

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By CHAIRMAN RUSSELL FAGG, on January 6, 1993, at  
8:00 a.m.

**ROLL CALL**

**Members Present:**

Rep. Russ Fagg, Chairman (R)  
Rep. Randy Vogel, Vice Chairman (R)  
Rep. Ellen Bergman (R)  
Rep. Jody Bird (D)  
Rep. Vivian Brooke (D)  
Rep. Dave Brown (D)  
Rep. Bob Clark (R)  
Rep. Duane Grimes (R)  
Rep. Scott McCulloch (D)  
Rep. Jim Rice (R)  
Rep. Angela Russell (D)  
Rep. Tim Sayles (R)  
Rep. Liz Smith (R)  
Rep. Bill Tash (R)  
Rep. Howard Toole (D)  
Rep. Tim Whalen (D)  
Rep. Karyl Winslow (R)  
Rep. Diana Wyatt (D)

**Members Excused:** Rep. Dave Brown, Vice Chair (D)

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Council  
Beth Miksche, Committee Secretary

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

**Committee Business Summary:**

Hearing: HB 38, 50, 68  
Executive Action: HB 50, 68, HJR 1

**HEARING ON HB 38**

**Opening Statement by Sponsor:**

REP. FRANCIS BARDANOUVE, House District 16, Harlem, by request of  
the Legislative Finance Committee, discussed HB 38. HB 38

defines unlawful use of a state employee's computer. Basically, use of a personal computer for personal use is an unlawful act. All across America, computer crimes are becoming more and more common and have caused a lot of damage. We want to make sure that it is a criminal act to abuse state or company owned computers.

**Proponents' Testimony:**

Mike Trevor, Administrator of Information Services, Department of Administration, recommends the House Judiciary Committee take any suggestive changes from REP. BARDANOUVE'S subcommittee to the Data Processing Advisory Council, which advises the Department of Administration. The Data Processing Advisory Council also supports these changes.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions From Committee Members and Responses:**

REP. JIM RICE asked about Section 3, line 1, appropriation in Title 2, and was it because there wasn't a penalty in the other Section for violation. REP. BARDANOUVE clarified that any monies returned will be to the General Fund. There are many types of funds in Montana, i.e. federal funds, agency funds. We should take a closer look at what we really mean, or should that General Fund definition be broadened in a language to cover all costs.

REP. RICE asked if Section 3, Section 45-7-401, line 1 addresses ethical conduct of state officials. Mr. Seacat, Legislative Auditor, mentioned that this is the current ethic section of law, and currently, there are no sanctions associated with that section of law. There are situations that auditors don't publicize the flaws that are investigated.

REP. DUANE GRIMES asked under Section 2. (a): Is this intended to allow those who are able to use the computers to go ahead and use them? He believes that Section 2. (a) should say, "obtains the use or utilizes computer." This would essentially give another employee permission to use another employee's computer.

REP. VIVIAN BROOKE asked both REP. BARDANOUVE and Mr. Seacat what type of prison sentence would this entail, i.e. county, and who would pay for this? What type of money is involved here. Mr. Seacat said that the referrals made on issues like this are, by law, to the Attorney General's office. If restitution is made, we would work with the County Attorney's office. There would be no sentence for computer crimes. It's possible, however, depending on the seriousness of the crime, such as massive fraud, to prosecute.

REP. BOB CLARK suggested there be a section that includes a felony rather than just a misdemeanor. Rep. Seacat said that in the case of a massive fraud, that clause would be covered under the criminal statutes already. His concern is more in the area of computer viruses and computer fraud. We are not involved in any massive frauds with respect to computers, and the last major fraud was the livestock helicopter situation, and in that case, the criminal statutory was a felony.

REP. CLARK was interested in the monetary costs involved, for example, destruction of complete programs and/or massive databases. Mr. Seacat said that they have not decided whether that would be a misdemeanor or a felony.

Closing by Sponsor:

REP. BARDANOUVE feels that if there were cases of huge magnitude, they would be referred to the Attorney General's office; however, it could be quite costly, and it could be taken care of elsewhere. We have invested literally millions of dollars in computers, and we must modernize the law so that it is up to date.

HEARING ON HB 50

Opening Statement by Sponsor:

CHAIRMAN FAGG feels strongly that merchants need the right to stop shoplifters. HB 50 is a request by the Montana Retailers Association to put into law merchant detention statutes, i.e. shoplifting statutes. As people who were in the last legislative session remember, SEN. VAN VALKENBURG proposed a 220 page, Criminal Procedure Bill, but most people who voted on that bill did not know what, exactly, was in that bill. They assumed that because it was part of the hearing where prosecutors, defense attorneys, and others said it was a good bill, it was. It passed, and one of the provisions of that bill was taken out and will be replaced with this law. This bill is a verbatim copy of the law that was on the books two years ago when the Legislature passed that very large 220-page criminal procedure bill and took it out. The merchants feel very strongly that they need the right to stop and detain somebody they believe is shoplifting. This bill has a lot of safeguards built into it. Section 1 sets forth, very specifically, what the merchant may do, and also by reference, what he may not do. First, it says that merchants may temporarily detain a suspect up to 30 minutes until a police officer arrives. If a police officer does not arrive within 30 minutes of the initial stop, then the merchant has to let the suspect go free. A merchant has to promptly inform the person that he stops for the investigation why he is stopping him, and that upon the completion of the investigation, the person shall be released or turned over to a police officer. Second, the merchant may demand the person's name and address and request from the person in a reasonable manner to determine whether shoplifting has occurred. The merchant may take in possession

any merchandise which is found on that person and may detain the person until the police officer arrives. The stop must be done in a reasonable matter of time. On page 2, line 6, it is important to note again, "after the purpose of a stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a peace officer."

**Proponents' Testimony:**

**Charles Brooks, Executive Vice-President Montana Retail Association,** supports HB 50. EXHIBIT 1 Since the early 1970s, this particular language in HB 50 was in the Code. We, as retail merchants, from the last session missed the Section SB 51 which eliminated these two sections to protect the retail merchant and urge the restoration of that language to the Code. It is estimated, nationally, that shoplifting is a crime and equals over \$20 billion in the retail industry, and that equates in Montana to almost \$40 million. We estimate through calculations that .02 cents of every dollar that we spend equates to recovering the losses through shoplifting. In a 1990 survey from the Marketing Institute of Washington, D.C., those shoplifters apprehended in supermarkets had approximately \$19 of merchandise in possession. In the merchandise field, that's approximately \$25 merchandise on their person of apprehension. Mr. Brooks said that retailers/merchants are taking steps internally to try to control shoplifting, but they need the benefit and protection of HB 50 that retailers/merchants may stop and question a suspected shoplifter or a suspected person concealing merchandise without the threat of an omnibus lawsuit - as long as they follow the code as it is written.

**REP. JOHN BOHLINGER, House District 94, Billings,** offers 33 years experience as a retailer. The problem of shoplifting is not one found solely to the mass-merchandisers, not just the supermarkets or chain stores - it is also found in small, privately owned stores such as his own in Billings. Shoplifting has hovered around 1 percent of sales. For example, of \$500,000 worth of sales business, expect \$5,000 of losses from shoplifting. Retailers operate on thin profit margins and, often, very tight budgets. Loss of profits can range anywhere from 2-9 percent of sales. REP. BOHLINGER said that independent retailers and small business owners need the protection of HB 50.

**Bruce Rowsell, head of loss prevention for Buttrey Food and Drug Co. EXHIBIT 2** Buttrey's 24 stores provide Mr. Rowsell with statistics of shoplifting and also provide him with a good indication of current shoplifting trends. These statistics also provide information in support of HB 50. For instance, only in a couple months of 1992, Buttrey employees and security apprehended 752 shoplifters. Unfortunately, that's just a fraction of the actual shoplifters who pass through Buttrey stores. In addition, Buttrey employees and security watch other suspected shoplifters steal merchandise under their coats or in their purses. These

individuals, when noticed they were being watched, will go around the corner of the store and dump the merchandise. They are subsequently stopped, and an inquiry is made as to where the merchandise is. Without passing HB 50, this type of conduct makes retailers exposed to litigation. This bill will protect the retailer from making a reasonable inquiry of a suspected shoplifter. HB 50 would not infringe on the right to civil action against the retailer that goes beyond reasonable cause. Mr. Rowsell is concerned that retailers can be sued for restraining suspects if there is not a law giving them this power.

Bill Stephens, Montana Food Distributors Association, said that he has worked on this subject for several sessions and believes that passing HB 50 can give lawmakers, the public and merchants a workable bill.

Riley Johnson, National Federation of Independent Businesses, said the NFIB strongly supports HB 50. EXHIBIT 3 He stated shoplifting is a major cost of doing business and hurts the small, Main Street business far more than the large stores which can pass this cost through as a cost of doing business. The small business does not have the volume nor the capital to finance this activity.

#### Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, discussed this bill from the trial lawyers' perspective, and they are opposed to HB 50. He believes it is quite benign. Mr. Hill is concerned about several points regarding HB 50: 1) He would be interested in knowing whether in two intervening years litigation or problems have increased; 2) HB 50 still maintains the reasonable standard for stopping, detaining and searching a suspected shoplifter. If you're unreasonable about that, you're still subject to civil suit; and 3) Mr. Hill's understanding now is that merchants have the same right as private citizens to act to prevent their property from being taken.

Informational Testimony: None.

Questions From Committee Members and Responses: None.

#### Closing by Sponsor:

CHAIRMAN FAGG hopes that since there were no questions from the committee, that everyone understands the bill. CHAIRMAN FAGG made a point that merchants need to know and thoroughly understand, "the powers retailers have to arrest a person." Mr. Brooks said there is a section in Section 46-6-502, which is arrest by private person - the citizens arrest statute. Merchants believe that this is not adequate protection, and they still would like to see what they can and cannot do set out in this specific statute.

HEARING ON HB 68Opening Statement by Sponsor:

CHAIRMAN FAGG sponsored HB 68. This particular bill was requested by the Attorney General's office, and he was pleased to hear that Mr. Russell Hill, Trial Lawyer's Association, is going to support this bill. Essentially, HB 68 is explained in the title. It changes from within 10 days after the omnibus hearing to within 30 days after the arraignment, the time which, for example, in a criminal case, that defense lawyers must disclose certain information to the prosecutor. For every criminal trial, there's an omnibus hearing sometime before the trial. In an omnibus hearing, the judge sits down with the prosecutor and defense attorney and goes over different motions that will be coming before the court, basically like a pretrial conference to go over the case. The problem is, some judgements have omnibus hearings 45 days before the trial, and that's the way it should work; however, some judges don't have omnibus hearings until a couple days before the trial or a week before the trial, and that's where the problem arises. This is what HB 68 is trying to address.

Proponents' Testimony:

John Conner, Assistant Attorney General, presented on behalf of the Montana County Attorney's Association, which is an organization composed of 56 county attorneys in the state of Montana. Mr. Conner works in an office called County Prosecutor's Services, and their function is to provide training and trial assistance to county attorneys. This bill is a result of a problem, to some extent, by SB 51 that was the overhaul of the criminal procedure code passed by the last legislature in the last session. Mr. Conner confessed having been a member of the criminal procedure code, the commission which worked on putting it together took approximately six years, and the bill resulted in about 221 pages of legislative changes. There were some problems with it, as there always is when something of this magnitude is put together in bulk. When the omnibus code provision was put in the bill, there had not been any statutory law for an omnibus hearing. The Supreme Court indicated years back that District Courts often have this omnibus or pretrial conference before criminal cases where issues with respect to disclosure could be addressed, but it was sporadically followed as far as the larger decisions and not the smaller ones. So when the criminal procedure code commission decided to overhaul the code, included in there is a provision by statute 46-13-110, holding of omnibus hearing, and that statute says that the omnibus hearing shall be held not less than 30 days before trial. In a typical criminal prosecution involving a felony, it goes on for several months, and some District Courts will hold the omnibus hearing relatively quickly after the case is in the District Court, and others wait until the last minute. It presents a problem as CHAIRMAN FAGG outlined only when the

disclosure provision of Title 46 comes into play. There are two statutes in Title 46, chapter 15, part 3 that deal with disclosure and information. One relates to what the prosecutors obligations are, and the other relates to what the defendant's obligations are. The prosecution is, in effect, required by federal law to disclose virtually everything in his or her possession to the defense. The defendant has an obligation to disclose affirmative defenses such as alibi, mistaken identity, as well as the witnesses that will be called in support of those defenses. While those discovery statutes say that the defense does not have to disclose this information until 10 days following the omnibus hearing, so the problem comes into play when the omnibus hearing is not held until three days or, in some cases, less than that even though the statute says 30 days. If the prosecution does not receive the defense information until 20 days before trial, with the complexity of some cases, there's no way one can adequately prepare to meet these defenses 20 days prior to trial, particularly in a case where the defense has 50-60 witnesses. Prosecutors are required to give notice of their rebuttal testimony within five days prior to trial, so that gives them 15 days to prepare. Mr. Conner is proposing to return the situation with respect to the defense disclosure back to what it was prior to the adoption of criminal procedure code. The problem occurred because the two sections simply were not read in conjunction with one another, and looked at in terms of how they might affect the overall operation.

Russell Hill, Montana Trial Lawyer's Association, is pleased to support HB 68. Mr. Russell agreed with Mr. Conner that there is a problem of not enough time to prepare for cases within 30 days.

Mr. Hill, however, believes there's an inequity in which the defendant has to request the information from the county attorney, and in reality, this doesn't always work.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. TIM WHALEN asked Mr. Conner if he requires the defendant to disclose prior to the time of the omnibus hearing, and what is the purpose in omnibus hearing when some information has already been disclosed. Mr. Conner said that this was the way the old law read, and it was familiar to people who had worked with the old law.

REP. RICE said Mr. Conner referenced the rule requiring the prosecution to give notice of a rebuttal five days prior to trial, and is there any thought to moving the days up when the prosecutor had to give notice to the rebuttal? Mr. Conner responded that the five-day requirement is something that has been in the law since the Mutual Discovers Statutes were enacted in 1985, and it wasn't touched by the criminal procedure code.

Rules aren't absolutely followed and work in a more general sense.

REP. CLARK asked Mr. Conner to comment on Mr. Hill's testimony. Mr. Conner stated that the old law prior to the 1991 changed and required that the prosecution disclose its information to the defense at the time of arraignment or at some other time as the information might come in. When the criminal procedure commission looked at that, they said, "Why should the prosecution wait until that point in time to disclose if the case is filed." Sometimes arraignments are done within a week or ten days after the case is filed in District Court, and other times, depending on the complexity of the case, it may go on for a number of weeks or months. So, rather than stall off these discovery responsibilities to the prosecution, the language should be changed.

Closing by Sponsor:

CHAIRMAN FAGG thinks HB 68 is straightforward and urges the committee's support.

EXECUTIVE ACTION ON HB 50

Motion: REP. WHALEN MOVED HB 50 DO PASS AS AMENDED.

Discussion: REP. HOWARD TOOLE MOVED DO PASS AS AMENDED WITH THE FOLLOWING CHANGES:

1. Page 1, line 9. Following: "A merchant"  
Insert: "who has reason to believe that a person has committed or is in the process of committing the offense of theft"
2. Page 1, line 10.  
Strike: "a suspected shoplifter"  
Insert: "that person"
3. Page 2, Line 14.  
Strike: "with malice, either actual or implied, or  
Insert: "in a manner"
4. Page 3, line 14.  
Strike: "30"  
Insert: "46"  
Strike: "11"  
Insert: "6"  
Strike: "3"  
Insert: "5"



5. Page 3, Line 15.

Strike: "30", chapter 11, part 3,"

Insert: "46"

Vote: Motion carried 15 to 3 with REPS. WYATT, BROOKE AND RUSSELL voting no and REP. BROWN excused.

EXECUTIVE ACTION ON HB 68

Motion/Vote: REP. BROOKE MOVED HB 68 DO PASS. Motion carried unanimously with REP. RUSSELL being absent and REP. BROWN excused.

EXECUTIVE ACTION ON HJR 1

Motion: REP. TOOLE MOVED HJR 1 DO NOT PASS.

Discussion:

REPS. TOOLE, WHALEN, BERGMAN, RICE, CLARK AND WYATT expressed concern because this bill deals with a very large issue. People who don't have the resources in large attorney settlements, no matter how fair this sounds. It is in desperate need of tort reform. CHAIRMAN FAGG said there is lots of tort reform and HJR 1 is the cleanest, fairest way he could think of.

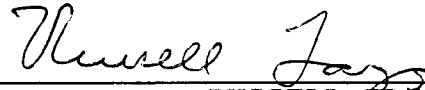
REP. RICE'S scenario is that under the resolution that was originally introduced, if an offer of judgement was made by the state of Montana, and the plaintiff lost his case and wants his original job back, for example, the plaintiff still pays all of Montana's attorney fees. The attorney would have to limit his fees so that the plaintiff could afford the attorney fees. CHAIRMAN FAGG said that REP. RICE has a point and that under this situation, the Supreme Court would consider amount of the attorneys' fees and whether they were reasonable.

REP. TOOLE said that this is a very radical bill and would have preferred that had any insurance companies testified during the hearing, the committee members could have asked for their viewpoint.

Motion/Vote: MOTION WAS MADE TO TABLE HJR 1. Motion carried 9 to 8.

ADJOURNMENT

Adjournment: 11:00 a.m.



RUSSELL FAGG, Chair



BETH MIKSCHKE, Secretary

RF/bcm

# HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

1-6-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	X		
Rep. Randy Vogel, Vice-Chair	X		
Rep. Dave Brown, Vice-Chair			X
Rep. Jodi Bird	X		
Rep. Ellen Bergman	X		
Rep. Vivian Brooke	X		
Rep. Bob Clark	X		
Rep. Duane Grimes	X		
Rep. Scott McCulloch	X		
Rep. Jim Rice	X		
Rep. Angela Russell	X		
Rep. Tim Sayles	X		
Rep. Liz Smith	X		
Rep. Bill Tash	X		
Rep. Howard Toole	X		
Rep. Tim Whalen	X		
Rep. Karyl Winslow	X		
Rep. Diana Wyatt	X		

HR:1993

wp.rollcall.man

CS-09

HOUSE STANDING COMMITTEE REPORT

January 6, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 50 (first reading copy -- white) do pass as amended .

Signed: \_\_\_\_\_  
Russ Fagg, Chair

And, that such amendments read:

1. Page 1, line 9.

Following: "A merchant"

Insert: "who has reason to believe that a person has committed or  
is in the process of committing the offense of theft"

2. Page 1, line 10.

Strike: "a suspected shoplifter"

Insert: "that person"

3. Page 2, line 14.

Strike: "with malice, either actual or implied, or"

Insert: "in a manner"

4. Page 3, line 14.

Strike: "30"

Insert: "46"

Strike: "11"

Insert: "6"

Strike: "3"

Insert: "5"

5. Page 3, line 15.

Strike: "30, chapter 11, part 3,"

Insert: "46"

HOUSE STANDING COMMITTEE REPORT

January 6, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 68 (first reading copy -- white) do pass.

Signed: Russ Fagg  
Russ Fagg, Chair

**TABLED BILL**

Judiciary  
Name of Committee  
1-6, 1993  
Date

The following bill  
~~HJR-1~~ HJR-1

was TABLED, by motion, on Jan. 6, 1993, 1993.

Burns-Michael  
Judiciary  
For the Committee

L. Sullivan  
For the Chief Clerk

3:05 p.m.  
Time

1-6-93  
Date

CS-04  
1991

# HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE Jan. 6, 1993 BILL NO. HB 50 NUMBER 18

MOTION: HB 50 to DO Pass as amended 15-4

Rep. Brown Excused

NAME	AYE	NO
Rep. Russ Fagg, Chairman	X	
Rep. Randy Vogel, Vice-Chair	X	
Rep. Dave Brown, Vice-Chair		
Rep. Jodi Bird	X	
Rep. Ellen Bergman	X	
Rep. Vivian Brooke		X
Rep. Bob Clark	X	
Rep. Duane Grimes	X	
Rep. Scott McCulloch	X	
Rep. Jim Rice	X	
Rep. Angela Russell		X
Rep. Tim Sayles	X	
Rep. Liz Smith	X	
Rep. Bill Tash	X	
Rep. Howard Toole	X	
Rep. Tim Whalen	X	
Rep. Karyl Winslow	X	
Rep. Diana Wyatt		X

## HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

## ROLL CALL VOTE

DATE JANUARY 6, 1993 BILL NO. HB 68 NUMBER 18

## MOTION:

HB 68 TO DO PASS CARRIED UNANIMOUSLY  
REP. RUSSELL ABSENT. REP. BROWN EXCUSED

NAME	AYE	NO
Rep. Russ Fagg, Chairman	X	
Rep. Randy Vogel, Vice-Chair	X	
Rep. Dave Brown, Vice-Chair		
Rep. Jodi Bird	X	
Rep. Ellen Bergman	X	
Rep. Vivian Brooke	X	
Rep. Bob Clark	X	
Rep. Duane Grimes	X	
Rep. Scott McCulloch	X	
Rep. Jim Rice	X	
Rep. Angela Russell		
Rep. Tim Sayles	X	
Rep. Liz Smith	X	
Rep. Bill Tash	X	
Rep. Howard Toole	X	
Rep. Tim Whalen	X	
Rep. Karyl Winslow	X	
Rep. Diana Wyatt	X	





EXHIBIT 1  
DATE 1-6-93  
LB 50

Executive Office  
318 N. Last Chance Gulch  
P.O. Box 440  
Helena, MT 59624  
Phone (406) 442-3388

TESTIMONY  
JANUARY 6, 1993  
8:00 A.M.  
ROOM 312-1

HOUSE BILL 50

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

FOR THE RECORD, I AM CHARLES BROOKS, EXECUTIVE VICE PRESIDENT OF THE MONTANA RETAIL ASSOCIATION AND ITS AFFILIATES, MONTANA HARDWARE AND IMPLEMENT DEALERS AND THE MONTANA TIRE DEALERS ASSOCIATIONS. I AM HERE TODAY TO URGE YOUR SUPPORT AND PASSAGE OF HOUSE BILL NO. 50.

SHOPLIFTING IS A CRIME - SHOPLIFTING IS STEALING.

SHOPLIFTING HAS INCREASED 33% OVER THE LAST FOUR YEARS - MAKING IT ONE OF THE FASTEST GROWING CRIMES IN THE NATION.

NATIONALLY IT COST MERCHANTS OVER 20 BILLION DOLLARS ANNUALLY, WHICH INTERPRETS TO APPROXIMATELY 40 MILLION IN LOSSES EACH YEAR FOR MONTANA MERCHANTS.

45% TO 70% OF A STORE'S MERCHANDISE LOSSES, ARE DERIVED FROM SHOPLIFTING. THIS CRIMINAL ACTIVITIES ADDS APPROXIMATELY 2 CENTS TO EVERY DOLLAR OF RETAIL COSTS. NINE IN EVERY TEN SHOPLIFTERS HAVE THE MONEY OR A CREDIT CARD IN THEIR POCKET TO PAY FOR THE ITEMS THEY STEAL.

THE 1992 SURVEY BY FOOD MARKETING INSTITUTES'S OF SHOPLIFTING LOSSES IN THE SUPER MARKET INDUSTRIES REVEALS AN AVERAGE OF \$19.10 PER APPREHENSION. THE NATIONAL RETAIL FEDERATION ESTIMATES IN THE GENERAL MERCHANDISE FIELD THE AMOUNT TO BE \$25.00 PER APPREHENSION.

OUR MEMBERS FEEL IT IS NECESSARY THAT THE MERCHANTS RIGHTS WHICH HAD BEEN A PART OF THE MONTANA CODE FOR MANY YEARS AND REMOVED IN 1991 WITH THE ENACTMENT OF SB 51 SHOULD BE RESTORED.

WE RECOGNIZE THAT MERCHANDISING METHODS TODAY MAKES IT EASIER FOR SOMEONE TO SHOPLIFT. HOWEVER, MAKING IT EASIER DOES NOT ALTER THE SERIOUSNESS OF THE CRIME. YOU WILL BE HEARING FROM SEVERAL INDIVIDUALS IN THE RETAIL FIELD THAT FACE THIS PROBLEM ON A DAILY BASIS. THEY ARE WORKING VERY HARD TO CONTROL THIS TYPE OF CRIMINAL ACTIVITY AND NEED THIS LEGISLATION TO PROTECT THEIR RIGHT TO STOP AND QUESTION INDIVIDUALS WHO ARE SUSPECTED OF STEALING OR CONCEALING MERCHANDISE.

I URGE YOUR TO GIVE HB 50 A DO PASS VOTE. THANK YOU FOR THE OPPORTUNITY TO PRESENT THIS TESTIMONY.



EXHIBIT 2  
DATE 1-6-93  
#B 50

P.O. BOX 5008 ■ PHONE 406/761-3401 ■ 601—6th ST. S.W., GREAT FALLS, MT 59403

January 6, 1993

Mr. Chairman and Members of the Committee,

My name Bruce Rowsell, and I'm here in support of House Bill Number 50.

As the head of Loss Prevention for Buttrey Food and Drug Company, I collect and review shoplifting statistics based on our company's experience. Forty-four stores submit data for the statistics, which provide a good indication of the current shoplifting trend.

These statistics also provide information significant to the support of House Bill Number 50. During the first eleven months of 1992, Buttrey employees and security apprehended 752 shoplifters. Unfortunately, this is just a fraction of the actual number of shoplifters that pass through Buttrey stores. Buttrey people also observed several other suspected shoplifters concealing merchandise under their clothing or in a purse. For one reason or another, the suspects discreetly dumped the items when they were able to evade detection of our people. They were subsequently stopped and an inquiry made about the product they concealed. Without the passing of this bill, this type of cunning by a shoplifter makes retailers exposed to civil litigation.

This bill would protect the retailer in making a reasonable inquiry of a suspected shoplifter when probable cause exists. It would not infringe upon the right to civil action against a retailer who goes beyond a reasonable inquiry.

It may be argued, that civil action could not be won against a retailer who follows all the laws and procedures we now have. However, civil actions brought against a retailer are expensive to defend, and expensive for the judicial system. Without the law, retailers find it less expensive to pay the shoplifter off, even though the case could easily be won by going to court. This makes crime pay at the expense of the retailer, and the honest customer.

The vast majority, if not all retail establishments in this state, would only make a stop when they are reasonably sure that a crime has been committed. We are there to serve our customers, not to make random or inappropriate stops. But, we need to be in position to protect our assets without fear of experiencing further losses due to litigation brought about by dishonest people.

I am here to express the message that Buttrey Food and Drug Company supports the passing of House Bill Number 50.

Thank you.

EXHIBIT 3  
DATE 1-6-93  
#B 50

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

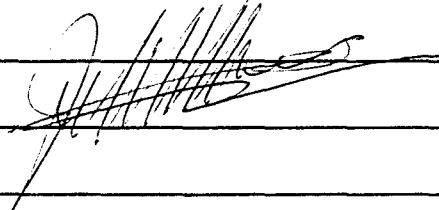
NAME Riley Johnson BILL NO. HB 50

ADDRESS 491 So. Park Ave, Helena DATE 1/6/93

WHOM DO YOU REPRESENT? NFIB

SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS: The National Federation of Independent Business strongly supports HB 50. Shoplifting is a major cost of doing business and hurts the small, main street business far more than the larger "mega" stores which can pass this cost through as a cost of doing business. The small business does not have the volume nor the capital to finance this activity.



HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB38  
DATE 1-6-93 SPONSOR(S) Francis Bardanave

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Mike Trevor	Dept of Admin	✓	
Scott Scott	Legislation Addition	✓	
John W. H. H.	HS & EST	—	
<del>John H. H. H.</del>	<del>HD 94</del>	<del>x</del>	
Bob B. B.	Legist Council		
Bill J. J.	<del>HD 94</del>		

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

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB-50  
DATE 1-6-93 SPONSOR(S) Russell Jagg  
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Charles R Brooks H/dm	Montana R. L. L.	HB-50	
Lloyd Knudsen	MT Dental Soc + Assn	HB50	
David Owen	MT Chamber of Commerce	HB 50	
Ken Heikes	Billings Area Chamber Comm	HB50	
Russell B Hill Helena	MTLA		✓
Jim (B) Hunsinger	HD 94	X	
Jim Cho	out	✓	
Bruce Rowse	Buttrey	✓	
B. J. Hunsinger	MT Dental Soc	✓	
Riley Johnson	NFIB	✓	

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HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB 68  
DATE 1-6-93 SPONSOR(S) Russell Fagg  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John Connor	MT. County Attys Assn	X	
Russell B Hill, Helena	MTLA	✓	

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