments were provided to Paul Johnson, Assistant Attorney General and Bill Fleiner, Lewis and Clark County Undersheriff, both of whom gave their okay. Ms. Lane stated that

the Hill and Judith Basin County Coroners assisted with the amendments.

Senator Svrcek made a motion to approve the proposed amendments.

Senator Grosfield commented that the jury should be able to go to the scene of a crime (amendment 11, page 5 of the bill). Valencia Lane replied that this language was suggested by the Coroners, and said the problem is that juries are serving many months after an incident has taken place.

The motion made by Senator Svrcek carried unanimously.

Recommendation and Vote:

Senator Harp made a motion that SB 331 DO PASS AS AMENDED.

Senator Crippen said it looks like the bill is reinserting old language previously removed from the law (page 8, line 19), concerning preserving evidence for an unlimited amount of time. Valencia Lane replied she didn't know. Senator Mazurek looked up the repealer in the Code and said it was okay.

The motion made by Senator Harp carried with all members voting aye except Senators Mazurek, Crippen, and Harp who voted no.

EXECUTIVE ACTION ON SENATE BILL 7

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Mazurek provided proposed amendments (Exhibit #7). He said the amendments define what a claim is and what insolvency is, and that page 5, line 24 describes assets as including everything one can have an interest in.

Senator Crippen gave an example of a partnership experiencing a downturn whose assets dip below the debt of the partnership. He said that is not insolvency, but according to the bill it is. He asked if it would then be fraudulent for the partnership were to then make a transfer of property. Senator Mazurek replied it would not be fraudulent unless the transfer were made to avoid a legitimate obligation. He added that as long as the transfer was made for fair value there would be no problem.

Senator Crippen asked what would happen if a financial institution referred to the part of the bill concerning insolvency. He said he realizes it deals with fraudulent conveyances, but feels there is danger that banks could make such referral. Senator

Crippen added that he believes the bill is needed, and said he is willing to go along with it if it is worked on in the House.

Senator Mazurek commented that striking subsection (2) which says that as long as a mortgage is foreclosed and a sale held it is not collusive, would then protect a debtor. He said most states have adopted what is in subsection (2). Senator Mazurek advised that Committee that one other change shortens the statute of limitations on page 14, line 1.

Senator Mazurek made a motion to approve the proposed amendments. The motion carried unanimously.

Senator Crippen made a motion to strike subsection (3) in its entirety; to strike "(1)" and insert "and" on page 5, line 24; and to strike "A" on lines 22 and 25 on page 1 and insert "The". The motion carried unanimously.

Recommendation and Vote:

Senator Mazurek made a motion that SB 7 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 53

Motion:

Senator Grosfield made a motion to remove SB 53 from TABLE. The motion carried unanimously.

Discussion:

Amendments, Discussion, and Votes:

Valencia Lane provided copies of proposed amendments she and Lois Menzies, Gambling Division, prepared (Exhibit #8).

Bob Robinson, Gambling Division Administrator, explained the amendments (gray bill attached to Exhibit #8).

Senator Halligan commented that shaking for lunch is not covered. Senator Brown replied that goes on all the time and no one cares about it or gets into trouble for doing it.

Senator Yellowtail reminded the Committee that he had made a motion to delete subsection (b) on January 23, 1991, and said he would resist shaking for a pot.

Senator Yellowtail made a motion to approve 2, 3, 4, 8, 9, and 10 of the Menzies/Lane amendments, and to strike ". The" and insert

", and the" on page 2, line 13, and to strike "do not" on page 2, line 14. He included correction of the title in his motion.

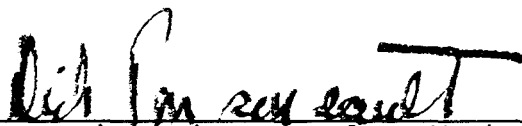
The motion made by Senator Yellowtail carried with all members voting aye except Senator Halligan who voted no.

Recommendation and Vote:

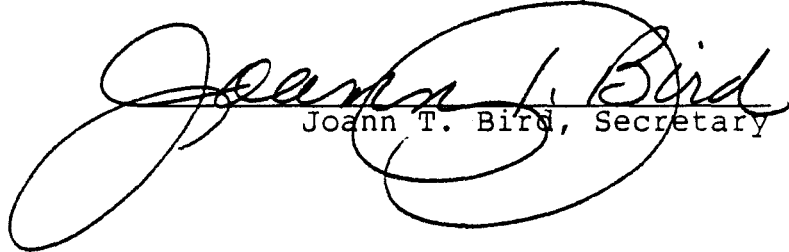
Senator Harp made a motion that SB 53 DO PASS AS AMENDED. The motion carried with all members voting aye except Senator Towe who voted no.

ADJOURNMENT

Adjournment At: 9:30 a.m.



Senator Dick Pinsoneault, Chairman



Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 23 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 342 (first reading copy -- white), respectfully report that Senate Bill No. 342 be amended and as so amended do pass:

1. Title, lines 6 through 8.

Following: "RESIDENTS;" on line 6

Strike: remainder of line 6 through "ACT;" on line 8

2. Title, line 9.

Following: "CONVENIENS"

Insert: "FOR FEDERAL EMPLOYERS' LIABILITY ACT CASES IN WHICH THE
PLAINTIFF IS A NONRESIDENT AND THE TORT DID NOT OCCUR IN THE
STATE OF MONTANA"

Strike: "AND"

Strike: "SECTIONS"

Insert: "SECTION"

Strike: "AND 25-2-201"

3. Title, line 10.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

4. Page 1, line 17.

Following: "jurisdiction"

Insert: "in Federal Employers' Liability Act cases in which the
plaintiff is a nonresident and the tort did not occur in the
state of Montana"

5. Page 1, lines 17 through 19.

Following: "." on line 17

Strike: remainder of line 17 through "Act." on line 19

6. Page 2, lines 8 through 19.

Strike: section 3 in its entirety

Renumber: subsequent section

7. Page 2.

Following: line 23

Insert: "NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval."

Signed: Richard Pinsoneault

Richard Pinsoneault, Chairman

1991 2-23-91
Am. Coord.

SB 2-23-1110
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 7
February 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 31 (first reading copy -- white), respectfully report that Senate Bill No. 31 be amended and as so amended do pass:

1. Title, line 6.

Following: "THE"

Insert: "NATIONAL INSTITUTE ON DRUG ABUSE (NIDA),"

2. Page 1, line 21.

Following: "employment"

Insert: ": (A)"

3. Page 1, line 24.

Following: "responsibility;"

Insert: "(B) in which the employer provides to its employees a drug and alcohol rehabilitation program that is paid for by the employer or through a policy of health insurance that is paid for by the employer, provided that no part of the cost may be paid from a collectively bargained health and welfare trust fund; or

(C) in which the employer employs 10 or fewer employees;"

4. Page 2, line 7.

Following: "the"

Insert: "national institute on drug abuse (NIDA),"

5. Page 2, line 8 through page 3, line 3.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

6. Page 3, line 9.

Following: "independent"

Insert: "NIDA-certified"

7. Page 3, line 14.

Following: "(1)(a)(iii),"

Insert: "and"

Following: "(2)"

Strike: ", and (3)"

8. Page 3, lines 23 and 24.

Following: "negative" on line 23

Strike: remainder of line 23 through "drugs" on line 24

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

Following: "than" on line 25

Strike: remainder of line 25 through "1,000" on page 4, line 9

Insert: "those provided in the NIDA guidelines."

10. Page 4, line 13.

Following: "in"

Strike: "this subsection (ii) for each drug"

Insert: "the NIDA guidelines for confirmatory tests"

11. Page 4, line 13 through page 5, line 7.

Strike: lines 19 through 7 in their entirety

Insert: "NIDA guidelines for confirmatory tests."

12. Page 5, line 15.

Following: line 14

Insert: "(d) Federal preemption of any part of this section must be narrowly construed to limit the extent of the federal preemption."

13. Page 5, lines 15 and 16.

Strike: subsection (6) in its entirety

14. Page 5, line 17.

Following: line 16

Insert: "NEW SECTION. Section 2. Definitions. As used in 39-2-304 and [sections 2 through 6], the following definitions apply:

(1) (a) "Controlled substance" means a dangerous drug as defined in 50-32-101 and as listed or to be listed in the schedule in 50-32-222 or 50-32-224.

(b) Controlled substance does not mean a dangerous drug used pursuant to a valid prescription or as authorized by law.

(2) "Employee" means an individual engaged in the performance of work for a private employer but does not include an individual having the status of an independent contractor.

(3) "Employer" means a person or entity in the private sector that has one or more employees and is located or is doing business in the state.

(4) "Medical review officer" means a licensed physician who contracts with an employer to receive laboratory results generated by an employer's drug testing program, who has knowledge of substance abuse disorders, and who has appropriate medical training to interpret and evaluate an employee's positive test results, together with the employee's medical history and any other relevant biomedical information.

(5) "Prospective employee" means an individual who has made application to an employer, whether written or oral, to become an employee.

(6) "Qualified testing program" means a program to test for the presence of controlled substances that meets the criteria set forth in [sections 3 and 4].

(7) "Sample" means, in the case of drug testing, a urine specimen and, in the case of alcohol testing, a blood, breath, or urine specimen.

NEW SECTION. Section 3. Qualified testing program. A qualified testing program must meet and be conducted according to the following criteria:

(1) Testing must be conducted according to the terms of written policies and procedures that must be adopted by the employer and be available for review by all employees and prospective employees 60 days prior to implementation. The policies and procedures must set forth, at a minimum:

(a) a description of the applicable legal sanctions under federal, state, and local law for the unlawful manufacture, distribution, possession, or use of a controlled substance;

(b) the employer's proposal for educating or providing information to employees on the health risks associated with the use of controlled substances;

(c) the employer's standards of conduct that regulate the use of controlled substances by employees;

(d) a description of available employee assistance programs, including drug and alcohol counseling, treatment, or rehabilitation programs that are available to employees;

(e) a description of the sanctions that the employer may impose on an employee if the employee is found to have violated the standards of conduct referred to in subsection (1)(c) or if the employee is found to test positive for the presence of a controlled substance;

(f) a statement that employees may be tested as provided in [section 1(1)(a)(iii)], including a discussion of the circumstances that may trigger an immediate test;

(g) a list of the controlled substances for which the employer intends to test;

(h) a detailed description of the procedures that will be followed to conduct the testing program, including the resolution of a dispute concerning test results;

(i) a provision that all information, interviews, reports, statements, memoranda, and test results are confidential communications that will not be disclosed to anyone except:

(i) the tested employee or his agent;

(ii) employees or agents of the employer who are specifically authorized by the tested employee to receive the employee's test results; or

(iii) in a proceeding related to a legal action arising out of the employer's implementation of 39-2-304 and [sections 2 through 6] or inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$5,000 when there is individual particularized suspicion that the tested employee may have caused or contributed to the accident; and

(j) a provision that information obtained through drug testing that is unrelated to drug use must be held in strict confidentiality by the medical review officer and may not be released to the employer.

(2) In addition to imposing appropriate sanctions on employees for violations of the employer's standards of conduct referred to in subsection (1)(c), the employer may require an affected employee to participate in an appropriate drug rehabilitation program as a condition of continued employment. The employer may subject the employee to periodic retesting as a condition of the rehabilitation program.

(3) Testing must be at the employer's expense, and all employees must be compensated at their regular rate, including benefits, for time attributable to the testing program.

(4) Sample collection must be performed in a manner designed to protect the privacy of the employee, using when practicable screens or stalls.

(5) Samples must be handled under strict forensic chain-of-custody procedures. These procedures should require that the sample be collected, stored, and transported in a manner that will document and preserve the identity of each sample and prevent the adulteration, contamination, or erroneous identification of test results.

(6) Once samples are obtained, testing of samples must be performed according to scientifically accepted analytical procedures by a qualified laboratory certified by the national institute on drug abuse (NIDA), U.S. department of health and human services, and must include an initial test and a confirmatory test conducted by the same laboratory, as follows:

(a)(i) The initial test must use an immunoassay that meets the requirements of the U.S. food and drug administration for commercial distribution. When screening specimens to determine whether they are negative, the initial cutoff levels may not be less than those provided in the NIDA guidelines.

(ii) All specimens identified as positive on the initial test must be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values at or above those listed in the NIDA guidelines for confirmatory tests. All confirmations must be by quantitative analysis. Concentrations that exceed the linear region of the standard curve must be documented in the laboratory record as "greater than highest standard curve value". The confirmatory cutoff levels may not be less than the NIDA guidelines for confirmatory tests.

(b) The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive may be reported positive for a specific drug.

(c) Drug testing laboratories shall retain all specimens confirmed positive and place them in properly secure long-term frozen storage for a minimum of 1 year.

(d) Federal preemption of any part of this section is strictly limited to the specific scope of the federal preemption.

(7)(a) Each employer shall designate or appoint a medical review officer. If an employer does not have a qualified individual on staff to serve as medical review officer, the employer may contract for the provision of medical review officer services as part of its antidrug program.

(b) The medical review officer must be a licensed physician with knowledge of drug abuse disorders.

(c) The medical review officer shall perform the following functions for the employer:

(i) review the results of drug testing before they are reported to the employer;

(ii) verify that the laboratory report and assessment are correct;

(iii) review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test result:

(A) conduct a medical interview with the individual tested;

(B) review the individual's medical history and any relevant biomedical factors;

(C) review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication;

(D) if necessary, require that the original specimen be reanalyzed to determine the accuracy of the reported test result.

(iv) determine whether and when an employee involved in a rehabilitation program may be returned to duty; and

(v) ensure that an employee has been drug tested in accordance with this section before the employee returns to duty after rehabilitation, and thereafter, as considered necessary by the medical review officer and the individual's rehabilitation plan.

(d) The following rules govern medical review officer determinations:

(i) If the medical review officer determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the medical review officer may not take further action except to report the results as negative to the employer.

(ii) If the medical review officer determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the medical review officer shall refer the individual tested to an employee assistance program or to a personnel officer or administrative officer for further proceedings in accordance with the employer's antidrug program.

(iii) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the medical review officer may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the medical review officer shall conclude that the test is negative for the presence of a prohibited drug or drug metabolite in an individual's system and shall, in a manner that does not reveal the identity of the person tested, notify the employer of the nature of the scientific insufficiency.

NEW SECTION. Section 4. Confidentiality of results.

(1) Except as provided in subsection (2), all information, interviews, reports, statements, memoranda, or test results received by the employer through a qualified drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding.

(2) The material treated as confidential in subsection (1) may be used in a proceeding related to:

(a) legal action arising out of the employer's implementation of 39-2-304 and [sections 2 through 6]; or

(b) inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$5,000 when there is individual particularized suspicion that the tested employee may have caused or contributed to the accident.

NEW SECTION. Section 5. Alcohol testing. Nothing in 39-2-304 and [sections 2 through 6] requiring the use of laboratories certified by the national institute on drug abuse (NIDA) for drug testing may be construed to require NIDA-certified laboratories for alcohol testing or to prohibit or prejudice the use of blood, breath, or urine testing for alcohol pursuant to the methods, procedures, or guidelines outlined in Title 61, chapter 8, parts 4 through 8.

NEW SECTION. Section 6. Penalty. A person who violates 39-2-304 and [sections 2 through 6] is guilty of a misdemeanor.

NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Signed: 
Richard Finsoneault, Chairman

39-2-23-9
Ad. Coord.

SB 2-23 11:10
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 145 (first reading copy -- white), respectfully report that Senate Bill No. 145 be amended and as so amended do not pass:

1. Title, line 6.

Following: "9,"

Insert: "AND ARTICLE III, SECTION 4,"

2. Title, line 9.

Following: "THROUGH"

Strike: "INITIATIVE OR"

Insert: "A"

3. Title, line 10.

Following: "REFERENDUM"

Insert: "SUBMITTED BY THE LEGISLATURE"

4. Page 1, line 18.

Following: "through"

Strike: "initiative or"

Insert: "a"

Following: "referendum"

Insert: "submitted by the legislature"

5. Page 1, line 19.

Following: line 18

Insert: "Section 2. Article III, section 4, of The Constitution of the State of Montana is amended to read:

"Section 4. Initiative. (1) The people may enact laws by initiative on all matters except gambling, appropriations of money, and local or special laws.

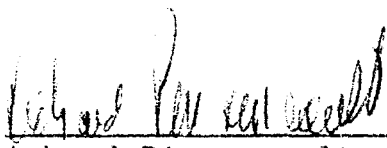
(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held."

Renumber: subsequent sections

6. Page 2, line 1.
Strike: "initiative or"

7. Page 2, line 4.
Strike: "initiative or"

Signed: 
Richard Pinsoneault, Chairman

191 2-23
Amd. Coord.

SB 2-23 11:10
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 315 (first reading copy -- white), respectfully report that Senate Bill No. 315 do pass.

Signed: _____
Richard Pinsoneault, Chairman

101-2-23-91
Amd. Coord.

SB 2-23
Sec. of Senate

10:05

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 388 (first reading copy -- white), respectfully report that Senate Bill No. 388 do pass.

Signed: _____
Richard Pinsoneault, Chairman

 -23-91
Amd. Coord.

CP 2-23 10:05
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Joint Resolution No. 19 (first reading copy -- white), respectfully report that Senate Joint Resolution No. 19 be amended and as so amended do pass:

1. Title, line 6.
Strike: "PROPOSE"
Insert: "CONSIDER"
2. Page 2, line 18.
Strike: "propose"
Insert: "consider"

Signed: _____
Richard Pinsoneault, Chairman

for 2-23-91
Am. Coord.

SB 2-23-91 12:15
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 441 (first reading copy -- white), respectfully report that Senate Bill No. 441 be amended and as so amended do pass:

1. Page 3, line 17.

Strike: "15"

Insert: "30"

2. Page 4, line 5.

Following: "judge,"

Insert: "the workers' compensation judge,"

3. Page 4, lines 19 through 25.

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

4. Page 5, line 3.

Following: "nominee,"

Insert: "letters and public comments received regarding the nominee,"

5. Page 5, line 16.

Following: "and a"

Strike: "4-year"

Insert: "3-year"

Signed: _____
Richard Pinsoneault, Chairman

Jan 2-23-91
And. Coord.

SB 2-23-91 1345
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 321 (first reading copy -- white), respectfully report that Senate Bill No. 321 be amended and as so amended do pass:

1. Page 11, line 22.

Following: "(3)."

Insert: "the court shall order"

2. Page 11, line 23.

Strike: "shall"

Insert: "to"

Strike: "\$150 into"

Insert: "\$35 to the clerk of the court to be deposited in"

3. Page 13, line 20.

Following: "(3)."

Insert: "the court shall order"

4. Page 13, line 21.

Strike: "shall"

Insert: "to"


Strike: "\$150 into"

Insert: "\$35 to the clerk of the court to be deposited in"

Signed: 

Richard Pinsoneault, Chairman

 2-23-91
Amg. Coord.

 2-23 12:20
Sec. of Senate

421203SC.Sji

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 331 (first reading copy -- white), respectfully report that Senate Bill No. 331 be amended and as so amended do pass:

1. Page 3, line 14.

Following: "agency"

Insert: ", other than the law enforcement agency having jurisdiction,"

2. Page 4, line 2.

Following: "that"

Strike: "warrants"

Insert: "may warrant"

3. Page 8, line 19.

Following: "(6)"

Insert: "if no law enforcement agency has jurisdiction of the case,"

4. Page 11, line 19.

Following: "where the"

Insert: "acts or events causing"

Following: "occurred"

Strike: "or"

5. Page 11, line 20.

Strike: "the dead human body was found"

6. Page 13, lines 19 and 20.

Following: "~~The~~" on line 19

Strike: remainder of line 19 through "the" on line 20

Insert: "The"

Following: "~~shall~~" on line 20

Strike: "may"

Insert: "shall"

7. Page 13, lines 21 through 23.

Following: "~~requested~~" on line 21

Strike: remainder of line 21 through "ordered" on line 23

Insert: "only if requested"

8. Page 13, lines 24 and 25.

Following: "occurred" on line 24

Strike: remainder of line 24 through "L" on line 25

9. Page 15, line 16.

Strike: "inspecting"

Insert: "viewing"

10. Page 15, line 17.

Following: "and"

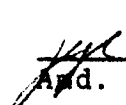
Strike: ", if the coroner considers it necessary,"

11. Page 15, line 18.

Following: "scene"

Insert: "by videotape, photographs, or slide transparencies"

Signed: 
Richard Pinsoneault, Chairman

 2-23-91
Ad. Coord.

SB 2-23 12:30
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 7 (first reading copy -- white), respectfully report that Senate Bill No. 7 be amended and as so amended do pass:

1. Page 3, line 8.

Following: "unmatured,"

Strike: "disputed, undisputed,"

2. Page 5, line 24.

Following: "debtor's"

Strike: "assets"

Insert: "property"

Following: "valuation"

Strike: "."

Insert: "and"

3. Page 5, line 25.

Strike: "(2) A"

Insert: "the"

Following: "debtor"

Strike: "who"

4. Page 6, lines 1 through 7.

Following: "due" on line 1

Strike: remainder of line 1 through "debts" on line 7

Re-number: subsequent subsections

5. Page 6, line 23 through page 7, line 4.

Strike: subsection (2) in its entirety

Re-number: subsequent subsection

6. Page 13, line 22.

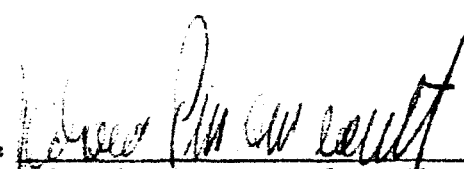
Strike: "4"

Insert: "2"

7. Page 14, line 1.

Strike: "4"

Insert: "2"

Signed: 

Richard Pinsoneault, Chairman

Jan 2-23-91
Am. Coord.

Feb 2-23 11:15
Sec. of Senate

421304SC.Sji

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 53 (first reading copy -- white), respectfully report that Senate Bill No. 53 be amended and as so amended do pass:

1. Title, lines 6 through 8.

Following: "JUKEBOX" on line 6

Strike: remainder of line 6 through "GAMES" on line 8

2. Page 1, line 12.

Strike: "or in a shake-a-day game"

3. Page 1, line 14.

Strike: ":"

4. Page 1, line 15.

Strike: "(a)"

5. Page 1, line 19.

Following: "shall"

Insert: "immediately"

Following: "money"

Insert: ", not to exceed \$2,"

6. Page 1, line 20.

Following: "jukebox"

Strike: "; or"

Insert: "in the establishment."

7. Page 1, line 21 through page 2, line 10.

Strike: subsections (b) and (2) in their entirety

Insert: "(2) Nothing in this section authorizes the dice game of craps or any other dice game not specifically described in this section."

8. Page 2, line 13.

Strike: ". The"

Insert: ", and the"

9. Page 2, line 14.

Strike: "do not"

Signed: 

Richard Pinsoneault, Chairman

Feb 23-91
Amd. Coord.

JB 2-23 2:40
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 23, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 331 (first reading copy -- white), respectfully report that Senate Bill No. 331 be amended and as so amended do pass:

1. Page 3, line 14.

Following: "agency"

Insert: ", other than the law enforcement agency having jurisdiction,"

2. Page 4, line 2.

Following: "that"

Strike: "warrants"

Insert: "may warrant"

3. Page 8, line 19.

Following: "(6)"

Insert: "if no law enforcement agency has jurisdiction of the case,"

4. Page 11, line 19.

Following: "where the"

Insert: "acts or events causing"

Following: "occurred"

Strike: "or"

5. Page 11, line 20.

Strike: "the dead human body was found"

6. Page 13, lines 19 and 20.

Following: "~~The~~" on line 19

Strike: remainder of line 19 through "the" on line 20

Insert: "The"

Following: "~~shall~~" on line 20

Strike: "may"

Insert: "shall"

7. Page 13, lines 21 through 23.

Following: "~~requested~~" on line 21

Strike: remainder of line 21 through "ordered" on line 23

Insert: "only if requested"

8. Page 13, lines 24 and 25.

Following: "occurred" on line 24

Strike: remainder of line 24 through "L" on line 25

9. Page 15, line 16.

Strike: "inspecting"

Insert: "viewing"

10. Page 15, line 17.

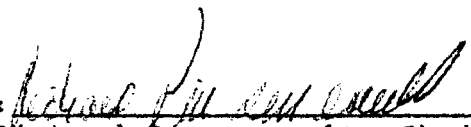
Following: "and"

Strike: ", if the coroner considers it necessary,"

11. Page 15, line 18.

Following: "scene"

Insert: "by videotape, photographs, or slide transparencies"

Signed: 

Richard Pinsoneault, Chairman

2-23-91
And. Coord.

2-23
Sec. of Senate

12:30

EXHIBIT 1
23 Feb 91

SENATE BILL NO. 31

INTRODUCED BY TOWE, STIMATZ

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAW RELATING TO DRUG TESTING; REQUIRING DRUG TESTING TO BE PERFORMED ONLY BY DRUG TESTING LABORATORIES CERTIFIED BY THE NATIONAL INSTITUTE ON DRUG ABUSE (NIDA), U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ESTABLISHING STANDARDS FOR VERIFICATION AND REPORTING OF TEST RESULTS; AND AMENDING SECTION 39-2-304, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-2-304, MCA, is amended to read:

"39-2-304. Lie detector tests prohibited -- regulation of blood and urine testing. (1) (a) No A person, firm, corporation, or other business entity or representative thereof ~~shall~~ may not require:

~~(a)~~ (i) as a condition for employment or continuation of employment, ~~any~~ a person to take a polygraph test or any form of a mechanical lie detector test;

~~(b)~~ (ii) as a condition for employment, ~~any~~ a person to submit to a blood or urine test, except for employment:

(A) in hazardous work environments or in jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; and

1 (B) IN WHICH THE EMPLOYER PROVIDES TO ITS EMPLOYEES A
2 COMPREHENSIVE DRUG AND ALCOHOL REHABILITATION PROGRAM THAT
3 IS PAID FOR THE BY THE EMPLOYER OR THROUGH A POLICY OF
4 HEALTH INSURANCE THAT IS PAID FOR BY THE EMPLOYER, PROVIDED
5 THAT NO PART OF THE COST MAY BE PAID FROM A COLLECTIVELY
6 BARGAINED HEALTH AND WELFARE TRUST FUND; OR

7 (C) IN WHICH THE EMPLOYER EMPLOYS 10 OR FEWER
8 EMPLOYEES; AND

9 ~~(c)~~(iii) as a condition for continuation of employment,
10 any an employee to submit to a blood or urine test unless
11 the employer has reason to believe that the employee's
12 faculties are impaired on the job as a result of alcohol
13 consumption or illegal drug use.

14 (b) The testing of blood or urine for illegal drug use
15 must be performed by drug testing laboratories certified by
16 the NATIONAL INSTITUTE ON DRUG ABUSE (NIDA), U.S. department
17 of health and human services.

18 ~~(2)--Prior-to-the-administration-of-a--drug--or--alcohol~~
19 ~~test,--the--person,--firm,--corporation,--or--other-business~~
20 ~~entity-or-its-representative-shall-adopt-a--written--testing~~
21 ~~procedure--and--make--it-available-to-all-persons-subject-to~~
22 ~~testing.-A-testing-procedure-must-provide-for-the-~~

23 ~~(a)--collection-of-a-blood-or-urine-specimen-in-a-manner~~
24 ~~that-minimizes-invasion-of-personal-privacy--while--ensuring~~
25 ~~the-integrity-of-the-collection-process;~~

1 (b)--collection--of--a--quantity--of--specimen--sufficient--to
2 ensure--the--administration--of--several--tests;

3 (c)--collection,--storage,--and--transportation--of--the
4 specimen--in--tamper--proof--containers;

5 (d)--adoption---of---chain-of-custody---documentation
6 procedures--identifying--how--the--specimen--was--handled--and
7 tested;

8 (e)--verification---of--test--results--by--two--or--more
9 different--testing--procedures--before--judging--a--test--positive,
10 as--provided--in--subsection--(5),--and

11 (f)--prohibition--of--the--release--of--test--results,--except
12 as--authorized--by--the--person--tested--or--as--required--by--a--court
13 of--law.

14 (3)(2) The person, firm, corporation, or other business
15 entity or its representative shall provide a copy of drug or
16 alcohol test results to the person tested and provide him
17 the opportunity, at the expense of the person requiring the
18 test, to obtain a confirmatory test of the blood or urine by
19 an independent NIDA-CERTIFIED laboratory selected by the
20 person tested. The person tested must be given the
21 opportunity to rebut or explain the results of either test
22 or both tests.

23 (4)(3) Adverse action may not be taken against a person
24 tested under subsections (1)(b) (1)(a)(ii), (1)(c)
25 (1)(a)(iii), AND (2),--and--(3) if the person tested presents

1 a reasonable explanation or medical opinion indicating that
2 the results of the test were not caused by alcohol
3 consumption or illegal drug use.

4 (5)(4) (a) Verification of test results must include an
5 initial test and a confirmatory test, as follows:

6 (i) The initial test must use an immunoassay that meets
7 the requirements of the U.S. food and drug administration
8 for commercial distribution. When screening specimens to
9 determine whether they are negative for-these-five-drugs-or
10 classes-of-drugs, the initial cutoff levels may not be less
11 than the-following:

	<u>Initial-Test</u>
	<u>Level-(ng/ml)</u>
<u>marijuana-metabolites</u>	<u>--100</u>
<u>cocaine-metabolites</u>	<u>--300</u>
<u>opiate-metabolites</u>	<u>--300-(25-ng/ml-if</u>
	<u>immunoassay-specific</u>
	<u>for-free-morphine)</u>
<u>phencyclidine</u>	<u>---25</u>
<u>amphetamines</u>	<u>17000</u>

21 THOSE PROVIDED IN THE NIDA GUIDELINES.

22 (ii) All specimens identified as positive on the initial
23 test must be confirmed using gas chromatography/mass
24 spectrometry (GC/MS) techniques at the cutoff values at or
25 above those listed in this-subsection-(ii)-for-each-drug THE

1 NIDA GUIDELINES FOR CONFIRMATORY TESTS. All confirmations
 2 must be by quantitative analysis. Concentrations that exceed
 3 the linear region of the standard curve must be documented
 4 in the laboratory record as "greater than highest standard
 5 curve value". The confirmatory cutoff levels may not be less
 6 than the following:

	<u>Confirmatory-Test</u>
	<u>Level-(ng/ml)</u>
9 <u>marijuana-metabolites</u>	
10 <u>(delta-9-tetrahydrocannabinol-</u>	
11 <u>9-carboxylic-acid)</u>	<u>-15</u>
12 <u>cocaine-metabolites-(benzoylecgonine)</u>	<u>150</u>
13 <u>opiate:</u>	<u>=</u>
14 <u>morphine</u>	<u>300</u>
15 <u>codeine</u>	<u>300</u>
16 <u>phencyclidine</u>	<u>-25</u>
17 <u>amphetamines:</u>	<u>=</u>
18 <u>amphetamine</u>	<u>500</u>
19 <u>methamphetamine</u>	<u>500</u>

20 NIDA GUIDELINES FOR CONFIRMATORY TESTS.

21 (b) The laboratory shall report as negative all
 22 specimens that are negative on the initial test or negative
 23 on the confirmatory test. Only specimens confirmed positive
 24 may be reported positive for a specific drug.

25 (c) Drug testing laboratories shall retain all

1 specimens confirmed positive and place them in properly
2 secure long-term frozen storage for a minimum of 1 year.

3 (D) FEDERAL PREEMPTION OF ANY PART OF THIS SECTION MUST
4 BE NARROWLY CONSTRUED TO LIMIT THE EXTENT OF THE FEDERAL
5 PREEMPTION.

6 ~~(5)(6)--A-person-who-violates-this-section-is-guilty--of~~
7 ~~a-misdemeanor--"~~

8 NEW SECTION. SECTION 2. DEFINITIONS. AS USED IN
9 39-2-304 AND [SECTIONS 2 THROUGH 6], THE FOLLOWING
10 DEFINITIONS APPLY:

11 (1) (A) "CONTROLLED SUBSTANCE" MEANS A DANGEROUS DRUG
12 AS DEFINED IN 50-32-101 AND AS LISTED OR TO BE LISTED IN THE
13 SCHEDULE IN 50-32-222 OR 50-32-224.

14 (B) CONTROLLED SUBSTANCE DOES NOT MEAN A DANGEROUS DRUG
15 USED PURSUANT TO A VALID PRESCRIPTION OR AS AUTHORIZED BY
16 LAW.

17 (2) "EMPLOYEE" MEANS AN INDIVIDUAL ENGAGED IN THE
18 PERFORMANCE OF WORK FOR A PRIVATE EMPLOYER BUT DOES NOT
19 INCLUDE AN INDIVIDUAL HAVING THE STATUS OF AN INDEPENDENT
20 CONTRACTOR.

21 (3) "EMPLOYER" MEANS A PERSON OR ENTITY IN THE PRIVATE
22 SECTOR THAT HAS ONE OR MORE EMPLOYEES AND IS LOCATED OR IS
23 DOING BUSINESS IN THE STATE.

24 (4) "MEDICAL REVIEW OFFICER" MEANS A LICENSED PHYSICIAN
25 WHO CONTRACTS WITH AN EMPLOYER TO RECEIVE LABORATORY RESULTS

1 GENERATED BY AN EMPLOYER'S DRUG TESTING PROGRAM, WHO HAS
2 KNOWLEDGE OF SUBSTANCE ABUSE DISORDERS, AND WHO HAS
3 APPROPRIATE MEDICAL TRAINING TO INTERPRET AND EVALUATE AN
4 EMPLOYEE'S POSITIVE TEST RESULTS, TOGETHER WITH THE
5 EMPLOYEE'S MEDICAL HISTORY AND ANY OTHER RELEVANT BIOMEDICAL
6 INFORMATION.

7 (5) "PROSPECTIVE EMPLOYEE" MEANS AN INDIVIDUAL WHO HAS
8 MADE APPLICATION TO AN EMPLOYER, WHETHER WRITTEN OR ORAL, TO
9 BECOME AN EMPLOYEE.

10 (6) "QUALIFIED TESTING PROGRAM" MEANS A PROGRAM TO TEST
11 FOR THE PRESENCE OF CONTROLLED SUBSTANCES THAT MEETS THE
12 CRITERIA SET FORTH IN [SECTIONS 3 AND 4].

13 (7) "SAMPLE" MEANS, IN THE CASE OF DRUG TESTING, A
14 URINE SPECIMEN AND, IN THE CASE OF ALCOHOL TESTING, A BLOOD,
15 BREATH, OR URINE SPECIMEN.

16 NEW SECTION. SECTION 3. QUALIFIED TESTING PROGRAM. A
17 QUALIFIED TESTING PROGRAM MUST MEET AND BE CONDUCTED
18 ACCORDING TO THE FOLLOWING CRITERIA:

19 (1) TESTING MUST BE CONDUCTED ACCORDING TO THE TERMS OF
20 WRITTEN POLICIES AND PROCEDURES THAT MUST BE ADOPTED BY THE
21 EMPLOYER AND BE AVAILABLE FOR REVIEW BY ALL EMPLOYEES AND
22 PROSPECTIVE EMPLOYEES 60 DAYS PRIOR TO IMPLEMENTATION. THE
23 POLICIES AND PROCEDURES MUST SET FORTH, AT A MINIMUM:

24 (A) A DESCRIPTION OF THE APPLICABLE LEGAL SANCTIONS
25 UNDER FEDERAL, STATE, AND LOCAL LAW FOR THE UNLAWFUL

1 MANUFACTURE, DISTRIBUTION, POSSESSION, OR USE OF A
2 CONTROLLED SUBSTANCE;

3 (B) THE EMPLOYER'S PROPOSAL FOR EDUCATING OR PROVIDING
4 INFORMATION TO EMPLOYEES ON THE HEALTH RISKS ASSOCIATED WITH
5 THE USE OF CONTROLLED SUBSTANCES;

6 (C) THE EMPLOYER'S STANDARDS OF CONDUCT THAT REGULATE
7 THE USE OF CONTROLLED SUBSTANCES BY EMPLOYEES;

8 (D) A DESCRIPTION OF AVAILABLE EMPLOYEE ASSISTANCE
9 PROGRAMS, INCLUDING DRUG AND ALCOHOL COUNSELING, TREATMENT,
10 OR REHABILITATION PROGRAMS THAT ARE AVAILABLE TO EMPLOYEES;

11 (E) A DESCRIPTION OF THE SANCTIONS THAT THE EMPLOYER
12 MAY IMPOSE ON AN EMPLOYEE IF THE EMPLOYEE IS FOUND TO HAVE
13 VIOLATED THE STANDARDS OF CONDUCT REFERRED TO IN SUBSECTION
14 (1)(C) OR IF THE EMPLOYEE IS FOUND TO TEST POSITIVE FOR THE
15 PRESENCE OF A CONTROLLED SUBSTANCE;

16 (F) A STATEMENT THAT EMPLOYEES MAY BE TESTED AS
17 PROVIDED IN [SECTION 1(1)(A)(III)], INCLUDING A DISCUSSION
18 OF THE CIRCUMSTANCES THAT MAY TRIGGER AN IMMEDIATE TEST;

19 (G) A LIST OF THE CONTROLLED SUBSTANCES FOR WHICH THE
20 EMPLOYER INTENDS TO TEST;

21 (H) A DETAILED DESCRIPTION OF THE PROCEDURES THAT WILL
22 BE FOLLOWED TO CONDUCT THE TESTING PROGRAM, INCLUDING THE
23 RESOLUTION OF A DISPUTE CONCERNING TEST RESULTS;

24 (I) A PROVISION THAT ALL INFORMATION, INTERVIEWS,
25 REPORTS, STATEMENTS, MEMORANDA, AND TEST RESULTS ARE

1 CONFIDENTIAL COMMUNICATIONS THAT WILL NOT BE DISCLOSED TO
2 ANYONE EXCEPT:

3 (I) THE TESTED EMPLOYEE OR HIS AGENT;

4 (II) EMPLOYEES OR AGENTS OF THE EMPLOYER WHO ARE
5 SPECIFICALLY AUTHORIZED BY THE TESTED EMPLOYEE TO RECEIVE
6 THE EMPLOYEE'S TEST RESULTS; OR

7 (III) IN A PROCEEDING RELATED TO A LEGAL ACTION ARISING
8 OUT OF THE EMPLOYER'S IMPLEMENTATION OF 39-2-304 AND
9 [SECTIONS 2 THROUGH 6] OR INQUIRIES RELATING TO A WORKPLACE
10 ACCIDENT INVOLVING DEATH, PHYSICAL INJURY, OR PROPERTY
11 DAMAGE IN EXCESS OF \$5,000 WHEN THERE IS INDIVIDUAL
12 PARTICULARIZED SUSPICION THAT THE TESTED EMPLOYEE MAY HAVE
13 CAUSED OR CONTRIBUTED TO THE ACCIDENT; AND

14 (J) A PROVISION THAT INFORMATION OBTAINED THROUGH DRUG
15 TESTING THAT IS UNRELATED TO DRUG USE MUST BE HELD IN STRICT
16 CONFIDENTIALITY BY THE MEDICAL REVIEW OFFICER AND MAY NOT BE
17 RELEASED TO THE EMPLOYER.

18 (2) IN ADDITION TO IMPOSING APPROPRIATE SANCTIONS ON
19 EMPLOYEES FOR VIOLATIONS OF THE EMPLOYER'S STANDARDS OF
20 CONDUCT REFERRED TO IN SUBSECTION (1)(C), THE EMPLOYER MAY
21 REQUIRE AN AFFECTED EMPLOYEE TO PARTICIPATE IN AN
22 APPROPRIATE DRUG REHABILITATION PROGRAM AS A CONDITION OF
23 CONTINUED EMPLOYMENT. THE EMPLOYER MAY SUBJECT THE EMPLOYEE
24 TO PERIODIC RETESTING AS A CONDITION OF THE REHABILITATION
25 PROGRAM.

1 (3) TESTING MUST BE AT THE EMPLOYER'S EXPENSE, AND ALL
2 EMPLOYEES MUST BE COMPENSATED AT THEIR REGULAR RATE,
3 INCLUDING BENEFITS, FOR TIME ATTRIBUTABLE TO THE TESTING
4 PROGRAM.

5 (4) SAMPLE COLLECTION MUST BE PERFORMED IN A MANNER
6 DESIGNED TO PROTECT THE PRIVACY OF THE EMPLOYEE, USING WHEN
7 PRACTICABLE SCREENS OR STALLS.

8 (5) SAMPLES MUST BE HANDLED UNDER STRICT FORENSIC
9 CHAIN-OF-CUSTODY PROCEDURES. THESE PROCEDURES SHOULD REQUIRE
10 THAT THE SAMPLE BE COLLECTED, STORED, AND TRANSPORTED IN A
11 MANNER THAT WILL DOCUMENT AND PRESERVE THE IDENTITY OF EACH
12 SAMPLE AND PREVENT THE ADULTERATION, CONTAMINATION, OR
13 ERRONEOUS IDENTIFICATION OF TEST RESULTS.

14 (6) ONCE SAMPLES ARE OBTAINED, TESTING OF SAMPLES MUST
15 BE PERFORMED ACCORDING TO SCIENTIFICALLY ACCEPTED ANALYTICAL
16 PROCEDURES BY A QUALIFIED LABORATORY CERTIFIED BY THE
17 NATIONAL INSTITUTE ON DRUG ABUSE (NIDA), U.S. DEPARTMENT OF
18 HEALTH AND HUMAN SERVICES, AND MUST INCLUDE AN INITIAL TEST
19 AND A CONFIRMATORY TEST CONDUCTED BY THE SAME LABORATORY, AS
20 FOLLOWS:

21 (A) (I) THE INITIAL TEST MUST USE AN IMMUNOASSAY THAT
22 MEETS THE REQUIREMENTS OF THE U.S. FOOD AND DRUG
23 ADMINISTRATION FOR COMMERCIAL DISTRIBUTION. WHEN SCREENING
24 SPECIMENS TO DETERMINE WHETHER THEY ARE NEGATIVE, THE
25 INITIAL CUTOFF LEVELS MAY NOT BE LESS THAN THOSE PROVIDED IN

1 THE NIDA GUIDELINES.

2 (II) ALL SPECIMENS IDENTIFIED AS POSITIVE ON THE INITIAL
3 TEST MUST BE CONFIRMED USING GAS CHROMATOGRAPHY/MASS
4 SPECTROMETRY (GC/MS) TECHNIQUES AT THE CUTOFF VALUES AT OR
5 ABOVE THOSE LISTED IN THE NIDA GUIDELINES FOR CONFIRMATORY
6 TESTS. ALL CONFIRMATIONS MUST BE BY QUANTITATIVE ANALYSIS.
7 CONCENTRATIONS THAT EXCEED THE LINEAR REGION OF THE STANDARD
8 CURVE MUST BE DOCUMENTED IN THE LABORATORY RECORD AS
9 "GREATER THAN HIGHEST STANDARD CURVE VALUE". THE
10 CONFIRMATORY CUTOFF LEVELS MAY NOT BE LESS THAN THE NIDA
11 GUIDELINES FOR CONFIRMATORY TESTS.

12 (B) THE LABORATORY SHALL REPORT AS NEGATIVE ALL
13 SPECIMENS THAT ARE NEGATIVE ON THE INITIAL TEST OR NEGATIVE
14 ON THE CONFIRMATORY TEST. ONLY SPECIMENS CONFIRMED POSITIVE
15 MAY BE REPORTED POSITIVE FOR A SPECIFIC DRUG.

16 (C) DRUG TESTING LABORATORIES SHALL RETAIN ALL
17 SPECIMENS CONFIRMED POSITIVE AND PLACE THEM IN PROPERLY
18 SECURE LONG-TERM FROZEN STORAGE FOR A MINIMUM OF 1 YEAR.

19 (D) FEDERAL PREEMPTION OF ANY PART OF THIS SECTION IS
20 STRICTLY LIMITED TO THE SPECIFIC SCOPE OF THE FEDERAL
21 PREEMPTION.

22 (7) (A) EACH EMPLOYER SHALL DESIGNATE OR APPOINT A
23 MEDICAL REVIEW OFFICER. IF AN EMPLOYER DOES NOT HAVE A
24 QUALIFIED INDIVIDUAL ON STAFF TO SERVE AS MEDICAL REVIEW
25 OFFICER, THE EMPLOYER MAY CONTRACT FOR THE PROVISION OF

1 MEDICAL REVIEW OFFICER SERVICES AS PART OF ITS ANTIDRUG
2 PROGRAM.

3 (B) THE MEDICAL REVIEW OFFICER MUST BE A LICENSED
4 PHYSICIAN WITH KNOWLEDGE OF DRUG ABUSE DISORDERS.

5 (C) THE MEDICAL REVIEW OFFICER SHALL PERFORM THE
6 FOLLOWING FUNCTIONS FOR THE EMPLOYER:

7 (I) REVIEW THE RESULTS OF DRUG TESTING BEFORE THEY ARE
8 REPORTED TO THE EMPLOYER;

9 (II) VERIFY THAT THE LABORATORY REPORT AND ASSESSMENT
10 ARE CORRECT;

11 (III) REVIEW AND INTERPRET EACH CONFIRMED POSITIVE TEST
12 RESULT AS FOLLOWS TO DETERMINE IF THERE IS AN ALTERNATIVE
13 MEDICAL EXPLANATION FOR THE CONFIRMED POSITIVE TEST RESULT:

14 (A) CONDUCT A MEDICAL INTERVIEW WITH THE INDIVIDUAL
15 TESTED;

16 (B) REVIEW THE INDIVIDUAL'S MEDICAL HISTORY AND ANY
17 RELEVANT BIOMEDICAL FACTORS;

18 (C) REVIEW ALL MEDICAL RECORDS MADE AVAILABLE BY THE
19 INDIVIDUAL TESTED TO DETERMINE IF A CONFIRMED POSITIVE TEST
20 RESULTED FROM LEGALLY PRESCRIBED MEDICATION;

21 (D) IF NECESSARY, REQUIRE THAT THE ORIGINAL SPECIMEN BE
22 REANALYZED TO DETERMINE THE ACCURACY OF THE REPORTED TEST
23 RESULT.

24 (IV) DETERMINE WHETHER AND WHEN AN EMPLOYEE INVOLVED IN
25 A REHABILITATION PROGRAM MAY BE RETURNED TO DUTY; AND

1 (V) ENSURE THAT AN EMPLOYEE HAS BEEN DRUG TESTED IN
2 ACCORDANCE WITH THIS SECTION BEFORE THE EMPLOYEE RETURNS TO
3 DUTY AFTER REHABILITATION, AND THEREAFTER, AS CONSIDERED
4 NECESSARY BY THE MEDICAL REVIEW OFFICER AND THE INDIVIDUAL'S
5 REHABILITATION PLAN.

6 (D) THE FOLLOWING RULES GOVERN MEDICAL REVIEW OFFICER
7 DETERMINATIONS:

8 (I) IF THE MEDICAL REVIEW OFFICER DETERMINES, AFTER
9 APPROPRIATE REVIEW, THAT THERE IS A LEGITIMATE MEDICAL
10 EXPLANATION FOR THE CONFIRMED POSITIVE TEST RESULT OTHER
11 THAN THE UNAUTHORIZED USE OF A PROHIBITED DRUG, THE MEDICAL
12 REVIEW OFFICER MAY NOT TAKE FURTHER ACTION EXCEPT TO REPORT
13 THE RESULTS AS NEGATIVE TO THE EMPLOYER.

14 (II) IF THE MEDICAL REVIEW OFFICER DETERMINES, AFTER
15 APPROPRIATE REVIEW, THAT THERE IS NO LEGITIMATE MEDICAL
16 EXPLANATION FOR THE CONFIRMED POSITIVE TEST RESULT OTHER
17 THAN THE UNAUTHORIZED USE OF A PROHIBITED DRUG, THE MEDICAL
18 REVIEW OFFICER SHALL REFER THE INDIVIDUAL TESTED TO AN
19 EMPLOYEE ASSISTANCE PROGRAM OR TO A PERSONNEL OFFICER OR
20 ADMINISTRATIVE OFFICER FOR FURTHER PROCEEDINGS IN ACCORDANCE
21 WITH THE EMPLOYER'S ANTIDRUG PROGRAM.

22 (III) BASED ON A REVIEW OF LABORATORY INSPECTION
23 REPORTS, QUALITY ASSURANCE AND QUALITY CONTROL DATA, AND
24 OTHER DRUG TEST RESULTS, THE MEDICAL REVIEW OFFICER MAY
25 CONCLUDE THAT A PARTICULAR DRUG TEST RESULT IS

1 SCIENTIFICALLY INSUFFICIENT FOR FURTHER ACTION. UNDER THESE
2 CIRCUMSTANCES, THE MEDICAL REVIEW OFFICER SHALL CONCLUDE
3 THAT THE TEST IS NEGATIVE FOR THE PRESENCE OF A PROHIBITED
4 DRUG OR DRUG METABOLITE IN AN INDIVIDUAL'S SYSTEM AND SHALL,
5 IN A MANNER THAT DOES NOT REVEAL THE IDENTITY OF THE PERSON
6 TESTED, NOTIFY THE EMPLOYER OF THE NATURE OF THE SCIENTIFIC
7 INSUFFICIENCY.

8 NEW SECTION. SECTION 4. CONFIDENTIALITY OF RESULTS.

9 (1) EXCEPT AS PROVIDED IN SUBSECTION (2), ALL INFORMATION,
10 INTERVIEWS, REPORTS, STATEMENTS, MEMORANDA, OR TEST RESULTS
11 RECEIVED BY THE EMPLOYER THROUGH A QUALIFIED DRUG TESTING
12 PROGRAM ARE CONFIDENTIAL COMMUNICATIONS AND MAY NOT BE USED
13 OR RECEIVED IN EVIDENCE, OBTAINED IN DISCOVERY, OR DISCLOSED
14 IN ANY PUBLIC OR PRIVATE PROCEEDING.

15 (2) THE MATERIAL TREATED AS CONFIDENTIAL IN SUBSECTION
16 (1) MAY BE USED IN A PROCEEDING RELATED TO:

17 (A) LEGAL ACTION ARISING OUT OF THE EMPLOYER'S
18 IMPLEMENTATION OF 39-2-304 AND [SECTIONS 2 THROUGH 6]; OR

19 (B) INQUIRIES RELATING TO A WORKPLACE ACCIDENT
20 INVOLVING DEATH, PHYSICAL INJURY, OR PROPERTY DAMAGE IN
21 EXCESS OF \$5,000 WHEN THERE IS INDIVIDUAL PARTICULARIZED
22 SUSPICION THAT THE TESTED EMPLOYEE MAY HAVE CAUSED OR
23 CONTRIBUTED TO THE ACCIDENT.

24 NEW SECTION. SECTION 5. ALCOHOL TESTING. NOTHING IN
25 39-2-304 AND [SECTIONS 2 THROUGH 6] REQUIRING THE USE OF

1 LABORATORIES CERTIFIED BY THE NATIONAL INSTITUTE ON DRUG
2 ABUSE (NIDA) FOR DRUG TESTING MAY BE CONSTRUED TO REQUIRE
3 NIDA-CERTIFIED LABORATORIES FOR ALCOHOL TESTING OR TO
4 PROHIBIT OR PREJUDICE THE USE OF BLOOD, BREATH, OR URINE
5 TESTING FOR ALCOHOL PURSUANT TO THE METHODS, PROCEDURES, OR
6 GUIDELINES OUTLINED IN TITLE 61, CHAPTER 8, PARTS 4 THROUGH
7 8.

8 NEW SECTION. SECTION 6. PENALTY. A PERSON WHO VIOLATES
9 39-2-304 AND [SECTIONS 2 THROUGH 6] IS GUILTY OF A
10 MISDEMEANOR.

11 NEW SECTION. SECTION 7. SEVERABILITY. IF A PART OF
12 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
13 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
14 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
15 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
16 SEVERABLE FROM THE INVALID APPLICATIONS.

-End-

23 Feb 91
SB 31

Amendments to Senate Bill No. 31
First Reading Copy (White)

Requested by Subcommittee
(Pinsonneault, Grosfield, Towe)

For the Committee on Judiciary

Prepared by Valencia Lane
February 19, 1991

1. Title, line 6.

Following: "THE"

Insert: "NATIONAL INSTITUTE ON DRUG ABUSE (NIDA),"

2. Page 1, line 21.

Following: "employment"

Insert: ": (A)"

3. Page 1, line 24.

Following: "responsibility;"

Insert: "(B) in which the employer provides to its employees a drug and alcohol rehabilitation program that is paid for by the employer or through a policy of health insurance that is paid for by the employer, provided that no part of the cost may be paid from a collectively bargained health and welfare trust fund; or

(C) in which the employer employs 10 or fewer employees;"

4. Page 2, line 7.

Following: "the"

Insert: "national institute on drug abuse (NIDA),"

5. Page 2, line 8 through page 3, line 3.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

6. Page 3, line 9.

Following: "independent"

Insert: "NIDA-certified"

7. Page 3, line 14.

Following: "(1)(a)(iii),"

Insert: "and"

Following: "(2)"

Strike: ", and (3)"

8. Page 3, lines 23 and 24.

Following: "negative" on line 23

Strike: remainder of line 23 through "drugs" on line 24

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

Following: "than" on line 25

Strike: remainder of line 25 through "1,000" on page 4, line 9

Insert: "those provided in the NIDA guidelines."

10. Page 4, line 13.

Following: "in"

Strike: "this subsection (ii) for each drug"

Insert: "the NIDA guidelines for confirmatory tests"

11. Page 4, line 19 through page 5, line 7.

Strike: lines 19 through 7 in their entirety

Insert: "NIDA guidelines for confirmatory tests."

12. Page 5, line 15.

Following: line 14

Insert: "(d) Federal preemption of any part of this section must be narrowly construed to limit the extent of the federal preemption."

13. Page 5, lines 15 and 16.

Strike: subsection (6) in its entirety

14. Page 5, line 17.

Following: line 16

Insert: "NEW SECTION. Section 2. Definitions. As used in 39-2-304 and [sections 2 through 6], the following definitions apply:

(1) (a) "Controlled substance" means a dangerous drug as defined in 50-32-101 and as listed or to be listed in the schedule in 50-32-222 or 50-32-224.

(b) Controlled substance does not mean a dangerous drug used pursuant to a valid prescription or as authorized by law.

(2) "Employee" means an individual engaged in the performance of work for a private employer but does not include an individual having the status of an independent contractor.

(3) "Employer" means a person or entity in the private sector that has one or more employees and is located or is doing business in the state.

(4) "Medical review officer" means a licensed physician who contracts with an employer to receive laboratory results generated by an employer's drug testing program, who has knowledge of substance abuse disorders, and who has appropriate medical training to interpret and evaluate an employee's positive test results, together with the employee's medical history and any other relevant biomedical information.

(5) "Prospective employee" means an individual who has made application to an employer, whether written or oral, to become an employee.

(6) "Qualified testing program" means a program to test for the presence of controlled substances that meets the criteria set forth in [sections 3 and 4].

(7) "Sample" means, in the case of drug testing, a urine specimen and, in the case of alcohol testing, a blood, breath, or urine specimen.

NEW SECTION. Section 3. Qualified testing program. A qualified testing program must meet and be conducted according to the following criteria:

(1) Testing must be conducted according to the terms of written policies and procedures that must be adopted by the employer and be available for review by all employees and prospective employees 60 days prior to implementation. The policies and procedures must set forth, at a minimum:

(a) a description of the applicable legal sanctions under federal, state, and local law for the unlawful manufacture, distribution, possession, or use of a controlled substance;

(b) the employer's proposal for educating or providing information to employees on the health risks associated with the use of controlled substances;

(c) the employer's standards of conduct that regulate the use of controlled substances by employees;

(d) a description of available employee assistance programs, including drug and alcohol counseling, treatment, or rehabilitation programs that are available to employees;

(e) a description of the sanctions that the employer may impose on an employee if the employee is found to have violated the standards of conduct referred to in subsection (1)(c) or if the employee is found to test positive for the presence of a controlled substance;

(f) a statement that employees may be tested as provided in [section 1(1)(a)(iii)], including a discussion of the circumstances that may trigger an immediate test;

(g) a list of the controlled substances for which the employer intends to test;

(h) a detailed description of the procedures that will be followed to conduct the testing program, including the resolution of a dispute concerning test results;

(i) a provision that all information, interviews, reports, statements, memoranda, and test results are confidential communications that will not be disclosed to anyone except:

(i) the tested employee or his agent;
(ii) employees or agents of the employer who are specifically authorized by the tested employee to receive the employee's test results; or
(iii) in a proceeding related to a legal action arising out of the employer's implementation of 39-2-304 and [sections 2 through 6] or inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$5,000 when there is individual particularized suspicion that the tested employee may have caused or contributed to the accident; and
(j) a provision that information obtained through drug testing that is unrelated to drug use must be held in strict confidentiality by the medical review officer and may not be released to the employer.

(2) In addition to imposing appropriate sanctions on employees for violations of the employer's standards of conduct referred to in subsection (1)(c), the employer may require an affected employee to participate in an appropriate drug rehabilitation program as a condition of continued employment. The employer may subject the employee to periodic retesting as a condition of the rehabilitation program.

(3) Testing must be at the employer's expense, and all employees must be compensated at their regular rate, including benefits, for time attributable to the testing program.

(4) Sample collection must be performed in a manner designed to protect the privacy of the employee, using when practicable screens or stalls.

(5) Samples must be handled under strict forensic chain-of-custody procedures. These procedures should require that the sample be collected, stored, and transported in a manner that will document and preserve the identity of each sample and prevent the adulteration, contamination, or erroneous identification of test results.

(6) Once samples are obtained, testing of samples must be performed according to scientifically accepted analytical procedures by a qualified laboratory certified by the national institute on drug abuse (NIDA), U.S. department of health and human services, and must include an initial test and a confirmatory test conducted by the same laboratory, as follows:

(a)(i) The initial test must use an immunoassay that meets the requirements of the U.S. food and drug administration for commercial distribution. When screening specimens to determine whether they are negative, the initial cutoff levels may not be less than those provided in the NIDA guidelines.

(ii) All specimens identified as positive on the initial test must be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values at or above those listed in the NIDA guidelines for confirmatory tests. All confirmations must be by quantitative analysis. Concentrations that exceed the linear region of the standard

curve must be documented in the laboratory record as "greater than highest standard curve value". The confirmatory cutoff levels may not be less than the NIDA guidelines for confirmatory tests.

(b) The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive may be reported positive for a specific drug.

(c) Drug testing laboratories shall retain all specimens confirmed positive and place them in properly secure long-term frozen storage for a minimum of 1 year.

(d) Federal preemption of any part of this section is strictly limited to the specific scope of the federal preemption.

(7)(a) Each employer shall designate or appoint a medical review officer. If an employer does not have a qualified individual on staff to serve as medical review officer, the employer may contract for the provision of medical review officer services as part of its antidrug program.

(b) The medical review officer must be a licensed physician with knowledge of drug abuse disorders.

(c) The medical review officer shall perform the following functions for the employer:

(i) review the results of drug testing before they are reported to the employer;

(ii) verify that the laboratory report and assessment are correct;

(iii) review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test result:

(A) conduct a medical interview with the individual tested;

(B) review the individual's medical history and any relevant biomedical factors;

(C) review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication;

(D) if necessary, require that the original specimen be reanalyzed to determine the accuracy of the reported test result.

(iv) determine whether and when an employee involved in a rehabilitation program may be returned to duty; and

(v) ensure that an employee has been drug tested in accordance with this section before the employee returns to duty after rehabilitation, and thereafter, as considered necessary by the medical review officer and the individual's rehabilitation plan.

(d) The following rules govern medical review officer determinations:

(i) If the medical review officer determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the medical

review officer may not take further action except to report the results as negative to the employer.

(ii) If the medical review officer determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the medical review officer shall refer the individual tested to an employee assistance program or to a personnel officer or administrative officer for further proceedings in accordance with the employer's antidrug program.

(iii) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the medical review officer may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the medical review officer shall conclude that the test is negative for the presence of a prohibited drug or drug metabolite in an individual's system and shall, in a manner that does not reveal the identity of the person tested, notify the employer of the nature of the scientific insufficiency.

NEW SECTION. Section 4. Confidentiality of results.

(1) Except as provided in subsection (2), all information, interviews, reports, statements, memoranda, or test results received by the employer through a qualified drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding.

(2) The material treated as confidential in subsection (1) may be used in a proceeding related to:

(a) legal action arising out of the employer's implementation of 39-2-304 and [sections 2 through 6]; or

(b) inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$5,000 when there is individual particularized suspicion that the tested employee may have caused or contributed to the accident.

NEW SECTION. Section 5. Alcohol testing. Nothing in 39-2-304 and [sections 2 through 6] requiring the use of laboratories certified by the national institute on drug abuse (NIDA) for drug testing may be construed to require NIDA-certified laboratories for alcohol testing or to prohibit or prejudice the use of blood, breath, or urine testing for alcohol pursuant to the methods, procedures, or guidelines outlined in Title 61, chapter 8, parts 4 through 8.

NEW SECTION. Section 6. Penalty. A person who violates 39-2-304 and [sections 2 through 6] is guilty of a misdemeanor.

NEW SECTION. Section 7. Severability. If a part of

ex. 2
2/23/91
SB 31

[this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Exhibit # 2
23 Feb 91
SB 342

Amendments to Senate Bill No. 342
First Reading Copy (White)

Requested by Senator Harp
For the Committee on Judiciary

Prepared by Valencia Lane
February 22, 1991

1. Title, lines 6 through 8.

Following: "RESIDENTS;" on line 6

Strike: remainder of line 6 through "ACT;" on line 8

2. Title, line 9.

Following: "CONVENIENS"

Insert: "FOR FEDERAL EMPLOYERS' LIABILITY ACT CASES IN WHICH THE
PLAINTIFF IS A NONRESIDENT AND THE TORT DID NOT OCCUR IN THE
STATE OF MONTANA"

Strike: "AND"

Strike: "SECTIONS"

Insert: "SECTION"

Strike: "AND 25-2-201"

3. Title, line 10.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

4. Page 1, line 17.

Following: "jurisdiction"

Insert: "in Federal Employers' Liability Act cases in which the
plaintiff is a nonresident and the tort did not occur in the
state of Montana"

5. Page 1, lines 17 through 19.

Following: "." on line 17

Strike: remainder of line 17 through "Act." on line 19

6. Page 2, lines 8 through 19.

Strike: section 3 in its entirety

Renumber: subsequent section

7. Page 2.

Following: line 23

Insert: "NEW SECTION. Section 4. Severability. If a part of
[this act] is invalid, all valid parts that are severable
from the invalid part remain in effect. If a part of [this
act] is invalid in one or more of its applications, the part
remains in effect in all valid applications that are
severable from the invalid applications.

NEW SECTION. Section 5. Effective date. [This act]
is effective on passage and approval."

EXHIBIT 4
23 Feb 91
SB 145

Amendments to Senate Bill No. 145
First Reading Copy (White)

Requested by Senator Svrcek
For the Committee on Judiciary

Prepared by Valencia Lane
February 5, 1991

1. Title, line 6.
Following: "9,"
Insert: "AND ARTICLE III, SECTION 4,"
2. Title, line 9.
Following: "THROUGH"
Strike: "INITIATIVE OR"
Insert: "A"
3. Title, line 10.
Following: "REFERENDUM"
Insert: "SUBMITTED BY THE LEGISLATURE"
4. Page 1, line 18.
Following: "through"
Strike: "initiative or"
Insert: "a"
Following: "referendum"
Insert: "submitted by the legislature"

5. Page 1, line 19.
Following: line 18
Insert: "Section 2. Article III, section 4, of The Constitution
of the State of Montana is amended to read:
"Section 4. Initiative. (1) The people may enact laws by
initiative on all matters except gambling, appropriations of
money, and local or special laws.
(2) Initiative petitions must contain the full text of the
proposed measure, shall be signed by at least five percent of the
qualified electors in each of at least one-third of the
legislative representative districts and the total number of
signers must be at least five percent of the total qualified
electors of the state. Petitions shall be filed with the
secretary of state at least three months prior to the election at
which the measure will be voted upon.
(3) The sufficiency of the initiative petition shall not be
questioned after the election is held.""

Renumber: subsequent sections

6. Page 2, line 1.

Exhibit #3
23 Feb 91

Amendments to Senate Bill No. 321
First Reading Copy

For the Senate Committee on Judiciary

Prepared by Bart Campbell
February 18, 1991

1. Page 11, line 22.

Following: "(3)."

Insert: "the court shall order"

2. Page 11, line 23.

Strike: "shall"

Insert: "to"

Strike: "\$150 into"

Insert: "\$35 to the clerk of the court to be deposited in"

3. Page 13, line 20.

Following: "(3)."

Insert: "the court shall order"

4. Page 13, line 21.

Strike: "shall"

Insert: "to"

Strike: "\$150 into"

Insert: "\$35 to the clerk of the court to be deposited in"

Montana Magistrates Association

Exhibit #5a
23 Feb 91
SB321

February 19, 1991

SB 321, an act to provide compensation to DUI Victims

Testimony by Pat Bradley, Lobbyist for MMA

Mr. Chairman and Committee Members:

The MMA supports the legislative intent to provide a method of compensating and assisting DUI victims. Monies from fines and forfeitures from courts of limited jurisdiction have been building in the Crime Victim account for several years. But we have certain objections to the funding of this bill and will offer some friendly amendments.

If it is the intent of the legislature to establish a DUI victims fund, we suggest that it be combined with the already in-place fund for crime victims. This fund projects revenues of over \$400,000 in FY 92 and at last report, has a current balance of \$700,000.

HB 548, heard on Feb. 15 in Human Services Committee, perhaps a companion bill to this one, calls for the increasing of the Crime Victims fund by 5%, by diverting this amount from the general fund, which would add another \$130,000 in FY 92 to crime victims. We suggest that this would be adequate funding for both DUI and crime victims funding. Copy of HB 548 and fiscal note are attached.

As a point of information, costs in first offense DUI convictions run about as follows: \$300 fine; \$10 surcharge; \$175 fee for ACT program; cost of one day in jail, \$33; cost of reinstatement of DL \$50 (\$100 for new legislation); a total of \$618, excluding attorneys fees. The assessment of \$150 required in this bill would bring this amount to \$768. Courts' jurisdiction over defendants in DUI cases lasts only 60 days; in Per Se violations, 10 days. Collection is often difficult, and sometimes impossible. This surcharge creates another bookkeeping problem for the courts.

We move to Amend SB 321 as Follows:

Amend to strike: page 11, sub (7), lines 21-24.

Amend to strike; page 13, sub (7), lines 19-22.

Amend to strike: page 6, lines 7 and 8.

Amend to combine provisions of HB 548, Sec. 3-10-601, which calls for a 5% increase to a Crime victim-DUI victim combination fund, from the portion of fines and forfeitures distributed to the general fund.

We support SB 321 in concept and with these amendments. Thank you.

Pat Bradley

STATE OF MONTANA
DEPARTMENT OF JUSTICE
BOARD OF CRIME CONTROL

Ex. 5b
SB 321
2/23/91

Marc Racicot
Attorney General



303 North Roberts
Scott Hart Building
Helena, MT 59620

February 19, 1991

RE: SB321, Amend Crime Victims Compensation Act to include victims of DUI and establishing two funds

Two funds, with separate funding sources, was proposed in SB321 to protect the program as it now exists and gain experience in the cost of the dui claims. Although we have used the latest information available to make the estimates on the costs, the cost of these claims is an unknown factor, as well as the amount of insurance available and what might not be paid by insurance.

At the present time, about half of the claims received are for children who have been sexually molested. Costs are paid for mental health counseling. The primary concern is that the dui claims might use the funds available and no payment could be made for counseling for the children.

A compromise solution might be to lower the amount of the surcharge to \$30 to \$35 and put a sunset clause on the surcharge for June 30, 1993. This would allow two years to gain experience in the costs of dui claims and allow receipt of federal funds.

Edwin L. Hall

Edwin Hall
Administrator

Cheryl Bryant

Cheryl Bryant
Crime Victims Unit

Exhibit 5b
SB 321
2/23/91

STATE OF MONTANA
DEPARTMENT OF JUSTICE
BOARD OF CRIME CONTROL

Marc Racicot
Attorney General



303 North Roberts
Scott Hart Building
Helena, MT 59620

MEMORANDUM

TO: Members of the Senate Judiciary Committee

FROM: Ed Hall *Ed*

DATE: February 20, 1991

SUBJECT: SB 321

As additional follow-up to my previous letter, I want restate my support for appropriate compensation to innocent victims of DUI. My only concern is to assure adequate funding so that the entire victims fund is not compromised or jeopardized. As noted in our prior communications, there are 3 major options for funding:

1. Reduce the \$150 surcharge in SB 321 to \$30 or \$35, keep two funds (DUI and Victims) and provide a sunset provision so the matter can be reconsidered by the next Legislature. This has two advantages:
 - a. The compensation program has a funding source and that funding source is directly related (i.e. DUI); and,
 - b. We get a two year track record and can adjust the program in the next Session to reflect actual experience.
2. Piggy back funding of SB 321 on the back of HB 548 which changes the distribution of fines, penalties and forfeitures from courts and delete funding mechanisms contained in SB 321. This, too, has some advantage but also some concern for me:
 - a. The advantage is that the fine distribution system is in place and there is no added burden to lower courts. In general, this scheme could be workable but I am concerned as described below.
 - b. The disadvantage (to me) is that the changes were proposed in HB 548 to fund changes in the scope of secondary victim coverage. It is possible that those changes may, in fact, consume more of the funding provided in HB 548 than we estimated (since we estimated conservatively). This may then adversely effect the ability to compensate all victims. I worry about being caught short. In addition the Legislature must assure the coordination

Ex. 56
SB 321
2/23/91

of two bills which can add uncertainty to eventual passage. If estimates of costs are indeed too low, we would have to dip into the fund balance to cover payments to victims. The difference between HB548 funding and SB 321 costs is estimated at \$17,177 (see attached). This is too narrow a margin should we have underestimated the impact of HB 548 or SB 321.

3. The third option is a variation of #1. Reduce the DUI surcharge to \$30-\$35 with no sunset provision. While simple, it does not address the need to review what impact SB 321 has had in two years and is contrary to the lower courts objections to SB 321 funding. At least option #1 offers them the potential of some relief in two years.

For your consideration I attached a summary comparison of fiscal notes for SB 321 and HB 548. Please feel free to contact us for any additional information we might be able to provide.

Ex. 5b
SB 321
2/23/91

Fiscal Impact Comparison
SB 321 & HB 548
FY 92 Only

Revenues:	SB 321	HB 548
@ \$150 for DUI (SB 321)	\$399,234	-
@ \$ 35 for DUI	\$ 93,161	-
@ \$ 30 for DUI	\$ 79,852	-
Change fine disbursement (HB 548)	-	\$130,923
Estimated Program costs:		
SB 321	<u>\$ 73,038</u>	-
HB 548	-	\$ 40,708
Balance		
@ \$150 DUI (SB 321)	\$326,196	-
@ \$ 35 DUI	\$ 26,123	-
@ \$ 30 DUI	\$ 6,814	-
Per HB 548 (available to fund SB321)	-	<u>\$ 90,215</u>
Estimated SB 321 Costs		\$ 73,038
Difference		\$ 17,177

Amendments to Senate Bill No. 331
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane
February 19, 1991

1. Page 3, line 14.
Following: "agency"
Insert: ", other than the law enforcement agency having jurisdiction,"
2. Page 4, line 2.
Following: "that"
Strike: "warrants"
Insert: "may warrant"
3. Page 8, line 19.
Following: "(6)"
Insert: "if no law enforcement agency has jurisdiction of the case,"
4. Page 11, line 19.
Following: "where the"
Insert: "acts or events causing"
Following: "occurred"
Strike: "or"
5. Page 11, line 20.
Strike: "the dead human body was found"
6. Page 13, lines 19 and 20.
Following: "~~The~~" on line 19
Strike: remainder of line 19 through "the" on line 20
Insert: "The"
Following: "~~shall~~" on line 20
Strike: "may"
Insert: "shall"
7. Page 13, lines 21 through 23.
Following: "~~requested~~" on line 21
Strike: remainder of line 21 through "ordered" on line 23
Insert: "only if requested"
8. Page 13, lines 24 and 25.
Following: "occurred" on line 24
Strike: remainder of line 24 through "L" on line 25

Exhibit 6 a
23 Feb 91
SB 441

Amendments to Senate Bill No. 441
First Reading Copy

Requested by Senator Mazurek
For the Committee on Judiciary

Prepared by Greg Petesch
February 21, 1991

1. Page 3, line 17.

Strike: "15"

Insert: "30"

2. Page 4, line 5.

Following: "judge,"

Insert: "the workers' compensation judge,"

3. Page 4, lines 19 through 25.

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

4. Page 5, line 3.

Following: "nominee,"

Insert: "letters and public comments received regarding the
nominee,"

5. Page 5, line 16.

Following: "and a"

Strike: "4-year"

Insert: "3-year"

Exhibit #7
23 Feb 91
SB 7

Amendments to Senate Bill No. 7
First Reading Copy

Requested by Senator Mazurek
For the Committee on Judiciary

Prepared by Greg Petesch
February 20, 1991

1. Page 3, line 8.
Following: "unmatured,"
Strike: "disputed, undisputed,"

2. Page 5, line 24.
Following: "debtor's"
Strike: "assets"
Insert: "property"
Following: "valuation"
Strike: "."
Insert: "and"

3. Page 5, line 25.
Strike: "(2) A"
Insert: "the"
Following: "debtor"
Strike: "who"

4. Page 6, lines 1 through 7.
Following: "due" on line 1
Strike: remainder of line 1 through "debts" on line 7
Renumber: subsequent subsections

5. Page 6, line 23 through page 7, line 4.
Strike: subsection (2) in its entirety
Renumber: subsequent subsection

6. Page 13, line 22.
Strike: "4"
Insert: "2"

7. Page 14, line 1.
Strike: "4"
Insert: "2"

#168 P01
Exhibit 7a
SB 7
2/23/91

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

Suite 1700
676 N. St. Clair
Chicago, IL 60611
(312) 915-0195
FAX# (312) 915-0187

FAX from: JOHN M. McCABE, LEGISLATIVE DIRECTOR

FAX to: SEN. JOSEPH P. MAZUREK

Cover Sheet + 5 page(s).

National Conference of Commissioners on Uniform State Laws
676 North St. Clair Street, Suite 1700, Chicago, Illinois 60611-(312) 915-0195

January 25, 1991

John M. McCabe
Legislative Director

Sen. Joseph P. Mazurek
P.O. Box 1715
301 First Bank Bldg.
Helena, Mt 59624

RE: Uniform Fraudulent Transfer Act (UFTA)

Dear Joe:

I have looked at Mr. Doak's letter, and, indeed, have a response. Copies of his letter and my response are also going to Frank Kennedy, who was the Reporter for the Fraudulent Transfer Act. It may be that he will comment further.

The Uniform Fraudulent Transfer Act (UFTA) replaced the 1918 Uniform Fraudulent Conveyance Act (UFCA) in 1984. Montana appears to have adopted the UFCA in 1945. Why did the ULC decide to amend the 1918 act? The universe of creditors and debtors had changed enormously, along with the economy of the United States. The language and breadth of the old act simply was not adequate for the needs of a more complex economy with enormously complex creditor-debtor relationships. In addition, Congress began a major revision of the bankruptcy laws of the United States (to which Professor Kennedy made a very large contribution) in the mid-1980's and it was simply no longer feasible to continue with the old act.

I apologize for the somewhat general introduction in the last paragraph, but I think it begins to address the real complaint that underlies Mr. Doak's specific criticisms of the UFTA. When I see words like "too broad" and "vague," sprinkled throughout criticism of an act, I tend to think that there are broader policy objections that are the real source of complaint. There is no question that the UFTA reaches a somewhat broader spectrum of creditor-debtor relationships than the UFCA does, although it would be wrong to characterize the UFTA as a radical departure from the UFCA. But then that spectrum has become more complex and ever larger over the time between the old act and the

new act. And it is this broader reach, in general, that bothers Mr. Doaks, I suspect.

Both the UFCA and the UFTA have a common objective in mind. The intent in both is to establish a level playing field for unsecured creditors in their relationship to any given debtor and in their ability to satisfy claims by gaining access to the assets of the debtor, when and if the debtor defaults. A debtor is not entitled to transfer assets for the specific purpose of defeating the claims of creditors or to make preferential transfers to some creditors that defeat the claims of other creditors. We have to look at the criticisms of Mr. Doak in light of these objectives.

Mr. Doaks indicates that the UFTA definitions of "debt" and "claim" are too broad because, together, they encompass "unliquidated, contingent and disputed obligations." To begin with, these definitions mimic the Bankruptcy Code. The UFTA definition of debt is nearly word for word the definition used in the Bankruptcy Code. In both, the word "claim" is defined to include "unliquidated, contingent and disputed obligations." But even more interesting is the fact that these definitions do not establish a radical change in the existing law. The UFCA defines "debt" to include "any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent." Montana law has had a broad definition of "debt" since 1945.

The law has had such broad definitions simply because there are a lot of ways to create the creditor-debtor relationship, and unless the definitions are broad that level playing field I discussed above will not be so level. Some relationships will be excluded in reckoning the rights of all legitimate creditors.

Mr Doak indicates that the definition of "insolvency" in the UFTA is inconsistent with the definition in the Bankruptcy Code. That may or may not be a real problem, depending upon the relationship between the Bankruptcy Code and the UFTA. There is no inherent reason for absolute correspondence between the terms of the two, but the fact is that the UFTA definition is derived from the Bankruptcy Code definition, and there is enormous correspondence between them. Both provide a measure of value of owned property against debts. The fundamental principles are identical.

The major difference in the basic measure is that the Bankruptcy Code relies upon "property" in the broader form, and the UFTA relies upon the word "assets", which is all property

excluding encumbered property, exempt property, and property in tenancy by the entireties (not an issue in Montana, I believe.).

In this respect, the UFTA is closer to the UFCA definition than it is to the Bankruptcy Code. The UFCA (current Montana law) uses the term "assets" in its provision on insolvency. The UFCA definition is not much different from the UFTA definition, and, in fact, the UFTA does not make a very significant change in current law with respect to defining insolvency. At best, it could be defined as being only slightly broader than its predecessor.

What is the significance of using the term "assets" as defined in the UFTA? It means a more precise and fairer measure of actual insolvency. To the unsecured creditor, the debtor is insolvent if he or she is not paying obligations and if there is not property to meet them. Only unencumbered and non-exempt property is really available to meet obligations. Only that kind of property should be used to determine the issue of insolvency. Both the UFCA and the UFTA have a better view of this issue than the Bankruptcy Code does.

Mr. Doaks continues on the issue of the definition of insolvency by alleging impairment of various kinds of contingent obligations. It is quite clear that some contingent obligations will be fraudulent transfers. For example, if a corporation guarantees some of the debts of a corporate officer and takes a broad security interest in the property of the officer to secure the guarantee, that very well may be a fraudulent transfer. Creation of such an interest may very well be a ploy to defeat the officer's creditors or to establish a favorable preference for favored creditors, and if it makes the debtor insolvent - should probably be thought of as a fraudulent transfer.

We probably ought always to be skeptical about any transaction that makes a debtor technically insolvent, if not actually insolvent. The key concept is "reasonably equivalent value." In legitimate business deals, the notion of reasonably equivalent value is generally a given. But even if there is not a reasonably equivalent value given, and there is a technical insolvency, before there is a fraudulent transfer, there must be more, intent, entry into ventures that are on their face particularly risky, or existing creditor-debtor relationships that would be undone by the mere fact of insolvency. What I suggest is that legitimate business is not hampered by the UFTA. It is instructive to look at Section 8 for the protections that it affords legitimate transferees and obligees.

Any contingent obligation of the kind cited in Mr. Doak's letter is mainly in a position to have its priorities re-ordered, but not to lose any position it ought to have as a legitimate deal. By Section 7(a)(1), it is avoided only to the extent necessary to satisfy the aggrieved creditor's claims. By Section 8(d), lien and enforcement rights are obtained for any good faith obligation. The claim that the UFTA burdens legitimate commercial transactions is just not credible.

Mr. Doaks makes objection to Section 3(b). There is no provision in the UFTA that has achieved wider acclaim than this one. It responds directly to the problem raised by Durrett v. Washington Nat. Ins. Co., 621 Fed.2d 201 (5th Cir. 1980). In that case, the court voided a foreclosure sale in Texas, and threw real estate financing in the United States into a tizzy. Durrett, which is a bankruptcy case, remains a serious cloud on real estate foreclosures everywhere. We did not want to make the same mistake in the UFTA. There is enormous commentary on the Durrett case in the legal literature, and all critical of that case. The popularity of the UFTA is to a great degree dependent upon its prohibition of a Durrett kind of decision in state law.

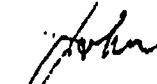
The last thing that Mr. Doak addresses is the four year statute of limitations on insider transfers under Section 5. Realistically, the Bankruptcy Code limitations are fatally short. Insider transactions can take place subtly and without notice to those outside the entity within which the transactions take place. It is unconscionable to expect action within 90 days or even within one year. Four years may be a short time in light of the transfers with which the act deals. Certainly, four years must be considered a minimum for adequate protection of existing creditor's interests.

So far, the UFTA has been adopted in 26 states. There is no indication that legitimate business has been impeded in any of them. The rising tide of insolvencies has made the adoption of a modern fraudulent transfer statute even more necessary, and I anticipate that it will be adopted in a substantial number of jurisdictions in 1991 and 1992. In addition, the repeal of UCC Article 6 is really not fully effective unless the UFTA is put in place. There is a strong argument that the real protection that unsecured creditors need is in the UFTA, not in bulk sales statutes. Having the UFTA makes it much easier to repeal UCC Article 6. The Connecticut Law Revision Commission, for example, has made such a recommendation to the Connecticut Legislature. I expect that these issues will become more and more coupled together as time goes on.

5

I hope that these remarks will be of some assistance to you.
Thanks for your kind attention.

Sincerely,



John M. McCabe
Legislative Director

cc & enc: Frank Kennedy

Amendments to Senate Bill No. 53
First Reading Copy (White)

For the Committee on Judiciary

Prepared by Valencia Lane (& Lois Menzies)
February 22, 1991

Exhibit #8
23 Feb 91
before
exec. action
SB 53

1. Title, line 6.
Following: " ; "
Insert: "AND"

2. Title, lines 7 and 8.
Following: "SHAKE-A-DAY" on line 7
Strike: remainder of line 7 through "GAMES" on line 8

3. Page 1, line 19.
Following: "shall"
Insert: "immediately"
Following: "money"
Insert: ", not to exceed \$2,"

4. Page 1, line 20.
Following: "jukebox"
Insert: "in the establishment"

5. Page 1, line 25.
Following: "roll"
Insert: "a combination simulating"

6. Page 2, line 1.
Strike: "hand"
Insert: "combination"

7. Page 2, line 3.
Strike: "hand"
Insert: "combination"

8. Page 2, lines 9 and 10.
Following: "(2)" on line 9
Strike: remainder of lines 9 and 10 in their entirety
Insert: "Nothing in this section authorizes the dice game of
craps or any other dice game not specifically described in
this section."

Amendments to Senate Bill No. 53
First Reading Copy (White)

For the Committee on Judiciary

Prepared by Valencia Lane (& Lois Menzies)
February 22, 1991

EXhibit #8
23 Feb 91
after exel
action
SB 53

1. Title, lines 6 through 8.
Following: "JUKEBOX" on line 6
Strike: remainder of line 6 through "GAMES" on line 8
2. Page 1, line 1²~~7~~.
Strike: "~~or~~ or in a shake - a day game "
page 1, line 14.
Strike: " " "
3. Page 1, line 15.
Strike: "(a)"
4. Page 1, line 19.
Following: "shall"
Insert: "immediately"
Following: "money"
Insert: ", not to exceed \$2,"
5. Page 1, line 20.
Following: "jukebox"
Strike: "; or"
Insert: "in the establishment."
6. Page 1, line 21 through page 2, line 10.
Strike: subsections (b) and (2) in their entirety
Insert: "(2) Nothing in this section authorizes the dice game of
craps or any other dice game not specifically described in
this section."
7. Page 2, line 13.
Strike: ". The"
Insert: ", and the"
8. Page 2, line 14.
Strike: "do not"

Exhibit 9
23 Feb 91
SJR 19

Amendments to Senate Joint Resolution No. 19
First Reading Copy

For the Committee on Judiciary

Prepared by Lee Heiman
February 23, 1991

1. Title, line 6.
Strike: "PROPOSE"
Insert: "CONSIDER"

2. Page 2, line 18.
Strike: "propose"
Insert: "consider"

ROLL CALL VOTE

SENATE COMMITTEE

JUDICIARY

Date 2-23-91

Bill No. SB 31

Time 7:30 am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen		✓
Sen. Doherty	✓	
Sen. Grosfield		✓
Sen. Halligan	✓	
Sen. Harp	✓	
Sen. Mazurek		✓
Sen. Rye		✓
Sen. Svrcek	✓	
Sen. Towe		✓
Sen. Yellowtail	✓	
Sen. Pinsoneault		✓

6

6

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion:

Svr - move table as amend
substitute motion - failed

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-23-91 Bill No. SB 31 Time 7:30 am

NAME	YES	NO
Sen. Brown		✓
Sen. Crippen	✓	
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Halligan		✓
Sen. Harp	✓	
Sen. Mazurek	✓	
Sen. Rye	✓	
Sen. Svrcek		✓
Sen. Towe	✓	
Sen. Yellowtail		✓
Sen. Pinsoneault	✓	
	7	5

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: Time - move DPAA
carried

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-23-91 Bill No. SB 388 Time 8 am

NAME	YES	NO
Sen. Brown		✓
Sen. Crippen		✓
Sen. Doherty		✓
Sen. Grosfield		✓
Sen. Halligan		✓
Sen. Harp		✓
Sen. Mazurek	✓	
Sen. Rye		✓
Sen. Svrcek		✓
Sen. Towe	✓	
Sen. Yellowtail	✓	
Sen. Pinsoneault		✓

3 . 9

ody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

otion: Towe - DNP - failed
Rev. note Harp not DP

ROLL CALL VOTE

SENATE COMMITTEE

JUDICIARY

Date 2-23-91

Bill No. SJR19 Time 8:10 am

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen		✓
Sen. Doherty	✓	
Sen. Grosfield		✓
Sen. Halligan	✓	
Sen. Harp	✓	✓
Sen. Mazurek	✓	
Sen. Rye		✓
Sen. Svrcek	✓	
Sen. Towe		
Sen. Yellowtail	✓	
Sen. Pinsoneault		✓

6 27

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: _____

Maz amend

ROLL CALL VOTE

SENATE COMMITTEE

JUDICIARY

Date 2-23-91

Bill No. SB441

Time 8:35 PM

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen	✓	
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Halligan		✓
Sen. Harp	✓	
Sen. Mazurek		✓
Sen. Rye	✓	
Sen. Svrcek		✓
Sen. Towe		✓
Sen. Yellowtail		✓
Sen. Pinsoneault	✓	
	6	6

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion:

Crip - move for amendment

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-23-91

Bill No. SB 441

Time 8:35 PM

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen	✓	
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Halligan		✓
Sen. Harp	✓	
Sen. Mazurek		✓
Sen. Rye	✓	
Sen. Svrcek		✓
Sen. Towe		✓
Sen. Yellowtail		✓
Sen. Pinsoneault	✓	
	6	6

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: Crip - move for amend 8

Sen. Dickinson, Chairman
From: Sen Bill Yellowtail
Please record my votes as follows.
BILLS HEARD BUT REQUIRING EXECUTIVE ACTION:

Monday *Yes my*
18 Feb SB 315 Doherty exec.jugmt.outside county

Friday *Yes my*
15 Feb SB 270 Williams allow/regul. amuse. games

Amendment: YES my

Friday
8 Feb ~~SB 228~~ Yellowtail incr.judicial salaries

Thursday *Yes my*
7 Feb HB 72 Rice red. pre-trial jail popul.

NO my Thursday
31 Jan SB 138 Stimatz priv.workforce drug testing

Thursday *NO my*
24 Jan SB 145 B.Brown amend Article 3-MT Constit.

NO my Wednesday
16 Jan SB 31 Towe drug testing

Doherty

(tom in fax)

- #1 SB-31 No Amendments
- #2 SB-342 - Amendment - Corum H.C.
- #3 SB-145 - Bryan Const. Amend
Surreck amendment.
- #4 SB-392
 ↓ (Recess Search)
 Kesting - one (1) amend't
- #5 SB 300 tabled -
- #6 - SB 910 - tabled Against table.
- #7 - SB 388 - Van Valken B. -
 Crearms ? Amend't.
 yes on funds amends, no on other
 amends, yes on bill
- #8 - SB 453 - Protection → Justice ?
 Table
 Against table motion
- #9 - SGR 19 - Williams - Elag desec. -
 Against bill, do not pass yes on table
 bill MON ex yes on D. no on pass
- #10 - SB 441 - Mazurek - Sud. Nat. Comm.
 2 sets - Amend - ?
 no amendments if yes Joe's amends
 on Gov. if ANY
 yes on bill
- Steve Doherty

11 SB 321 Fritz — Steve Schultz

yes crime Vict. Comp.
OK (1) red of Amendment (technical)
yes on amendments

12 SB 331 Franklin

[friendly] 1 set amendments
req. by Coroner —

yes on amendments
yes on bill

13 SB 315 — Exec. Judg.'s Outside
(No Ammats) County —

14 — SB 138 — (Stinatz) table

15 — SB # 7 — Frank Conway
yes amendments
yes will Amendments — Yes —
Joe hes.

16 SB # 53 DEVIN — SHAKE & BAKE
Amendments — Yes —
yes amendments yes bill

Towe

(tom in fax)

#1 SB-31 No Amendments

#2 SB-342 - I amend and - Corum H.C.

#3 SB-145 - Brien Const. Amend
Source amendment -

#4 SB-392
 ↓ (Recalls Search)
 Kesting - one (1) amend't

#5 SB 300 tabled -

#6 - SB 910 - tabled

#7 - SB 388 - Van Valken B. -
Everarms ? Amend't

#8 - SB 453 - Probation → Justice ?
Table

#9 - SGR 19 - Williams - Flag desec. -
No on the bill

#10 - SB 441 - Mazurek - Svd. Non-Comm.
Yes on bill

No 2 sets - Amend - ?
on Gov. Am.

11 SB 321 Fritz —
Yes on bill

Crime Vict. Comp.

one (1) set of Amendments (technical)

12 SB 331 Franklin

[friendly] 1 set Amendments
req. by Coroner —

~~SB~~ # 13 SB 315 — Exec. Judg. "Outside"
County —
(No Amendments)

14 — SB 138 — Stinatz — table

15 — SB # 7 — Frank Convey

Yes on Am.

Amendments — Yes —
Joe has.

16 SB # 53 DEVID — SHAKE & BAKE

— Yes on Am.
— No on Bill

Amendments — Yes —