

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on March 7, 1991, at
10:00 a.m.

ROLL CALL

Members Present:

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

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

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

Announcements/Discussion: None

HEARING ON HOUSE BILL 725

Presentation and Opening Statement by Sponsor:

Representative Wilbur Spring, sponsor of the bill, stated that this bill changes two words. It changes thirty seven to forty eight months as the length of time to pay off a loan between one thousand and twenty five hundred dollars.

Proponents' Testimony:

Jerry Loendorf, representing the Montana consumer finance association, stated that the bill extends the permissible term of the loan in the amount of one thousand up to twenty five hundred dollars from thirty seven months to forty eight months. This is a provision that would be little used. Assuming you are talking about an automobile for twenty five hundred dollars, an automobile like this is not likely to last for more than two or three years, so you wouldn't make that type of loan. If you are talking about an aluminum boat that might be ten years old, and

that will last for another ten years, in this situation, you would be willing to make such a loan. Although this is a provision that would be of little use, there are a number of situations where it would be a benefit.

Opponents' Testimony:

None

Questions From Committee Members:

None

Closing by Sponsor:

Representative Spring closed.

HEARING ON HOUSE BILL 279

Presentation and Opening Statement by Sponsor:

Representative Ted Schye, sponsor of the bill, stated that this bill is an act prohibiting the use of automated telephone systems, devices, or facsimile machines for specific purposes. It is a bill that would do away with the recorded messages, not the live operator telemarketing, but the ones that come across that are completely automated. The computer can plug up your answering machines with these messages. Across the United States in the last year and a half to two years, there has been four hundred and fifty bills trying to regulate these computerized calls. This legislation was copied from Wyoming legislation. He proposed an amendment to address the concerns of the telephone companies. They wanted it to be clarified a little more that if a live operator comes on a telemarketing, then they can switch to a recorded message if they have permission from the person there.

Proponents' Testimony:

Russ Cannon, representing the direct marketing association, stated that they are the people who do prepare and deliver these kinds of recorded messages. They have no objections to the bill with the amendments proposed by Representative Schye. This conforms with the direct marketing association's ethics, which requires the prior permission of the live operator before they deliver this type of recorded message.

Dan Walker, representing US West, stated that they support the bill as amended. They have interaction with the industry that does this, and they have taken a position in favor of live operator introduction.

Cathy Brightwell, representing AT&T, stated that AT&T supports regulating automatic dialing devices. Reasonable restrictions are needed to curve this misuse. They can't let

blanket prohibitions unnecessarily affect their legitimate uses. They support the bill with the amendments proposed by Representative Schye.

Leo Barry, representing MCI telecommunications, stated that they support the bill as amended.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Gage asked if there was a definition of "person" in title forty five chapter eight.

Representative Schye replied that there is not a definition.

Senator Gage asked if imprisonment of up to six months is a viable fine for a violation of this nature.

Representative Schye replied that the thing that they are trying to get at are the recorded phone calls.

Senator Williams asked if there was any history in any state of them tracking somebody down that has been guilty of this.

Representative Schye replied that most of the legislation that is being talked about is fairly new legislation. It would be fairly hard to track those people, but it would get a message out to the one's that are doing it illegally that it is not required.

Senator Lynch stated that he feels that they should strike that section.

Representative Schye replied that a lot of the telemarketers are not from in state. If it came out across the codes that Montana made this a law, it would let a lot of them know that the law is there and that it is illegal to use the recorded message without a live voice.

Senator Hager asked if you hang up on a computerized call, does it disconnect.

Representative Schye replied if you hang up on a computerized call, it will hang up rather quickly.

Senator Hager stated that he was concerned about the people who have car phones. They pay a lot of money to have people call them up.

Dan Walker stated that the call should time out from six to twenty seconds.

Closing by Sponsor:

Representative Schye closed.

HEARING ON HOUSE BILL 252

Presentation and Opening Statement by Sponsor:

Representative Gary Forrester, sponsor of the bill, stated

that this bill provides an extension of the time for notice of intent to file a lien. The lien laws were rewritten in 1987, and that is where this provision was added to the law. The law now provides that a subcontractor must provide a notice of intent to lien, and has to be filed within twenty days after the first work or materials were furnished on the job. In Montana, most deals that have to do with construction are sealed with a handshake. When a notice of intent of lien is filed with a homeowner, the first thing they see is a registered letter informing the homeowner that this particular subcontractor intends to file a lien on their house. This is the notice that they are required to give. Most of the homeowners deal with a general contractor that they pay at the first of the month following date of billing. The forty five days would give the contractors thirty days for the normal contract to run out to the billing date. The first of the month, and the tenth of the month would be the payment date. If payment was not received by that time, they would have five days to file a notice of intent on lien. They want a normal billing period.

Proponents' Testimony:

Riley Johnson, representing the Western building material association, spoke in favor of the bill (See Exhibit 1, Exhibit 1A, Exhibit 1B, Exhibit 1C, Exhibit 1D).

Don Chance, speaking on behalf of the Montana building industry association, stated that this bill started out as a good bill in the house, and through amendments on the house floor, it is now a great bill. It solves a number of major problems and expensive headaches for the industry, and for the consumers. It does not jeopardize the protection of the consumer. That is what these provisions are all about. The problems center around the standard billing cycle. You have to file within twenty days to maintain your right of lien. If they file on every sale and every service that they provide in the construction business, they would essentially bring the whole closing system on house sales down. The system that is currently in place is an expense to the industry and to the consumer.

Bob Ross, representing the Flathead valley homebuilders association, stated that the Flathead valley has forty five percent of the housing starts in the state of Montana. This is a real problem for suppliers and subcontractors. It is a problem for the suppliers, because it reflects directly on their creditability with their clients when they receive a notice of intent of lien of property. He supports all of the testimony, and feels that the consumer is protected under this legislation. The small businessman and the contractor benefit greatly from this legislation.

Jim Caras, representing the Missoula homebuilder's association, stated that the billing cycle problem could be resolved by going to the forty five days.

David Curd, representing the Helena homebuilder's association, stated that he agrees with the previous testimony by the other proponents. By approving and passing this bill the

committee would be doing a great favor, and further improving our construction industry.

David Steen, owner and operator of Steen builders property improvements company in Great Falls and the vice president of the Great Falls homebuilder's association, stated that on behalf of himself and the association they support this legislation.

Opponents' Testimony:

George Bennett, representing the Montana banker's association, stated that this bill has a long history, it goes back to 1985. Senator Hager and Senator Thayer worked long and hard with an interim committee to study the lien situation in Montana. The compromise that came out of that was that the legislation was passed in 1987. Senator Gage was co-sponsor of that legislation. It is a good law, and it has been working. What the building materialman are saying now, is that they want to break the covenant they made with the legislature and the public. What they have is a non consensual, secret lien. It used to be secret for ninety days, and nobody knew who supplied these materials until ninety days had gone by if the filing was going to be made. It is the only lien where a person selling goods to have a lien on somebody else's property, where that property owner has not dealt contractually or otherwise, with that retailer.

Jock Anderson, representing the Montana league of savings institutions (MSLI), spoke in opposition of the bill (See Exhibit 2).

Bob Pyfer, vice president of the Montana credit unions league, stated because credit unions are non-stock, non-profit, member owned organizations, the only reason for them to exist is serving their members. One of the ways that credit unions do this these days is through home equity, home improvement loans. While these projects do tend to enhance the value of the property, for that reason the collateral is protected. If the member has to pay twice for the materials, it could put the member in financial difficulties. The financial well being of the member goes hand in hand with the financial well being of the credit union. The existing construction lien law is a good law. It is a disclosure law. It is a trade off with a hidden lien, which nobody else has, and a disclosure by the people who have the benefit of that lien to the person who could get burned, and that is the homeowner. Under the amendments put on by the house, that consumer could still get burned, or still have to pay twice. If it goes to foreclosure, the materialman would get paid first. If it goes to bankruptcy, they can walk away from a little more debt. The timeliness of this disclosure is crucial. If it doesn't arrive before the homeowner pays the contractor, then it is worthless. Twenty days is too long. To solve the problems with this bill we need uniform practices and education.

Brad Walterskirchen, with heritage bank in Great Falls, stated that during the past four years, the law has worked very well. It has provided all participants a set of rules to ensure

that they receive materials or money. If the material supplier gives notice, they get paid. If they give notice, and do not get paid, then they get a lien. It has eliminated the secret lien, and eliminated the consumer of paying twice. It has drastically reduced the disputes and the law suits that were encountered prior to the enactment of the law.

Joe Bauer, representing first bank Montana, stated that the proponents brought up that it saves them embarrassment, and it is a ridiculous process of putting a homeowner on notice. The intent of the law was to put the homeowner on notice. He wondered if the homeowner thinks it is ridiculous if it saves him from paying twice.

Bill Leary, representing Montana banker's association, spoke in opposition of the bill (See Exhibit 3).

Roger Tippy, representing Montana independent banker's association, stated that they are in concurrence with what has been stated by the other opponents.

Questions From Committee Members:

Senator Williams asked Bill Leary what the date of the newspaper article was.

Bill Leary replied that it was from some years ago, it was not recent.

Senator Gage pointed out an error on page two of the bill, where the time period is listed as twenty instead of thirty days. Also, on page two, sub four, forty five days should also be part of that notice. Shouldn't the new language on page two, where it has been extended to forty five days be also in that notice somewhere.

Representative Forrester replied that he thought it was adequate there, because we have involved the lenders.

Senator Thayer stated that there was nobody here today that testified on behalf of the people who sell these products to the contractors. How is the person that will be supplying these materials going to know whether this will be going on a job that will be paid for, directly by the homeowner, or if it will be paid for by filing. How will they obtain that information.

Joe Bauer stated that he doesn't know how the lumberyard would know.

Senator Williams asked what the vote for this bill was in the house.

Riley Johnson replied that the vote was 88-6.

Closing by Sponsor:

Representative Forrester closed by saying that people do not like to see the registered letter that tells them what is going on. They are mad, they made a deal with their contractor. To them it is no different than receiving a lien, and they now have to go see their attorney so that he can explain to them that the contract doesn't do anything wrong, they are just complying with the law. The law has been working. The consumer advocates

haven't brought in anyone who can say that the law isn't working. This bill, with the amendments, merely involves the consumer advocates. Keep in mind, we are talking about third party. If a dispute arises between a general contractor and a homeowner, the small business person has no recourse. That what this bill is about. This is something that is needed. It isn't going to hurt anyone except the consumer advocates. You are not protecting the consumer advocates, you are protecting mainstreet Montana.

EXECUTIVE ACTION ON HOUSE BILL 725

Motion:

Senator Noble moved that HB 725 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion that HB 725 be concurred in passed unanimously. Senator Williams will carry HB 725 to the floor.

EXECUTIVE ACTION ON HOUSE BILL 279

Motion:

Senator Williams moved to amend HB 279.

Senator Gage moved to amend HB 279 by striking the imprisonment and putting a fine at twenty five hundred dollars.

Senator Noble moved that HB 279 be concurred in as amended.

Discussion:

None

Amendments, Discussion, and Votes:

The motion made by Senator Williams to amend HB 279 passed unanimously.

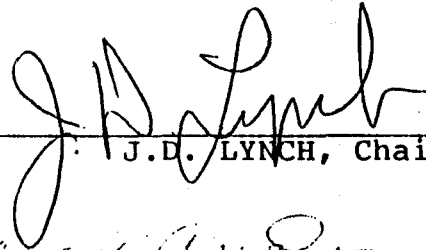
Senator Gage stated that maybe they should strike the imprisonment part of the bill and maybe increasing the fine.

The motion made to amend HB 279 by striking the imprisonment and putting a fine at twenty five hundred dollars passed unanimously.

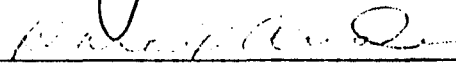
SENATE BUSINESS & INDUSTRY COMMITTEE

March 7, 1991

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J.D. LYNCH, Chairman



DARA ANDERSON, Secretary

JDL/dia

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

DATE 3/14/91

52ND LEGISLATIVE SESSION

| NAME | PRESENT | ABSENT | EXCUSED |
|------------------|---------|--------|---------|
| SENATOR BRUSKI | X | | |
| SENATOR FRANKLIN | X | | |
| SENATOR GAGE | X | | |
| SENATOR HAGER | X | | |
| SENATOR NOBLE | X | | |
| SENATOR THAYER | X | | |
| SENATOR WILLIAMS | X | | |
| SENATOR KENNEDY | X | | |
| SENATOR LYNCH | X | | |

Each day attach to minutes.

3/1/51

(Please leave prepared statement with Secretary)

WITNESS STATEMENT

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

Dated this 7 day of March, 1991.

Name: Cathy Brightwell - AT&T

Address: 1 N. Last Chance Gulch
Helena MT

Telephone Number: 449-6776

Representing whom?

AT&T

Appearing on which proposal?

HB 279

Do you: Support? X Amend? X Oppose?

Comments:

Support with Rep. Schy's amendments.

WITNESS STATEMENT

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

Dated this 7th day of MARCH, 1991.

Name: GEORGE T. BENNETT

Address: P.O. Box 1705 HELENA 59624

Telephone Number: 442-3691

Representing whom?

MONTANA BANKERS ASSOCIATION

Appearing on which proposal?

H. B. 252

Do you: Support? ☐ Amend? ☐ Oppose? ☒

Comments:

See attached material

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SUBMITTED STATEMENT OF
WESTERN BUILDING MATERIAL ASSOCIATION

Before: Senate Business & Industry

Sen. J.D. Lynch, Chairman

Subject: HB-252

Date: March 7, 1991

Presented By: J. Riley Johnson, Lobbyist

Mr. Chairman, members of the committee, I offer the following testimony on behalf of some 90 building material dealers in Montana who belong to the Western Building Material Association. Our members support HB-252.

As I look over the committee this morning, I realize there are some here unfamiliar with the construction lien law. To most the lien law is merely 71-3-531 and 71-3-532 MCA. But to me the lien law is a labor of love. Permit me to provide you with a little history on one of the most unusual bills ever passed in the 1980s in the Montana Legislature.

It began in 1985 when several legislators, the banking community and consumer advocates brought before the lawmakers a problem that was called "the hidden lien". Consumers, unaware of the construction lien laws dating back to the 1880s, paid for construction jobs on their homes only to have subcontractors and suppliers file liens against their property for bills unpaid by their contractors. These "hidden liens" could pop up months

interests got together and solve their own problems, the construction lien law as you know it today sailed through both houses of the 1987 Legislature almost unanimously.

And, now, for four years the construction lien law has been at work in Montana. Indeed, it is a political compromise. But it is one political compromise that has worked well. Hidden liens against consumers have all but been eliminated.

Truly, the authors of that very lien law are before you again this morning. We come before you not to overhaul a very workable construction lien law. We come before you to fine-tune a very workable construction lien law. And, we believe, it is a fine-tuning any one of you who have ever paid a bill at the end of the month or issued a monthly statement will understand.

If you think about it, the problem is obvious. The law now states that any contractor or supplier has 20 days in which to file a notice of the right to file a lien, or that contractor or supplier must give up the right to file a lien...forever! Keep in mind, this is merely a notice of the right to file a lien. It is NOT a lien! But you, a good, prompt bill-paying consumer, must get this notice of the right to file a lien against your house before your contractor has even had 30 days to pay his/her bills. What runs through your mind? Something is wrong with your contractor, isn't there? He doesn't pay his or her bills, right? What about the suppliers to contractors who don't want to be viewed as "slip-shod" and "irresponsible"? Contractors won't do business with them.

This truly is now a bill of both consumer protection and help to struggling contractors, lumber yards and subcontractors. Rep. Mercer's colleagues in the House agreed. HB-252 passed the House on February 9 with a resounding 88-6 favorable vote.

This morning, you too have the opportunity to strike a significant blow for both the consumer and the small business person in Montana. You can vote a "do pass" on HB-252.

As you know, any major rewrite of law needs time to work out glitches or to have any imperfections rise to the surface. Then, it is customary for lawmakers to fine-tune the law and make it work better for the people of Montana.

That is what we are asking for you to do today. Speaking for the construction industry, we gave up much with this new construction lien law...but we also gained much. A problem within our state was solved and our industry worked hard and willingly to help craft that solution.

But we suggest that a "do pass" from this committee on HB-252 will help us all to fine-tune the solution...because it is fair!

HB 252

Extending time to give notice of right to file lien

From : Montana League of Savings Institutions (MLSI)

Lobbyist : Jock Anderson 442-8560

Position: Opposed

Date : March 7, 1991

The MLSI requests you vote No on HB 252.

WHAT IS A CONSTRUCTION LIEN?

Generally, any person who supplies labor or materials to improve real estate has a right to file a lien against that property if he is not paid.

WHY ARE CONSTRUCTION LIENS UNIQUE?

Most importantly, construction liens are unusual because they may be imposed against a homeowner's property even though that homeowner has paid every dime he owes to the person to whom he owes that money. This occurs when a homeowner contracts with a general contractor to improve property and that general contractor in turn hires subcontractors to perform parts of the project. If the general contractor does not pay his subcontractors they may impose the lien even though the homeowner has paid the general contractor as agreed. Then the homeowner often has to pay again to avoid having the lien foreclosed and his property sold to satisfy the debt to the subcontractors. Because the homeowner has never made any promise to pay these subcontractors and often doesn't even know they worked on the project, the liens have often been referred to as "hidden" or "secret" liens.

WHAT PROTECTION DOES THE HOMEOWNER HAVE?

The problem of hidden liens was so substantial that in 1985 the Legislature authorized an interim study of the subject. All segments of the industry were represented and the present law was the compromise reached and enacted into law in 1987.

The centerpiece of that compromise was the requirement that persons furnishing services or materials to a project must notify the owner to preserve their lien rights (Notice is attached hereto). The notice serves two important purposes: First, it identifies the persons who need to be paid and second, it gives explicit instructions as to how the homeowners can protect themselves. Specifically, for example, it explains to the homeowner that he

has the right to make payment jointly to the general contractor and the subcontractors thus insuring the subcontractors get paid.

The key point to remember is that the notice loses its purpose unless the homeowner receives it before he releases all the funds to the general contractor.

IS NOTICE ALWAYS REQUIRED?

No. There are major exceptions to the requirement to give the notice. Hourly wage earners don't have to give the notice at all. Neither is the notice required on commercial projects or multifamily housing projects or when the services are being supplied directly to the owner.

WHAT IS THE EFFECT OF LENGTHENING THE TIME TO GIVE NOTICE?

This is best explained by example. Suppose you hire a contractor to remodel your kitchen with payment due upon completion in 30 days. On day 1 the contractor purchases the materials and on day 5 the plumber and electrician arrive. The project is completed on schedule.

Under current law (20 days) the homeowner received his notice before the contractor is paid and therefore is in a position to protect himself. Under HB 252 the notice doesn't have to be sent in some circumstances for 45 days which can be after the general contractor is paid. Why require the notice at all if you allow it to be sent when it's too late to serve its purpose?

WHAT ARGUMENTS ARE ADVANCED TO SUPPORT THIS BILL?

The following were the arguments advanced in the House and a response.

1. By extending the time we can wait to see if there is a problem before we send a notice: The proponents are missing the point. The purpose of the notice is to prevent a problem by allowing homeowners (or lenders) to protect themselves. After the problem arises and all the money is paid it is worthless.

2. The notice is expensive and bothersome. It is not expensive (postage and filing fee) and it is essentially the same expense that every other creditor expends to perfect its liens. Whatever bother is involved pales in comparison to the problems which arose in prior times of hidden liens.

3. Customers get concerned when they receive the notice: They should get concerned. The whole purpose is to encourage homeowners to protect themselves. You don't do homeowners any favors by leaving them in the dark until after the problem exists.

4. The notice makes it appear the general contractor isn't creditworthy: This is a simple matter of education. Contractors

should tell their customers there will be subcontractors on the project and they can expect a notice of lien rights which is required by law. Anyway, how about the homeowner who has paid his debt and still ends up in the credit bureau report under construction liens appearing to all the world like a dead beat? Which is the greater injustice?

5. This bill is just a minor modification of an already good idea: Not true. The time element is not a matter of degrees. The value of the notice is that it be received before the funds are released to the general contractor. When the notice is delayed until after that time it serves no purpose. This bill guts the purpose of the notice. This Legislature has to decide whether or not it is going to protect homeowners. It can't provide for the notice on the one hand and allow it to be sent after it is worthless on the other. There simply is no middle ground. Twenty days is plenty of time to do the minimal paper work required.

WHY ARE LENDERS CONCERNED ABOUT THIS BILL?

Most improvement projects are financed by lenders. In 1987 the Legislature provided that when a project was financed by a lender any construction lien would be prior to the mortgage of the lender even though that mortgage might be prior in time (Section 71-3-542). The assumption was that lenders were knowledgeable and could protect themselves and the homeowner from these liens by doing the things the notice suggests. If lenders failed that duty they deserved to be subordinate to the lien. Therefore this bill creates the same problem for lenders as it does for the homeowner. Lenders rely on that notice to be sure potential lienors are paid. If we don't know who is out there we can't protect the homeowner and ourselves.

DOESN'T THE COMPROMISE BILL PASSED BY THE HOUSE SATISFY ALL CONCERNS?

No. The original bill was to extend the period from 20 days to 45 days. The amended version which passed the House sets up a two-tier system--20 days when the homeowner finances the project and 45 days when a "regulated lender" finances the improvement.

First, it is difficult to see how a supplier will know how the project is funded. Liens will rise or fall on the vagrancies of how a project is funded. And what is the result when a project is funded in part by the homeowner and part by borrowing? Further, note that the 45-day period only applies when the lender takes a security interest in the improvement to secure the loan. Some remodel projects are funded by lenders without a mortgage on the improvement. Is the homeowner expected to understand that his notice protection will vary depending on whether a security interest is given? The point is the proposed two-tier system is seriously flawed in principle and will lead to misunderstanding and confusion.

Second, there is no logical reason to differentiate based on the source of funds. If the theory behind giving the notice is sound (and it is), there is no logical reason to single out "regulated lenders" for disparate treatment. If lenders are expected to protect against liens when they fund a project then they deserve to have access to the information needed to provide that protection.

Third, the premise of the compromise bill seems to be that lenders will bear the cost if hidden liens appear. That is not true. In almost all cases it will ultimately be the homeowner who must pay these hidden liens.

4509J

(3) The notice must contain the following information and be in substantially the following form:

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

To: Date of mailing:
(Owner)
.....
(Owner's address)

This is to inform you that has begun to provide (description of services or materials) ordered by for improvements to property you own. The property is located at

A lien may be claimed for all services and materials furnished to you, if this notice is given to you within 20 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 20-day period before the date on which the notice is given.

Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid. THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

This notice has been sent to you by:

NAME:..... IF YOU HAVE ANY QUES-
ADDRESS:..... TIONS ABOUT THIS NOTICE,
TELEPHONE:..... PLEASE CALL US

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

— RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

— **LEARN** more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.

— **WHEN PAYING** your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to lien.

— **OBTAIN EVIDENCE** that all firms from whom you have received a notice of the right to lien have been paid or have waived the right to claim a lien against your property.

— **CONSULT** an attorney, a professional escrow company, or your mortgage lender.

History: En. Sec. 8, Ch. 202, L. 1987.

~~**71-3-533. Notice of completion.** (1) The contracting owner may file a notice of completion at any time after the completion of any work or improvement.~~

~~(2) The following acts or events constitute completion of any work or improvement for the purpose of filing a notice of completion:~~

~~(a) the written acceptance by the contracting owner, his agent, or representative of the building, improvement, or structure. The filing of a notice of completion shall not be considered as an acceptance of the building, improvement, or other structure.~~

~~(b) the cessation from labor for 30 days upon any building, improvement, or structure, or the alteration, addition to, or repair thereof.~~

~~(3) The notice of completion together with an affidavit of publication as hereinafter required shall be filed in the office of the county clerk and recorder of the county where the property is situated and the notice shall set forth:~~

~~(a) the date when the work or improvement was completed or the date on which cessation from labor occurred first and the period of its duration;~~

~~(b) the contracting owner's name and address and the nature of the title, if any, of the person signing the notice;~~

~~(c) a description of the property sufficient for identification;~~

~~(d) the name of the contractor, if any.~~

~~(4) The notice shall be verified by the contracting owner or his agent.~~

~~(5) A copy of the notice of completion shall be published once each week for 3 successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.~~

~~(6) The contracting owner shall give a copy of the notice of completion to any person who has given the contracting owner a notice of a right to claim a lien.~~

History: (1), (3) thru (5) En. Sec. 3, Ch. 408, L. 1971; Sec. 45-502.1, R.C.M. 1947; (2) En. Sec. 6, p. 333, Bannack Stat. and Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; En. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1187; re-en. Sec. 8340, R.C.M. 1935; amd. Sec. 2, Ch. 408, L. 1971; Sec. 45-502, R.C.M. 1947; R.C.M. 1947, 45-502(3), 45-502.1; amd. Sec. 13, Ch. 202, L. 1987; Sec. 71-3-512, MCA 1985; redes. 71-3-533 by Code Commissioner, 1987.

71-3-533. Filing with county clerk — notification of owner. (1) The county clerk must endorse upon every lien the day of its filing and make an abstract thereof in a book by him to be kept for that purpose and properly

Amendments to House Bill No. 279
Third Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
March 7, 1991

1. Title, line 7.

Strike: "PENALTIES"

Insert: "A FINE"

2. Page 2, line 6.

Following: "relationship."

Insert: "This section does not prohibit the use of an automated telephone system or device if the permission of the called party is obtained by a live operator before the recorded message is delivered."

3. Page 2, lines 7 through 9.

Strike: "guilty" on line 7 through "and" on line 9

Insert: "subject to"

Strike: "\$750"

Insert: "\$2,500"

TRIPLE 'S' BUILDING CENTER, INC.

100 E. FRONT STREET
P. O. BOX 3764
BUTTE, MT 59702



The Stordahls

(406) 723-6567 PHONE
(406) 723-7304 FAX
(800) 823-8777 IN-STATE WATS

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. LA

DATE 3/7/91

BILL NO. H.B. 252

March 5, 1991

Senator J.D. Lynch
Chairman of Business & Industry Committee

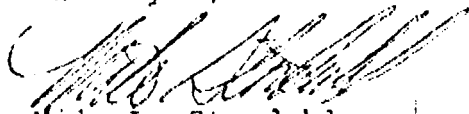
Dear Mr. Chairman:

Please support House Bill #252. This bill will take some of the pressure off us in having to file a "Notice of Intent to File a Lien" on contractors that DO pay their bill every thirty days. This bill will reduce the time spent, both by us in the courthouse, by not having to file these notices on reputable contractors and/or subcontractors.

My understanding is the "little old lady" consumer is still protected from the "big bad wolf, the poor retailer, and the unscrupulous contractor" under House Bill #252.

I hope you see the humor in that last statement and please support House Bill #252.

Thank you,


Milo L. Stordahl
President

SENATE BUSINESS & INDUSTRY
OTB F01
EXHIBIT NO. 1B
DATE 3/7/91
BILL NO. 48252

Thomae Lumber Sales

501 East Main
Laurel, Montana 59044

May 5, 1991

Chet Blaylock
Helena, Mt.

Dear Chet:

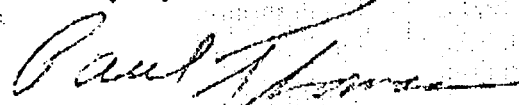
Since we were not able to make phone connections previously, I am sending this letter to you to ask you to vote for House Bill 252.

As a small, independent lumber yard I support this bill. The extra days allowed by the bill, will benefit the supplier, the contractor and not jeopardize the home owner.

I can state that I have lost business due to the way the right to claim a lien law is now written. As a small business, I cannot afford to lose business or gamble by not sending lien protectors.

Chet, if you have any questions or comments, please call me at 628-8224.

Thank you,


Paul Thomae

The Only Numbers YOU Need for Lumber

628-8224

656-9655



GREAT FALLS' ORIGINAL
HOME CENTER

March 5, 1991

Senator J. D. Lynch
Chairman-Business and Industry Committee

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1D

DATE 3/7/91

BILL NO. HB252

Dear Senator Lynch,

To reduce the amount of paperwork necessary to protect our mechanics
lien rights I urge you to support HB252.

Thanks,

A handwritten signature in cursive script, appearing to read "Jake Tuck".

Jake Tuck
General Manager



HOUSE BILL 252

CONSTRUCTION LIEN LAW

By

Montana Bankers Association

The old mechanics lien law was in a mess and had not been changed for 100 years. A group of local bankers, builders, attorneys, and legislators in Kalispell met in the fall of 1984 and approved the uniform law on construction liens. In the 1985 Legislature, this became SB 128 sponsored by Senators Himsl, Mazurek, Blaylock and Crippen.

The home builders and building material dealers killed the bill because it took away their 90 day secret lien and made many other improvements to the law.

The 1985 Legislature passed a resolution creating a Joint Interim Subcommittee on Lien Laws, Chaired by Senator Halligan and Vice Chair Rep. Mercer. Other committee members were: Senators Hager, Christiensen, Thayer, and Reps. Ellerd, Bachini, and Krueger.

At the first Subcommittee meeting, we recommended no secret lien and adoption of the Uniform Code Commissioner's Act. Riley Johnson, lobbyist for a coalition of builders and suppliers, said the UCC was too confusing and proposed a notification process. Subsequently Senator Halligan, and 2 members of the Subcommittee, drafted some "Discussion Recommendations" in which a 10 day notice was proposed.

At the third meeting of the Interim Committee on February 7, 1986, Riley Johnson, lobbying for the home builders, requested time

to give notice of a lien be increased from 10 days to 20 days. It was approved over our objections.

After 7 meetings over 2 years, a modified uniform code was approved. Everyone agreed to the compromise and SB 20 was introduced in 1987 by Senators Halligan, Thayer, Boylen, Gage and Reps. Poulson, Mercer, Hager, Rasmussen, Wallin, and D. Brown.

During the 1987 session, without prior warning, the home builders and building material dealers proposed an amendment to the bill to extend their filing time by another 5 business days. With weekends, builders and suppliers would then have almost a 30 day secret lien. We supported a 15 day notice to the homeowner and an additional 5 days to file with the county, to no avail. The bill passed in the 1987 Legislature with the 5 additional days.

This law has worked extremely well since 1987. To our knowledge no homeowner has been forced to pay twice for any home improvements. Prior to 1987, Legislators were coming to the session complaining about their constituents who were forced to pay twice because either the subcontractor did not get paid by the contractor or the building material dealer did not get paid by the contractor. You may recall the Sherlock Homes Development in Great Falls in 1981 where over 7 homeowners were placed in double jeopardy because subcontractors were not paid. There were also 20 homes in the Sun Prairie Village Development subject to secret liens. Since 1987 all homeowners have been protected.

There is also protection for the contractors and suppliers because they still have a secret lien. The homeowner can still be forced to pay twice if a notice of lien is given to that homeowner

within 20 days. Obviously builders and suppliers do not want to go through the paperwork of providing notices like all banks have to do to protect themselves. If they do not wish to do the paper work, they are putting themselves at risk and justifiably so. They are the ones that are making money off home improvements. Why should the homeowner guarantee the accounts receivable of a building material dealer or the repair costs of a subcontractor?

Why should anyone have to pay twice for a home improvement job? Please kill HB 252.

Lien times

Legal battles over unpaid bills leave some homeowners bitter

By RICHARD ECKE
Tribune Staff Writer

Some 21 months ago, Carol White stood outside her split-level house preparing to go to town, just as a man she didn't recognize drove up in a car.

First in a series

"Are you Carol White?" he asked politely.

"Yes," she said.

The man, a Cascade County sheriff's deputy, handed her legal documents telling the Whites they were being sued in district court. With that brief event, a year of frustration, anger and confusion began.

JOHN AND CAROL WHITE were among at least seven homeowners in the Sherlock Homes development who faced possible legal action because firms who provided plumbing, heating, landscaping and other services weren't paid for their work. Although they believe it wasn't their fault, the Whites and other homeowners appeared to be legally responsible for paying the debts.

As the Whites quickly discovered, owners of new homes occasionally face the rude prospect of paying for parts of their house twice over — a kind of homeowner's double jeopardy.

Despite title insurance, which some may view as protection against liens, suppliers can still often file liens — legal claims against property — and move to enforce them in court. Then comes a legal roulette, as the players in the drama often fight it out in the courts to see who wins and who loses.

Persons living in Sun Prairie Village west of Great Falls are not the only homeowners to have recently felt the sting of liens — a legal term pronounced LEANS. Mechanic's liens are designed to protect the commercial interests of plumbers, carpenters and others who provide work or materials at a home and then are not paid.

In addition to the lien filings in Sun Prairie Village, nearly 20 homes in the Westwood development east of C.M. Russell High School were targets of liens after the builder went bankrupt.

For the Whites, the discovery that they were being sued was a stunning surprise.

NESTLED into their four-bedroom home with a 12-year-old daughter, two dogs and three cats, the Whites were feeling comfortable.

"It's more like living in the country here," Mrs. White says. There is less traffic, too, than in the city. From their sun deck, acres of rich farmland stretch out from beyond a row of trees marking their backyard.

Considering rising housing costs in Great Falls at the time, they also felt they got a good price at \$45,000. It was their first new home.

Then the bubble burst. They were being sued, with their real and white home in the balance.

"They (the firms suing) wanted our house sold, yes, sold at a sheriff's auction," a friend Mrs. White says.

EDITOR'S NOTE: Circumstances detailed in the following series of articles, compiled over the past year, are not totally unique although the number of people, properties and complexities involved are more numerous than the usual case. Many homeowners over the years have learned the bitter truth that their property may be subject to a lien for debts incurred by contractors or prior owners for materials and/or services. The series should alert homeowners, potential homeowners and people in the home building or home services industry of the possible pitfalls and the need for written assurance that all bills and obligations have been paid.

procedure in lien cases.

As reality sunk in, the Whites say they visited with the president of the credit union where they secured a loan. They were told the \$5,000 in liens could be added to their home loan, although White declined the offer.

WHITE SAYS he later called Ray Wirth, president of Great Falls Federal Savings & Loan, the institution which provided most of the construction money for Sherlock Homes. The savings and loan is suing in court for ownership of seven unsold houses in Sherlock Homes.

White says Wirth told him in a telephone conversation that the liens were White's personal problem.

(Wirth, through attorney Charles Lovell, declined comment because of pending lawsuits.)

In the meantime, the Whites retained a lawyer.

As the months passed, White says few of the neighbors talked about the legal tangles. In bitterness, White put the house up for sale, although it didn't sell.

When their case came to court, the Whites' lawyer succeeded in getting the liens dismissed. The plumbing firm which filed the liens named the wrong owner of the property. Instead of naming the Whites as owners, they named the builder, McCann Enterprises, and the development, Sherlock Homes. The liens, and others against their property, were dismissed last February.

Carol White says the news from court left her "relieved." Her husband says he was "disgusted" despite the ruling.

"I DON'T REALLY think I cared one way or another," he says.

Through it all, the Whites failed to understand how they could be held responsible for the unpaid bills. White says he would never have paid the liens even if the courts had ruled against him.

"I would have dumped the house," he says. "I made up my mind I wouldn't have paid someone else's bill."

In any event, the Whites concede they were fortunate.

"We lucked out," White says. "We won." Cases are still pending against four of the Whites' neighbors who are being sued as the result of lien filings.

If the payments of the Whites have

their court victory, tempers are still flaring in Westwood among some homeowners, who faced thousands of dollars worth of liens after the builder went bankrupt. Westwood is located east of C.M. Russell High School.

"I'll never buy a new home again," vows Darrell Garneau, a Rice Motors employee who bought his first new home in Westwood.

"I TELL YOU, I got educated," he says.

Garneau says he bought the \$48,000 house and paid almost 50 percent down.

"We like the house," he says of his Westwood home. "Everything was just kind of halfway neat until this thing hit me in the face."

Garneau says he was "pretty wild" when he first heard from his neighbors about the liens.

"Now I've kind of mellowed out," he says.

The neighbors who first broke the bad news of the liens to the Garneaus are insurance agent Michael Depner and his wife Barbara.

"It's really a ripoff from the word go," Depner says angrily.

"We've got (liens) and everyone on our block that I know of has them," Depner says.

AT LEAST 18 HOMES were the targets of liens in Westwood, compared to 14 in the Sun Prairie Village development of Sherlock Homes. Seven homes in Sherlock Homes remain unoccupied, however.

In contrast with the Sherlock Homes mess, which is still bogged down as the lenders, real estate brokers and builder fight it out bitterly in court, the Westwood tale was short if not sweet.

Toward the close of the Westwood project, Alta Construction Co. simply went bankrupt. Its president, Hans A. Fedge, was the builder in the Westwood project. (Fedge and Dr. William G. Shull, developer of the project, were not available for comment.)

When the case came up for hearing in federal bankruptcy court, Garneau says he attended. He says the homeowners received nothing.

"I never got a nickel," he says.

For a Vietnamese refugee family which lived near Garneau, the liens became a dilemma when the family decided to move to California. To sell their home at 124 17th Ave. NW in Westwood, Mein Hong Nguyen and his family was forced to pay off about \$700 in liens, a neighbor says.

Garneau remains defiant, saying he won't pay the liens. He theorizes the house probably can't be repossessed for more than the \$680 he has in liens.

HE ALSO SAYS he doesn't feel he has received any help from his lender and title company.

"I think they should have defended me," he says.

The whole affair has left Garneau and others thoroughly humiliated.

"It's just like me taking \$100 from you and giving it to somebody else and saying, 'Well, too bad,'" Garneau says.

"The little guy stands here wondering why."

Next: The building suppliers tell their story.

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/7/91 Bill No. HB 725 Time 10 a.m.

| NAME | YES | NO |
|------------------|-----|----|
| SENATOR WILLIAMS | ✓ | |
| SENATOR THAYER | X | |
| SENATOR NOBLE | X | |
| SENATOR HAGER | X | |
| SENATOR GAGE | X | |
| SENATOR FRANKLIN | X | |
| SENATOR BRUSKI | X | |
| SENATOR KENNEDY | X | |
| SENATOR LYNCH | X | |

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

Motion: BE CONCURRED IN - WILLIAMS TO CARRY

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/7/91 Bill No. HB 279 Time 10 a.m.

| NAME | YES | NO |
|------------------|-----|----|
| SENATOR WILLIAMS | ✓ | |
| SENATOR THAYER | ✓ | |
| SENATOR NOBLE | ✓ | |
| SENATOR HAGER | ✓ | |
| SENATOR GAGE | ✓ | |
| SENATOR FRANKLIN | ✓ | |
| SENATOR BRUSKI | ✓ | |
| SENATOR KENNEDY | ✓ | |
| SENATOR LYNCH | ✓ | |

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

Motion: To AMEND

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/7/91 Bill No. 43279 Time 10 a.m.

| NAME | YES | NO |
|------------------|-----|----|
| SENATOR WILLIAMS | X | |
| SENATOR THAYER | X | |
| SENATOR NOBLE | X | |
| SENATOR HAGER | X | |
| SENATOR GAGE | X | |
| SENATOR FRANKLIN | X | |
| SENATOR BRUSKI | X | |
| SENATOR KENNEDY | X | |
| SENATOR LYNCH | X | |

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

Motion: STRIKE IMPRISONMENT, DOUBLE FINE \$2500.

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/7/91 Bill No. HB 279 Time 10 a.m.

| NAME | YES | NO |
|------------------|-----|----|
| SENATOR WILLIAMS | X | |
| SENATOR THAYER | X | |
| SENATOR NOBLE | X | |
| SENATOR HAGER | X | |
| SENATOR GAGE | X | |
| SENATOR FRANKLIN | X | |
| SENATOR BRUSKI | X | |
| SENATOR KENNEDY | X | |
| SENATOR LYNCH | X | |

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

Motion:

BE CONCURRED IN AS AMENDED

LYNCH To
CARRY

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/7/91 Bill No. 46258 Time 10 a.m.

NAME

YES

NO

| | | |
|------------------|---|--|
| SENATOR WILLIAMS | X | |
| SENATOR THAYER | X | |
| SENATOR NOBLE | X | |
| SENATOR HAGER | X | |
| SENATOR GAGE | X | |
| SENATOR FRANKLIN | X | |
| SENATOR BRUSKI | X | |
| SENATOR KENNEDY | X | |
| SENATOR LYNCH | X | |

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

Motion: To AMEND

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/7/91 Bill No. HB 258 Time 10 a.m.

| NAME | YES | NO |
|------------------|-----|----|
| SENATOR WILLIAMS | X | |
| SENATOR THAYER | X | |
| SENATOR NOBLE | X | |
| SENATOR HAGER | X | |
| SENATOR GAGE | | X |
| SENATOR FRANKLIN | X | |
| SENATOR BRUSKI | X | |
| SENATOR KENNEDY | X | |
| SENATOR LYNCH | X | |

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

Motion:

BE CONSIDERED IN AS AMENDED

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 279 (third reading copy -- blue), respectfully report that House Bill No. 279 be amended and as so amended be concurred in:

1. Title, line 7.

Strike: "PENALTIES"

Insert: "A FINE"

2. Page 2, line 6.

Following: "relationship."

Insert: "This section does not prohibit the use of an automated telephone system or device if the permission of the called party is obtained by a live operator before the recorded message is delivered."

3. Page 2, lines 7 through 9.

Strike: "guilty" on line 7 through "and" on line 9

Insert: "subject to"

Strike: "\$750"

Insert: "\$2,500"

Signed: _____


John "J.D." Lynch, Chairman

141 3-7-91
And. Coord.

SPB 3-7 3:40
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 725 (third reading copy -- blue), respectfully report that House Bill No. 725 be concurred in.

Signed: 

John "J.D." Lynch, Chairman

M 3-791
And. Coord.

SB 3-7 3:40
Sec. of Senate