

MINUTES

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

COMMITTEE ON JUDICIARY

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

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (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: None.

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 24, 35, 37
Executive Action: HB 90, 24, 35, 37

HEARING ON 24

Opening Statement by Sponsor:

REP. JIM RICE, House District 43, Helena presented HB 24 for the Legislative Council. HB 24 is an internal administrative matter concerning the Montana Code Annotated (MCA) books. Montana now holds the copyright laws to the Codes. This bill revokes the

State's claim to copyright for the Codes. In 1977, Montana started putting its laws in the MCA, and later discovered that the copyright for the Codes was held by an out-of-state private company in Minneapolis. As a result, the Legislature authorized a purchase of that copyright from that out-of-state corporation for the sum of \$25,000 in 1977. The copyright to the annotations was also purchased.

Since that time, there has been a series of court decisions which have continually eroded a state's right to hold the copyrights to its own Codes. The reason why copyrights have been held out of state is because the courts had given more weight to the public's right to know and the public policy interested in distributing the Codes as broadly as possible to the public.

Private individuals from Montana have requested to place the Codes in different forms, i.e. CD-ROM, microfiche, etc. and distributed and marketed. This is not allowable because we have the copyright, and there would be a charge to do so.

Essentially, HB 24 says the MCA can no longer be copyrighted, and in addition, it designates our current code (MCA) as the official version of the statutes of Montana, which must be cited and used in court cases. HB 24 opens to the public the right to demand to copy through different markets the Codes and laws for public dissemination. The MCA code will be the official version to use in court, but it will allow other parties to come in and distribute the Code.

Proponents' Testimony:

Charles Walk, Executive Director of the Montana Newspaper Association, represents 74 weekly newspapers across Montana. Over the last two years, HB 24 has been the result of the lobbying effort between commercial interests, the Montana Newspaper Association, and the Legislative Council. Mr. Walk is interested in the appropriate means in which the Code can be distributed to the general public.

Gregg Petesch, Code Commissioner, Legislative Council, stated that, during the 1991 Legislative Session, the Legislative Council defeated a bill which clarified procedures to be followed by people seeking to use the copyrights. It sailed through the Judiciary Committee and the House without opposition and was tabled in the Senate Judiciary Committee because it felt that state laws should not be copyrighted. The Senate Judiciary Committee requested Mr. Petesch to work on the matter.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor: None.

HEARING ON 37Opening Statement by Sponsor:

REP. DAVE BROWN, House District 72, Butte sponsored HB 37 on behalf of the Department of Livestock. He stated the purpose of HB 37 is to update the 1907 statute which clarifies the statute for certain animals, i.e. sheep, swine, goats, bison and llamas from unlawfully running at large. The penalties are \$10 and \$20; the bill would change the penalty to normal misdemeanor status so that it's up to \$500, which is a common misdemeanor penalty in Montana. The county attorneys and sheriffs found that a \$10 fee is not worth their while to collect from the offenders.

Proponents' Testimony:

Cork Mortensen, Executive Secretary, Board of Livestock, noted that HB 37 is an old statute and feels there's a need to update it. The \$10 fee for a first offense and a \$20 fee for subsequent offenses is quite inadequate today. Mr. Mortensen separated the differences and problems with sheep, swine and goats, bison and llamas. These animals, once out of their jurisdiction, feed on other landowners. This causes continuous complaints from farmers, ranchers and their neighbors. Sending out sheriffs to investigate the issue, repaying for the feed eaten, and herding the animals back to their land is costly, and the \$10 and \$20 fine simply does not take care of administrative costs. Mr. Mortensen would like to change this statute to a normal misdemeanor. He also recommended creating a "fine assessment" for the offenders. Currently, the Department of Livestock attempts to resolve the matter with warning tickets.

EXHIBIT 1

Bob Gilbert, Secretary and Manager of Montana Wool Growers Association, said that livestock roaming on other people's private land is a chronic problem. He also expressed concern that there be consistency with this bill; for example, dogs running in other people's lands. Private landowners should keep their fences mended so that animals cannot get through to another landowner's property.

Opponents' Testimony: None.Questions From Committee Members and Responses:

REP. KARYL WINSLOW asked Mr. Mortensen for the definition of swine. Many people have pot-belly pigs as pets. Would pot-belly pigs fall under the definition of swine? Mr. Mortensen noted that pot-belly pigs are considered pigs; if they do get out of the owner's yard, there will be a fine or warning. He recommends that any private landowner who has a such an animal as a pet to let the surrounding neighbors know this. Then if the animal is found in someone else's yard, that landowner, the Department of Livestock, and the sheriff's department will work something out.

REP. BOB CLARK asked Mr. Mortensen if horses and cattle are

covered under this statute. Mr. Mortensen said that cattle and horses are considered livestock under a separate statute.

Informational Testimony:

Mr. Lon Mitchell, Staff Attorney, Dept. of Livestock, answered REP. CLARK's question pertaining to the \$15 surcharge. The surcharge is a sanction ordered by the court. It is a fee added on top of the fine itself to pay for administrative costs.

Questions From Committee Members and Responses (continued):

REPS. VIVIAN BROOKE and BILL TASH asked Mr. Mortensen if Yellowstone Park bison are covered in this bill, and if so, has there has been an increasing incidence of bison roaming on privately owned land? Mr. Mitchell indicated Yellowstone Park bison are wild animals, and as such, not covered by this bill. However, if a private landowner does own bison, and the bison roams out of its jurisdiction, there would be a penalty.

Closing by Sponsor:

Closing comments and discussion will be included in the Executive Action.

HEARING ON HB 35

Opening Statement by Sponsor:

REP. DAVE BROWN, House District 72, Butte presented HB 35 on behalf of the Department of Livestock. HB 35 states that if a person is prosecuted for mutilating or concealing an animal hide and the evidence is removed, the prosecutor does not have to prove it. Under this Section of the bill, whoever owned the hide or the animal, all the prosecutor has to show is that the animal has been stolen, mutilated or concealed.

The Department of Livestock and the people who testified for this bill believe that prosecutors do not think this statute is constitutional and believe it should be repealed.

Proponents' Testimony:

Mr. Cork Mortensen, Dept. of Livestock, said that this is another statute that goes back many years. He indicated that the Dept. of Livestock does not believe this statute is constitutional; therefore, it needs to be repealed. EXHIBIT 2

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor: None.

EXECUTIVE ACTION ON HB 35

Motion: REP. DAVE BROWN MOVED HB 35 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 37

Motion: REP. DAVE BROWN MOVED HB 37 DO PASS.

Discussion:

REP. BROOKE asked REP. BROWN if this bill included the shooting of dogs, and REP. BROWN concluded that dogs are not considered livestock.

REP. WINSLOW asked REP. BROWN what the penalty is for dogs running loose in the city and urban areas. REP. BROWN said he really didn't know as it refers to the state, but local jurisdiction may be \$100, in Butte, for example. REP. WINSLOW asked Mr. MacMaster what the fine is or how it's defined in the law. Mr. MacMaster said it is a matter of local government ordinance and that it is a misdemeanor. From that response, REP. WINSLOW concluded that each local government sets the fine or status of crime. Mr. MacMaster said that first they would have to pass an ordinance to make it an offense - prohibiting animals from running at large, then the penalty would be chosen. REP. WINSLOW'S concern is that since pot belly pigs are considered a pet, they might be in violation of being considered a typical pet. REP. BROWN believes it's appropriate that pot belly pigs are considered as livestock because they do and have caused damage in neighbors' yards. As with large dogs, they have no place roaming the city and urban areas, and owners should take care of them or they will be fined.

REP. JODY BIRD asked Mr. Mortensen where the money from fines goes. There was no in-depth discussion on this question; however, CHAIRMAN FAGG mentioned that his particular question is addressed in the Section 2 of the bill.

Vote: DO PASS MOTION ON HB 137 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 24

Motion/Vote: REP. RICE MOVED HB 24 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 90

Motion: REP. BROWN MOVED HB 90 DO PASS.

Discussion:

REP. TIM SAYLES said he has some conflicting issues with HB 90. There are several codes that fall under the category of this bill that address specific issues. REP. SAYLES presented an amendment of HB 90, which he believes is stronger legislation. In Section 1, REP. SAYLES' amendments read as follows:

- (2) the commission of a felony;
- (3) including sexual intercourse without consent and deviate sexual conduct in an instance in which the offense is without consent; or the imminent commission of either offense involving physical force or violence, or the threat of it against a person.

REP. BIRD is concerned that line (3) is misleading and should read "consent or deviate." Consent may be a passive situation, as in date rape, for example, and deviate is considered a violent situation. If there was a passive situation between adult and a child, that particular passage would not apply.

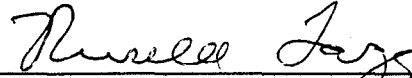
REP. ELLEN BERGMAN asked Mr. MacMaster what the difference is with this law and what is already on the books. The difference is that you can defend yourself against imminent bodily harm if you are threatened. Forceful felony is defined as one in which the use of physical forcible violence against a person exists. In HB 90, for example, one is using sex or the absence of sex as a threat. The bill allows persons to use physical force or violence to protect themselves or another person. What this bill essentially says is that a person can use physical force or violence should a person be threatened to have sex.

REP. RICE is concerned we are getting into something we don't know the full extent of, and he is satisfied with the current law.

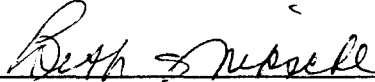
Motion/Vote: REP. RICE MOVED HB 90 BE TABLED. Motion carried with REPS. BROWN, FAGG, TOOLE, CLARK, and VOGEL voting no.

ADJOURNMENT

Adjournment: 10:00



RUSSELL FAGG, Chair



BETH MIKSCHÉ, Secretary

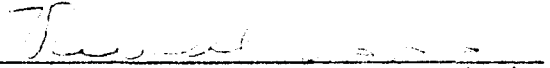
RF/bcm

HOUSE STANDING COMMITTEE REPORT

January 8, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 35 (first reading copy -- white) do pass .

Signed: 
Russ Fagg, Chair

HOUSE STANDING COMMITTEE REPORT

January 8, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 37 (first reading copy -- white) do pass .

Signed: Russ Fagg
Russ Fagg, Chair

HOUSE STANDING COMMITTEE REPORT

January 8, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 24 (first reading copy -- white) do pass .

Signed: RF
Russ Fagg, Chair

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE JANUARY 8, 1993 BILL NO. HB 35 NUMBER 18

MOTION: REP. BROWN DO PASS

DO PASSED UNANIMOUSLY

NAME	AYE	NO
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	

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE JANUARY 8, 1993 BILL NO. HB 37 NUMBER 18

MOTION: Do PASS CARRIED UNANIMOUSLY

NAME	AYE	NO
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	

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE JANUARY 8, 1993 BILL NO. HB 24 NUMBER 18

MOTION: REP. RICE MOTIONS DO PASS
DO PASS CARRIED UNANIMOUSLY

NAME	AYE	NO
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	

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE JANUARY 8, 1993 BILL NO. HB 90 NUMBER 18

MOTION: HB 90 TABLED PASSED
WITH REPS BROWN, FAGG, TOOLE,
CLARK AND VOGEL VOTING NO.

NAME	AYE	NO
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	

EXHIBIT 1
DATE 1-8-93
HB 37

EXHIBIT #1
DATE 1-8-93
HB 37

81-4-201. Swine, sheep, llamas, bison, and goats running at large.
It is unlawful for any owner or person in control of swine, sheep, llamas, bison,
or goats to willfully permit the same to run at large.

History: En. Sec. 1165, Pen. C. 1895; re-en. Sec. 8838, Rev. C. 1907; re-en. Sec. 3393,
R.C.M. 1921; re-en. Sec. 3393, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1945; R.C.M. 1947,
46-1704; amd. Sec. 10, Ch. 166, L. 1989.

EXHIBIT 2
DATE 1-8-93
#B 35

EXHIBIT 2
DATE 1-8-93
#B 35

81-9-424. Sufficiency of pleading and proof in criminal prosecution. In any prosecution for the violation of the provisions of 81-9-423 it is not necessary for the state to allege in the complaint or information the ownership of the hide or of the animal from which the hide was removed, but it is sufficient to allege in the complaint or information that the owner of the hide or of the animal from which the hide was removed is unknown and the hide or animal is not the property of the defendant.

History: En. Sec. 2, Ch. 76, L. 1923; re-en. Sec. 3350.5, R.C.M. 1935; amd. Sec. 47, Ch. 12, L. 1977; R.C.M. 1947, 46-1104; amd. Sec. 11, Ch. 14, L. 1979.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. 35
DATE 1-8-93 SPONSOR(S) Rep. Dave Brown

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Cork Martensen	Dept of Livestock	X	
JACK SEDGWICK	DEPT. OF LIVESTOCK	X	

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

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. 24
 DATE 1-8-93 SPONSOR(S) Rep. Jim Price

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Check WALK	MNA	✓	
Gay Polesel	Leg Council	✓	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. 37
 DATE 1-8-93 SPONSOR(S) Rep. Dave Brown

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Cork Mortensen	Dept. Limestone	X	
Bo Blankert	MT Woodrow	X	
Dan Mitchell	Do Limestone	✓	

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