

**MINUTES**

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

**COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Russell Fagg, on December 15, 1993,  
at 9:00 a.m.

**ROLL CALL**

**Members Present:**

Rep. Russ Fagg, Chairman (R)  
Rep. Randy Vogel, Vice Chairman (R)  
Rep. Ellen Bergman (R)  
Rep. Jody Bird (D)  
Rep. Vivian Brooke (D)  
Rep. Bob Clark (R)  
Rep. Duane Grimes (R)  
Rep. Scott McCulloch (D)  
Rep. Jim Rice (R)  
Rep. Angela Russell (D)  
Rep. Tim Sayles (R)  
Rep. Debbie Shea (D)  
Rep. Liz Smith (R)  
Rep. Bill Tash (R)  
Rep. Howard Toole (D)  
Rep. Tim Whalen (D)  
Rep. Karyl Winslow (R)  
Rep. Diana Wyatt (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** John MacMaster, Legislative Council  
Karmen Tuttle, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 39  
Executive Action: SB 39

**HEARING ON SB 39****Opening Statement by Sponsor:**

**Sen. Mignon Waterman, S.D. #22, Helena,** said SB 39 would bring Montana law into compliance with federal law and insure that, in difficult economic times, Medicaid long term care would be reserved for the truly needy. Medicaid became the first major third party financing source for long-term care in the U.S., in recent years the state plans have devised ways of investing in children so any person may qualify for Medicaid long-term care coverage. In 1991 63% of the people in Montana were on Medicaid. SB 39 would enact recent changes in federal law. The SRS may place a lien on real property owned by certain Medicaid recipients to preserve property for later recovery of Medicaid expenditures. This will affect people on welfare. There will be long term substantial savings of \$13 million in the next biennium.

**Proponents' Testimony:**

**Nancy Ellery, Social & Rehabilitation Services, Medicaid Services Division,** said that right now the state is spending about \$100,000,000 on long-term care.

**Larry Akey, Montana Association of Life Underwriters,** said that they would like a do pass recommendation.

**George Bennett, Montana Bankers Association,** asked the committee to use their language regarding liens in the bill. **Exhibit 1**

**John Anderson, MLSI,** supports SB 39.

**Rose Hughes, Executive Director, Montana Health Care Association,** supports SB 39.

**Opponents' Testimony:**

**Rep. Bob Bachini** said that he would like to have this bill tabled.

**Questions From Committee Members and Responses:**

**Rep. Jody Bird** asked what would happen if a lien was filed and there was a miraculous turn around a month after that occurred. **Greg Loom** answered that federal law and this bill require that if the person is discharged from the facility and returns home, the lien would be released.

**Rep. Ellen Bergman** asked if people may shift their assets before entering a nursing home. **Mr. Akey** answered yes, that they make trusts or give the money or property to grandchildren.

**Rep. Randy Vogel** asked whether a family artifact could be taken as an asset. **Nancy Ellery** answered that they would look at eligibility.

**Rep. Vivian Brooke** asked if the state would be getting into the real estate business. **Gene Gould** said it is not the departments intent to get into the real estate business. It is to protect the resource.

**Rep. Brooke** asked how they will avoid getting into real state and management. **Mr. Gould** answered that in most cases the home would be sold.

**Sen. Waterman** said that she has worked with AARP with this proposal. This proposal we would restrict who may receive Medicaid. **Sen. Waterman** has put language in the bill for a cost effective program.

**Rep. Wyatt** asked whether they have considered a homestead exemption. **Sen. Waterman** answered they are allowed to keep \$2,000, and the family can maintain their home as long as they are living.

**Rep. Howard Toole** asked if they understand what the committee is doing. **Sen. Waterman** replied yes and they have no problem with it.

**Rep. Toole** asked under section 1, what the department's adopted a hardship rule will do or say. **Sen. Waterman** answered that the hardship exception is under federal law.

**Rep. Toole** asked what changes are made when two people become ineligible. **Mrs. Ellery** replied that there was a study done and 9 people were either denied or discouraged because of the new law. Cost avoidance savings was about \$100,000 of the savings; the rest of the savings are through state recoveries.

**Rep. Toole** asked if it is an additional \$600,000 per year. **Mrs. Ellery** answered they did not want to over estimate what the potential of this would be.

**Rep. Toole** asked whether there is a provision for the department in section 7. **Mrs. Ellery** answered that current federal law mandates that if a person going into the nursing home has intent of returning to the home, their home is an exempt asset.

**Rep. Toole** asked if the criteria is based on medical opinion and whether it will govern the intent. **Mr. Gould** answered that the department determines the lien and whether they are medically able to return home.

**Rep. Bird** asked why the anticipated revenue was not put into the general fund. **Mrs. Ellery** answered that it was anticipated that the money would come in and rebate expenditures. **Sen. Waterman** also answered that the money is contingent on passage.

**Rep. Bird** asked if a child would be treated as a sibling. **Mr. Gould** answered that under federal law, the answer is no.

**Rep. Liz Smith** asked if there is still surviving spouse benefits. **Mrs. Ellery** answered that the Spousal Impoverishment Provision is still in effect.

**Rep. Angela Russell** asked if this bill will have anything to do with Indian trusts. **Mr. Gould** answered that federal law would prohibit that.

**Rep. Russell Fagg** asked what **Sen. Waterman's** thoughts are about the Bankers Association amendments. **Sen. Waterman** replied that she supports them if the language may be used.

**Rep. Fagg** asked if it would be an accurate statement to say that there are a certain amount of dollars in the Medicaid budget and, if dollars are taken away because people are hiding assets, there will be less money for other Medicaid recipients. **Sen. Waterman** answered that yes, that is a very good description of what is happening. This session is looking at \$46 million and \$66 million in entry costs for Medicaid in the next biennium.

**Rep. Fagg** asked what is being cut. **Sen. Waterman** answered that dentures, preventative services, individual personal care attendants, 300% of SSI, and the income limit for nursing homes are in danger.

**Rep. Duane Grimes** asked what the intent is of hardships. **Sen. Waterman** replied that they are defined in federal statutes.

**Closing by Sponsor:**

**Sen. Waterman** said that this is an important piece of legislation not only because of its impact on Montana but its potential impact on the budget. It is important to note that much of what is being implemented in this bill is federal law. If Montana could reach a middle ground of 50-55%, it could develop other resources. The state spends less than 5% on community based services. These are things the state should be looking at.

The meeting adjourned at 11:00 a.m. for floor session. The meeting reconvened at 4:30 p.m.

**Rep. John Cobb** said that the state should forget about budget cuts and put the money in different places, like keeping people in their homes with in-home care givers. If this money isn't put up now, it will be put into other places.

**Rep. Grimes** asked how far the department looks back into people's assets? **Mrs. Ellery** said it goes back to 36 months.

**Rep. Toole** asked about the amount of delegation. **Rep. Cobb** answered that the committee can put a termination date on the bill.

**Rep. Vogel** asked that no matter what we do we have no say in this bill. **Mr. Gould** answered that some aspects are covered by the federal law, but assets and liens are up to the committee.

**Rep. Vogel** asked if any personal property a person has will be taken by federal law. **Mr. Gould** answered that \$30-90 is kept for personal needs; under federal law it has to be kept in an account.

**Rep. Vogel** asked what cannot be taken. **Mr. Gould** answered that after the recipient dies personal property cannot be taken if there is a child under 21 or a remaining spouse. He added that, to some extent, the department can recover physical property.

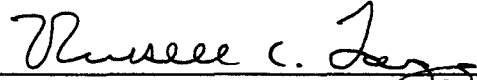
**Motion:** REP. BIRD MOVED HER AMENDMENT.

**Substitute Motion:** REP. WHALEN MOVED TO TABLE THE BILL.

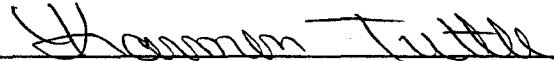
**Vote:** The substitute motion passed 10-7 with Rep. Fagg, Rep. Brooke, Rep. Bergman, Rep. Grimes, Rep. McCulloch, Rep. Smith, and Rep. Tash voting no.

ADJOURNMENT

Adjournment: 5:50 p.m.



REP. RUSSELL FAGG, Chairman



KARMEN TUTTLE, Secretary

RF/KT

# HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

ROLL CALL

DATE December 15, 1993

NAME	PRESENT	ABSENT	EXCUSED
REP. RUSSELL FAGG, CHAIRMAN	x		
REP. RANDY VOGEL, VICE CHAIRMAN	x		
REP. JODY BIRD	x		
REP. VIVIAN BROOKE	x		
REP. ELLEN BERGMAN	x		
REP. DIANA WYATT	x		
REP. DEBBIE SHEA	x		
REP. ROBERT CLARK	x		
REP. DUANE GRIMES	x		
REP. SCOTT MCCULLOCH	x		
REP. JIM RICE	x		
REP. ANGELA RUSSELL	x		
REP. TIM SAYLES	x		
REP. LIZ SMITH	x		
REP. HOWARD TOOLE	x		
REP. BILL TASH	x		
REP. TIM WHALEN	x		
REP. KARYL WINSLOW	x		

HR:1993  
wp:rollcalls.man  
CS-10

# HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

### ROLL CALL VOTE

DATE December 15, 1993 BILL NO. SB 39 NUMBER                     

MOTION: Rep. Whalen moved to table the bill.

NAME	AYE	NO
REP. RUSSELL FAGG, CHAIRMAN		x
REP. RANDY VOGEL, VICE CHAIRMAN	x	
REP. JODY BIRD	x	
REP. VIVIAN BROOKE		x
REP. ELLEN BERGMAN		x
REP. DEBBIE SHEA	x	
REP. ROBERT CLARK	x	
REP. DUANE GRIMES		x
REP. SCOTT MCCULLOCH		x
REP. JIM RICE	x	
REP. ANGELA RUSSELL	x	
REP. TIM SAYLES		
REP. LIZ SMITH		x
REP. BILL TASH		x
REP. HOWARD TOOLE	x	
REP. TIM WHALEN	x	
REP. KARYL WINSLOW	x	
REP. DIANA WYATT	x	



EXHIBIT 1  
DATE 12/15/93  
HB SB 39

WITNESS STATEMENT  
SPECIAL SESSION, NOV.-DEC. 1993

NAME GEORGE T. BENNETT BILL NO. SB 39  
ADDRESS P. O. Box 1705, Helena, MT 59624 DATE 12/15/93  
WHOM DO YOU REPRESENT? MONTANA BANKERS ASSOCIATION  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: The lien priority should be the same as for child support; see attached.

**TESTIMONY OF**  
**MONTANA BANKERS ASSOCIATION**  
**IN SUPPORT OF AMENDMENT TO**  
**SENATE BILL 39**

Senate Bill 39 is requested by Department of Social and Rehabilitation Services (SRS) and Office of Budget and Program Planning. The bill deals with recovery by SRS of medical payments.

The section of concern to lenders and people dealing with transfers of interests in property is Section 7, starting line 13, page 18, and continuing to line 3, page 28.

Section 7 of the bill creates a lien for medical payments which is recorded with the clerk and recorder (L. 24, page 21).

The language of concern appears on page 22, starting at line 6 and reads as follows:

"Upon recording, the lien is prior to any earlier unrecorded interest or claim, is prior to any subsequent interest or claim, whether or not recorded, and is subject to any unpaid property taxes."

Thus the lien for medical payments is superior to any lien or interest except for the lien for property taxes. This would make the lien superior to all others (except property taxes) including income, workers compensation and other taxes, liens of other state agencies including liens for child support, and liens and interests of lenders and purchasers of property.

In contrast, the lien for child support which was the subject of HB 335 of the Regular 1993 Session, as contained in Section 40-5-248 MCA, gives such lien only the ordinary priority of a lien of a "secured creditor." See attached copy of Section 40-5-248 MCA

**Page 2 Witness Statement of Montana Bankers Association**  
**Senate Bill 39**

**It was our understanding during the Regular 1993 session, that there should be uniform filing and priority for all liens of state agencies and lenders so that persons dealing with property could search the records quickly and easily and that priorities would be uniform.**

**To maintain uniformity the language quoted above from page 22, lines 6 to 10, should be amended to conform to the language of subsection (3) of Section 40-5-248, copy attached.**

Amendments to Senate Bill No. 39  
Third Reading Copy

Requested by Rep. Bird  
For the Committee on the Judiciary

Prepared by John MacMaster  
December 15, 1993

1. Page 17, line 2.

Following: line 1

Insert: "(7) The department may not recover under 53-2-611,  
[section 7], or this section from a spouse or child of the  
deceased recipient or from the estate of a spouse or child a  
percentage of the department's claim that exceeds the  
percentage of the deceased recipient's property that was  
received by the spouse or child through distribution or  
survival."

Amendments to Senate Bill No. 39  
Third Reading Copy

Requested by Rep. Toole  
For the Committee on the Judiciary

Prepared by John MacMaster  
December 15, 1993

1. Page 7, line 16.

Following: "value"

Insert: "during the applicable 3-year, 5-year, or other period  
provided by federal law and adopted by department rule

2. Page 25, line 12.

Following: "costs."

Insert: "Costs do not include attorney fees. The interest rate  
is the average prevailing rate charged by Helena banks,  
minus 2%, for a conventional 30-year mortgage on the date of  
the death, sale, transfer, or exchange. Interest begins to  
accrue on that date."

3. Page 34, line 8.

Following: "act]."

Insert: "If a provision of [this act] provides for an undue  
hardship exception or waiver, the department shall by rule  
implement policies and rules on the subject that are adopted  
by the United States department of health and human  
services. The rules must address undue hardship arising  
from transfers involving undue influence, fraud,  
misrepresentation, and coercion. The rules must provide  
that a recipient will not be granted an undue hardship  
exception or waiver based on undue influence, fraud,  
misrepresentation, or coercion unless the recipient or the  
recipient's representative has taken all possible steps,  
including legal action, to recover the transferred assets or  
the equivalent in damages."

Amendments to Senate Bill No. 39  
Third Reading Copy

For the Committee on the Judiciary

Prepared by John MacMaster  
December 15, 1993

1. Page 24, line 8.

Following: "taxes"

Insert: "and any prior recorded mortgage or other prior recorded  
encumbrance, interest, or claim"

**40-5-248. Lien against real and personal property — effect of lien — interest — warrant for distraint.** (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to this department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as defined in 30-9-107.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until 2 years after the child to whom the support lien is related attains the age of majority, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor, if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer for value of an obligor's personal property, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice, who buys in good faith and without knowledge of the

## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

*Judiciary* COMMITTEE BILL NO. *SB 39*  
 DATE *12-15-93* SPONSOR(S) *Waterman*

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
GEORGE BENNETT	MT BKRS ASSN	SB 39	amendment	
LARRY AXEN	MT ASSOC OF LIFE UNDERWRITERS	SB39		✓
Bob Bachini	Self		✓	
JOCK ANDERSON	MLSI	39		✓

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