

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Blaylock, on March 9, 1993, at 10:15 a.m.

ROLL CALL

Members Present:

Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Yellowtail, Sen. Doherty, Sen. Crippen, Sen. Harp.

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: HB 234
HB 235
Executive Action: NONE

HEARING ON HB 234

Opening Statement by Sponsor:

Representative Whalen, District 93, said HB 234 codified Montana Law Uniform Foreign-Money Claims Act. Rep. Whalen read part of the prefatory note of the Uniform Foreign Money Claims Act. "This Act facilitates uniform judicial determination of claims expressed in the money of foreign countries. It requires judgments and arbitration awards in these cases to be entered in foreign money rather than in Unites States dollars. The debtor may pay the judgment in dollars on the basis of the rate of exchange prevailing at the time of payment."

"A Uniform Act governing foreign-money claims has become desirable because: These claims have increased greatly as a result of the growth in international trade. Values of foreign moneys as compared to the United States dollar fluctuate more over shorter periods of time than was formerly the case. United States jurisdictions treat recoveries on foreign-money claims differently than most of our major trading partners. A lack of uniformity among the states in resolving foreign-money claims stimulates forum shopping and creates a lack of certainty in the law."

"The real issue is where the risk of exchange rate fluctuation should be placed. This Act recognizes the right of the parties to agree upon the money that governs their relationship. In the absence of an agreement, the Act adopts the rule of giving the aggrieved party the amount to which it is entitled in its own money or the money in which the loss was suffered."

Proponents' Testimony:

NONE

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Blaylock asked Rep. Whalen about the currency in which the judgment would be paid. Rep. Whalen said the currency exchange would have to be in agreement with the countries involved in the dispute. Contracts may specify which currency would be used in the event of a dispute. Rep. Whalen said often attorney fees and cost provisions are included in contracts in the event of a dispute so the judgement would be in the amount of the currency of the specified country.

Senator Blaylock asked Rep. Whalen about the settlement of attorney fees and fines. Rep. Whalen said HB 151 would apply only in civil cases. HB 141 provides for an agreement as to how the fine or fees would be paid in the event that there was no agreement between the parties.

Closing by Sponsor:

Rep. Whalen closed.

HEARING ON HB 235

Opening Statement by Sponsor:

Rep. Whalen, District 93, said HB 235 adopts the Uniform Money Judgement Recognition Act. Rep. Whalen said HB 235 is a uniform act that was put together by the National Conference of Commissioners on Uniform State Laws. Rep. Whalen read parts of

the prefatory notes from the Uniform Foreign Money-Judgments Recognition Act. "In most states of the Union, the law on recognition of judgments from foreign countries is not codified. In a large number of civil law countries, grant of conclusive effect to money-judgments from foreign courts is made dependent upon reciprocity. Judgments rendered in the United States have in many instances been refused recognition abroad either because the foreign court was not satisfied that local judgments would be recognized in the American jurisdiction involved or because no certification of existence of reciprocity could be obtained from the foreign government in countries where existence of reciprocity must be certified to the courts by the government. Codification by a state of its rules on the recognition of money-judgments rendered in a foreign court will make it more likely that judgments rendered in the state will be recognized abroad."

"The Act states rules that have long been applied by the majority of courts in this country. In some respects the Act may not go as far as the decisions. The Act makes clear that a court is privileged to give the judgement of the court of a foreign country greater effect than it is required to do by the provisions of the Act. In codifying what basis for assumption of personal jurisdiction will be recognized, which is an area of the law still in evolution, the Act adopts the policy of listing bases accepted generally today and preserving for the courts the right to recognize still other bases. Because the Act is not selective and applies to judgments from any foreign court, the Act states that judgments rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law shall neither be recognized nor enforced."

"The Act does not prescribe a uniform enforcement procedure. Instead, the Act provides that a judgment entitled to recognition will be enforceable in the same manner as the judgment of a court of a sister state which is entitled to full faith and credit."

"Enactment by the states of the Union of modern uniform rules on recognition of foreign money-judgments will support efforts toward improvement of the law on recognition everywhere."

Proponents' Testimony:

NONE

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Rye asked Rep. Whalen who requested HB 235. Rep. Whalen said a committee of the State Bar looks at the Uniform State Laws and makes a decision to introduce a specific law to address

problems that have arisen because of the law.

Senator Halligan asked Rep. Whalen why judgements for child support were excluded in HB 235. Rep. Whalen said there are laws that apply to child support between states within the United States and foreign jurisdictions.

Senator Towe asked Rep. Whalen if there was any variance between HB 235 and the Uniform Act. Rep. Whalen said there was not.

Senator Towe asked Rep. Whalen about page 3, lines 10 through 12. Rep. Whalen said section 5 sets forth a laundry list of specific types of criteria which would allow the court in Montana to refuse to recognize the judgment of a foreign jurisdiction.

Senator Towe asked Rep. Whalen if a person would be able to avoid being served a summons and complaint in another country with the passage of HB 235. Rep. Whalen did not know, but pointed out that HB 235 deals with civil matters not criminal matters.

Senator Towe told the Committee that the passage of HB 235 would make it more difficult for people to travel outside the United States.

Closing by Sponsor:

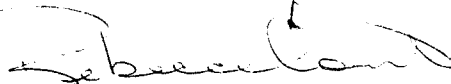
Senator Whalen closed.

ADJOURNMENT

Adjournment: 10:35 a.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE

3-9-93

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		