

**MINUTES**

**MONTANA SENATE  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By Senator Bill Yellowtail, on February 16, 1993,  
at 10:05 a.m.

**ROLL CALL**

**Members Present:**

Sen. Bill Yellowtail, Chair (D)  
Sen. Steve Doherty, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Chet Blaylock (D)  
Sen. Bob Brown (R)  
Sen. Bruce Crippen (R)  
Sen. Eve Franklin (D)  
Sen. Lorents Grosfield (R)  
Sen. Mike Halligan (D)  
Sen. John Harp (R)  
Sen. David Rye (R)

**Members Excused:** Sen. Towe

**Members Absent:** NONE

**Staff Present:** Valencia Lane, Legislative Council  
Rebecca Court, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 4  
SB 5  
SB 242  
Executive Action: SB 23  
SB 41  
SB 119  
SB 210  
SB 217  
SB 250  
SB 260  
SB 356  
SB 321

**HEARING ON SB 4**

**Opening Statement by Sponsor:**

Senator Burnett, District 42, told the Committee that SB 4 is a referendum to transfer the authority of the Supreme Court to the legislature in the matter of who can practice law in Montana. Senator Burnett said line 25, on page 2, should be stricken.

**Proponents' Testimony:**

Jerry O'Neil, Vocal of Montana, said the Supreme Court ruled that a person has to a graduate from an accredited law school before they are allowed to take the bar examination. Therefore, only a select few can be attorneys. Mr. O'Neil feels that anyone who can pass the bar exam, with or without schooling, should be allowed to practice as an attorney.

Pascal Redfern, told the Committee that he runs a paralegal service. Mr. Redfern said that SB 4 would allow paralegals to help the general public in drafting legal forms when they cannot afford an attorney. SB 4 would open up a competitive system in which there would not be a monopoly on the legal profession. There should be room for self taught individuals to draft legal forms for people who can represent themselves in court, but need help in drafting forms. SB 4 would also allow paralegals to coach individuals when they are preparing to go to court. The people have the right to choose their representation, whether the person is a lawyer or a nonlawyer.

Arwood Stickney, Vocal of Montana, supported SB 4. Mr. Stickney told the Committee that the United States Constitution provides for no titles of nobility, however lawyers have a title of nobility which is wrong.

Joe Macurskey supported SB 4. Mr. Macurskey reiterated the proponents testimony.

George Stapleton said the United States Constitution guarantees equal representation under the law, therefore he supports SB 4.

**Opponents' Testimony:**

Ward Shanahan, State Bar of Montana, told the Committee that SB 4 would allow nonlawyers to take the bar exam and become lawyers if they passed the exam. Mr. Shanahan reminded the Committee that there are many professions where schooling is required, for example, doctors. Mr. Shanahan said there are pro bono services provided by the Montana Legal Services Corporation for the poor. Mr. Shanahan told the Committee that courts are for the resolution of disputes. The courts have a tremendous back load of actual cases of controversy. The legal profession is trying to reach out to the general citizens for the purpose of letting everyone participate in the law, but the court system is for the determination of actual cases or controversy. Mr. Shanahan said SB 4 was misintended and urged a DO NOT PASS recommendation.

Patrick Chenovic, Administrator for the Supreme Court, told the

Committee that the Supreme Court believes that the examination for admittance to the bar is a complex and detailed issue. The procedures established currently maintain the competency of those individuals that have passed the bar and are licensed in Montana. The administration of discipline for members who are licensed to practice law will be adversely affected by SB 4. The Supreme Court urged a DO NOT PASS recommendation for SB 4.

Vicky Soderberg, Montana Big Sky Paralegal Association, told the Committee that paralegals across the state are not in favor of SB 4. Ms. Soderberg said SB 4 would add to the number of attorneys in Montana, but would not increase the quality of legal services available to people. Mr. Soderberg urged the Committee to oppose SB 4.

**Questions From Committee Members and Responses:**

Senator Halligan asked Mr. Stapleton about access to the courts. Mr. Stapleton said all people should be allowed to have equal access to the court system. Mr. Stapleton said it is difficult for people to obtain good and adequate representation if they do not have the money for an attorney.

Senator Halligan asked Mr. Redfern if he had insurance for his paralegal service, which protect him from liability, if found negligent for his services. Mr. Redfern said no, because his services would then become more expensive to his clients.

Senator Halligan asked Mr. Redfern about being an attorney. Mr. Redfern said a client could sue a paralegal in a small claims for the fees if the service was thought to be improper.

Senator Halligan asked Mr. Redfern about paralegals representing clients in court. Mr. Redfern said some people want the opportunity to choose their counsel, whether it was a lawyer or nonlawyer, to represent or to coach them while in court.

**Closing by Sponsor:**

Senator Burnett said he realized that SB 4 had a slim chance of passing, but it does need judicial review.

**HEARING ON SB 5**

**Opening Statement by Sponsor:**

Senator Burnett, District 42, said SB 5 would eliminate the requirement that a person would have to belong to the bar before becoming a judge. Senator Burnett said individuals are capable of being of becoming a judge without being a member of the bar. It should be up to the public to make the determination of who should become a judge.

**Proponents' Testimony:**

Jerry O'Neil, Vocal of Montana, said he did not feel that only graduates from accredited law school could make decisions affecting how laws are to be interpreted in the State of Montana. Mr. O'Neil stated that any individual should be able to run for a judgeship in Montana.

Pascal Redfern told the Committee that if there were more people from all walks of life serving as judges, there would be more respect for the little people and more common sense decisions.

Arwood Stickney, Vocal of Montana, supported SB 5. Mr. Stickney said the United States Constitution is the law and the judges and lawyers should obey that law.

Joe Macurskey supported SB 5.

**Opponents' Testimony:**

Ward Shanahan, State Bar of Montana, opposed SB 5. Mr. Shanahan said the unauthorized practice of law does not have anything to do with lawyers trying to protect their turf, but with the public getting proper legal services. Mr. Shanahan reminded the Committee that Montana Legal Services does provide counsel for low income people.

Pat Chenovick, Administrator for the Montana Supreme Court, told the Committee that several of the Montana Supreme Court Justices felt the qualifications for becoming a judge were not stringent enough. Mr. Chenovick suggested raising the qualifications. Mr. Chenovick also pointed out that all skilled trades have requirements. For example; people that fit hearing aids need a one year internship or people that cuts hair need to have two years of training. Qualifications are a must for competency in all skilled occupations. Judging is a highly skilled occupation. The Supreme Court urged a DO NOT PASS for SB 5.

Craig Hoppe, Montana Magistrates Association, asked for a DO NOT PASS recommendation for SB 5.

**Questions From Committee Members and Responses:**

Senator Halligan asked Mr. O'Neil about the qualifications for judges. Mr. O'Neil told the Committee that to be an engineer in Montana a person is only required to take an engineer exam. Mr. O'Neil said anyone should be allowed to become a judge, regardless of their qualifications. Mr. O'Neil said to limit the participation in the court is not proper.

Mr. Redfern responded to Senator Halligan's question. Mr. Redfern said there were many professions that do not require a degree or certificate.

**Closing by Sponsor:**

Senator Burnett asked the Committee to pass SB 5 so the public could make their own decisions about who could become a judge.

**HEARING ON SB 242****Opening Statement by Sponsor:**

Senator Burnett, District 42, said SB 242 would require the clerk of court to report judges who violate the laws.

**Proponents' Testimony:**

Jerry O'Neil, Vocal of Montana, told the Committee that he supports SB 242. Mr. O'Neil said SB 242 would require a judge to rule on a motion within 20 days after the motion is submitted and establish a judgement within 60 days after a jury trial.

Pascal Redfern said judges records showing complaints about judges should be public knowledge. Mr. Redfern supports SB 242.

Joe Macurskey supports SB 242.

**Opponents' Testimony:**

Ward Shanahan, Montana State Bar Association, told the Committee that SB 242 is poorly put together and urged a DO NOT PASS recommendation. Mr. Shanahan told the Committee that the State Bar of Montana invites people to file a claim if they are not satisfied by the judicial system. Mr. Shanahan said there are no statistics to show that judges are abusing people with the system. However, if judges are abusing people with the system, it would become a public issue and would need to be looked into.

Pat Chenovick, Administrator for the Montana Supreme Court, told the Committee that the Supreme Court stands in opposition to SB 242. Mr. Chenovick said all citizens can complain about a judge to the Constitutional Judicial Standards Commission. Mr. Chenovick said SB 242 is unnecessary and encouraged the Committee to recommend SB 242 DO NOT PASS.

Craig Hoppe, Montana Magistrates Association, said there are adequate protections with existing laws concerned with complaints about judges. Mr. Hoppe said every loser in a case brought before the court has a right to appeal if they felt the law had been misapplied. The Supreme Court would then review the case and decide if there had been a misapplication of the law, and if so the case would be remanded back to the District Court for a retrial. SB 242 would provide a measure of intimidation to a judge. Presently, judges are protected by a certain amount of judicial immunity so they can act impartially on matters brought before them. Mr. Hoppe told the Committee that the Clerk of Court should not make the complaint. The litigant affected by the action should file the complaint. Mr. Hoppe restated that

there is an existing remedy to take care of complaints.

Questions From Committee Members and Responses:

NONE

Closing by Sponsor:

Senator Burnett closed.

EXECUTIVE ACTION ON SB 119

Motion:

Senator Halligan moved to AMEND SB 119. (Exhibit #1)

Discussion:

Valencia Lane explained the amendments.

A memorandum from Ed Eck was submitted into the record. (Exhibit #2)

Vote:

The motion to amend SB 119 CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Halligan moved SB 119 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 210

Discussion:

Chair Yellowtail told the Committee that the sponsor recommended TABLING SB 210.

Motion:

Senator Doherty moved to TABLE SB 210. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 41

Motion/Vote:

Senator Halligan moved to TABLE SB 41. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 23

Motion:

Senator Halligan moved SB 23 DO PASS.

Discussion:

Senator Franklin asked Senator Halligan about the third party on page 5. Senator Halligan said sub B would clarify who the third party was. Senator Halligan told the Committee that the third party would likely be a school employee.

Vote:

The Do Pass motion for SB 23 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 217

Motion:

Senator Doherty moved to AMEND SB 217. (Exhibit #3)

Discussion:

Senator Doherty explained the amendments.

Vote:

The motion to amend SB 217 CARRIED UNANIMOUSLY.

Motion:

Senator Doherty moved SB 217 DO PASS AS AMENDED.

Discussion:

Senator Halligan asked Senator Doherty about the effective date. Senator Doherty said the effective date was October 1, 1993.

Senator Doherty told the Committee that SB 217 was a good bill. Senator Doherty suggested a letter be written to the Supreme Court from the Child Enforcement Division to inform them of SB 217.

Senator Bartlett asked if the Committee should send a letter to the Supreme Court recommending that they take a look at similar kinds of provisions in regard to licensing. Senator Doherty agreed.

Vote:

The Do Pass As Amended motion CARRIED UNANIMOUSLY.

**Motion/Vote:**

Senator Bartlett MOVED to send a letter to the Supreme Court reflecting the Committee's action on SB 217 and recommending that they consider similar provisions in regard to licensing in the State. The motion CARRIED UNANIMOUSLY.

**Discussion:**

Chair Yellowtail asked Ms. Lane to draft the letter to the Supreme Court.

**EXECUTIVE ACTION ON SB 260**

**Discussion:**

Chair Yellowtail told the Committee that SB 260 was a code commissioners bill.

Valencia Lane explained the amendments. (Exhibit #4)

**Motion/Vote:**

Senator Bartlett moved to AMEND SB 260. The motion CARRIED UNANIMOUSLY.

**Motion/Vote:**

Senator Bartlett moved SB 260 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 356**

**Discussion:**

Senator Halligan said the Committee supports SB 356 because they want responsible corporations applying for permits and operating in Montana, but feels that SB 356 needs alot of work.

**Motion:**

Senator Halligan moved to TABLE SB 356.

**Discussion:**

Chair Yellowtail asked Senator Doherty if he wanted time to work on SB 356. Senator Doherty said he was concerned with the questions concerning due process. Senator Doherty told the Committee that he would work on SB 356 for next session.



Vote:

The motion to Table SB 356 CARRIED with Senator Doherty voting NO.

EXECUTIVE ACTION ON SB 250

Motion:

Senator Bartlett moved to amend SB 250. (Exhibit #5)

Discussion:

Chair Yellowtail explained the amendments.

Vote:

The motion to amend SB 250 CARRIED with Senator Rye voting NO.

Motion:

Senator Brown moved SB 250 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 321

Motion/Vote:

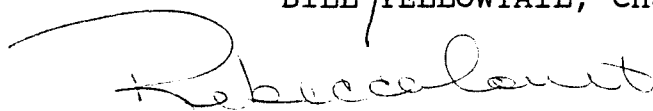
Senator Halligan moved SB 321 DO PASS. The motion CARRIED with Senators Doherty and Franklin voting NO.

ADJOURNMENT

Adjournment: 12:00 p.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

# ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-16-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe			X
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

F08

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 16, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 23 (first reading copy -- white), respectfully report that Senate Bill No. 23 do pass.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

ADN  
on Amd. Coord.  
Sec. of Senate

381215SC.San

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 17, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 119 (first reading copy -- white), respectfully report that Senate Bill No. 119 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 145, line 25.

Following: "intent."

Insert: "However, any one party may withdraw the entire amount on deposit in the account. Further, any one party may change the type of account."

2. Page 154, lines 8 and 9.

Following: "representative" on line 8

Strike: remainder of line 8 through "party" on line 9

Insert: "or a successor claiming under 72-3-1101"

-END-

ADN  
M Amd. Coord.  
Sec. of Senate

390948SC.San

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 16, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 217 (first reading copy -- white), respectfully report that Senate Bill No. 217 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 3, line 3.

Following: "and"

Insert: ", in IV-D cases,"

2. Page 6, lines 9 and 10.

Following: "services" on line 9

Strike: remainder of line 9 through "9]" on line 10

3. Page 9, lines 9 through 11.

Strike: subsection (3) in its entirety

Renumber: subsequent subsections

4. Page 13, line 3.

Following: second "the"

Strike: "licensee's"

5. Page 13, line 4.

Strike: "is effective"

Insert: "has been reinstated"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 16, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 250 (first reading copy -- white), respectfully report that Senate Bill No. 250 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 8.

Following: "REMOVING"

Strike: "CERTAIN EXCEPTIONS"

Insert: "THE EXCEPTION FOR COLLECTIVE BARGAINING STRATEGY  
MEETINGS"

2. Page 1, line 15.

Strike: "exception"

Insert: "exceptions"

3. Page 2, line 12.

Following: "~~agency.~~"

Insert: "(a) However, except as provided in subsection (4) (b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2)."

4. Page 2, line 13.

Following: "~~(5)~~"

Insert: "(5)"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 17, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 260 (first reading copy -- white), respectfully report that Senate Bill No. 260 be amended as follows and as so amended do pass.

Signed: *Wm Yellowtail*  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 1, line 14.

Following: "existence"

Insert: "or nonexistence"

2. Page 1, lines 16 through 18.

Following: line 15

Strike: line 16 through "40-6-105(1)" on line 18

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 16, 1993

MR. PRESIDENT:

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

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

Am Amd. Coord.  
Sec. of Senate

381214SC.San



Amendments to Senate Bill No. 119  
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane  
February 16, 1993

1. Page 145, line 25.

Following: "intent."

Insert: "However, any one party may withdraw the entire amount on deposit in the account. Further, any one party may change the type of account."

2. Page 154, lines 8 and 9.

Following: "representative" on line 8

Strike: remainder of line 8 through "party" on line 9

Insert: "or a successor claiming under 72-3-1101"

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 1  
DATE 2-16-93  
BILL NO. SB119

MEMORANDUM

TO: SENATOR MIKE HALLIGAN  
FROM: Ed Eck  
RE: Senate Bill 119  
DATE: February 11, 1993

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 2  
DATE 2-16-93  
BILL NO. SB119

Robert C. Pyfer of the Montana Credit Union Network and I have agreed to 2 changes to the above bill.

1. page 145 after line 25  
Insert the following language:

"However any one party may withdraw the entire amount on deposit in the account. Further, any one party may change the type of account."

2. page 154 lines 8 & 9

Strike the following language:

"if any, or if there is none, the heirs or devisees of a deceased party"

Add the following language:

"or a successor claiming under 72-3-1101,"

Also, Mr. Pyfer and I would like the executive committee minutes to reflect the following:

"Section 97 does not authorize the financial institution to pay sums to a personal representative of a decedent who was a party to a multiple party account without right of survivorship upon that personal representative's unilateral request."

Finally I have been advised by Mr. George Bennett that the Montana Bankers' Association does not oppose this Bill.

cc Mr. Robert C. Pyfer  
Mr. George Bennett

Amendments to Senate Bill No. 217  
First Reading Copy

Requested by Senator Nathe  
For the Committee on Judiciary

Prepared by Valencia Lane  
February 2, 1993

1. Page 3, line 3.  
Following: "and"  
Insert: ", in IV-D cases,"
2. Page 6, lines 9 and 10.  
Following: "services" on line 9  
Strike: remainder of line 9 through "9]" on line 10
3. Page 9, lines 9 through 11.  
Strike: subsection (3) in its entirety  
Renumber: subsequent subsections
4. Page 13, line 3.  
Following: second "the"  
Strike: "licensee's"
5. Page 13, line 4.  
Strike: "is effective"  
Insert: "has been reinstated"

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 2-16-93  
BILL NO. SB 217

Amendments to Senate Bill No. 260  
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane  
February 16, 1993

1. Page 1, line 14.

Following: "existence"

Insert: "or nonexistence"

2. Page 1, lines 16 through 18.

Following: line 15

Strike: line 16 through "40-6-105(1)" on line 18

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 2-16-93

BILL NO. SB260

Amendments to Senate Bill No. 250  
First Reading Copy

Requested by Dept. of Justice  
For the Committee on Judiciary

Prepared by Valencia Lane  
February 10, 1993

1. Title, line 8.

Following: "REMOVING"

Strike: "CERTAIN EXCEPTIONS"

Insert: "THE EXCEPTION FOR COLLECTIVE BARGAINING STRATEGY  
MEETINGS"

2. Page 1, line 15.

Strike: "exception"

Insert: "exceptions"

3. Page 2, line 12.

Following: "~~agency.~~"

Insert: "(a) However, except as provided in subsection (4) (b),  
a meeting may be closed to discuss a strategy to be followed  
with respect to litigation when an open meeting would have a  
detrimental effect on the litigating position of the public  
agency.

(b) A meeting may not be closed to discuss strategy to  
be followed in litigation in which the only parties are  
public bodies or associations described in subsections (1)  
and (2)."

4. Page 2, line 13.

Following: "~~(5)~~"

Insert: "(5)"

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 2-16-93

BILL NO. SB250

DATE 2-16-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB4, SB5, SB24

Senator Bennett

Name	Representing	Bill No.	Check One Support Oppose	
<u>Sen Bennett</u>	<u>myself &amp; others</u>	<u>L</u>		
<u>Don Jasekoff</u>	<u>myself &amp; others</u>	<u>✓</u>		
<u>James O'Neil</u>	<u>Local of Montana</u>	<u>✓</u>	<u>✓</u>	
<u>icky Siderberg</u>	<u>MT Big Sky Paralegal Assn</u>			<u>X</u>
<u>PATRICK CHENOVICK</u>	<u>MT SUPREME CT</u>			<u>X</u>
<u>David Radon</u>	<u>business / self employed</u>		<u>✓</u>	
<u>Wend Hansen</u>	<u>State Bar of MT</u>			<u>X</u>
<u>Arwood Dist. Stieney</u>	<u>Vocal of Mont.</u>	<u>4 5</u> <u>242</u>		
<del>XXXXXXXXXXXXXXXXXXXX</del>	<del>XXXXXXXXXXXXXXXXXXXX</del>	<u>4 5</u> <u>242</u>		
<u>CRAIG L. HOPPE</u>	<u>MT. MAGISTRATES ASSN</u>	<u>58455</u> <u>58 242</u>		<u>X</u>

# VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY