

MINUTES

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

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 26, 1993, at
10:06 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)
Sen. Tom Towe (D)

Members Excused: NONE

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: NONE
Executive Action: HB 468
HB 416
HB 411
HB 228
HB 396
HB 216
HB 278
HB 525
HB 346
HB 157
HB 245
HB 474

EXECUTIVE ACTION ON HB 216

Motion:

Senator Doherty moved to amend HB 216. (Exhibit #1)

Discussion:

Senator Doherty explained amendment hb021601.adn.

Senator Doherty told the Committee that the Attorney General's Office supported HB 216. HB 216 has drawn bipartisan support and urged the Committee to accept the amendments.

Senator Towe asked Senator Doherty about item 3 in amendment hb021601.adn. Senator Doherty said the amendment was in HB 216 when it was first introduced in the House.

Senator Towe told the Committee that he would support the amendment.

Vote:

The motion to amend HB 216 CARRIED with Senator Rye voting NO.

Discussion:

Senator Towe explained amendment hb021602.avl.

Motion:

Senator Towe moved to amend HB 216. (Exhibit #2)

Discussion:

Senator Towe said the amendment hb021602.avl would blend in with amendment hb021601.adn.

Senator Doherty said he would oppose the amendment because the delivered cost of motor fuel, plus the cost of doing business, may be a difficult calculation. However, it provides leeway so frivolous claims can be avoided if someone has attempted to sell at below cost. Senator Doherty said amendment hb021601.adn would provide protection for large oil entities to demonstrate that they are not attempting to injure competition or monopolize the market.

Senator Grosfield told the Committee that he would support amendment hb021602.avl. Senator Grosfield told the Committee that without the amendment there would be no reason to enforce the law because the cost would not be known. The cost is different in every case and the amendment would help identify the cost.

Senator Towe told the Committee that in order to help small businesses in Montana, we need good law that can be enforced,

rather than a poor law that can not be enforced. Senator Towe said no one has ever been prosecuted under current law because of the vagueness in the law. Senator Towe said if the language was more definite and certain it would help small businesses throughout Montana. Senator Towe urged support for the amendment.

Vote:

The motion to amend CARRIED with Senators Crippen and Doherty voting NO.

Motion:

Senator Towe moved HB 216 BE CONCURRED IN AS AMENDED.

Discussion:

Senator Crippen asked Senator Doherty about HB 216. Senator Doherty said HB 216, as amended, was in the same shape as it was when introduced in the House, with the addition of Senator Towe's amendment which would make it easier to prove that a below cost sale was taking place.

Senator Crippen told the Committee that he would not support HB 216. Senator Crippen said that other types of stores are not protected. For instance; IGA store are not protected against Costco's. Senator Crippen said he believes in the free market system and therefore would vote against HB 216.

Senator Grosfield said he supported Senator Towe's amendment, but would vote against HB 216.

Senator Doherty told the Committee that he is in favor of the free market system. The idea behind unfair trade practices is when a monopolist reduces the prices in one area in order to drive a competitor out of business, so eventually they can raise their prices. Senator Doherty told Senator Crippen he would like to work with him over the next couple of years, because Montana retailers may need protection from the Costco's and the WalMart's who may be attempting to drive people out of business. Senator Doherty said with good laws there can be healthy competition and lower prices for all consumers.

Senator Crippen told Senator Doherty that government should not pass laws to protect retailers.

Senator Towe said HB 216 as amended would prohibit people from selling gasoline below the market price. Senator Towe said the only reason someone would sell a product for less then the market price would be to run someone out of business in order to charge a higher price. Senator Towe urged support for HB 216.

Senator Brown asked Chair Yellowtail if the original language was

restored in HB 216. Chair Yellowtail said yes, plus an additional amendment.

Vote:

The Be Concurred In As Amended motion for HB 216 CARRIED by a Roll Call Vote.

EXECUTIVE ACTION ON HB 228

Motion:

Senator Bartlett moved HB 228 BE CONCURRED IN.

Discussion:

Senator Towe told the Committee that HB 228 was drastically needed to unify the laws regarding modification and support. Senator Towe said the concept of HB 228 was excellent.

Vote:

The Be Concurred In motion for HB 228 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 278

Motion/Vote:

Senator Bartlett moved HB 278 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 525

Motion:

Senator Bartlett moved to amend HB 525. (Exhibit #3)

Discussion:

Senator Bartlett explained amendment HB052502.ADB.

Senator Towe asked Senator Bartlett why the amount of money received by gifts, grants, and donations was limited. Senator Bartlett said the intention was to have at least a minimum of \$25,000. Senator Bartlett said if there was a problem with the language it could be addressed with an amendment.

Chair Yellowtail asked Ms. Lane about the language. Ms. Lane said it is clear that the language says not to accept gifts in excess of \$25,000.

Chair Yellowtail said the intent was to not accept less than

\$25,000. Ms. Lane said that would require a change in the language.

Senator Towe asked Senator Bartlett about the money for the study. Senator Bartlett said they need to have a minimum of \$25,000 in private money to fund the study. If the Legislative Council does not have that amount they would not be able to conduct the study. The Legislative Council could receive more than \$25,000 but not less than that amount.

Senator Towe suggested putting a period after "donations" and strike, "but may not in total exceed \$25,000." In section 7 insert after "\$33,000" add "or that sum received in commission, gifts, grants, or donations, is less than \$25,000." Senator Towe said he would be hesitant to amend the latter part and suggested striking the reference to dollars.

Senator Bartlett said there needs to be a threshold amount so the people concerned about the study would be committed to raising the money for the study to take place.

Senator Towe said the language he proposed would clarify the language.

Ms. Lane asked for clarification on the proposed amendment. Page 4, line 5, change the language from "may not exceed" to "is not less than \$25,000." Senator Towe said the language should say that "Legislative Council may accept, on behalf of the commission, gifts, grants, or donations and then put the limitation in the new section 7.

Ms. Lane asked if the sentence on page 4, line 5, would end after donation. Chair Yellowtail said yes.

Ms. Lane said Senator Bartlett would prefer to have the sum of \$25,000 referenced on page 4, line 5. Senator Bartlett said suggested the language "that they may not in total be less than \$25,000."

Senator Bartlett said she would like to include that any amount over the \$25,000 raised would correspondingly decrease the amount from the District Court Reimbursement Program so if they received \$30,000 District Court reimbursement would go down to \$28,000. Also, she asked for a contingency void in the language if donations are less than \$25,000.

Senator Halligan asked Senator Bartlett if the study would be void if \$25,000 was not raised. Senator Bartlett said yes.

Senator Doherty told the Committee that the studies needed to be conducted regardless of how much private money was raised. Senator Doherty said the state may need to spend money in order to save money in the future.

Senator Bartlett suggested dividing the question.

Chair Yellowtail agreed. Chair Yellowtail told the Committee that they would vote on amendment HB052502.ADB with the exception of item #4.

Vote:

The motion to amend HB052502.ABD with the exception of item #4 CARRIED UNANIMOUSLY.

Discussion:

Chair Yellowtail told the Committee that they would vote on item #4 in amendment HB052502.ADB.

Vote:

The motion to amend item #4 in amendment HB052502.ADB FAILED with Senators Bartlett and Grosfield voting YES.

Motion/Vote:

Senator Bartlett moved HB 525 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 396

Motion:

Senator Halligan moved to TABLE HB 396.

Discussion:

Chair Yellowtail said HB 396 provided that the Department of Justice suspend drivers licenses for a persons refusal to submit to a blood alcohol test.

Senator Halligan told the Committee that HB 396 would be bad policy.

Senator Rye reminded the Committee that Representative Whalen was the only proponent of HB 396.

Vote:

The motion to table HB 396 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 157

Discussion:

Valencia Lane explained the amendments. (Exhibit #4)

Motion/Vote:

Senator Halligan moved to amend HB 157. The motion CARRIED with Senator Crippen voting NO.

Discussion:

Senator Doherty asked Ms. Lane about a time frame in which the DUI's would have to occur before the forfeiture of a vehicle. Ms. Lane said current law defines conviction as meaning three or more times in a five year period.

Senator Doherty said many people are demanding that something be done about DUI offenders, but if someone has been convicted more than three times in a five year period something needs to be done to help those people because they may have an illness. Senator Doherty said HB 157 may get peoples attention, but the forfeiture of a car that is owned by people in common may hurt the innocent party.

Senator Halligan said there was a problem with HB 157 because it does not protect the innocent party.

Senator Rye told the Committee that drunk driving was a chosen reprehensible act and the penalty in HB 157 was not too severe.

Vote:

Senator Towe moved HB 157 BE CONCURRED IN AS AMENDED.

Discussion:

Senator Halligan said a technical clarification needed to be included so offenders would only receive the proceeds of the sale.

Senator Towe said the top of page 19 says, "the proceeds of a sale of a motor vehicle must be distributed first to the holder of the security interest." Senator Towe said it is only talking about the proceeds of the sale.

Senator Halligan said the problem with the language is that if a car has a security interest of \$10,000 and the car sells for \$5000, the tax payers would have to pay the extra \$5,000.

Chair Yellowtail asked Senator Halligan about an amendment addressing the problem of the proceeds.

Senator Halligan said the amendment in concept would say that all the secured party would receive is the amount of money generated from the sale.

Senator Towe suggested adding to the amendment that a motor

vehicle could be taken away if the security interest was more than the value of the car.

Senator Towe withdrew his motion to Be Concurred In As Amended.

Motion:

Senator Halligan moved to amend HB 157.

Discussion:

Ms. Lane asked for clarification of the amendments. Ms. Lane said the first amendment would say in concept that the holder of the security interest would receive up to the amount of their interest or the amount received in the sale of the car, whichever is less. The second amendment would say in concept that a motor vehicle could be taken away if the security interest was more than the value of the car.

Vote:

The motion to amend CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Towe moved HB 157 BE CONCURRED IN AS AMENDED. The motion CARRIED with Senators Crippen, Harp, and Doherty voting NO.

EXECUTIVE ACTION ON HB 411

Discussion:

Senator Doherty explained amendment hb041101.avl. (Exhibit #5)

Senator Doherty asked Janet Jessup, Gambling Control Division, if she would oppose amendment hb041101.avl. Ms. Jessup told the Committee that the Gambling Control Division would be opposed to the amendment because it substantially changes the language in HB 411. HB 411 was intended to clarify the legislative intent of the 1991 gambling law. Ms. Jessup said if the amendment passes the Gambling Control Division would not be able to control some devices that are brought into the state because they would be much more difficult to track. Ms. Jessup said the language included in HB 411 would not change current law or impact any jobs, but would cause enforcement problems.

Motion/Vote:

Senator Doherty moved to AMEND HB 411. The motion FAILED with Senators Doherty, Franklin, Bartlett and Harp voting YES.

Motion:

Senator Brown moved HB 411 BE CONCURRED IN.

Discussion:

Senator Towe asked Ms. Jessup if the Gambling Control Division was in support of HB 411. Ms. Jessup said yes.

Vote:

The Be Concurred motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 468

Motion:

Senator Towe moved to AMEND HB 468. (Exhibit #6)

Discussion:

Senator Towe explained amendment hb046801.avl.

Senator Brown asked Senator Bartlett about sentencing. Senator Bartlett said that by enabling the Department of Institutions to sentence a defendant to a prerelease center, it would decrease the population of the Montana State Prison.

Senator Blaylock said he asked a judge if they would concur with this and they said yes.

Senator Bartlett told the Committee that she was concerned that incidents could create problems amongst communities and then they in turn would turn against a community corrections program. Senator Bartlett encouraged the Department of Institutions not to be unrealistic in the goals that they set, in terms of the prison population, but to do the ground work in those communities to ensure that the approach to corrections is an acceptable practice and one that would work well.

Vote:

The motion to amend CARRIED by a Roll Call Vote.

Motion/Vote:

Senator Bartlett moved HB 468 BE CONCURRED IN AS AMENDED. The motion was tied by a Roll Call Vote therefore remaining before the Committee.

Motion:

Senator Halligan moved to strip item #1 through item #4 from amendment hb046801.avl.

Vote:

The motion to amend CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Halligan moved HB 468 BE CONCURRED IN AS AMENDED. The motion carried with Senators Crippen, Brown, and Harp voting NO.

EXECUTIVE ACTION ON HB 416

Motion:

Senator Grosfield moved to AMEND HB 416. (Exhibit #7)

Discussion:

Senator Grosfield explained amendment hb041601.avl.

Senator Doherty asked Senator Grosfield how an identifiable group activity would be defined. Senator Grosfield said it would be up to the Department of Justice to develop a rule to define an identifiable group activity.

Senator Towe asked Senator Grosfield about identifying a hate crime. Senator Grosfield said a crime would have to be connected toward hatred of an identified group.

Vote:

The motion to amend HB 416 CARRIED by a Roll Call Vote.

Motion:

Senator Bartlett moved to AMEND HB 416. (Exhibit #8)

Discussion:

Senator Bartlett explained amendment hb041604.avl.

Senator Grosfield told the Committee he would support amendment hb041604.avl and asked Senator Bartlett if she would accept an amendment to include "actual or perceived." Senator Bartlett said yes.

Senator Halligan asked for bipartisan support for the amendment.

Senator Rye told the Committee that he would support amendment hb041604.avl because statistics prove that there are a lot of crimes committed against homosexuals.

Senator Grosfield told the Committee that his reason for supporting the amendment is the same as Senator Rye's.

Motion:

The motion to amend HB 416 CARRIED with Senators Crippen, Brown, and Harp voting NO.

Motion/Vote:

Senator Bartlett moved HB 416 BE CONCURRED IN AS AMENDED. The motion CARRIED with Senators Brown, Crippen, and Harp voting NO.

EXECUTIVE ACTION ON HB 482

Discussion:

Amy Pfeifer, Child Support Enforcement Division, explained amendment HB048201.AEM and amendment hb048201.avl. (Exhibit #9 and Exhibit #10)

Motion:

Senator Halligan moved to AMEND HB 482. (hb048201.avl)

Discussion:

Senator Towe asked Ms. Pfeifer about items #2 through #4 on amendment hb048201.avl. Ms. Pfeifer said the language was taken out of SB 217, which was the Department of Commerce's bill. Ms. Pfeifer said the Department of Commerce wanted to make sure the amendments were included in HB 482 because if it passes SB 217 would be void.

Senator Towe asked Ms. Pfeifer about the difference between SB 217 and HB 482. Ms. Pfeifer said HB 482 would expand the concept of SB 217. SB 217 only addressed occupational licenses issued by the Department of Commerce under title 47. HB 482 would address any state issued licenses, registrations, or certificates.

Senator Towe asked Ms. Pfeifer asked about SB 217. Ms. Pfeifer said SB 217 was concurred in as amended by the House Judiciary Committee. Ms. Pfeifer said SB 217 had not gone to the House floor.

Senator Doherty suggested TABLING HB 482 in order to get amendments at a later date.

Motion:

Senator Doherty made a substitute motion to TABLE HB 482.

Discussion:

Senator Grosfield told the Committee he would support the motion to TABLE HB 482 because he would like to propose some amendments. Senator Grosfield said he did not want to kill HB 482, but suggested moving the bill to the end of the list of executive

action to be taken on this date.

Senator Halligan said he would withdraw his motion to amend HB 482 to wait for further amendments before the end of executive session on this date.

Senator Doherty withdrew his motion to TABLE HB 482.

Motion:

Senator Doherty moved that HB 482 be the last bill to be considered during this executive session.

Discussion:

Senator Halligan WITHDREW his motion to amend HB 482.

EXECUTIVE ACTION ON HB 245

Discussion:

Senator Towe explained amendment hb024504.avl. (Exhibit #11)

Motion:

Senator Towe moved to AMEND HB 245.

Discussion:

Chair Yellowtail asked Rep. Kadas to comment on amendment hb023504.avl. Rep. Kadas supported the amendment because it clarifies the bill and makes it easier to read.

Chair Yellowtail asked Jim Parker, Montana People's Action to comment on the amendment. Mr. Parker supported the amendment.

Chair Yellowtail asked Mr. Greg Van Horssen, Montana Landlords Association, to comment on the amendment. Mr. Van Horssen said the Montana Landlords Association does not concur with the amendments.

Senator Blaylock asked Senator Towe about playing loud music at a mobile home park. Senator Towe said loud music would have a significant adverse affect on a mobile home court. Senator Towe said 70-24-321 states that the individuals must conduct themselves in a manner that would not disturb their neighbors peaceful enjoyment of the premises. Therefore, the tenant could be evicted after three or more violation, even if there is not a rule in the park about load music.

Chair Yellowtail asked Senator Towe about sub 2. Senator Towe said sub 2 states that a tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so. Senator Towe said that should be a one time violation.

Ms. Lane said HB 245 was originally drafted to say that if a tenant received three notices of violations within a year, then they could be evicted. Ms. Lane said Senator Towe amended the bill to say that it no longer matters how many notices a tenant is given, but it is the number of times a tenant violates the rules.

Ms. Lane suggested an amendment relating to the payment of rent in amendment #9.

Chair Yellowtail said item #9 would be corrected to refer to 1(a) and 1(b).

Senator Towe said if a tenant has their payments structured so rent is due one day and maintenance fee on another day, the tenant could have separate violations, but if they are both due on the same day only one notice per month could be given.

Chair Yellowtail said the amendment is minor relating only to the payment of rent in amendment #9.

Senator Harp asked Mr. Van Horssen to comment on the amendment. Mr. Van Horssen said he would not oppose the amendment.

Ms. Lane said I think that amendment #9 should be amended only to 1B.

Chair Yellowtail said item #9 would refer to subsection 1(b) only.

Vote:

The motion to amend HB 245 CARRIED UNANIMOUSLY.

Discussion:

Senator Towe explained amendment hb024503.avl. (Exhibit #12)

Motion:

Senator Towe moved to AMEND HB 245.

Discussion:

Senator Bartlett told the Committee that the meaning of "legitimate business reason" was very broad. Senator Bartlett proposed an amendment dealing with the same issue. (Exhibit #13) Senator Bartlett explained amendment hb024505.avl.

Senator Towe asked Senator Bartlett about increasing the amount of mobile home park spaces. Senator Bartlett said there would be no affect.

Ms. Lane told the Committee that on page 6, lines 10 and 11,

states the reason a mobile home park owner could evict someone, which would include change in the use of the land if the requirements of subsection 2 were met. Ms. Lane said both amendments proposed by Senators Towe and Bartlett address subsection 2, but would not affect whether they could be evicted for that purpose. The language on lines 10 and 11 would still remain, but a tenant could be evicted if the park owner changes the use of the land as long as the requirements of subsection 2 were met.

Senator Harp told the Committee about his proposed amendment. (Exhibit #14)

Ms. Lane said any change in the use of the land would be a basis for eviction and the only requirement would be that a written notice be given.

Senator Towe told the Committee that he did not think that his amendment would be necessary if Senator Harp's amendment was adopted.

Senator Towe asked Mr. Van Horssen to comment on Senator Harp's amendment. Mr. Van Horssen told the Committee that he would support Senator Harp's amendment and that Senator Towe's amendment would not be necessary.

Senator Towe WITHDREW his motion to amend HB 245. (hb024503.av1)

Motion:

Senator Harp moved to AMEND HB 245. (Exhibit #14)

Discussion:

Senator Harp explained his amendment.

Vote:

The motion to amend HB 245 CARRIED with Senators Franklin and Halligan voting NO.

Discussion:

Senator Halligan told the Committee that he would like an immediate effective date with the passage of HB 245.

Motion:

Senator Halligan MOVED for an immediate effective date with the passage of HB 245.

Motion:

Senator Franklin made a substitute motion for an effective date

to be in effect 30 days after the passage of HB 245.

Discussion:

Senator Franklin said her concern is that no one would be informed of the passage of HB 245.

Senator Towe said he would concur with the substitute motion.

Vote:

The motion CARRIED UNANIMOUSLY for an effective date to be in effect 30 days after the passage of HB 245.

Discussion:

Senator Doherty told the Committee that HB 245 ONLY applies to mobile homes. It DOES not apply to the landlord tenant act or rental units other than mobile homes.

Motion/Vote:

Senator Towe moved HB 245 BE CONCURRED IN AS AMENDED. The motion CARRIED by a Roll Call Vote.

EXECUTIVE ACTION ON HB 474

Discussion:

Chair Yellowtail told the Committee that the Department of Justice supported HB 474.

Motion:

Senator Bartlett moved HB 474 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 346

Motion:

Senator Doherty moved to STRIKE section 2 and section 4 from HB 346.

Discussion:

Senator Doherty said section 2 and section 4 deals with contingency fees. Senator Doherty said the sections would prevent access to the courts for severely injured people.

Chair Yellowtail said Senator Doherty's amendment would remove section 2 and section 4 in its entirety.

Senator Harp told the Committee he would not support the motion to AMEND HB 346.

Vote:

The motion to amend HB 346 CARRIED by Roll Call Vote.

Motion:

Senator Doherty moved to STRIKE in its entirety section 3.

Discussion:

Senator Doherty said the reason he moved to strike section 3 was because Montana law already allows parties in medical negligence actions to agree on periodic payments. Senator Doherty told the Committee that if the amendment fails, he would propose another amendment to deal with periodic payments.

Senator Blaylock asked Senator Doherty about periodic payments. Senator Doherty said when a plaintiff was awarded periodic payments they would receive a large sum as the first payment. The succeeding payments would then be stretched out over a period of time. Senator Doherty told the Committee that the problem with periodic payments is that if they are made mandatory, the attorney fees would come out of the first large lump sum and the individual would be left with less. The initial payment would be going towards attorney fees and the cost of bringing the action to court.

Senator Crippen asked Senator Doherty about the amendment. Senator Doherty said the amendment would strike the reference to mandatory periodic payments, including economic and non-economic damages. Senator Doherty said under the current law a judge can order periodic payments if it is in the best interest of the plaintiff. The amendment before the Committee is to strike the mandatory requirement of periodic payments.

Senator Bartlett said this is the section of HB 346 amends existing law and would apply to all liability awards regardless of whether they are for medical malpractice, product liability, or economic or non-economic punitive types of damages.

Senator Towe said HB 346 does not deal with damages that someone has already suffered, but damages they expect to suffer in the future.

Senator Towe told the Committee that he would support the amendment to strike section 3 of HB 346 because there are problems in terms of fairness to the plaintiff in section 3.

Senator Crippen told the Committee that he agreed with Senator Doherty that periodic payment on economic damages should not be allowed. However, he feels that periodic payments should be

awarded for non-economic and punitive damages.

Senator Doherty told the Committee that the current law would remain the same if his amendment passes. Therefore, judges could order periodic payments if it was in the best interest of the plaintiff. HB 346 would make periodic payments mandatory for all cases. Senator Doherty told the Committee that the current law works and should not be changed.

Senator Rye told the Committee that if sections 2 through 4 were amended out of HB 346, most of the material would be gone. Senator Rye suggested killing HB 346.

Chair Yellowtail told the Committee that even with section 2 through 4 amended out of HB 346, there was still substantial material left in the bill.

Senator Towe told the Committee that the most substantial part of HB 346 was section 1.

Vote:

The motion to strike section 3 of HB 346 FAILED by a Roll Call Vote.

Motion:

Senator Doherty moved to amend HB 346. (Exhibit #15)

Discussion:

Senator Doherty explained amendment hb034603.avl.

Motion/Vote:

Senator Crippen moved to DIVIDE the question on items #1, #2, and #3. The motion CARRIED UNANIMOUSLY.

Discussion:

Senator Crippen asked Senator Doherty about the intent of item #4 of amendment hb034603.avl. Senator Doherty said the intention of item #4 was to make sure the injured party was awarded periodic payments if a judgement had been entered. Senator Doherty said the claimant should not have to fight with the insurer or the insurance company about the payments because the payments should be guaranteed.

Senator Towe told the Committee about a case that would pertain to item #4 of amendment hb034603.avl. "I settled a case and we got a periodic payment annuity lined up with executive life. About five years after that settlement was done, we were sent a notice that executive life was in bankruptcy in California and was not in the position to pay out all of its obligations. At

that point I scurried around to see what that settlement said. My judgement debtor was on the hook." Senator Towe told the Committee that was the reason why the first sentence of item #4 was absolutely critical because it would have been the protection for the case he was referring to. Senator Towe said if a debtor was not adequately insured, the insurance company would take care of the payments. However, if the debtor was not insured or underinsured, in order to get by with periodic payment they would have to post something to show that they could handle periodic payment.

Vote:

The motion to amend HB 346 by adopting item #4 CARRIED by a Roll Call Vote.

Motion:

Senator Doherty moved to AMEND HB 346. (Exhibit #16)

Discussion:

Senator Doherty explained amendment hb034601.avl.

Senator Towe supported amendment hb034601.avl.

Senator Harp told the Committee that item #7 would allow anyone to sue for any incident of malpractice. Senator Harp asked the Committee to kill HB 346 or defeat the amendment.

Senator Doherty told the Committee that the language was copied from the California Statute which caps non-economic damages.

Senator Towe told the Committee of a concern he had. "Suppose a hospital, because of their negligence, did not sterilize instruments and it affected more than one person over a weeks time. If there are two or three people who had been affected, it would not be right to limit those people to one set of non-economic damages." Senator Towe said he was troubled with the language, therefore he would support the amendment.

Senator Doherty told the Committee the proposed amendment was reasonable and would provide fairness to people who were injured.

Vote:

The motion to amend HB 346 CARRIED by a Roll Call Vote.

Motion:

Chair Yellowtail moved to AMEND HB 346. (Exhibit #17)

Discussion:

Chair Yellowtail explained amendment hb034604.av1.

Senator Halligan told the Committee that he was concerned about the confidentiality provisions because it could be subjecting medical personal to lawsuits.

Chair Yellowtail told the Committee that consumers need to have access to information concerning their medical malpractice claims.

Vote:

The motion to amend HB 346 FAILED by a Roll Call Vote.

Motion:

Senator Halligan moved to AMEND a 1995 termination date to apply to HB 346.

Discussion:

Senator Blaylock supported Senator Halligan's motion.

Vote:

The motion to apply a 1995 termination date on HB 346 CARRIED by a Roll Call Vote.

Motion:

Senator Brown moved HB 346 BE CONCURRED IN AS AMENDED.

Discussion:

Senator Brown WITHDREW his motion to BE CONCURRED IN AS AMENDED.

Chair Yellowtail told the Committee that Senator Weeding proposed an amendment to include physician assistants.

Motion/Vote:

Senator Doherty moved to AMEND HB 346 to include a physician assistant. The motion CARRIED with Senator Halligan voting NO.

Motion:

Senator Brown moved HB 346 BE CONCURRED IN AS AMENDED.

Discussion:

Chair Yellowtail told the Committee that he had not received evidence that non-economic damages above \$500,000 in Montana was a problem. Chair Yellowtail said if the legislature provides a limitation based on evidence from other states, he did not feel

he could support HB 346. Chair Yellowtail said he was asked to support HB 346 because it would reduce medical cost by lowering insurance. However, the insurance industry has not demonstrated to what extent the insurance would go down.

Vote:

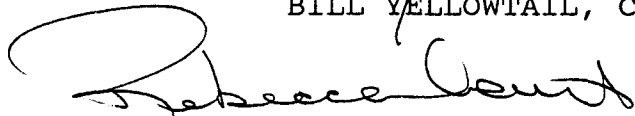
The Be Concurred In As Amended motion CARRIED by a Roll Call Vote.

ADJOURNMENT

Adjournment: 2:00 p.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 3-26-93

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 1
March 28, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 157 (third reading copy -- blue), respectfully report that House Bill No. 157 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 4, line 11.

Strike: "forfeited as"

Insert: "seized and subjected to the procedure"

2. Page 15, line 21.

Strike: "forfeited as"

Insert: "seized and subjected to the procedure"

3. Page 18, lines 11 and 17.

Strike: "COUNTY SHERIFF"

Insert: "arresting agency"

4. Page 19, line 2.

Following: "(4)"

Insert: "(a)"

5. Page 19, line 5.

Following: "INTERESTS"

Insert: "or the amount received from the sale, whichever is less"

6. Page 19, lines 6 and 7.

Strike: "AND" on line 6 through "PROCEEDINGS," on line 7

7. Page 19, line 11.

Following: line 10

Insert: "(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 4
March 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 216 (third reading copy -- blue), respectfully report that House Bill No. 216 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 11.

Following: "REMOVING"

Insert: "THE MOTOR FUEL MARKETING UNFAIR PRACTICES LAW; PROVIDING THAT AN ADVERTISEMENT, OFFERING TO SELL, OR SALE OF MOTOR FUEL AT LESS THAN COST IS PRIMA FACIE EVIDENCE OF INTENT TO INJURE OR DESTROY COMPETITORS, INJURE OR DESTROY COMPETITION, OR SUBSTANTIALLY LESSEN COMPETITION; REMOVING"

2. Title, line 13.

Following: "AND"

Insert: "SECTIONS 30-14-803 AND 30-14-804, MCA, AND"

3. Page 4.

Following: line 4

Insert: "Section 1. Section 30-14-803, MCA, is amended to read:
"30-14-803. (Temporary) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means a person who, other than through a franchise or marketing agreement, controls, is controlled by, or is under common control with any other person.

~~(2) "Cost of doing business", in the absence of proof of lesser cost, means 1% of the delivered cost of motor fuel for wholesale sales and 6% of the delivered cost of motor fuel for retail sales and in other cases includes all costs incurred in the conduct of business, including but not limited to:~~

~~(a) labor, including salaries of executives and officers;~~
~~(b) rent that is not less than the fair market value based on current use;~~

~~(c) interest on borrowed capital;~~

~~(d) depreciation;~~

~~(e) selling cost;~~

~~(f) maintenance of equipment;~~

~~(g) losses due to breakage or damage;~~

~~(h) credit card fees or other charges;~~

~~(i) credit losses; and~~

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W Sec. of Senate

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Senator Carrying Bill

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~~(j) all licenses, taxes, insurance, and advertising.~~

~~(3)~~(2) "Customary discount for cash" means an allowance, whether part of a larger discount or not, made to a wholesaler or retailer when a person pays for motor fuel within a limited or specified time.

~~(4)~~(3) "Delivered cost of motor fuel" means:

(a) for a distributor or retailer, the lower of the most recent cost of motor fuel to the distributor or retailer or the lowest replacement cost of motor fuel to the distributor or retailer within 5 days prior to the date of sale, in the quantity last purchased, whether within or before the 5-day period, less all trade discounts except customary discounts for cash plus transportation costs and any taxes that may be required by law if not already included in the invoice cost; or

(b) for a refiner, that refiner's posted rack price to the wholesale class of trade at the terminal used by the refiner to obtain the motor fuel, plus transportation costs and any taxes that may be required by law. If the refiner does not regularly sell to the wholesale class of trade at the terminal or does not post a terminal price, the refiner may use as its rack price the posted price of any other refiner at a terminal within the general trade area that has products readily available for sale to the wholesale class of trade.

~~(5)~~(4) "Distributor" means a person engaged in the purchase of motor fuel for resale to a retail motor fuel outlet.

~~(6)~~(5) "Motor fuel" means gasoline, as defined in 15-70-201, alcohol blended with gasoline to produce gasohol, and special fuel as defined in 15-70-301.

~~(7)~~(6) "Person" means an individual, a sole proprietorship, a partnership, a corporation, any other form of business entity, or any individual acting on behalf of any of them.

~~(8)~~(7) "Posted rack price" means the f.o.b. terminal price for a particular motor fuel that a refiner, producer, or person offers for sale or transfer to itself or any related or unrelated person.

~~(9)~~(8) "Refiner" means a person engaged in the production or refining of motor fuel, whether the production or refining occurs in this state or elsewhere, and includes any affiliate of the person.

~~(10)~~(9) "Retailer" means a person engaged in the business of selling motor fuel at a retail motor fuel outlet.

~~(11)~~(10) "Retail motor fuel outlet" means a place of business where motor fuel is sold and delivered into the tanks of motor vehicles regardless of whether the income from the selling and delivery of the fuel is the primary source of revenue of that business.

~~(12)~~(11) "Sale" means a transfer, gift, sale, offer for sale, or advertisement for sale in any manner or by any means of

motor fuel, including a transfer of motor fuel by a person to himself or to his affiliate.

(13)(12) "Transfer price" means the price used by a person to transfer motor fuel to himself or to an affiliate for resale at a retail motor fuel outlet.

(14)(13) "Transportation cost" means the actual cost of transportation of motor fuel or, in the absence of proof of actual cost, the common carrier rates fixed by the public service commission for the immediate market area concerned.

(15)(14) "Wholesaler" means a person engaged in the business of making sales at wholesale to a retail motor fuel outlet. (Terminates July 1, 1993--sec. 9, Ch. 499, L. 1991.) "

Section 2. Section 30-14-804, MCA, is amended to read:

"30-14-804. ~~(Temporary)~~ Below-cost sale prohibited. (1) A wholesaler may not sell motor fuel to a retail motor fuel outlet at less than the delivered cost of the motor fuel ~~plus the cost of doing business~~ if the effect is to injure or destroy competitors or to injure or destroy competition or substantially lessen competition.

(2) A retailer may not sell motor fuel at less than the delivered cost of the motor fuel ~~plus the cost of doing business~~ if the effect is to injure or destroy competitors or to injure or destroy competition or substantially lessen competition.

(3) A wholesaler may not sell or transfer motor fuel to itself or an affiliate for resale at a retail outlet at a transfer price lower than the price the wholesaler charges another retail motor fuel outlet that purchases a like quantity within the same competitive area if the effect is to injure or destroy competitors or to injure or destroy competition or substantially lessen competition.

(4) The provisions of this part do not apply to a sale at wholesale or a sale at retail made:

(a) in an isolated transaction not in the usual course of business;

(b) if motor fuels are advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in the motor fuel and the advertising, offer to sell, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or to be sold;

(c) if the motor fuel is advertised, offered for sale, or sold as imperfect or damaged and the advertising, offer of sale, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or sold;

(d) if motor fuel is sold upon the final liquidation of a business; or

(e) if motor fuel is advertised, offered for sale, or sold by a fiduciary or other officer under the order or direction of a court.

(5) Notice required under this section is not sufficient unless the subject of the sale is kept separate from other stocks and is clearly and legibly marked with the reason for the sale and any advertisement of the goods indicates the same facts and the quantity to be sold.

(6) A wholesaler or retailer may advertise, offer to sell, or sell motor fuel at a price made in good faith to meet the price of a competitor who is selling the same or a similar product of like grade and quality. The price of motor fuel advertised, offered for sale, or sold under the exceptions in subsection (4) may not be considered the price of a competitor and may not be used as a basis for establishing prices below cost, and the price established at a bankruptcy sale may not be considered the price of a competitor under the provisions of this section.

~~(7) If a wholesaler sells motor fuel to another wholesaler, the former is not required to include in his selling price to the latter the cost of doing business as defined in 30-14-803, but the latter wholesaler, upon resale to a retailer, is subject to the provisions of this section.~~

(7) Evidence of advertisement, offering to sell, or sale of motor fuel at less than cost is prima facie evidence of intent to injure competitors or destroy or substantially lessen competition. (Terminates July 1, 1993 sec. 9, Ch. 499, L. 1991.)"

Renumber: subsequent sections

4. Page 4, lines 7 and 8.

Strike: "-- TERMINATION"

5. Page 4, line 9.

Strike: "AND TERMINATES JULY 1, 1995"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 26, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 228 (third reading copy -- blue), respectfully report that House Bill No. 228 be concurred in.

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

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Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT

Page 1 of 3
March 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 245 (third reading copy -- blue), respectfully report that House Bill No. 245 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.

Strike: "FIVE"

2. Title, line 8.

Strike: "AND"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "70-24-103"

Insert: "AND 70-24-311"

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

3. Page 5, lines 10 and 11.

Following: "rent" on line 10

Strike: "OR"

Insert: ", "

Following: "CHARGES," on line 10

Strike: remainder of line 10 through "(2)" on line 11

Insert: "or common area maintenance fees as established in the rental agreement"

4. Page 5, line 12.

Following: line 11

Insert: "(b) late payment of rent, late charges, or common area maintenance fees as established in the rental agreement three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by 70-24-422;"

Renumber: subsequent subsections

5. Page 5, lines 12 and 13.

Following: "rule" on line 12

Strike: remainder of line 12 through "(3)" on line 13

Insert: "that creates an immediate threat to the health and safety of any resident of the mobile home park if the violation has not been remedied 24 hours after the violator

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M Sec. of Senate

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Senator Carrying Bill

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is given written notice of the violation;

(d) three or more violations within a 12-month period of any combination of one or more mobile home park rules, the violation of which would have a significant adverse impact on the mobile home park or its residents and which are so designated;

(e) three or more violations within a 12-month period of the same rule;

(f) three or more violations of 70-24-321(1) within a 12-month period or any violation of 70-24-321(2)"

Renumber: subsequent subsections

6. Page 6, line 3.

Strike: "or"

7. Page 6, line 5.

Strike: "(4)"

Insert: "(2)"

Following: "met"

Strike: "."

Insert: "; or"

8. Page 6, line 6.

Following: line 5

Insert: "(j) a legitimate business reason of the landlord if the requirements of subsection (3) are met."

9. Page 6, line 6 through page 9, line 18.

Strike: subsections (2) and (3) in their entirety

Renumber: subsequent subsection

10. Page 10, line 13.

Strike: "(4)(b)"

Insert: "(2)(b)"

11. Page 10, line 25.

Following: line 24

Insert: "(3)(a) A landlord may terminate the rental agreement of a mobile home owner or a tenant of a mobile home owner if the landlord, by the termination:

(i) does not violate a provision of this section or any other state statute; and

(ii) has a legitimate business reason.

(b) A landlord shall give the mobile home owner or the tenant of a mobile home owner a minimum of 6 months' written notice of termination.

(4) For purposes of calculating the total number of notices given within a 12-month period under subsection

(1)(b), only one notice per violation per month may be included in the calculation."

12. Page 11, line 16.

Following: line 15

Insert: "Section 3. Section 70-24-311, MCA, is amended to read:

"70-24-311. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time he enters into the rental agreement or when it is adopted.

(2) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of his bargain, it is not valid until 7 days after notice to the tenant in the case of a week to week tenancy or 30 days' notice in the case of tenancies from month to month.

(3) A rule adopted by a landlord of a mobile home park must be in writing and must be given to each mobile home owner or tenant of a mobile home owner residing in the mobile home park and to each new resident upon arrival."

Renumber: subsequent sections

13. Page 11, lines 21 through 24.

Strike: section 4 in its entirety

Insert: "NEW SECTION. Section 5. Effective date. [This act] is effective 30 days after passage and approval."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 26, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 278 (third reading copy -- blue), respectfully report that House Bill No. 278 be concurred in.

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

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Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT

Page 1 of 3
March 28, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 346 (third reading copy -- blue), respectfully report that House Bill No. 346 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 8.
Following: "DAMAGES;"
Strike: remainder of line 8
2. Title, lines 11 and 12.
Strike: "SECTIONS" on line 11
Insert: "SECTION"
Strike: "AND 25-10-301" on line 12
3. Title, line 13.
Following: "DATE"
Insert: "AND A TERMINATION DATE"
4. Page 1, line 18.
Strike: "action or actions"
5. Page 1, lines 19 and 20.
Following: "malpractice," on line 19
Strike: remainder of line 19 through "awards" on line 20
Insert: "an award"
6. Page 1, line 21.
Following: "\$500,000"
Insert: "per claimant"
7. Page 1, line 21 through page 2, line 13.
Strike: ", whether" on line 21 through "reduction" on page 2,
line 13
8. Page 2, line 14.
Strike: "For each claimant, further"
Insert: "Prior to applying the \$500,000 limitation per claimant
specified in this subsection (1), other"

W Amd. Coord.
W Sec. of Senate

Rye
Senator Carrying Bill

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9. Page 2, line 24.

Following: line 23

Insert: "(4) The \$500,000 limit in subsection (1) must be adjusted annually in accordance with the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics."

Renumber: subsequent subsection

10. Page 3, lines 9 and 10.

Following: "27-6-103," on line 9

Strike: "OR"

Following: "8" on line 10

Insert: ", or a physician assistant-certified licensed under Title 37, chapter 20, part 4"

11. Page 3, lines 11 and 12.

Following: "claim" on line 11

Strike: remainder of line 11 through "27-6-103" on line 12

Insert: "means a claim based on a negligent act or omission by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death"

12. Page 3, lines 15 and 16.

Following: "inconvenience;" on line 15

Strike: remainder of line 15 through "disfigurement;" on line 16

13. Page 3, line 19.

Following: line 18

Insert: "(6) This section does not limit in any manner a claimant's recovery for physical impairment or disfigurement."

14. Page 3, line 19 through page 5, line 12.

Strike: section 2 in its entirety

Renumber: subsequent sections

15. Page 5, line 21.

Following: "order"

Insert: "and supporting findings of fact"

16. Page 6, line 21.

Following: "an"

Strike: "'A" (excellent)"

Insert: "'A++" (superior)"

SENATE

HB 346

17. Page 6, line 22.

Strike: "7"

Insert: "10"

18. Page 6, line 23 through page 7, line 1.

Following: "bond." on line 23

Strike: remainder of line 23 through "discharged." on page 7,
line 1

Insert: "The judgment is not satisfied and the judgment debtor is not discharged until all periodic payments have been made. As a condition to ordering periodic payments of future damages, the court shall require a judgment debtor who is not adequately insured to post security adequate to ensure full payment of damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security or any remainder to the judgment debtor. Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments ceases and any security given reverts to the judgment debtor."

19. Page 7, lines 10 through 21.

Strike: section 4 in its entirety

Renumber: subsequent sections

20. Page 13, line 19.

Following: line 18

Insert: "NEW SECTION. Section 6. Termination. [This act] terminates October 1, 1995."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 26, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 411 (third reading copy -- blue), respectfully report that House Bill No. 411 be concurred in.

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

ACN Amd. Coord.
W Sec. of Senate

Yellowtail
Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 28, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 416 (third reading copy -- blue), respectfully report that House Bill No. 416 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 9.

Following: "~~PERCEIVED~~"

Insert: "ACTUAL OR PERCEIVED"

2. Title, line 10.

Following: "~~ORIENTATION,~~"

Strike: "OR"

Insert: "SEXUAL ORIENTATION,"

3. Title, line 11.

Following: "ACTIVITIES"

Insert: ", OR INVOLVEMENT IN OTHER IDENTIFIABLE GROUPS OR GROUP ACTIVITIES"

4. Page 1, line 24.

Following: "crimes."

Insert: "Further, it is the intent of the legislature that the board develop safeguards in the procedure that will ensure that any crime reported as a hate crime under [this act] is verified to be a hate crime before it is reported as one."

5. Page 2, line 8.

Following: "rules."

Insert: "(1)"

6. Page 2, line 14.

Following: "~~perceived~~"

Insert: "actual or perceived"

7. Page 2, line 15.

Following: "~~orientation,~~"

Strike: "or"

Insert: "sexual orientation,"

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N Sec. of Senate

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Senator Carrying Bill

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8. Page 2, line 16.

Following: "activities"

Insert: ", or involvement in other identifiable groups or group activities"

9. Page 2, line 20.

Following: line 19

Insert: "(2) [Sections 2 and 3] and this section may not be used as a basis for a cause of action based on discrimination against or conduct toward an individual or group because of their actual or perceived race, creed, religion, color, national origin, sexual orientation, involvement in civil rights or human rights activities, or involvement in other identifiable groups or group activities.

(3) As used in [sections 2 and 3] and this section, "sexual orientation" means and is limited to consensual heterosexuality, consensual homosexuality, and consensual bisexuality."

10. Page 3, line 14.

Following: "~~perceived~~"

Insert: "actual or perceived"

11. Page 3, line 15.

Following: "~~orientation,~~"

Strike: "or"

Insert: "sexual orientation,"

12. Page 3, line 16.

Following: "activities"

Insert: ", or involvement in other identifiable groups or group activities"

13. Page 3, line 20.

Following: "~~curriculum.~~"

Insert: "The department shall provide education and training in its regular curriculum."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 468 (third reading copy -- blue), respectfully report that House Bill No. 468 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 5, line 25.

Following: line 24

Insert: "(10) In determining where to place a felony offender, the department shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the department shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently placed in the state prison or a women's correctional facility, the department shall maintain records indicating why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

-END-

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M Sec. of Senate

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Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 26, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 474 (third reading copy -- blue), respectfully report that House Bill No. 474 be concurred in.

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

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Sec. of Senate

Bartlett
Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 525 (third reading copy -- blue), respectfully report that House Bill No. 525 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 9.

Following: "COMMISSION;"

Strike: "AND"

2. Title, line 10.

Following: "DATE"

Insert: "; AND PROVIDING FOR CONTINGENT VOIDNESS"

3. Page 4, line 3.

Following: "appropriation"

Insert: "-- restriction on expenditures"

4. Page 4, line 5.

Strike: "exceed"

Insert: "be less than"

5. Page 4, lines 5 and 20.

Strike: "\$40,000"

Insert: "\$25,000"

6. Page 4, line 24.

Strike: "\$10,000"

Insert: ", funded in 3-5-901, up to \$33,000"

7. Page 4, line 25.

Following: "4]."

Insert: "Any amount received pursuant to subsection (1) in excess of \$25,000 decreases the allocation under this subsection (b) by a corresponding amount."

8. Page 5, line 1.

Strike: "AFTER"

Insert: "before"

M Amd. Coord.
M Sec. of Senate

Bartlett
Senator Carrying Bill

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9. Page 5, line 2.

Following: "."

Insert: "For the purposes of 3-5-901(2), the study described in [section 4] is a cost of administering certain district court expenses described in 3-5-901."

10. Page 5, lines 3 through 11.

Strike: subsection (c) in its entirety

11. Page 5.

Following: line 13

Insert: "(5) As required under 17-2-108, the legislative council shall expend special revenue allocated in subsection (3)(a) of this section before expending any amount allocated in subsection (3)(b) or contingently appropriated in [section 6]. If any funds appropriated or allocated for the study under subsection (3)(a) or [section 6(1)] remain unexpended on June 30, 1995, the funds must revert to the state general fund. If any funds appropriated or allocated for the study under subsection (3)(b) or [section 6(2)] remain unexpended on June 30, 1995, the funds must revert to the district court criminal reimbursement program funded under 3-5-901."

12. Page 6.

Following: line 9

Insert: "NEW SECTION. Section 6. Coordination instruction. If House Bill No. 278 is not passed and approved in a form that includes a statutory appropriation of funds received under 61-3-509, then the following language is included in House Bill No. 2, within the appropriation to the judiciary:

"If House Bill No. 525 is passed and approved, then \$33,000 of the appropriation to the district court criminal reimbursement program (program 7) must be allocated to the legislative council for the purpose of conducting the study of judicial unification and finance."

NEW SECTION. Section 7. Contingent voidness. If House Bill No. 278 is not passed and approved in a form that includes a statutory appropriation of funds received under 61-3-509 and the appropriation in House Bill No. 2 to the judiciary for the district court criminal reimbursement program (program 7) is less than \$33,000, then [this act] is void."

Renumber: subsequent sections

-END-

ROLL CALL VOTE

SENATE COMMITTEE Judiciary

Judiciary

BILL NO. HB 2016

HB216

DATE 3-26-93

TIME 10:27

A.M. P.M.

NAME

YES

NO

[illegible]

Rebecca Gault
SECRETARY

SECRETARY

Bill Uellawtall
CHAIR

CHAIR

MOTION: HB 2116 BCIAA motion carried.

MOTION: HB 216 BCIAA motion carried.

ROLL CALL VOTE

SENATE COMMITTEE Judiciary

BILL NO. HB 468

DATE 3-26-93

TIME 11:25

A.M. P.M.

NAME _____

YES NO

[illegible]

Rebecca Aust

SECRETARY

Bill Yellowtail

CHAIR

MOTION: HB468 amend Carried.

ROLL CALL VOTE

SENATE COMMITTEE

Judiciary

BILL NO. HB 468

DATE 3-26-93

TIME 11:28

(A.M.) P.M.

NAME _____

YES

NO

[illegible]

Rebecca Law

SECRETARY

Bill Yellowtail

CHAIR

MOTION: HB4168 BCI AA

ROLL CALL VOTE

SENATE COMMITTEE Judiciary

BILL NO. HB416

DATE 3-26-93

TIME 11:30

A.M.) P.M.

NAME _____

YES

NO

[illegible]

Rebecca Law

SECRETARY

Bill Yellowtail

CHAIR

MOTION: ~~1340 Amend 1340 carried.~~

the motion to amend HB416 carried.

ROLL CALL VOTE

SENATE COMMITTEE Judiciary

BILL NO. 245

DATE 3-26-93

TIME

12:45

A.M. P.M.

NAME

YES

NO

[illegible]

SECRETARY

CHAIR

MOTION: ~~Bob~~ HB245 BCIAA carried

ROLL CALL VOTE

SENATE COMMITTEE Judiciary

HB
BILL NO. 346

DATE 3-26-93

TIME 1:00

A.M. P.M.

NAME _____

YES

NC

[illegible]

Rebecca Court
SECRETARY

Bill Yellowtail
CHAIR

MOTION: amend HB346 strike sec
24 carries

346
295

BILL NO.

A.M. (P.M.

YES NO

Bill Yellowtail
CHAIR

MOTION: amend: failed to strike
Sec. 3.

ROLL CALL VOTE

SENATE COMMITTEE Judiciary

BILL NO. 346

DATE 3-26-93

TIME 1:43

A.M. P.M.

NAME _____

YES

NO

[illegible]

Rebecca Hunt
SECRETARY

Bill Yellowtail
CHAIR

MOTION: to amend hb034662. 2ul. carried.

ROLL CALL VOTE

SENATE COMMITTEE

Judiciary

BILL NO. 346

DATE 3-26-93

TIME

1.55

A.M.

P.M.

NAME _____

YES

NO

[illegible]

Rebecca Court

SECRETARY

Bill Yellowtail

CHAIR

MOTION: for HB346 BCIAA carried.

ROLL CALL VOTE

SENATE COMMITTEE

Judiciary

BILL NO. 346

DATE 3-26-93

TIME 1.50

A.M. (P.M.

NAME _____

YES

NO

[illegible]

Rebecca Lawst

SECRETARY

Bill Yellowtail

CHAIR

MOTION: to apply 1995 termination date
carried.

carried

ROLL CALL VOTE

SENATE COMMITTEE Judiciary

Judiciary

BILL NO. H15346

HB346

DATE 3-26-93

TIME

1:45

A.M.

P.M.

NAME _____

YES

NO

[illegible]

Rebecca Court

SECRETARY

Bill Yellowtail

CHAIR

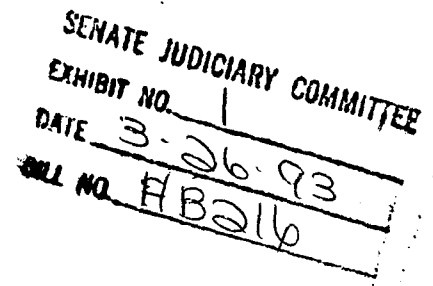
MOTION: to amend hb 034664 201

failed.

Amendments to House Bill No. 216
Third Reading Copy

Requested by Sen. Doherty
For the Committee on Judiciary

Prepared by David S. Niss
March 23, 1993



1. Title, line 11.

Following: "REMOVING"

Insert: "THE MOTOR FUEL MARKETING UNFAIR PRACTICES LAW; PROVIDING THAT AN ADVERTISEMENT, OFFERING TO SELL, OR SALE OF MOTOR FUEL AT LESS THAN COST IS PRIMA FACIE EVIDENCE OF INTENT TO INJURE OR DESTROY COMPETITORS, INJURE OR DESTROY COMPETITION, OR SUBSTANTIALLY LESSEN COMPETITION; REMOVING"

2. Title, line 13.

Following: "AND"

Insert: "SECTION 30-14-804, MCA, AND"

3. Page 4.

Following: line 4

Insert: "Section 1. Section 30-14-804, MCA, is amended to read:

"30-14-804. ~~(Temporary)~~ Below-cost sale prohibited.

(1) A wholesaler may not sell motor fuel to a retail motor fuel outlet at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy competitors or to injure or destroy competition or substantially lessen competition.

(2) A retailer may not sell motor fuel at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy competitors or to injure or destroy competition or substantially lessen competition.

(3) A wholesaler may not sell or transfer motor fuel to itself or an affiliate for resale at a retail outlet at a transfer price lower than the price the wholesaler charges another retail motor fuel outlet that purchases a like quantity within the same competitive area if the effect is to injure or destroy competitors or to injure or destroy competition or substantially lessen competition.

(4) The provisions of this part do not apply to a sale at wholesale or a sale at retail made:

(a) in an isolated transaction not in the usual course of business;

(b) if motor fuels are advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in the motor fuel and the advertising, offer to sell, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or to be sold;

(c) if the motor fuel is advertised, offered for sale, or

sold, as imperfect or damaged and the advertising, offer of sale, or sale, states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or sold;

(d) if motor fuel is sold upon the final liquidation of a business; or

(e) if motor fuel is advertised, offered for sale, or sold by a fiduciary or other officer under the order or direction of a court.

(5) Notice required under this section is not sufficient unless the subject of the sale is kept separate from other stocks and is clearly and legibly marked with the reason for the sale and any advertisement of the goods indicates the same facts and the quantity to be sold.

(6) A wholesaler or retailer may advertise, offer to sell, or sell motor fuel at a price made in good faith to meet the price of a competitor who is selling the same or a similar product of like grade and quality. The price of motor fuel advertised, offered for sale, or sold under the exceptions in subsection (4) may not be considered the price of a competitor and may not be used as a basis for establishing prices below cost, and the price established at a bankruptcy sale may not be considered the price of a competitor under the provisions of this section.

(7) If a wholesaler sells motor fuel to another wholesaler, the former is not required to include in his selling price to the latter the cost of doing business as defined in 30-14-803, but the latter wholesaler, upon resale to a retailer, is subject to the provisions of this section.

(8) Evidence of advertisement, offering to sell, or sale of motor fuel at less than cost is prima facie evidence of intent to injure competitors or destroy or substantially lessen competition. ~~(Terminates July 1, 1993 sec. 9, Ch. 499, L. 1991.)~~""

Renumber: subsequent sections

4. Page 4, lines 7 and 8.

Strike: "-- TERMINATION"

5. Page 4, line 9.

Strike: "AND TERMINATES JULY 1, 1995"

Amendments to House Bill No. 216
Third Reading Copy (BLUE)

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

Requested by Senator Towe
For the Committee on Judiciary

DATE 3-26-93

BILL NO. HB216

Prepared by Valencia Lane
March 25, 1993

1. Title, line 11.

Following: "~~REMOVING~~"

Insert: "THE MOTOR FUEL MARKETING UNFAIR PRACTICES LAW; PROVIDING THAT AN ADVERTISEMENT, OFFERING TO SELL, OR SALE OF MOTOR FUEL AT LESS THAN COST IS PRIMA FACIE EVIDENCE OF INTENT TO INJURE OR DESTROY COMPETITORS, INJURE OR DESTROY COMPETITION, OR SUBSTANTIALLY LESSEN COMPETITION; EXTENDING"

2. Title, line 13.

Following: "~~AND~~"

Insert: "SECTIONS 30-14-803 AND 30-14-804, MCA, AND"

3. Page 4.

Following: line 4

Insert: "Section 1. Section 30-14-803, MCA, is amended to read:

"30-14-803. (Temporary) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means a person who, other than through a franchise or marketing agreement, controls, is controlled by, or is under common control with any other person.

~~(2) "Cost of doing business", in the absence of proof of lesser cost, means 1% of the delivered cost of motor fuel for wholesale sales and 6% of the delivered cost of motor fuel for retail sales and in other cases includes all costs incurred in the conduct of business, including but not limited to:~~

~~(a) labor, including salaries of executives and officers;~~

~~(b) rent that is not less than the fair market value based on current use;~~

~~(c) interest on borrowed capital;~~

~~(d) depreciation;~~

~~(e) selling cost;~~

~~(f) maintenance of equipment;~~

~~(g) losses due to breakage or damage;~~

~~(h) credit card fees or other charges;~~

~~(i) credit losses; and~~

~~(j) all licenses, taxes, insurance, and advertising.~~

~~(3)~~ (2) "Customary discount for cash" means an allowance, whether part of a larger discount or not, made to a wholesaler or retailer when a person pays for motor fuel within a limited or specified time.

~~(4)~~ (3) "Delivered cost of motor fuel" means:

(a) for a distributor or retailer, the lower of the most recent cost of motor fuel to the distributor or retailer or the lowest replacement cost of motor fuel to the distributor or retailer within 5 days prior to the date of sale, in the

quantity last purchased, whether within or before the 5-day period, less all trade discounts except customary discounts for cash plus transportation costs and any taxes that may be required by law if not already included in the invoice cost; or

(b) for a refiner, that refiner's posted rack price to the wholesale class of trade at the terminal used by the refiner to obtain the motor fuel, plus transportation costs and any taxes that may be required by law. If the refiner does not regularly sell to the wholesale class of trade at the terminal or does not post a terminal price, the refiner may use as its rack price the posted price of any other refiner at a terminal within the general trade area that has products readily available for sale to the wholesale class of trade.

~~(5)~~(4) "Distributor" means a person engaged in the purchase of motor fuel for resale to a retail motor fuel outlet.

~~(6)~~(5) "Motor fuel" means gasoline, as defined in 15-70-201, alcohol blended with gasoline to produce gasohol, and special fuel as defined in 15-70-301.

~~(7)~~(6) "Person" means an individual, a sole proprietorship, a partnership, a corporation, any other form of business entity, or any individual acting on behalf of any of them.

~~(8)~~(7) "Posted rack price" means the f.o.b. terminal price for a particular motor fuel that a refiner, producer, or person offers for sale or transfer to itself or any related or unrelated person.

~~(9)~~(8) "Refiner" means a person engaged in the production or refining of motor fuel, whether the production or refining occurs in this state or elsewhere, and includes any affiliate of the person.

~~(10)~~(9) "Retailer" means a person engaged in the business of selling motor fuel at a retail motor fuel outlet.

~~(11)~~(10) "Retail motor fuel outlet" means a place of business where motor fuel is sold and delivered into the tanks of motor vehicles regardless of whether the income from the selling and delivery of the fuel is the primary source of revenue of that business.

~~(12)~~(11) "Sale" means a transfer, gift, sale, offer for sale, or advertisement for sale in any manner or by any means of motor fuel, including a transfer of motor fuel by a person to himself or to his affiliate.

~~(13)~~(12) "Transfer price" means the price used by a person to transfer motor fuel to himself or to an affiliate for resale at a retail motor fuel outlet.

~~(14)~~(13) "Transportation cost" means the actual cost of transportation of motor fuel or, in the absence of proof of actual cost, the common carrier rates fixed by the public service commission for the immediate market area concerned.

~~(15)~~(14) "Wholesaler" means a person engaged in the business of making sales at wholesale to a retail motor fuel outlet.

(Terminates July 1, 1993--sec. 9, Ch. 499, L. 1991.) "

{ Internal References to 30-14-803:

A30-14-804 }

Section 2. Section 30-14-804, MCA, is amended to read:

"30-14-804. (Temporary) Below-cost sale prohibited. (1) A wholesaler may not sell motor fuel to a retail motor fuel outlet at less than the delivered cost of the motor fuel ~~plus the cost of doing business~~ if the effect is to injure or destroy competitors or to injure or destroy competition or substantially lessen competition.

(2) A retailer may not sell motor fuel at less than the delivered cost of the motor fuel ~~plus the cost of doing business~~ if the effect is to injure or destroy competition or substantially lessen competition.

(3) A wholesaler may not sell or transfer motor fuel to itself or an affiliate for resale at a retail outlet at a transfer price lower than the price the wholesaler charges another retail motor fuel outlet that purchases a like quantity within the same competitive area if the effect is to injure or destroy competition or substantially lessen competition.

(4) The provisions of this part do not apply to a sale at wholesale or a sale at retail made:

(a) in an isolated transaction not in the usual course of business;

(b) if motor fuels are advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in the motor fuel and the advertising, offer to sell, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or to be sold;

(c) if the motor fuel is advertised, offered for sale, or sold as imperfect or damaged and the advertising, offer of sale, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or sold;

(d) if motor fuel is sold upon the final liquidation of a business; or

(e) if motor fuel is advertised, offered for sale, or sold by a fiduciary or other officer under the order or direction of a court.

(5) Notice required under this section is not sufficient unless the subject of the sale is kept separate from other stocks and is clearly and legibly marked with the reason for the sale and any advertisement of the goods indicates the same facts and the quantity to be sold.

(6) A wholesaler or retailer may advertise, offer to sell, or sell motor fuel at a price made in good faith to meet the price of a competitor who is selling the same or a similar product of like grade and quality. The price of motor fuel advertised, offered for sale, or sold under the exceptions in subsection (4) may not be considered the price of a competitor and may not be used as a basis for establishing prices below cost, and the price established at a bankruptcy sale may not be considered the price of a competitor under the provisions of this section.

~~(7) If a wholesaler sells motor fuel to another wholesaler, the former is not required to include in his selling price to the latter the cost of doing business as defined in 30-14-803, but the latter wholesaler, upon resale to a retailer, is subject to the provisions of this section.~~

(7) Evidence of advertisement, offering to sell, or sale of

motor fuel at less than cost is prima facie evidence of intent to injure competitors or destroy or substantially lessen competition. (Terminates July 1, 1993--sec. 9, Ch. 499, L. 1991.) ""

Renumber: subsequent sections

Amendments to House Bill No. 525
Third Reading Copy

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Dave Bohyer
March 23, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3-26-93
BILL NO. HBS25

1. Title, line 9.
Following: "COMMISSION;"
Strike: "AND"
2. Title, line 10.
Following: "DATE"
Insert: "; AND PROVIDING FOR CONTINGENT VOIDNESS"
3. Page 4, line 3.
Following: "appropriation"
Insert: "-- restriction on expenditures"
4. Page 4, lines 5 and 20.
Strike: "\$40,000"
Insert: "\$25,000"
5. Page 4, line 24.
Strike: "\$10,000"
Insert: ", funded under 3-5-901, \$33,000"
6. Page 5, line 1.
Strike: "AFTER"
Insert: "before"
7. Page 5, line 2.
Following: "."
Insert: "For the purposes of 3-5-901(2), the study described in
[section 4] is a cost of administering certain district
court expenses described in 3-5-901."
8. Page 5, lines 3 through 11.
Strike: subsection (c) in its entirety
9. Page 5.
Following: line 13
Insert: "(5) As required under 17-2-108, the legislative council
shall expend special revenue allocated in subsection (3)(a)
of this section before expending any amount allocated in

(OVER)

subsection (3)(b) or contingently appropriated in [section 6]. If any funds appropriated or allocated for the study under subsection (3)(a) or [section 6(1)] remain unexpended on June 30, 1995, the funds must revert to the state general fund. If any funds appropriated or allocated for the study under subsection (3)(b) or [section 6(2)] remain unexpended on June 30, 1995, the funds must revert to the district court criminal reimbursement program funded under 3-5-901.

10. Page 6.

Following: line 9

Insert: "NEW SECTION. Section 6. Coordination instruction. If House Bill No. 278 is not passed and approved in a form that includes a statutory appropriation of funds received under 61-3-509, then the following language is included in House Bill No. 2, within the appropriation to the judiciary:

"If House Bill No. 525 is passed and approved, then \$33,000 of the appropriation to the district court criminal reimbursement program (program 7) must be allocated to the legislative council for the purpose of conducting the study of judicial unification and finance."

NEW SECTION. Section 7. Contingent voidness. If House Bill No. 278 is not passed and approved in a form that includes a statutory appropriation of funds received under 61-3-509 and the appropriation in House Bill No. 2 to the judiciary for the district court criminal reimbursement program (program 7) is less than \$33,000, then [this act] is void."

Renumber: subsequent sections

Amendments to House Bill No. 157
Third Reading Copy

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Greg Petesch
March 25, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3-26-93
BILL NO. #B157

1. Page 4, line 11.

Strike: "forfeited as"

Insert: "seized and subjected to the procedure"

2. Page 15, line 21.

Strike: "forfeited as"

Insert: "seized and subjected to the procedure"

3. Page 18, lines 11 and 17.

Strike: "COUNTY SHERIFF"

Insert: "arresting agency"

4. Page 19, lines 5 through 7.

Following: "INTERESTS" on line 5

Strike: remainder of line 5 through "PROCEEDINGS" on line 7

EXHIBIT 4

DATE 3-26-93

HB 157

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs. (1) Except as provided in subsections (7) and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than \$100 or more than \$500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection (7), on a second conviction, he the person shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection (7), on the third or subsequent conviction, he the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less

than \$500 or more than \$1,000. Except as provided in subsection (7), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be ~~forfeited as~~ ^{seized and subject to the procedure} provided under [sections 2-through-9 SECTION 3].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of

SECTION 2. SECTION 61-8-722, MCA, IS AMENDED TO READ:

"61-8-722. Penalty for driving with excessive alcohol concentration. (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than \$300 or more than \$500.

(3) (a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than \$500 or more than \$1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be ~~forfeited~~ ^{seized and subjected to the procedure provided under section 31.}

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or

other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant

EXHIBIT 4
DATE 3-26-93
HB 157

1 fails to attend the course or the treatment program, the
2 counselor shall notify the court of the failure.
3 (6) For the purpose of determining the number of
4 convictions under this section, "conviction" means a final
5 conviction, as defined in 45-2-101, in this state or a
6 similar statute in another state or a forfeiture of bail or
7 collateral deposited to secure the defendant's appearance in
8 court in this state or another state, which forfeiture has
9 not been vacated. An offender is considered to have been
10 previously convicted for the purposes of sentencing if less
11 than 5 years have elapsed between the commission of the
12 present offense and a previous conviction. If there has been
13 no additional conviction for an offense under this section
14 for a period of 5 years after a prior conviction under this
15 section, then the prior offense must be expunged from the
16 defendant's record.

17 (7) The court may order that a term of imprisonment
18 imposed under this section be served in another facility
19 made available by the county and approved by the sentencing
20 court. The defendant, if financially able, shall bear the
21 expense of the imprisonment in the facility. The court may
22 impose restrictions on the defendant's ability to leave the
23 premises of the facility and require that the defendant
24 follow the rules of that facility. The facility may be, but
25 is not required to be, a community-based prerelease center

1 as provided for in 53-1-203. The prerelease center may
2 accept or reject a defendant referred by the sentencing
3 court.

4 (8) Except for the initial 24 hours on a first offense
5 or the initial 48 hours on a second or subsequent offense,
6 the court may order that a term of imprisonment imposed
7 under this section be served by imprisonment under home
8 arrest as provided in Title 46, chapter 18, part 10."

9 NEW SECTION. SECTION 3. FORFEITURE PROCEDURE. (1) A
10 MOTOR VEHICLE FORFEITED UNDER 61-8-714 OR 61-8-722 MUST BE
11 SEIZED BY THE ~~COUNTY SHERIFF~~ ^{arresting agency} WITHIN 10 DAYS AFTER THE
12 CONVICTION AND DISPOSED OF AS PROVIDED IN TITLE 44, CHAPTER
13 12, PART 2. EXCEPT AS PROVIDED IN THIS SECTION, THE
14 PROVISIONS OF TITLE 44, CHAPTER 12, PART 2, APPLY TO THE
15 EXTENT APPLICABLE.

16 (2) FORFEITURE PROCEEDINGS UNDER 44-12-201(1) MUST BE
17 INSTITUTED BY THE ~~COUNTY SHERIFF~~ ^{arresting agency} WITHIN 20 DAYS AFTER THE
18 SEIZURE OF THE MOTOR VEHICLE.

19 (3) FOR PURPOSES OF 44-12-203 AND 44-12-204, THERE IS A
20 REBUTTABLE PRESUMPTION OF FORFEITURE. THE OWNER OF THE MOTOR
21 VEHICLE MAY REBUT THE PRESUMPTION BY PROVING A DEFENSE UNDER
22 61-8-714(3)(D)(II) OR 61-8-722(3)(B)(II) OR BY PROVING THAT
23 THE OWNER WAS NOT CONVICTED OF A THIRD OR SUBSEQUENT OFFENSE
24 UNDER 61-8-401 OR 61-8-406. IT IS NOT A DEFENSE THAT THE
25 CONVICTED PERSON OWNS THE MOTOR VEHICLE JOINTLY WITH ANOTHER

1 PERSON.

2 (4) FOR PURPOSES OF 44-12-206, THE PROCEEDS OF THE SALE
 3 OF THE MOTOR VEHICLE MUST BE DISTRIBUTED FIRST TO THE
 4 HOLDERS OF SECURITY INTERESTS WHO HAVE PRESENTED PROPER
 5 PROOF OF THEIR CLAIMS, UP TO THE AMOUNT OF THE INTERESTS,
 6 AND NEXT TO THE SHERIFF IN THE AMOUNT OF THE COSTS OF THE
 7 FORFEITURE PROCEEDINGS, AND THE REMAINDER TO THE DEPARTMENT
 8 OF CORRECTIONS AND HUMAN SERVICES FUND--ALCOHOL
 9 INFORMATION COURSES AND TREATMENT PROGRAMS REFERRED TO IN
 10 61-8-714 AND 61-8-722 GENERAL FUND OF THE ARRESTING AGENCY.

11 (5) ACTIONS THE COURT MAY TAKE UNDER 44-12-205(3) TO
 12 PROTECT THE RIGHTS OF INNOCENT PERSONS INCLUDE RETURN OF THE
 13 MOTOR VEHICLE WITHOUT A SALE TO AN OWNER WHO IS UNABLE TO
 14 PRESENT AN ADEQUATE DEFENSE UNDER THIS SECTION BUT IS FOUND
 15 BY THE COURT TO BE WITHOUT FAULT.

16 NEW SECTION. Section 4. Codification instruction.
 17 [Sections 2-through-9] are SECTION 3] IS intended to be
 18 codified as an integral part of Title 61, chapter 8, part 4,
 19 and the provisions of Title 61, chapter 8, part 4, apply to
 20 [sections 2-through-9 SECTION 3].

-End-

Amendments to House Bill No. 411
Third Reading Copy

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
March 24, 1993

1. Page 18, line 18.
Strike: "and"
Insert: "or"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3-26-93
BILL NO. HB411

Amendments to House Bill No. 468
Third Reading Copy

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 15, 1993

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 3-26-93

BILL NO. HB468

1. Title, line 10.

Strike: "GOOD CAUSE"

Insert: "THE REASON"

2. Page 3, lines 13 and 14.

Following: "specifically" on line 13

Strike: remainder of line 13 through "cause" on line 14

Insert: "designates commitment to a correctional institution"

3. Page 3, lines 14 and 15.

Following: "order" on line 14

Strike: remainder of line 14 through "institution" on line 15

4. Page 3, line 15.

Following: "1"

Insert: "then"

5. Page 5, line 25.

Following: line 24

Insert: "(10) In determining where to place a felony offender, the department shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the department shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently placed in the state prison or a women's correctional facility, the department shall maintain records indicating why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Amendments to House Bill No. 416
Third Reading Copy (BLUE)

Requested by Senator Grosfield
For the Committee on Judiciary

Prepared by Valencia Lane
March 17, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 3-26-93
BILL NO. HB416

1. Title, line 9.

Following: "PERCEIVED"

Insert: "ACTUAL OR PERCEIVED"

2. Title, line 11.

Following: "ACTIVITIES"

Insert: "OR INVOLVEMENT IN OTHER IDENTIFIABLE GROUPS OR GROUP
ACTIVITIES"

3. Page 1, line 24.

Following: "crimes."

Insert: "Further, it is the intent of the legislature that the
board develop safeguards in the procedure that will ensure
that any crime reported as a hate crime under [this act] is
verified to be a hate crime before it is reported as one."

4. Page 2, line 14.

Following: "~~perceived~~"

Insert: "actual or perceived"

5. Page 2, line 16.

Following: "activities"

Insert: "or involvement in other identifiable groups or group
activities"

6. Page 3, line 14.

Following: "~~perceived~~"

Insert: "actual or perceived"

7. Page 3, line 16.

Following: "activities"

Insert: "or involvement in other identifiable groups or group
activities"

Amendments to House Bill No. 416
Third Reading Copy (BLUE)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 22, 1993

1. Title, line 10.
Following: "~~ORIENTATION~~,"
Insert: "SEXUAL ORIENTATION,"

2. Page 2, line 8.
Following: "rules."
Insert: "(1)"

3. Page 2, line 15.
Following: "~~orientation~~,"
Insert: "sexual orientation,"

4. Page 2, line 20.
Following: line 19
Insert: "(2) [Sections 2 and 3] and this section may not be used as a basis for a cause of action based on discrimination against or conduct toward an individual or group because of their race, creed, religion, color, national origin, sexual orientation, or involvement in civil rights or human rights activities.

(3) As used in [sections 2 and 3] and this section, "sexual orientation" means and is limited to consensual heterosexuality, consensual homosexuality, and consensual bisexuality."

5. Page 3, line 15.
Following: "~~orientation~~,"
Insert: "sexual orientation,"

6. Page 3, line 20.
Following: "~~curriculum~~."
Insert: "The department shall provide education and training in its regular curriculum."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 3-26-93
BILL NO. HB416

Amendments to House Bill No. 482
Third Reading Copy

Requested by the Department of Health and Environmental Sciences
For the Senate Judiciary Committee

Prepared by Eddye McClure
March 26, 1993

1. Page 20, line 3.
Following: "hearing"
Strike: "by"
Insert: "involving"

2. Page 20, line 11.
Following: "license"
Insert: "must be implemented by the licensing authority and"

3. Page 21, line 14.
Following: line 13
Insert: "(9) To the extent that inconsistencies exist between
[sections 5 through 12] and the procedural requirements for
suspension of a license issued by the department of health
and environmental sciences, [sections 5 through 12]
supercedes those requirements."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 3-26-93

BILL NO. HB482

Amendments to House Bill No. 482
Third Reading Copy

Requested by Department of Commerce
For the Committee on Judiciary

Prepared by Valencia Lane
March 25, 1993

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 10

DATE 3-26-93

BILL NO. HB482

1. Page 1, line 17.

Following: "11]"

Insert: "and [section 13] requires the licensing authority to
adopt rules necessary for the implementation and
administration of [sections 5 through 13]"

2. Page 20, lines 5 through 7.

Strike: subsection (3) in its entirety

Renumber: subsequent subsections

3. Page 21, line 14.

Following: line 13

Insert: "NEW SECTION. Section 9. Nondisciplinary suspension for
failure to pay child support. Notwithstanding any other
provision of this title, the department of social and
rehabilitation services has the authority to suspend a
license under [sections 5 through 13] without any action by
the licensing authority. The licensing authority shall,
upon receipt of an order issued by the support enforcement
entity, suspend the license of the named individual. The
suspension must be nondisciplinary for professional or
occupational licenses, and the provisions of 2-4-631 do not
apply."

Renumber: subsequent sections

4. Page 23, line 15.

Following: "12]."

Insert: "Fees collected pursuant to this section by a licensing
authority with a state special revenue fund must be
deposited in the state special revenue fund for the use of
the licensing authority to pay the costs of administering
[sections 5 through 13]."

5. Page 23, line 19.

Following: "11]."

Insert: "The licensing authority shall adopt rules necessary for
the implementation and administration of [sections 5 through
13]."

6. Page 1, line 14.

Page 19, line 12.

Page 21, line 10.

Page 23, lines 13, 15, and 24.

Page 24, lines 2 and 5.

Strike: "12"

Insert: "13"

Amendments to House Bill No. 245
Third Reading Copy

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 24, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 3-26-93
BILL NO. HB245

1. Title, line 5.
Strike: "FIVE"

2. Title, line 8.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "70-24-103"
Insert: "AND 70-24-311"

3. Page 5, lines 10 and 11.
Following: "rent" on line 10
Strike: "OR"
Insert: ", "
Following: "CHARGES," on line 10
Strike: remainder of line 10 through "(2)" on line 11
Insert: "or common area maintenance fees as established in the rental agreement"

4. Page 5, line 12.
Following: line 11
Insert: "(b) late payment of rent, late charges, or common area maintenance fees as established in the rental agreement three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by 70-24-422;"
Renumber: subsequent subsections

5. Page 5, lines 12 and 13.
Following: "rule" on line 12
Strike: remainder of line 12 through "(3)" on line 13
Insert: "that creates an immediate threat to the health and safety of any resident of the mobile home park if the violation has not been remedied 24 hours after the violator is given written notice of the violation;
(d) three or more violations within a 12-month period of any combination of one or more mobile home park rules, the violation of which would have a significant adverse impact on the mobile home park or its residents and which are so designated;
(e) three or more violations within a 12-month period of the same rule;
(f) three or more violations of 70-24-321(1) within a 12-month period or any violation of 70-24-321(2),"

Renumber: subsequent subsections

6. Page 6, line 5.

Strike: "(4)"
Insert: "(2)"

7. Page 6, line 6 through page 9, line 18.
Strike: subsections (2) and (3) in their entirety
Renumber: subsequent subsection

8. Page 10, line 13.
Strike: "(4) (b)"
Insert: "(2) (b)"

9. Page 10, line 25.
Following: line 24
Insert: "(3) For purposes of calculating the total number of notices given within a 12-month period under subsection (1), only one notice per violation per month may be included in the calculation."

10. Page 11, line 16.
Following: line 15
Insert: "Section 3. Section 70-24-311, MCA, is amended to read:
"70-24-311. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time he enters into the rental agreement or when it is adopted.

(2) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of his bargain, it is not valid until 7 days after notice to the tenant in the case of a week to week tenancy or 30 days' notice in the case of tenancies from month to month.

(3) A rule adopted by a landlord of a mobile home park must be in writing and must be given to each mobile home owner or tenant of a mobile home owner residing in the mobile home park and to each new resident upon arrival."

{Internal References to 70-24-311:
x70-24-103}"

Renumber: subsequent sections

11. Page 11, lines 21 through 24.
Strike: section 4 in its entirety

Amendments to House Bill No. 245
Third Reading Copy

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 24, 1993

1. Page 9, line 21.

Following: "use"

Insert: "or for a new mobile home park design for a legitimate
business reason"

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 12

DATE 3-26-93

FILE NO. HB245

Amendments to House Bill No. 245
Third Reading Copy

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 25, 1993

1. Page 9, line 21.

Following: "to"

Strike: "some other use"

Insert: "a use that would decrease the number of or eliminate all
mobile home park spaces"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 3-26-93
BILL NO. HB245

Haep

Proposed Amendments to HB 245

March 23, 1993

1. Page 6.

Following: line 5

Insert: "(f) legitimate business reason of the landlord if the requirements of subsection (5) are met."

2. Page 11.

Following: line 15

Insert: "(5) A landlord may terminate the rental agreement of a tenant provided the landlord, by such termination, does not violate any provision of this statute, violate the provisions of any other statute of the state of Montana, and has a legitimate business reason. A landlord shall give the mobile home owner and a tenant of the mobile home owner a minimum of six (6) months' written notice of termination of the tenancy."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 14

DATE 3-26-93

BILL NO. HB245

Amendments to House Bill No. 346
Third Reading Copy

Requested by Senator Doherty
(PERIODIC PAYMENTS)
For the Committee on Judiciary

Prepared by Valencia Lane
March 25, 1993

1. Page 5, line 21.
Following: "order"
Insert: "and supporting findings of fact"

2. Page 6, line 21.
Following: "an"
Strike: "'A" (excellent)"
Insert: "'A++" (superior)"

3. Page 6, line 22.
Strike: "7"
Insert: "10"

4. Page 6, line 23 through page 7, line 1.
Following: "bond." on line 23
Strike: remainder of line 23 through "discharged." on page 7,
line 1

Insert: "The judgment is not satisfied and the judgment debtor is not discharged until all periodic payments have been made. As a condition to ordering periodic payments of future damages, the court shall require a judgment debtor who is not adequately insured to post security adequate to ensure full payment of damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security or any remainder to the judgment debtor. Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments ceases and any security given reverts to the judgment debtor."

[Handwritten signature]
#1-3
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 15
DATE 3-26-93
BILL NO. HB346

Amendments to House Bill No. 346
Third Reading Copy

Requested by Senator Doherty
(NON-ECONOMIC DAMAGES) SENATE JUDICIARY COMMITTEE
For the Committee on Judiciary EXHIBIT NO. 16

Prepared by Valencia Lane DATE 3-26-93
March 25, 1993 BILL NO. HB346

1. Page 1, line 18.

Strike: "action or actions"

2. Page 1, lines 19 and 20.

Following: "malpractice," on line 19

Strike: remainder of line 19 through "awards" on line 20

Insert: "an award"

3. Page 1, line 21.

Following: "\$500,000"

Insert: "per claimant"

4. Page 1, line 21 through page 2, line 13.

Strike: ", whether" on line 21 through "reduction" on page 2,
line 13

5. Page 2, line 14.

Strike: "For each claimant, further"

Insert: "Prior to applying the \$500,000 limitation per claimant
specified in this subsection (1), other"

6. Page 2, line 24.

Following: line 23

Insert: "(4) The \$500,000 limit in subsection (1) must be
adjusted annually in accordance with the last previous
calendar year's consumer price index for all urban
consumers, U.S. department of labor, bureau of labor
statistics."

Renumber: subsequent subsection

7. Page 3, lines 11 and 12.

Following: "claim" on line 11

Strike: remainder of line 11 through "27-6-103" on line 12

Insert: "means a claim based on a negligent act or omission by a
health care provider in the rendering of professional
services, which act or omission is the proximate cause of a
personal injury or wrongful death"

8. Page 3, lines 15 and 16.

Following: "inconvenience;" on line 15

Strike: remainder of line 15 through "disfigurement;" on line 16

9. Page 3, line 19.

Following: line 18

Insert: "(6) This section does not limit in any manner a
claimant's recovery for physical impairment or

Amendments to House Bill No. 346
Third Reading Copy

Requested by Senator Yellowtail
(DISCLOSURE)
For the Committee on Judiciary

COMMITTEE

DATE 3-26-93
CALL NO. H8346

Prepared by Valencia Lane
March 25, 1993

1. Title, line 11.

Following: "CONDITIONS;"

Insert: "REQUIRING DISCLOSURE OF MEDICAL MALPRACTICE CLAIMS AND
RECOVERIES;"

2. Title, line 12.

Following: "25-9-403,"

Insert: ", "

Strike: "AND"

Following: "25-10-301,"

Insert: "AND 27-6-103,"

3. Page 7, line 22.

Following: line 21

Insert: "Section 5. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the
following definitions apply:

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge,
an individual licensed to practice dentistry under the provisions
of Title 37, chapter 4, who at the time of the assessment:

(i) has as his principal residence or place of dental
practice the state of Montana;

(ii) is not employed full-time by any federal governmental
agency or entity; and

(iii) is not fully retired from the practice of dentistry;
or

(b) for all other purposes, a person licensed to practice
dentistry under the provisions of Title 37, chapter 4, who at the
time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or
place of dental practice the state of Montana and was not
employed full-time by any federal governmental agency or entity;
or

(ii) was a professional service corporation, partnership, or
other business entity organized under the laws of any state to
render dental services and whose shareholders, partners, or
owners were individual dentists licensed to practice dentistry
under the provisions of Title 37, chapter 4.

(2) "Health care facility" means a facility (other than a
governmental infirmary but including a university or college
infirmary) licensed as a health care facility under Title 50,
chapter 5.

(3) "Health care provider" means a physician, a dentist, or
a health care facility.

2104 (4) "Hospital" means a hospital as defined in 50-5-101.
(5) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death. A health care provider shall disclose, upon request, the number of malpractice claims resolved against the provider by payment to a claimant and the amount of payment involved in each resolution.

(6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(7) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as his principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3."

{Internal References to 27-6-103: None.}"

Renumber: subsequent sections

17. Page 6, line 22.

Strike: "7"

Insert: "10"

18. Page 6, line 23 through page 7, line 1.

Following: "bond." on line 23

Strike: remainder of line 23 through "discharged." on page 7,
line 1

Insert: "The judgment is not satisfied and the judgment debtor is not discharged until all periodic payments have been made. As a condition to ordering periodic payments of future damages, the court shall require a judgment debtor who is not adequately insured to post security adequate to ensure full payment of damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security or any remainder to the judgment debtor. Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments ceases and any security given reverts to the judgment debtor."

19. Page 7, lines 10 through 21.

Strike: section 4 in its entirety

Renumber: subsequent sections

20. Page 13, line 19.

Following: line 18

Insert: "NEW SECTION. Section 6. Termination. [This act] terminates October 1, 1995."

-END-

EXHIBIT 17
DATE 3-26-93
HB 346