

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 15, 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. Tom Towe (D)

Members Excused: Sen. Rye

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 258
HB 468
Executive Action: HB 409
HB 573
HB 496
HJR 21

HEARING ON HB 258

Opening Statement by Sponsor:

Representative Toole, District 60, said HB 258 would provide for a more reasonable calculation of damages in wrongful discharge suits. Under the current law, allowed damages are four years of pay from the date of termination, which is the maximum a judge, jury, or arbitrator could award. The amount had to be deducted from earnings at a new job. If a person with a modest job was

terminated from a \$15,000 a year job, and then got a job earning \$12,000 a year, after six months of being off, half a years total wages amounting to \$7,500 of the \$15,000 would be awarded. For the remaining three and a half years, the difference between the \$15,000 job and the \$12,000 job would be awarded. Rep. Toole said those limits are serious problems if a person has to undergo paying a significant relocation cost. Many people who are terminated have to leave their communities to find a job elsewhere. HB 258 was amended in the House Judiciary Committee to say that the amount of relocation cost would be deducted only if the cost was reasonable. Rep. Toole also proposed an amendment. (Exhibit #1) Rep. Toole told the Committee that the amendment addresses a court decision, Hoffman Vs. Town Pump, in the wrongful discharge area. An employer who made an offer to arbitrate in a wrongful discharge suit was not entitled to attorneys fees after the employee rejected the offer. Rep. Toole said that was not the intent. The intent of the arbitration provision is if a person makes a valid offer and the other side rejects it, and then the person who rejects the offer fails to better it in the final outcome, that person would be obligated to pay attorneys fees. The Hoffman case was decided unfavorably to the employee, but the employer was not allowed to collect. Rep. Toole asked the Committee to pass HB 258 with or without the amendment.

Proponents' Testimony:

David Owen, Montana Chamber of Commerce, told the Committee that the Montana Chamber of Commerce supports HB 238. Mr. Owen said the Montana Chamber of Commerce opposed HB 238 in the House because the bill allowed someone to collect interim pay as well as back pay. The Montana Chamber of Commerce asked for some kind of definition and restriction on what can be construed as reasonable costs in terms of seeking employment. For instance, it would not be a reasonable cost to go to Hawaii four times looking for work if the person is a snow plower. Mr. Owen said HB 238 now proposes to do that. On that basis the Montana Chamber of Commerce support HB 238.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Towe asked Rep. Toole about the proposed amendments. Rep. Toole said the amendments were proposed by Rep. Mercer and Rep. Rice. The amendment is a rewrite of the existing statute. The amendment addresses Hoffman Vs. Town Pump by clarifying and restating the rule that loser pays when arbitration is offered and then rejected. The rule that the loser pays was not implemented in the Hoffman Vs. Town Pump decision.

Senator Towe asked Rep. Toole about the Hoffman case. Rep. Toole

said the employee rejected the employer's offer to arbitrate and the case was dismissed. The Supreme Court rejected the payment of attorneys fees to the employer, which was a favorable decision for the employee, but was not in line with the intent of the statute. The amendment is intended to address that problem and firm up the loser pays rule.

Senator Towe asked Rep. Toole about the loser pays rule. Rep. Toole said if either party rejects arbitration then attorney fees would be paid by the loser.

Senator Towe asked Rep. Toole if the loser pay rule would discourage people from offering arbitration. Rep. Toole said the loser pay rule that was originally to engage in the law was intended to decrease litigation. Rep. Toole said that by reinstating and reinforcing the rule it would continue to have that effect. The Hoffman case was a clear example of the courts' unwillingness to enforce the statute that was written.

Senator Blaylock asked Rep. Rice about the amendment. Rep. Rice said the reason the amendment was offered so the original intent was put back into the statute.

Chair Yellowtail proposed to leave the record open for 48 hours to receive written comment from parties regarding the proposed amendment.

Senator Bartlett asked Rep. Toole about the intent of the amendments. Rep. Toole said restating the provisions of the existing statute in a new section would give the courts a chance to take a second look it when a similar case to Hoffman Vs. Town Pump is heard.

Closing by Sponsor:

Senator Toole urged passage for HB 258.

HEARING ON HB 468

Opening Statement by Sponsor:

Representative Rice, District 43, told the Committee that Montana's Prison system is overcrowded. Prisons can keep being built, but the prisons would still be overcrowded. Correction systems nationwide are recognizing that prison space is limited and extremely expensive, and must be reserved for those offenders who truly need incarceration. Some alternatives to incarceration would be prerelease centers, house arrests, day reporting centers, or intensive supervision. Rep. Rice said the present sentencing statute makes it difficult to use those alternatives. HB 468 would encourage judges to sentence offenders to the Department of Corrections and allow the Department to analyze alternatives to incarceration. HB 468 would not be an absolute

mandate or requirement, but would encourage judges to sentence offenders to the Department of Corrections so alternatives could be considered. A judge could still sentence an offender to the state prison. HB 468 recognizes that the Department is the best place to analyze available alternatives. The bill is a step to help direct the flow of defendants into alternative programs. Rep. Rice said HB 468 would not be a huge change, but it would be a change in emphasis and an important part of the community corrections strategy.

Proponents' Testimony:

Jim Pomroy, Department of Corrections and Human Services (DCHS), told the Committee that American Correctional Association considers it essential that legal provisions should authorize the commitment of individual offenders to a corrections agency rather than a particular facility. The amendment would permit the DCHS to place offenders in those programs best suited for society's need for protection and the offenders potential need for rehabilitation. Many nonviolent first offenders are sentenced to the state's overcrowded prisons. 40% of the offenders in Montana State Prison are first time incarcerations. Placement of carefully selected offenders would be less restricted and less costly. Correctional programs would maximize opportunities for rehabilitation and the efficient use of limited correctional resources. Corrections division staff discussed the draft of HB 468 with the state's district court judges and the County Attorneys Association. Mr. Pomroy said judges would still have the ability to sentence certain offenders to prison terms. Mr. Pomroy told the Committee that prison costs are approximately \$40 per day, not including medical costs. Prison cells cost about \$60,000 each. Alternative placement costs are as little as \$8.00 per day. Mr. Pomroy said HB 468 would not be soft on crime. When someone goes to prison they are given a bed, three meals a day, guaranteed recreation, and several other factors. When a person is in a community program, they are required to work, obtain treatment, mostly at their own expense, and provide for their families.

Harley Warner, Montana Association of Churches, said people convicted of crimes should not be incarcerated in a more strict environment than really necessary for the rehabilitation of that person. HB 468 is a step towards that goal. The Montana Association of Churches would like to see the population in Deer Lodge reduced and HB 468 would help decrease that population. Mr. Warner said the Montana Association of Churches is in favor of community corrections and supports HB 468.

Opponents' Testimony:

Mark Quimby, Montana State Prison Employees Union (MSPEU), told the Committee that the main concern should be public safety. The MSPEU urges the Committee to delay action on HB 468 for two years. Mr. Quimby said that would allow the Department of

Corrections and Human Services to develop an adequate classification system that would better enable the system to work. A delay in action would also provide statistics that would prove that the system would work. The present system in effect is ineffective. Those who work in a prison on a daily basis see decisions being made in the classification area that affects public safety, which is the main concern of the MSPEU.

Questions From Committee Members and Responses:

Senator Blaylock asked Mr. Pomroy if violent criminals could be sentenced to community corrections. Mr. Pomroy said yes. Mr. Pomroy said the DCHS could make those decisions on violent offenders based upon a model of classification which the DCHS is developing. However, the preference for community corrections would always be nonviolent offenders. The DCHS does not like to rule out violent offenders because of factors that may go into that persons personality and makeup.

Senator Blaylock asked Mr. Pomroy about the classification process. Mr. Pomroy said presently classification is done by a group, which is a subjective process. The procedure that is being developed would make the process more objective based upon research and analysis of criminal profiles. The DCHS believes that one person could do the classification when the work that is now being conducted is completed.

Senator Blaylock asked Judge Honzel how the judges in Montana feel about HB 468. Judge Honzel said the judges expressed concern that judges would have to sentence all defendants to the DCHS and the DCHS would be making all the decisions. However, HB 468 gives the judge the option of sentencing the defendants to the DCHS or to prison. Judge Honzel was not aware of any opposition to HB 468 after their concern was addressed.

Senator Crippen asked Rep. Rice about the term good cause on page 3, line 14. Rep. Rice said good cause was not defined because there is a lot of language on the books in regard to sentencing and what kinds of guidelines judges have to follow. Title 46-18-225 sets forth a criteria that judges need to look at before they sentence offenders. According to that statute, a judge can sentence a nonviolent offender to the state prison if he believes the defendant has a bad attitude or believes it would be in the best interest of society. The judges need good cause to send someone to the state prison. Rep. Rice said there were sufficient instructions on the books for allowing a judge to make decisions on sentencing.

Senator Towe asked Rep. Rice about replacing "good cause" with "the courts should state the reasons for the sentencing order or commitment." Rep. Rice said that would be sufficient.

Senator Towe asked Mr. Pomroy if he agreed to the language. Mr.

Pomroy said yes.

Senator Towe asked Mr. Pomroy about the stricken language on page 5. Mr. Pomroy told the Committee that he did not know why the language was stricken. The legislative council drafted HB 468.

Senator Towe asked Judge Honzel about page 5, subsection 10. Judge Honzel said there was at least one case before the Supreme Court which was remanded because the judge did not state reasons why an alternative to imprisonment was not selected. Judge Honzel told the Committee that he served on a sentence review board and would review orders of commitment to the state prison which did not contain reasons as to why alternatives to incarceration were not selected. Judge Honzel said he does state the reasons why a person is sent to a state prison, but does not usually give reasons why the alternative an alternative was not chosen.

Senator Towe asked Judge Honzel about sentencing. Judge Honzel said the problem is that judges now only have two options. A judge can sentence someone to the state prison, defer a sentence, or suspend a sentence. Under HB 468, judges can still use those options. If a judge is not sure whether a defendant should really be incarcerated in the state prison they should go to an intensive supervision program which the DCHS is developing. The DCHS should sentence those defendants, rather than the judges. The judge would still have the option of sentencing, but it would make more sense to send the defendants to the DCHS.

Senator Towe asked Mr. Pomroy about having a requirement that the DCHS would sentence the defendants to community corrections. Mr. Pomroy did not oppose Senator Towe's suggestion. The DCHS knows where the vacant beds are located so the DCHS can move people into those beds, whereas judges are not aware where beds are available in the community.

Senator Bartlett asked Mr. Pomroy about the definition of a correctional institution. Mr. Pomroy did not know. However, the DCHS has defined it as a facility that incarcerates 24 hours a day.

Senator Bartlett asked Mr. Pomroy if a correctional system would include more than a county jail or a state prison facility. Mr. Pomroy said it would not. Correctional institution is used in lieu of state prison because there are three institutions in Montana, the Women's Correctional Center, Montana State Prison, and Swan River Forest Camp. The remaining programs are referred to as facilities.

Senator Bartlett said the key to whether a community corrections system would function decently in the State of Montana would be how the individuals are classified and put in custody. The legislators need to have as much information that the DCHS can make available on the plans for the classification process and

how it would work. Mr. Pomroy said the DCHS would provide information for the Committee within the week.

Closing by Sponsor:

Representative Rice said HB 468 would be sensitive to the judges need to fulfill their responsibility in protecting their communities. 44 states have sentencing statutes that require offenders to be sentenced to a central authority. HB 468 does not go that far, but shifts the emphasis to move in that direction. Rep. Rice said HB 468 is not a great step, but it is an important step for the continuing community corrections effort.

EXECUTIVE ACTION ON HB 409

Discussion:

Senator Towe explained amendment hb040901.avl. (Exhibit #2)

Motion:

Senator Towe moved to AMEND HB 409.

Discussion:

Senator Blaylock asked Senator Towe about not amending HB 409. Senator Towe said if the amendments are not on the bill, HB 409 should be killed. If HB 409 is not amended the bill would only work where there is a resident judge sitting, which would be less than half the counties in the state.

Vote:

The motion to amend HB 409 CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Towe moved HB 409 BE CONCURRED IN AS AMENDED. The motion CARRIED with Senators Halligan and Blaylock voting NO.

EXECUTIVE ACTION ON HJR 21

Motion/Vote:

Senator Halligan moved to TABLE HJR 21. The motion CARRIED with Senators Crippen and Brown voting NO.

EXECUTIVE ACTION ON HB 573

Motion/Vote:

Senator Bartlett moved HB 573 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 496

Motion:

Senator Bartlett moved to AMEND HB 496. (Exhibit #3)

Discussion:

Senator Bartlett explained amendment hb049601.avl.

Vote:

The motion to amend HB 496 CARRIED UNANIMOUSLY.

Motion/Vote:

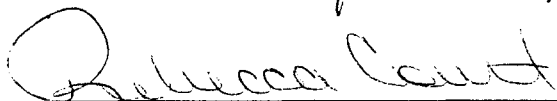
Senator Brown moved HB 496 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:48 a.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE

3-18-93

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

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 15, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 409 (first reading copy -- blue), respectfully report that House Bill No. 409 be amended as follows and as so amended be concurred in.

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

That such amendments read:

1. Title, line 5.

Following: "COURT"

Insert: "OR ADMINISTRATIVE TRIBUNAL"

2. Title, line 6.

Following: "WAIVED;"

Insert: "PROVIDING AN EXCEPTION TO THE FINANCIAL STATEMENT REQUIREMENT; ALLOWING FILING OF A PLEADING SUBJECT TO SUBSEQUENT APPROVAL OF INDIGENCE STATUS; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ADOPT AN AFFIDAVIT FORM BY RULE;"

3. Page 1, line 8.

Following: line 7

Insert: " STATEMENT OF INTENT

A statement of intent is required for this bill because 25-10-404 authorizes the department of justice to adopt a form for a financial statement by rule. It is the intent of the legislature that the form require sufficient information regarding income and assets to allow a reasonable determination of indigence. The department may, in developing the rules, use the affidavit form currently used by Lewis and Clark County as a model."

4. Page 1, line 12.

Strike: "A"

Insert: "(1) Except as provided in subsection (3), a"

5. Page 1, line 17.

Strike: "Upon"

Insert: "Except as provided in subsection (2), upon"

Following: "court"

Insert: "or administrative tribunal"

AW Amd. Coord.
M Sec. of Senate

Lynch
Senator Carrying Bill

581221SC.San

6. Page 1.

Following: line 24

Insert: "(2) If a judge or presiding officer of an administrative tribunal is not available to approve a request for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval. If the request is subsequently denied, the fees must be paid before the case may proceed further.

(3) A person represented by an entity that provides free legal services to indigent persons is not required to file the financial statement required by subsection (1).

(4) The department of justice shall, by rule, prescribe the form of the financial statement required by subsection (1) for use in determining indigence. The form may require the disclosure of income and assets, including but not limited to the ownership of real and personal property, cash, and savings."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 15, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 496 (first reading copy -- blue), respectfully report that House Bill No. 496 be amended as follows and as so amended be concurred in.

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

That such amendments read:

1. Page 14, line 15.
Strike: "in"
Insert: "who uses"
2. Page 15, line 2.
Strike: "in"
Insert: "who uses"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 15, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 573 (first reading copy -- blue), respectfully report that House Bill No. 573 be concurred in.

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

AM Amd. Coord.
2M Sec. of Senate

Bartlett
Senator Carrying Bill

581226SC.San

Amendments to Senate Bill No. 19
Third Reading Copy

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 3-15-93

Requested by Rep. _____
For the Committee on the Judiciary BILL NO. HB 258

Prepared by John MacMaster
January 29, 1993

1. Title, lines 4 and 5.

Strike: "LIMITING THE EXEMPTIONS FROM"

Insert: "CLARIFYING THE ORIGINAL LEGISLATIVE INTENT OF"

Following: "ACT"

Insert: "WITH RESPECT TO ARBITRATION"

2. Title, line 6.

Strike: "SECTION"

Insert: "SECTIONS"

Following: "39-2-912"

Insert: "AND 39-2-914"

3. Page 1, line 25.

Following: line 24

Insert: "Section 2. Section 39-2-914, MCA, is amended to read:

"39-2-914. Arbitration. (1) Under A party may make a written agreement of the parties, offer to enter into arbitration of a dispute that otherwise could be adjudicated under this part may be resolved by final and binding arbitration as provided in this section.

(2) An offer to arbitrate enter into arbitration must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate enter into arbitration must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

~~(4) A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.~~

~~(5) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.~~

~~(6) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding,~~

~~subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act."~~
{ Internal References to 39-2-914: None. }

NEW SECTION. Section 3. Effect of acceptance or rejection of offer to enter into arbitration. (1) A party who makes a valid offer to enter into arbitration that is not accepted by the other party and who prevails in an action under this part is entitled to reasonable attorney fees incurred subsequent to the date of the offer.

(2) A discharged employee who makes a valid offer to enter into arbitration that is accepted by the employer and who prevails in the arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

(3) If a valid offer to enter into arbitration is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act.

NEW SECTION. Section 4. {standard} Codification instruction. [Section 3] is intended to be codified as an integral part of Title 39, chapter 2, part 9, and the provisions of Title 39, chapter 2, part 9, apply to [section 3]."

Renumber: subsequent section

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 3-15-93

BILL NO. HB409

Amendments to House Bill No. 409
Third Reading Copy (BLUE)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 10, 1993

1. Title, line 5.

Following: "COURT"

Insert: "OR ADMINISTRATIVE TRIBUNAL"

2. Title, line 6.

Following: "WAIVED;"

Insert: "PROVIDING AN EXCEPTION TO THE FINANCIAL STATEMENT
REQUIREMENT; ALLOWING FILING OF A PLEADING SUBJECT TO
SUBSEQUENT APPROVAL OF INDIGENCE STATUS; AUTHORIZING THE
DEPARTMENT OF JUSTICE TO ADOPT AN AFFIDAVIT FORM BY RULE;"

3. Page 1, line 8.

Following: line 7

Insert: "

STATEMENT OF INTENT

A statement of intent is required for this bill because
25-10-404 authorizes the department of justice to adopt a
form for a financial statement by rule. It is the intent of
the legislature that the form require sufficient information
regarding income and assets to allow a reasonable
determination of indigence. The department may, in
developing the rules, use the affidavit form currently used
by Lewis and Clark County as a model."

4. Page 1, line 12.

Strike: "A"

Insert: "(1) Except as provided in subsection (3), a"

5. Page 1, line 17.

Strike: "Upon"

Insert: "Except as provided in subsection (2), upon"

Following: "court"

Insert: "or administrative tribunal"

6. Page 1.

Following: line 24

Insert: "(2) If a judge or presiding officer of an
administrative tribunal is not available to approve a
request for a waiver of fees prior to filing a pleading, the
pleading must be filed subject to subsequent approval. If
the request is subsequently denied, the fees must be paid
before the case may proceed further.

(3) A person represented by an entity that provides
free legal services to indigent persons is not required to
file the financial statement required by subsection (1).

(4) The department of justice shall, by rule,

(OVER)

STUDY. 10/10/80
prescribe the form of the financial statement required by subsection (1) for use in determining indigence. The form may require the disclosure of income and assets, including but not limited to the ownership of real and personal property, cash, and savings."

Amendments to House Bill No. 496
Third Reading Copy (BLUE)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 15, 1993

1. Page 14, line 15.

Strike: "in"

Insert: "who uses"

2. Page 15, line 2.

Strike: "in"

Insert: "who uses"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3-15-93
BILL NO. HB 496

DATE 3-15-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: H.B. 258 Toole
H.B. 468 Rice

Name	Representing	Bill No.	Check One	
			Support	Oppose

MARK Quimby	LOCAL 4700 MFSPE	HB 468		<input checked="" type="checkbox"/>
HARLEY WARNER	ASSOC. OF CHURCHES	HB 468	X	
Mr. Hamble	DCHS	HB 468	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY