MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 2, 1995, at 9:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

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

Committee Business Summary:

Hearing:	SB 189, SB 272, HB 108, HB 37
Executive Action:	SB 13, SB 132, SB 167, SB 149, SB 272, HB 37, HB 108

EXECUTIVE ACTION ON SB 132

Motion: **SENATOR AL BISHOP MOVED THAT SB 132 DO PASS.**

Discussion: **SENATOR BISHOP** thought the biggest concern was the insurance industry objections over the augmented estate issue. Also, the concern of the Department of Revenue was the cost, estimated at $150,000 to 300,000, but that they had supported the bill, he said.
He explained the concept of augmented estate makes available to the surviving spouse a certain percentage of an insurance policy if the beneficiary is other than the spouse, depending on the

length of the marriage.

CHAIRMAN BRUCE CRIPPEN discussed a key-person policy on businesses and there was confusion among the committee on whether or not this issue would be included in the bill.

Valencia Lane explained that existing law already provides for life insurance to go into the augmented estate, done in 1993. This bill does not change that, she said, and the amendments offered by **Mr. Moreen** would change that.

Valencia Lane explained there were four sets of amendments. Some of the members felt they would be more comfortable with the amendments from **Mr. Moreen** which exempted life insurance from the augmented estate.

Dennis Moreen explained the amendments he presented. Part of the amendments pertain to the augmented estate, he said, and the other part dealt with the notices that are the duty of insurance companies as pertaining to murder or divorce. In such cases, the insurance designations are void, he said.

SENATOR SUE BARTLETT said she would not be comfortable taking insurance out of the augmented estate. Some agreed, some disagreed. **SENATOR STEVE DOHERTY** agreed. He thought it would be appropriate for the insurance company to pay the money to the court and let the court decide the distribution. Insurance can be used as a new means of disinheriting the spouse, he said.

SENATOR BISHOP asked what was so sacred about insurance? He said **SENATOR DOHERTY** was right in that other property is brought back in to the augmented estate. If the spouse consents to the transactions, all problems will be solved.

SENATOR BARTLETT said because of the multiplicity of insurance products now, it was a good way to move assets and disinherit a spouse.

CHAIRMAN CRIPPEN said that the only part of the policy that would be of value at the time of death is the cash surrender value and any accumulated dividends.

SENATOR LARRY BAER said he did not think it could be used as a disinheritance tool and that it was a matter of specific intent.

SENATOR BISHOP said that if a gift is made and there is no valuable consideration then you make a transfer and it is brought back into the estate within three years of death.

CHAIRMAN CRIPPEN used the example of a parent buying life insurance and listing as beneficiaries children of a first marriage. If there was a falling out of the second marriage and the step-father was financially strapped, he could contest the distribution. If the child was given money to buy the insurance

on the parent, however, it would not be included, he said. It passes outside of probate and outside of tax purposes, he said.

SENATOR BARTLETT questioned whether or not that situation would fall in the augmented estate category. She said the determination would fall to the ratio of assets.

SENATOR DOHERTY said it would only happen when the spouse elects to do anything and asks for an augmented estate in electing against the will. He disagreed with the cash surrender value of a policy saying it would not be worth much.

SENATOR BISHOP didn't see the problem with bringing the money into the augmented estate. If there were plenty of assets, he said, the judge could do whatever he saw fit, and it would probably only delay the payment for several months.

SENATOR LORENTS GROSFIELD said about the only time this would occur is if a man would buy a 5 million dollars policy shortly before death and give it to someone other than the spouse. He thought the chance of this happening would be remote. He thought whatever was stipulated by the person buying the insurance should be honored and paid immediately upon death.

SENATOR SHARON ESTRADA said she did not think the people at that table had the right to interfere with someone's wishes.

Motion: **SENATOR BISHOP WITHDREW HIS MOTION.**

CHAIRMAN CRIPPEN asked for a show of hands on who would be in favor of working on these amendment and taking insurance out. Eight members for in favor; three voted "no." **The Chairman** instructed the legal staffer to assist in making the changes.

Valencia Lane, the committee staffer, explained the additional amendments to the bill. She said the amendments by Greg Petesch were technical corrections.

Motion: **SENATOR GROSFIELD MOVED THE PETESCH AMENDMENTS.**

Vote: The vote **CARRIED UNANIMOUSLY** by oral vote.

Ms. Lane explained additional amendment by the Department of Revenue. They simply want to make the same reference in another section of law, she said, to match what is being done in the bill.

Motion: **SENATOR GROSFIELD MOVED THE DEPARTMENT OF REVENUE AMENDMENTS.**

Discussion: Discussion followed about the fiscal note and it was suggested that the bill fell within the contingent voidance provisions. If that was the case, the chairman asked if they wanted to adopt this. The House can exclude the amendment if

they want to blow the bill, **SENATOR BAER** offered.

Vote: The **MOTION PASSED** with on an oral vote with **SENATOR DOHERTY** voting, "no."

Discussion: **CHAIRMAN CRIPPEN** said that with the motion went the provision that **Valencia Lane** would draft a contingent voidance amendment.

EXECUTIVE ACTION ON SB 167

Discussion: **SENATOR STEVE BENEDICT** was asked to speak to the bill. He asked the committee to look at the second grey bill dated February 1 and the amendments dated January 31. It was pointed out that there were amendments from both **Beth Baker** and **SENATOR DOHERTY.** The sponsor said that he had incorporated **Beth Baker's** amendment in the set of amendments, which took it though Section 8. The original had only five, he said. Page 8 of Section 5 eliminated reference of the legislative finance committee. He struck everything in Section 5, he said, in an attempt to streamline the bill, except the requirement of the Budget Office recommendations for reporting federal mandates. He eliminated the requests from outside sources from the Office of Budget Planning. He took out the dates of reporting and it would be included in the next budget cycle. He said that **SENATOR DOHERTY** had shared some amendments with him and that he had adopted some of his ideas into this bill, however, he felt that the language watered down the bill until he was not comfortable with it. He said that **SENATOR DOHERTY'S** amendments would have put everything into the Governor's office and he said they all knew the Governor did not have the staff. The OBP gets the requests and has the information anyway, he said.

SENATOR DOHERTY said the second grey bill is vastly improved. His amendments, he said, make the investigation and recording the responsibility of the Governor's office with the intention that he could assign them to whomever or whatever agency he wants. It would be unusual to specify the OBP he thought, in that it would restrict the Governor.

CHAIRMAN CRIPPEN asked the sponsor if he would object to this additional amendment, to which he replied that he would prefer not to because it would water down the language of the bill. The chairman asked if it would not be ideal to rest the responsibility with the Governor. The sponsor did not object.

SENATOR GROSFIELD said that if the Governor made a request for information and action on a specific mandate, the Governor would have a lot more force behind the request than the OBP would.

CHAIRMAN CRIPPEN said that he would prefer to see the Governor in control over bureaucrats, who would not have the accountability necessarily.

SENATOR BISHOP thought it would strengthen the bill.

Motion/Vote: **SENATOR BAER MOVED TO ADOPT THIS FACET OF SENATOR DOHERTY'S AMENDMENT AND WHEREVER OBP OCCURS IN THE BILL, THE GOVERNOR'S OFFICE WOULD BE INSERTED.**

Vote: The vote **CARRIED UNANIMOUSLY** by oral vote.

Discussion : **SENATOR DOHERTY** said he tried in his amendments to clean up the language of the poorly drafted bill. He tried to identify whether or not it was legal or illegal to tell the Governor to fight the mandates. On Page 4 under the federal statutes heading, 20 statutes were listed. He struck them and inserted "any federal statutes." He said if they went to the exhaustive measure of listing each one, if they got another one not listed, there might be the argument that the legislature did not want that particular one to be considered. Or, he said, they could add more.

SENATOR BENEDICT said that 74 members of the body had signed the bill and were comfortable with the language that was in there. He said he had made as much of an attempt as he could to bring some other ideas in, but he would like to leave it the way it was.

CHAIRMAN CRIPPEN expressed his concern about the fact that the courts would hold conclusive a long list as stated, notwithstanding the language of "included in but not limited to the following:".

SENATOR GROSFIELD stated his concern that there may be a problem with future acts, if, for instance a huge federal mandate were passed after the effective date of this act. **The chairman** said they could add "present and future." And they agreed that the wording would be added to either version of the bill.

When asked by **SENATOR BARTLETT** to explain why the listing of the mandates were important to him, **SENATOR BENEDICT** answered that they were from listings used in Colorado and California documents of the same type and also constituents had asked specifically for some of them. On the same topic, **SENATOR CRIPPEN** added a comment that the other legislators might not be willing to go beyond the list either.

SENATOR GROSFIELD asked **SENATOR DOHERTY** make his corrections to the bill for a later presentation. The senator agreed to amend the February 1 version of the bill by cleaning up, but not watering down, the bill.

SENATOR BENEDICT appreciated the attempt by **SENS. DOHERTY AND GROSFIELD,** but did not ask them to go on the bill. He said he would rather the committee deal with his amendments, accepting or

rejecting as proposed. He feared loss of intent.

EXECUTIVE ACTION ON SB 149

Motion: **SENATOR REINY JABS MOVED TO TAKE SB 149 OFF THE TABLE.**

Discussion: **CHAIRMAN CRIPPEN** explained that this bill is a Constitutional Amendment to remove two words, "this full".

SENATOR MIKE HALLIGAN said he believed that the Supreme Court had reversed itself and then followed its own precedent in reversing itself in interpreting the full legal redress in cases. Then they saw they had made an error and went 180 degrees and said they were wrong, he stated. Now he said the interpretation is not being interpreted liberally or being misconstrued. So the bill taking away people's full legal redress when not being abused was not responsible, he said.

SENATOR BISHOP agreed with the senator. He said the courts were loath to reverse themselves. He thought it would cause undue confusions.

Vote: By roll call vote, the **MOTION TO TAKE SB 149 FROM THE TABLE PASSED** by a 6 to 5 margin.

{Tape: 1; Side: B; Approx. Counter: 0.0}

HEARING ON SB 189

Opening Statement by Sponsor:

SENATOR JEFF WELDON, Senate District 35, Arlee, sponsor for SB 189, brought this bill to the committee on behalf of the Department of Justice. The primary purpose would be to give the department exclusive authority to suspend or revoke the drivers' license of a tribal member seized within the boundaries of an Indian reservation by tribal authorities following a testing refusal under authority of a tribal implied consent ordinance or law. It would also amend the process by which a motorist who refuses testing under the implied consent laws are given notice of their right to a hearing to contest a license suspension or revocation if the petition is filed in district court to challenge the license seizure and suspension or revocation. On the first part of the bill, he explained, the department began working with the tribes within Montana last fall. Over the past few weeks, the Salish-Kootenai Tribe had raised concerns about the language. The legal staff of the tribe had agreed with the concept of the bill, however, they had the concerns about the language. The Department of Justice has been working with the tribes and they are all optimistic that they can agree and collectively propose amendments to the bill. He asked the Chairman to delay action on the bill until they could complete

negotiations with the tribe and arrive at mutually agreeable language. He thanked the chairman for his patience.

Proponents' Testimony:

Attorney General Joseph Mazurek appeared to honor a commitment made to the Salish/Kootenai tribe on the previous day. He said that they had agreed that the committee take no action on the bill until they had an opportunity to meet with members of the tribe and other tribes. No one has a disagreement in principle, he said, but the language was in question. He presented a letter from the tribe. **(EXHIBIT 1).**

Brenda Nordland, Department of Justice, addressed the primary purpose of the bill which she described as a gap in Montana's implied consent law as it applies to seizures occurring on the Indian reservations under tribal law. The secondary purpose, she said, changes the procedure notice requirements and codifies the practice currently used throughout the state regarding challenges to the implied consent. She presented written testimony and read from the text. **(EXHIBIT 2).**

A letter, addressed to **Brenda Nordlund, Department of Justice,** from **Llevando Fisher, President, Northern Cheyenne Tribal Council,** was presented after the hearing. **(EXHIBIT 3).**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR HALLIGAN asked about the non-Indians on the reservation and **Brenda Nordland** said the bill did not address non-Indians. They are covered under existing law. This bill deals with tribal to tribal arrests and seizures.

SENATOR JABS asked what the procedure would be at present for a non-Indian picked up on the reservation?

Ms. Nordland said she did not know and thought it was through cross-deputization between various tribes.

Attorney General Mazurek answered that the Montana Highway Patrol did not have the authority over Indian members on the reservation unless they have a state-tribal agreement. The Flathead Reservation allows a memo of understanding for specific authority to be given by the appropriate law enforcement department, as some other do. The tribal police do not have the authority to pick up a non-Indian for DUI, he said, but if they stop someone, then they call the proper authority and proceed.

SENATOR JABS inquired if the bill was tight enough so that it would not be worded to eventually cause a non-Indian to go through the tribal courts.

Attorney General Mazurek stated it was not contemplated. Even under the agreement on the Flathead reservation, there is no authority even where there is shared responsibility to issue citations. If a citation is issued to a non-Indian, it goes to state or justice of the peace court.

SENATOR JABS was worried about "the camel's nose under the tent," in that future agreements would include non-Indian jurisdiction.

The Attorney General assured him it would not.

SENATOR RIC HOLDEN asked about Page 2, Part B. He thought that if they enter into this agreement and then pass **SENATOR HALLIGAN'S** bill about drivers' licenses, it would seem to give Indian police officers a right to take non-Indian licenses.

Attorney General Mazurek said that nothing the legislature does can affect the jurisdiction of the tribal courts. That is a matter of federal law. This bill would only allow an agreement with the tribal government that the state would honor a tribal suspension. There are over 500 tribal-state agreements in the state, he said. They could not alter the jurisdiction of tribal courts over non-Indians.

SENATOR LINDA NELSON asked if it was to apply to all tribes, or would they have to negotiate with each one separately?

The Attorney General said that each would be done separately. They are separate, independent sovereigns, he said.

SENATOR GROSFIELD asked if in a practical situation where an tribal officer stops a DUI who is a non-Indian on a reservation, was there a time for detention until the appropriate authority could be summoned.

The Attorney General said that it depends on the reservation. He gave an example of the Flathead agreement wherein a Montana Highway Patrolman could stop and detain a violator until the appropriate tribal representative could be called. In answer to a subsequent question, he said that tribal police have like authority.

Closing by Sponsor:

SENATOR WELDON said that the Department of Justice would be happy to show the committee a similar agreement between the state and the tribes and that these agreements actually contain a negative declaration that the agreement affects jurisdiction. They would only affect the procedure by which the state recognizes a tribal government suspension of a state license. They assured the chairman that they would work as quickly as possible for a resolution.

HEARING ON SB 272

Opening Statement by Sponsor:

SENATOR GROSFIELD, Senate District 13, Big Timber sponsored SB 272, an act that he said deals with paperwork kept and handled by the Department of Revenue. It is an issue that came to him from the City Attorney. He said it was paperwork required that is currently required for a surviving joint tenant spouse, without a real point to it because there is no inheritance tax due to the Department.

Proponents' Testimony: **Bob Jovick, a lawyer from Livingston,** said he would like to think that he represents the consumers. He said for years in his practice, he has hated to see the paperwork push as it comes to joint tenancy. In Montana, he said, there is no probate required in the case of a husband and wife joint tenancy when one or the other dies. In order for their real property to be sold, the lien of the inheritance tax division has to be released. In order to release that lien, he showed a INH2 form, a 4-5-page form, listing all assets to be sent to Helena, approved there and sent back to the county clerk and recorder where it is filed. That releases the lien. It is pointless, he said; there is no inheritance tax due for husband and wife in joint tenencies. The law says that the real property automatically passes to the surviving spouse. The only thing needed is the release of the inheritance tax lien. The State of Wyoming has for years had a simplified procedure, requiring only a statement with the clerk and recorder with an attached death certificate. That releases the lien. He had spoken to **Jeff Miller of the Department of Revenue,** who had input into the drafting of this bill. He introduced **Larry Allen of the Department of Revenue** to speak on any specifics the committee may ask. The bill would hopefully free up time for members of the busy inheritance tax departments to process returns where tax is actually due, he said.

Opponents' Testimony:

None.

Informational Testimony:

SENATOR BISHOP asked **SENATOR GROSFIELD** if he meant that they would just file an affidavit, then? He supported the bill. Also, who was going to furnish the affidavit, he asked.

SENATOR GROSFIELD said it would maybe be furnished by the Department of Revenue, or maybe one would be provided by the county offices.

Mr. Jovick said that the Inheritance Tax Division could do a standard sample affidavit to be made available at the county offices, without any necessary involvement of lawyers.

SENATOR BARTLETT said she was a former clerk and recorder and had dealt with INH3 and INH2's. She asked about the language, "a personal representative need not be appointed," and wondered if it was not going through probate.

Mr. Jovick said that was correct. He said the bill only addresses instances where there is no probate filed and determination of joint tenancy with respect to real property.

SENATOR BARTLETT asked if he thought the affidavit would formally transfer the ownership to the surviving joint tenant with the bill?

Mr. Jovick said that current Montana law already automatically on the date of death, terminates the joint tenancy. This bill would require that with the filing of the affidavit, any lien that the inheritance tax division might have would automatically be lifted with the filing of the affidavit.

SENATOR BARTLETT said she would insist that the provision for attaching the death certificate be taken out because once the information had been filed, it would be recorded, including the certificate. It is then public information and anyone who wants to look at that has access to it. Death certificates are not public information under the statutes having to do with vital statistics and she thought it would be inappropriate. She also thought that if the affidavit is recorded, the form itself should be sufficient unto itself if it includes the real property. She agreed with the bill and thought the process cumbersome to grieving people.

Mr. Jovick said the omission of the death certificate would be even more helpful.

SENATOR BISHOP asked if there was a procedure for getting the inheritance tax waiver from the Department of Revenue transfer agent. What would happen?

SENATOR GROSFIELD said that in respect to personal property, you would still have to go through the procedure.

SENATOR BISHOP asked what they would file to get an inheritance waiver for a stock certificate then?

Larry Allen from the Department of Revenue, said a INH3 would still have to be filed for stocks and bonds and normal procedure would follow. For real property, they would have to indicate they were a spouse and filing for joint tenancy and would not have to fill out that section of the form.

SENATOR HALLIGAN asked about the affidavit portion. He did not think they would have the forms at the clerk and recorder office. He thought a simpler statement should be required, such as a "notarized statement," or "verified statement." People would not

know exactly what that means.

Mr. Jovick said that a simple two or three sentence statement of the circumstances such as the death had taken place and that they were the owner of the property described, is contemplated. Sample forms could be compiled in various places.

Closing by Sponsor:

SENATOR GROSFIELD said part of the reason for not including stocks and bonds was that the stockbroker would want some kind of documentation that they have the authority to process it. As far as real property, he thought **SENATOR BARTLETT'S** suggestions would be fine. He had not wanted to sign the fiscal note, which said it had no impact. He thought it might have a minimal impact, but it would certainly save staff time and money. He urged the committee to concur.

HEARING ON HB 108

Opening Statement by Sponsor:

REPRESENTATIVE JOHN COBB, House District 50, Augusta, introduced HB 108, an act requiring a person convicted of a dangerous drug misdemeanor to attend a dangerous drug informational course. The language in Section 1, he said, would be the same language used for DUI's. If a person is caught on a DUI, they have to take a course and the judge can further require a treatment course if he deems it necessary. If the violation is a felony, it would not apply because he said, "you'd have to go away for a while." He estimated 279 juveniles would have to take this course each year. He said that if some of the juveniles were caught earlier in the drug cycle, hopefully some could be turned around. Last year, he quoted, 4,800 DUI cases were charged; 3,500 were first-time offenses; only 1,000 repeated; and only 40 repeated the third time. Since the people pay for the course themselves, he thought it would be a deterrent. He thought that a gap existed between alcohol and drug offenses. Misdemeanor drug charges are smaller charges, under 60 grams of marijuana. If the people were unable to pay, treatment centers charge the others to make up the difference so there is no fiscal impact.

Proponents' Testimony:

Darryl Bruno, Administrator of the Alcohol and Drug Division for the Corrections and Human Services, spoke in support of the bill. He submitted written testimony. **(EXHIBIT 4).** He also believed it to be an early intervention program. The earlier the intervention, he said, the more hope they had to keep people out of the prison system, which would be a major reduction in cost to the people of the State of Montana.

Kathy McGowan appeared on behalf of the Chemical Dependency

Programs of Montana, and said that the organization represented out-patient and some in-patient CD programs across the state. CDPM also supported the bill. She said they should have no trouble whatsoever adapting to a drug information course. On a personal note, she spoke about an acquaintance who had recently gone through the alcohol court school and said it was an intimidating and humiliating experience and said he would definitely not drink and drive again. She thought it would also be true for this particular course.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR NELSON asked if they were talking about two different courses, drug and chemical dependency treatment.

Mr. Bruno answered that there was currently a DUI court school course approved by their office. This would be a course they would incorporate within current curriculum, including drug laws and effects. In answer to a further question about costs, he replied that based on the cost of each school, averaging from $125 to $200, based on providing costs. He said that they generally re-figure their court school costs to cover those not able to pay. He did not know what the percentage of those would be. When the Senator asked about insurance, he said if treatment was recommended, it alone would be covered by those covered by insurance. The others are billed on an ability to pay backed by state and federal support. He said he would try to provide an estimate of those unable to pay.

Closing by Sponsor:

REPRESENTATIVE COBB said he thought the numbers of those unable to pay would be about 15 per cent as an estimate. Hopefully, some kids would be saved from doing drugs, he said, and he hoped for a success rate of up to 20 to 30 percent. The immediate effect is not just getting a misdemeanor and going on probation, but they would have to do this on a weekly basis and would be more of a harassment effect. He hoped to prevent future felonies.

HEARING ON HB 37

Opening Statement by Sponsor:

The sponsor was not present so **SENATOR MIKE HALLIGAN, Senate District 34 of Missoula,** presented the bill to the committee. He said he had actually done the bill draft request on this bill on behalf of the Department of Administration. The reason behind the bill was that in the early days when the statute was passed inmates going to the Montana State Prison were not represented by

counsel as they are today and there was no availability of libraries inside the prison to assist inmates to pursue cases. The statutes of limitations was trying to reflect some sensitivity to those early days when resources were not available. Now they are available, there is Constitutional law and case law and there is no longer a tolling of the statute of limitations, he said.

Opponent's Testimony: **Bill Gianoulias, attorney, working for Risk Management in Tort Defense, Department of Administration** helped to explain the bill. At one time there was a need to allow inmates an extension on the statute of limitations because access to courts may have been difficult. He did not think it was difficult any more. The best example, he said, is that out of 203 cases they were currently defending, 97 are brought by inmates. Inmates own computers in prison or have access to them. They also have a library paid for by the state and there are inmate law clerks within the prison. Nobody gets to prison without having a lawyer in the first place and there are fill-in-the-blank forms available to file civil rights claims in federal court and once filed, federal courts accomplish service on the state. There is no reason then for a five-year statute of limitation extension any more, he said. He said one tricky portion had to do with retroactivity in the bill. They did not want to cut anyone off, so they provided that no one would be cut off by the passage of the bill. The minimum time anyone would have to recognize that their limitations would be decreased would be six months. He also presented written testimony. **(EXHIBIT 5).**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

SENATOR HALLIGAN closed on HB 37 without further comments.

{Tape: 2; Side: A; Approx. Counter: 00; Comments: .}

EXECUTIVE ACTION ON SB 13

Motion: **SENATOR HALLIGAN MOVED THAT THE COMMITTEE ADOPT THE AMENDMENTS TO SB 13 AS CONTAINED IN (EXHIBIT 6).**

Discussion: **SENATOR HALLIGAN** explained that his amendments addressed the concerns of **SENATOR SPRAGUE** that there would be an insurance problem for young people getting drivers' license suspensions. He said that in case of non-appearance, there would

be a letter going from the court asking the violator to appear or have the license suspended. He said he had specified in the amendments that initial notice must be followed by a written notice from the court by first class mail. If after the stop, a person does not have bail, they can appear on a certain date and if they don't, the letter goes out asking them to appear. If they do not appear, their license will be suspended. If they are 18 years old, it may cause a major problem with their insurance, so he said that they had included in the amendments language specifying that they would not be included in special risk classification and that their rates supposedly can't be affected. Now, he said, the insurance companies don't like that at all. He assured a full hearing in the House on this bill so that the insurance companies could come in to debate it.

SENATOR BARTLETT said it was possible to remove the rate section and deal with it though the motor vehicle report that the Department of Justice can or cannot release. They can make differentiation about the kinds of information they release to the insurance companies, she said.

Valencia Lane said that **Brenda Nordland** told her it wouldn't work to try to adopt the same rule here as in the minors in possession act.

CHAIRMAN CRIPPEN said that the insurance companies would get an opportunity to present their case in the House hearings concerning possible rate changes.

Vote: The motion to adopt the amendments **CARRIED UNANIMOUSLY** by oral vote.

Motion/Vote: **SENATOR HALLIGAN MOVED SB 13 DO PASS AS AMENDED.** The motion **PASSED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 37

Discussion: **SENATOR DOHERTY** asked about the statute of limitations for minors. On Page 1, Line 17, "minority" was stricken, so did it also affect the statute of limitations for minors?

SENATOR BISHOP said that Line 14 said, "either a minor or seriously ill." Did that take care of it, he asked?

Valencia Lane commented that there were no time limits on a minority and five years on a mental illness.

SENATOR HALLIGAN explained that they were limiting the disability for serious mental illness to five years and were not trying to restrict a minor.

SENATOR DOHERTY asked if it was five years from the onset of the serious mental illness or five years after the mental illness?

Valencia Lane said she thought it was from the onset. The first sentence said that the time is tolled during the period of the disability whether it is minority or mental illness. The second sentence said it would not be tolled more than five years, she said. But, she said, these were not changes in existing law, merely a re-statement.

CHAIRMAN CRIPPEN said they would wait for one day for clarification on this language.

EXECUTIVE ACTION ON SB 272

Discussion: **SENATOR GROSFIELD** explained the amendments he had written addressing Page 2, Line 23 striking the word "affidavit" and inserting the words, "acknowledged statement." He further stated that on Page 2, Line 24 he struck a sentence regarding a death certificate and added, "the acknowledged statement must include a legal description of the real property."

Motion/Vote: **SENATOR GROSFIELD MOVED TO ADOPT THE AMENDMENTS.** The motion **CARRIED UNANIMOUSLY** on an oral vote.

Motion/Vote: **SENATOR GROSFIELD MOVED THAT SB 272 DO PASS AS AMENDED.** The motion **CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON SB 37

Discussion: **CHAIRMAN CRIPPEN** asked **Mr. Gianoulias** about the language on Section 1, Subsection 1. He questioned when the tolling start on the seriously mental illness provision?

Mr. Gianoulias stated that the bill was not intended to change that. He quoted a case called Bestwina. All this tried to do was eliminate the time extension for people incarcerated. The deletion of the word "minority" at the end was because it was not a disability, he said, but the tolling would still apply to a minor.

Motion/Vote: **SENATOR HALLIGAN MOVED THAT HB 37 BE CONCURRED IN.** The motion **CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 108

Discussion: There was discussion about the fiscal note, where the money comes from, and that the judge may recommend treatment.

SENATOR HALLIGAN said he had clients that had to fight with the judges over treatment issues. He thought the bill was far more structured that it at first appeared.

SENATOR BAER was concerned about duplication in the drug and alcohol programs.

SENATOR HALLIGAN read and determined that this bill would only apply to misdemeanor charges and sentencing would not include any treatment or assessment.

SENATOR ESTRADA said she was concerned about the costs of the program.

SENATOR NELSON commented that the committee should bear in mind that other people will pay the costs for those who are unable to pay and others will pay the insurance costs for those who are unable to pay.

Motion/Vote: **SENATOR HALLIGAN MOVED THAT HB 108 BE CONCURRED IN.** The **MOTION CARRIED** by oral vote with **SENS. NELSON AND ESTRADA** voting "no."

ADJOURNMENT

Adjournment: **CHAIRMAN BRUCE CRIPPEN** adjourned the hearing at 12:35 p.m.

BRUCE D. CRIPPEN, Chairman

JUDY FELAND, Secretary

BDC/jf

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL EXECUTIVE SESSION DATE 2-2-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		
Valencia	✓		

SEN:1995
wp.rollcall.man

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL HEARING 10 A.M. DATE 2-2-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

February 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 13 (third reading copy -- blue), respectfully report that SB 13 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 10.
Following: "VIOLATION;"
Insert: "PROHIBITING INSURANCE PREMIUM INCREASES OR SPECIAL RISK CLASSIFICATIONS BASED ON SUSPENSION OF A DRIVER'S LICENSE FOR FAILURE TO APPEAR OR PAY;"
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 33-16-201 AND"

2. Page 2, line 3.
Following: "restitution."
Insert: "A suspension under this section may not be considered for insurance purposes as a special risk classification under Title 33 or be used as the basis for increasing a person's insurance premiums."

3. Page 2, line 7.
Following: "court."
Insert: "The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent and of the probable consequences of a suspension unless the person appears or pays within a specified number of days."

4. Page 2, line 8.
Insert: "**Section 2.** Section 33-16-201, MCA, is amended to read:
"**33-16-201. Standards applicable to rates.** The following standards ~~shall~~ apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(1) (a) Rates ~~shall~~ may not be excessive or inadequate, as ~~herein~~ defined in this title, ~~nor shall~~ and they may not be unfairly discriminatory.

(b) ~~No~~ A rate ~~shall be held to be~~ is not excessive unless ~~such~~ the rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which ~~such~~ the rate is

PV
Amd. Coord.
Sec. of Senate

applicable.

(c) ~~No~~ A rate ~~shall be held to be~~ is not inadequate unless ~~such~~ the rate is unreasonably low for the insurance provided and the continued use of ~~such~~ the rate endangers the solvency of the insurer using ~~the same~~ it or unless ~~such~~ the rate is unreasonably low for the insurance provided and the use of ~~such~~ the rate by the insurer using ~~same~~ it has, or if continued will have, the effect of destroying competition or creating a monopoly.

(2) (a) Consideration ~~shall~~ must be given, to the extent applicable, to past and prospective loss experience within and outside this state, to ~~revenues~~ revenue and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, ~~deemed~~ considered relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent 5-year period for which ~~such~~ the experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of ~~any such~~ an insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans ~~which~~ that establish standards for measuring variations in hazards or expense provisions, or both. ~~Such~~ The standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations, except that no special risk classification may be established based on anything adverse to the insured in a driving record ~~which~~ that is 3 years old or older or for any driver's license suspension under 61-5-214. ~~Such~~ The classifications and modifications ~~shall~~ apply to all risks under the same or substantially the same circumstances or conditions.""

-END-

SENATE STANDING COMMITTEE REPORT

February 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 37 (third reading copy -- blue), respectfully report that HB 37 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

281331SC.SPV

SENATE STANDING COMMITTEE REPORT

February 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 108 (third reading copy -- blue), respectfully report that HB 108 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

281333SC.SPV

SENATE STANDING COMMITTEE REPORT

February 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 272 (first reading copy -- white), respectfully report that SB 272 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 2, line 23.
Strike: "affidavit stating"
Insert: "acknowledged statement"

2. Page 2, line 24.
Following: "terminated."
Strike: "A copy of the certificate of death must be attached to the affidavit."
Insert: "The acknowledged statement must include a legal description of the real property."

-END-

Amd. Coord.
Sec. of Senate

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

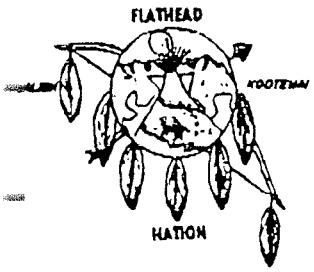
DATE 2-2-95 BILL NO. SB 149 NUMBER 1

MOTION: Motion By Sen. JABS TO TAKE IT OFF THE TABLE

VOTE: 6-5 - OFF THE TABLE.

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	/	
LARRY BAER	/	
SUE BARTLETT		/
AL BISHOP, VICE CHAIRMAN		/
STEVE DOHERTY		/
SHARON ESTRADA	/	
LORENTS GROSFIELD	/	
MIKE HALLIGAN		/
RIC HOLDEN	/	
REINY JABS	/	
LINDA NELSON		/
	6	5

SEN:1995
wp:rlclvote.man



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 675-2806

February 1, 1995

Ms. Beth Baker
Office of the Attorney General
Department of Justice
215 North Sanders, Justice Bldg.
Helena, Montana 59620-1401

Re: Senate Bill 189

Dear Ms. Baker:

This letter is written to confirm the understanding reached between our Legal Department and the Office of the Attorney General on the afternoon of February 1, 1995.

As you are aware, the Confederated Salish and Kooteni Tribes have reviewed Senate Bill 189. The concept of enabling state agencies to accept license revocation, suspension, and reinstatement proceedings conducted by Tribal peace officers and Tribal Courts is admirable. The State has, until recently, routinely done that on the Flathead Indian Reservation. For that reason, among others, we believe that the concept is already in place. The state now appears to believe otherwise.

Both governments, I believe, genuinely desire to reinstate a previously functioning system of state law. We believe that the present amendments, however, are more than is necessary to do the job. We believe that more acceptable terms can be met.

In line with our mutual goal to achieve a workable system, we accept your proposal to advise the Committee of the fact that the Confederated Salish and Kootenai Tribes have substantial concerns with the present language, that the hearing proceed with that information being made of record by you, and that your office request that no further Committee action take place until we have had an opportunity to attempt a compromise.

We have also spoken to Senator Weldon, the bill's sponsor. He is agreeable to this approach.

We look forward to working with you on this matter. Please contact our Legal Department at your earliest convenience to commence this process.

Sincerely,

Rhonda R. Swaney
Acting Chairman

cc: Senator Weldon

SB 189

Testimony of the Department of Justice
February 2, 1995
Prepared by Brenda Nordlund

I will address both aspects of this bill.

STATE-TRIBAL ENFORCEMENT OF IMPLIED CONSENT LAWS

It has been the Montana Department of Justice's policy to process licenses of tribal members seized by tribal law enforcement officials under tribal implied consent ordinances and forwarded to the Department as if those licenses had been seized under Mont. Code Ann. § 61-8-402. That section generally provides that, if a driver reasonably believed to be operating a motor vehicle under the influence of alcohol or drugs refuses to consent to administration of a blood, breath or urine test, a law enforcement officer must seize the driver's license and send it to the Department. The driver's privilege to operate a motor vehicle is suspended automatically for 90 days after a first refusal or, following a second or subsequent refusal within five years of a previous refusal, for one year. When the suspension is completed, the driver may request reinstatement of his license upon payment of a $100 fee.

Last summer the Department was required to reassess its policy in response to a demand by a tribal member for return of his license without payment of the fee. We concluded that licenses seized under the authority of tribal ordinances cannot be deemed to have been seized under § 61-8-402 as that provision is now drafted. We also concluded, however, that this issue could be addressed through an amendment to § 61-8-402 and entry

into state-tribal cooperative agreements under Mont. Code An.. §§ 18-11-101 to 61-8-402. We communicated our conclusions to each of the chairs of the Indian tribes in a letter dated September 7, 1994.

It is only in recent days that the Department was advised of concerns of the Confederated Salish-Kootenai Tribes of the Flathead Nation (C S-K T) regarding the manner in which this bill was drafted. We have exchanged possible amendments with the Legal Department of the C S-K T in an attempt to address their concerns. The Department is willing to continue to work with the C S-K T, and to that end, late yesterday afternoon an agreement was reached with the C S-K T that the hearing today proceed, but that we would ask that no further Committee action be taken until we have had an opportunity to reach a compromise.

This agreement is memorialized in a letter from Rhonda R. Swaney, acting Chairman and Vice Chairman of the Confederated Salish and Kootenai Tribes of the Flathead Nation, a copy of which will be distributed to committee members by the committee secretary.

The Department wants to work things out with the C S-K T, but in so doing, we don't want to create problems with other tribes. The state-tribal government aspects of this bill must be broad enough to work for all parties, and the DOJ is committed to do whatever to resolve concerns and come up with appropriate amendments that serve the needs of all. And the Department wants to assure the Chairman and members of this committee, that it

EXHIBIT 2
DATE 2-2-95
SB 189

will act with dispatch so as not to hold up the committee action unduly.

PROCEDURAL CHANGES REGARDING NOTICE AND RIGHT TO STAY

Unrelated to the tribal issue, the bill also contains some revisions for the notice to be given drivers under the implied consent statute. These changes are intended to provide drivers with more timely and clearer notice of their rights under the implied consent statute, particularly the right to a hearing. The bill also codifies the current practice of staying a license suspension or revocation pending hearing. These changes were brought in part in response to a lawsuit filed in 1992 in federal district court that asserted a procedural due process challenge to Montana's implied consent laws. The lawsuit is currently in the process of being dismissed, without a decision on the merits or any admission of constitutional deficiency on the part of the state. Rather than run the risk of a similar challenge in the future, the Department opted to support these procedural changes, which will serve the purpose of providing timely notice of rights to motorists whose license is subject to seizure, suspension or revocation under implied consent laws, while at the same time streamlining the process by having the formal notice served by the arresting officer at the time of arrest, rather than by mail several days later from the Motor Vehicle Division.

SB189

- WOHEHIV -
The Morning Star

NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. Box 128

LAME DEER, MONTANA 59043

- WOHEHIV -
The Morning Star

-via telefax and first class mail-

February 2, 1995

Ms. Brenda Nordlund
Mt. Dept. of Justice
215 N. Sanders
Box 201401
Helena, Mt. 59620-1401

Dear Brenda and Sara:

The office of Montana Attorney General has inquired on our views about a bill which is now pending before the Montana legislature relating to driver's license suspension, revocation and reinstatements. We have read the proposed changes, especially the new language in which the State will recognize and honor the suspension and revocation that our Judicial System would impose on a driver who refused to take blood, breath or urine tests that would be requested to detect alcohol or drugs in an impaired drivers body.

We support the bill (Senate Bill No. 189) and the amendments through February 2, 1995. Our understanding of this bill is that if our Tribe ever requires the drivers here to have a license and we enact law which would allow our police and judicial system to suspend and revoke an impaired drivers license to drive, then you, in the State, would recognize our decision and see that the license was indeed revoked. Reinstatements made by the Tribe likewise would be respected by Montana. The Tribe and the State would also need a short written memorandum of agreement in place once this enabling State legislation is passed.

We believe this is a step towards the State and Tribal Governments working cooperatively on our joint problems and do support this proposed SB189 as now amended.

Sincerely,

Llevando Fisher

Llevando Fisher, President
Northern Cheyenne Tribal Council

cc: Calvin L. Wilson
Tribal Council Member

Amendments to Senate Bill No. 189
First Reading Copy

For the Committee on Judiciary

Prepared by Brenda Nordlund, Dept. of Justice
Feburary 1, 1994

1. Page 2, lines 22-28
Strike: subsection (7) in its entirety
Insert: (7) The department will (a) suspend or revoke a driver's license seized within the exterior boundaries of a federally recognized Indian reservation in this state by a peace office acting under the authority of a tribal government with jurisdiction over the reservation and (b) recognize a tribal court order reinstating a driver's license if:

(i) the tribal government has adopted an ordinancy substantially similar to this section and 61-5-403; and

(ii) the department and tribal government have entered into a state-tribal cooperative agreement for this purpose in accordance with title 18, chapter 11, part 1.

2. Page 3, line 25:
Insert: "This section does not create a right of appeal to a state court from a driver's license seizure by a peace officer acting under authority of a tribal government or adjudicated by a tribal court pursuant to a cooperative agreement under subsection (7) of [Section one].

HB 108 Testimony

This bill introduced by Representative John Cobb is supported by the Department of Corrections and Human Services (DCHS) Alcohol and Drug abuse Division (ADAD).

DCHS/ADAD would be the agency responsible under 53-24-208 for approving the facilities eligible to provide the dangerous drug information course. We currently develop the standards for the ACT or DUI component, approved programs are required to follow. The department is also the agency given legislative responsibility for certifying chemical dependency counselors who would determine if the individuals taking the course were chemical dependent and need treatment.

We believe programs could merge the persons convicted of dangerous drug misdemeanor into the preexisting DUI curriculum, expand the information course with relative ease and minimal cost. We believe that the successful merge would require extending the lectures by one hour or at the most one session. The assessment and referral process would remain the same.

Respectfully submitted

Darryl L. Bruno, Administrator
Alcohol and Drug Abuse Division
Department of Corrections and Human Services

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 2-2-95
BILL NO. HB 37

DEPARTMENT OF ADMINISTRATION

RISK MANAGEMENT AND TORT DEFENSE DIVISION

MARC RACICOT, GOVERNOR

1500 EAST SIXTH—LOWER LEVEL
PO BOX 200124

STATE OF MONTANA

TELEPHONE (406) 444-2421
FAX (406) 444-2592

HELENA, MONTANA 59620-0124

February 2, 1995

TESTIMONY IN SUPPORT OF HB 37, by Bill Gianoulias, Chief Defense Counsel, Risk Management and Tort Defense Division, Department of Administration.

The Risk Management and Tort Defense Division requested and supports HB 37. This bill simply provides that people in prison have the same statute of limitations that applies to everyone else.

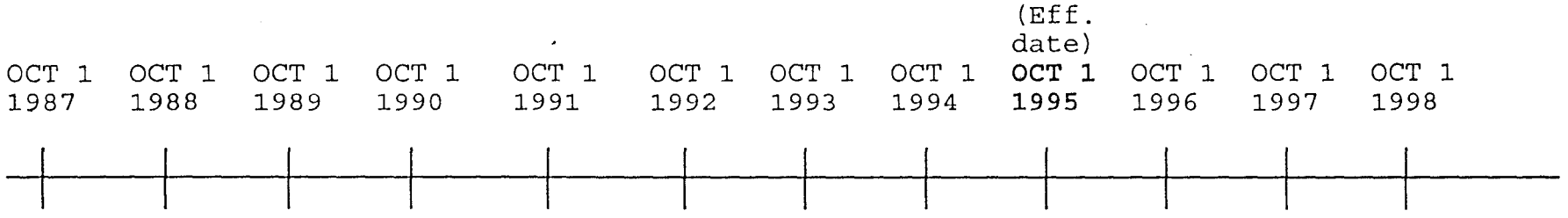
Section 27-2-401 MCA now provides a person imprisoned on a criminal charge, or under a sentence for a term less than life, with up to a five year extension for bringing a lawsuit. If a person in prison has a tort claim to file, instead of a three year statute of limitations, the time period to file a lawsuit is eight years. This amendment will eliminate the five year extension and allow a person in prison three years to file suit, the same amount of time as for everyone else.

While inmates may have had difficulty gaining access to courts in the past, it is not so now. Of 203 open lawsuits we are presently defending, 97 of them have been brought by inmates. Inmates also have access to courts through the Montana Defender Project which is funded by the state and run by the University of Montana Law School. Many inmates have access to computers and access to a law library maintained by the state for the inmates at the prison.

We request that you pass HB 37.

HB 37 EXAMPLE

EXAMPLE ASSUMES TORT ACTION WITH 3 YEAR STATUTE OF LIMITATIONS



<———————— **UNAFFECTED**

Any cause of action arising before 10/1/90 is unaffected by this bill (up to 8 year statute of limitations applies).

———————————————— **3-8 YR. S/L**

Any cause of action arising between 10/1/90 and 10/1/95 has a last date to file of 10/1/98 (statute of limitations is between 3 and up to 8 years).

————————————**>3 YR. S/L**

Any cause of action arising after 10/1/95 (the effective date of this act) has a 3 year statute of limitations.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 2-2-95
BILL NO. SB 13

Amendments to Senate Bill No. 13
Third Reading Copy (blue)

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Valencia Lane
January 30, 1995

1. Title, line 10.
Following: "VIOLATION;"
Insert: "PROHIBITING INSURANCE PREMIUM INCREASES OR SPECIAL RISK CLASSIFICATIONS BASED ON SUSPENSION OF A DRIVER'S LICENSE FOR FAILURE TO APPEAR OR PAY;"
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 33-16-201 AND"

2. Page 2, line 3.
Following: "restitution."
Insert: "A suspension under this section may not be considered for insurance purposes as a special risk classification under Title 33 or be used as the basis for increasing a person's insurance premiums."

3. Page 2, line 7.
Following: "court."
Insert: "The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent and of the probable consequences of a suspension unless the person appears or pays within a specified number of days."

4. Page 2, line 8.
Insert: "**Section 2.** Section 33-16-201, MCA, is amended to read:
"**33-16-201. Standards applicable to rates.** The following standards ~~shall~~ apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:
(1) (a) Rates ~~shall~~ may not be excessive or inadequate, as ~~herein~~ defined in this title, ~~nor shall~~ and they may not be unfairly discriminatory.
(b) ~~No~~ A rate ~~shall be held to be~~ is not excessive unless ~~such~~ the rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which ~~such~~ the rate is applicable.
(c) ~~No~~ A rate ~~shall be held to be~~ is not inadequate unless ~~such~~ the rate is unreasonably low for the insurance provided and the continued use of ~~such~~ the rate endangers the solvency of the insurer using ~~the same~~ it or unless ~~such~~ the rate is unreasonably low for the insurance provided and the use of ~~such~~ the rate by the insurer using ~~same~~ it has, or if continued will have, the effect of destroying competition or creating a monopoly.
(2) (a) Consideration ~~shall~~ must be given, to the extent applicable, to past and prospective loss experience within and

OVER

outside this state, to ~~revenues~~ revenue and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, ~~deemed~~ considered relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent 5-year period for which ~~such~~ the experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of ~~any such~~ an insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans ~~which~~ that establish standards for measuring variations in hazards or expense provisions, or both. ~~Such~~ The standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations, except that no special risk classification may be established based on anything adverse to the insured in a driving record ~~which~~ that is 3 years old or older or for any driver's license suspension under 61-5-214. ~~Such~~ The classifications and modifications ~~shall~~ apply to all risks under the same or substantially the same circumstances or conditions.""

DATE 2-2-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: 8:30 Exec. Sess: SB 13, 132, 167, 200

Hearing 10 AM: HB 37, HB 108, SB 189, SB 272

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Bill Gravelines	RMTD - Dept of Adm	HB 37	✓	
Dean Roberts	Mtn Bell D.R.in	SB 189	✓	
Brenda Nordlund	Dept of Justice	SB 159	✓	
Sarah Bond	11	11	✓	
DARRYL BRUNO	DCHS/ADAD	H B 108	X	
KATHY McGowan	CDPM	108	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10