MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE CRIPPEN**, on February 16, 1995, at 10:00 AM

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 Keintz, Committee Secretary

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

Committee Business Summary:

Hearing:	SB 308, SB 340, SJR 16, SB 402
Executive Action:	SJR 16, SB 340, SB 402, SB 206, SB 212, SB 314, SB 308

HEARING ON SB 308

Opening Statement by Sponsor:

SENATOR SHARON ESTRADA, Senate District 7, Billings, presented SB 308. In a civil action, reasonable attorney fees as determined by the court will be awarded to the prevailing party. The intent of this bill is to unclog the court system, put a stop to frivolous lawsuits and eventually bring down insurance rates. SB 308 is a form of tort reform.

Proponents' Testimony:

SENATOR LARRY BAER testified in support of SB 308. It has been his experience, as a sole practitioner attorney, that Montana becomes more litigious every day. Our courts are clogged and our judges are overworked. Many lawsuits are frivolous and ungrounded. Insurance companies will settle quickly for a smaller amount even though there may not be merit to the case. If we implement the rule whereby the prevailing party can always collect attorneys fees from the losing party, we can curb many of these non-meritorious, frivolous lawsuits which clog our systems and keep our courts from true justice.

SENATOR JOHN HARP commented it is always intriguing to see some real tort reform. As a small business owner, he has talked to a lot of business people who have been in lawsuits. After they get through a very long and expensive lawsuit, even though they may win the lawsuit they lose in the end because of the cost of litigation and the overuse and abuse of the legal system. The loser pay rule would help small business. It would make people think twice before filing frivolous lawsuits. This is somewhat after the English rule which holds losers accountable for attorney fees. If you win something, you shouldn't lose something. If you win, you prevail. Our legal system has it backwards. We are talking about fairness and accountability. Small business people can't compete. It would be wonderful to see a small business person come through a case, actually win it and continue to have a business.

GENE JARUSSI, an attorney from Billings, an officer and director of the Montana Trial Lawyers Association, appeared on behalf of himself and his clients and not in behalf of the MTLA. He has litigated cases for about 17 years. SB 308 amends the cost statute and allows reasonable attorney fees to the prevailing party. It is a simple amendment which has some far reaching ramifications. He is a reluctant opponent. The award of attorney fees to a prevailing party is not new. Parties to contracts can put in an attorney fee provision in their contract. If there is a dispute over the contract, the prevailing party gets their fees. There are a number of statutes which we have that allow the prevailing party attorney fees, such as cases where the recovery is sought for property damage arising out of the use or ownership of a vehicle. This bill would give the prevailing party in all civil actions the right to obtain reasonable attorney fees. The vast majority of his clients are young. They have a low income and very few assets. Their claims are against bigger companies which either have insurance or have significant assets of their own. If his client does not prevail, he or she is liable for fees and costs. Attorney fees for defending a case can run up to $30,000. If we do prevail, we prevail against someone with insurance or assets. His clients recovery will be enhanced. Small business will run into problems when they have a claim against their supplier, financial institution, or franchiser. Those companies are big companies

and to fight those companies the defense bill would be extremely large. Retired people have savings and probably own a home. They could lose the same if they do not prevail on their case. Agriculture would also be hit pretty hard. Property values have gone up so that farmers and ranchers have a fair amount of equity in their land. If they ended up with a $30,000 bill, they will have to pay.

Mike Meloy appeared in support of SB 308. He stated that in 1994 he turned down 179 cases. Most of his cases are wrongful discharge or medical malpractice. He turned down the cases because the client cannot afford to pay him on an hourly basis and the case is not worth taking on a contingency fee basis. Of the 179 cases he turned down, 158 were wrongful discharge cases. Most of these were termination cases against some business in Montana or against a governmental entity. Seventy six of these cases were good cases on liability. He turned them down because the employee wasn't making enough money for him to take the case on a contingency fee basis. It costs about $40,000 to handle a wrongful discharge case. Unless the client is making $30,000 a year, he can't take the case on a contingency fee basis because he would come out short if he wins the case. If he loses, he doesn't get paid for his services. Another reason he doesn't take these cases is if the client has a good liability case this means the employee is a good employee. When he finds work someplace else that mitigates his loss. The employee has been wronged. With this bill, he could afford to take the case and would be able to help a lot of employees out there who are being mistreated by employers. The Wrongful Discharge Act has an arbitration provision. If this is turned down, you must pay the other side's fees. This is a good bill for the "little guy".

SENATOR MIKE SPRAGUE rose in support of SB 308. He is a small business employer. If you are an ethical employer, you do not have anything to fear from this bill.

Mike Cok stated he thinks this bill will make justice more accessible for the poor people and regular citizens who will be able to collect their attorney fees from the big companies. There is some risk. It will hurt the small businessman and the retired people.

Reiny Tschida spoke in support of SB 308. Overuse and abuse of the legal system imposes undue costs upon the taxpayers, businesses, and other people of the state of Montana. This bill would hold losers accountable for attorneys fees of winners in legal cases. We need a measure to control frivolous lawsuits and allow our court systems to function in a straightforward manner.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, stated they oppose SB 308. This bill is honest, simple and understandable to nonlawyers. This legislature can pass SB 308 or SB 212, but it

is almost certain that both cannot be passed because of the way these two bills will interact. SB 308 entitles the prevailing party to attorney fees. If you win, you get attorney fees. In SB 212, defendants want to be able to point the finger at many people who may only be one or two percent negligent. It will be reasonable, if SB 212 passes, for the plaintiff to name all these people as parties. There will be many litigants in the case which will result in a lot of attorneys fees. In a multi-defendant case, a plaintiff can't recover his full attorney fees from all three defendants. It is clear that if the plaintiff prevails against one party who is 90% negligent and doesn't prevail against other parties, that plaintiff's attorney fees will result in the losing defendant paying the other defendants' attorneys fees as well. The interaction of these two bills will be intolerable to all the proponents on SB 212. The fact is SB 212, which MTLA believes is unconstitutional, will probably pass. SB 308 won't pass. There are a few cases out there which have clear liability and big damages. There are more cases which have doubtful liability and small damages. Montana law acts as a disincentive to the people with doubtful liability and small damages. It does not act as a disincentive to cases with clear liability and big damages. SB 308 will not weed out the cases with the big damages. It will instantly increase recoveries in those cases by about a third. Under current law the damages awarded in a case are defined by the injury. If SB 308 passes, attorneys fees will be boundless.

Jacqueline Lenmark, American Insurance Association and State Farm Insurance, commented she is very confused. Her law practice includes both plaintiff and defense cases. She represents insurance companies. When she is defending a lawsuit, she is often retained by the insurance company. The person she is representing is the defendant. This bill may have some unintended consequences for those people who are looking for relief under the bill. Insurance policies are purchased to protect assets when sued. The defense counsel and the insurance company must be sure that they deliver to their customers the defense which they purchased under their policy. In cases where insurance is involved, there is often a dispute between the plaintiff and the defendant about the value of a claim. The defendant is not the company. The defendant is the person who is insured. Frequently the defendant will admit liability in a rear end collision. Plaintiff may say that his damages are $30,000. Defendant may agree that he was in the wrong but disagree as to the amount of damages. He may feel his damages are only $12,000. The parties cannot reach settlement. Based on admitted liability, the jury awards damages of $8,000. In that situation, defendant has won. Legally he has lost. He has admitted liability. Attorney fees have been incurred on both sides and defendant, who has won the lawsuit, is going to pay the plaintiff's attorney fees. This bill will reduce some litigation because it raises the stakes. On balance, it will have a more detrimental impact on defendants who have insurance coverage or plaintiffs who have assets. Plaintiffs who have assets are not

going to be willing to risk those assets in a lawsuit where they don't know whether they are going to win. Plaintiffs who don't have assets have nothing to lose under this bill because defense will have to pay their attorney fees. The defendant, who has little assets and perhaps an insurance company covering for some policy limit which may not recover all that is covered in the trial, is going to put his assets at risk if the circumstances do not come out the way they are anticipated.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR RIC HOLDEN asked **Ms. Lenmark** to explain the situation wherein a verdict would come back less than what the insurance company had offered originally, why would the defendant have lost the case? **Ms. Lenmark** stated that when a person enters into a lawsuit admitting liability, he states that he caused the accident and should have some dollars assessed against him; however, not the sum of money which plaintiff has asked for. In that situation, when the verdict comes back, he will still be the loser. If he hasn't admitted liability but will argue that in the lawsuit and loses the argument in the lawsuit but still disputes with plaintiff the amount of damages the plaintiff is entitled to, he may still lose the liability argument, but the jury may still award damages less than what plaintiff asked for or what he may have offered. The defendant may go into court knowing he is going to technically lose the case. There will be a judgment. The case is arguing how much that judgment should be. The way the law is written, even if he wins the argument about how much the judgment should be, he is still the loser on the court record. A judgment will be filed against him.

CHAIRMAN CRIPPEN asked if insurance covers the insured's attorneys fees. **Ms. Lenmark** stated some policies provide for that and some do not. In professional liability cases, an aspect of the policy is to cover attorney fees. She could not give an answer consistent for all companies.

SENATOR AL BISHOP asked for an explanation of sanctions. **Mr. Jarussi** commented that there is already a mechanism in place, Rule 11 of the Montana Rules of Civil Procedure, to stop frivolous lawsuits. Every document filed in a lawsuit must be well grounded in fact or law or present a reasonable argument for extending the law. The rule states that the court shall impose sanctions on the person who files the frivolous paper.

SENATOR STEVE DOHERTY posed the situation wherein he would be defending a corporation which had bought an insurance policy. The insurance company then decides to file a separate declaratory judgment action stating it has no obligation to defend or indemnify. If there is a fiduciary relationship between the insurance company and their insured and there is a declaratory judgment, the insurance company will be obligated to provide

counsel for their insured in a question of whether there is coverage or not. **Ms. Lenmark** stated that insurance companies do defend in those situations where they have filed a declaratory judgment action or they simply defend under a reservation of rights for some other purpose. **SENATOR DOHERTY** further questioned the situation if this bill passed and the business he is defending goes to trial and his client loses, would his client then be out not only insurance coverage but would he be also obligated to pay the insurance company's attorneys fees as well. **Ms. Lenmark** stated this depended on the contract between all of the parties.

SENATOR LINDA NELSON commented that someone who protested having her child support lowered and lost would then have to pay attorneys fees. Under this bill, would she also be liable for the court costs and the other party's court costs. **Amy Pfeifer, Attorney with SRS, Child Support Enforcement Division,** commented that under 40-4-110 costs and attorney fees can be awarded in a domestic action. This bill would add attorney fees to the list of costs but would not make too much of a change from existing law.

SENATOR DOHERTY questioned how the prevailing party would be determined in a dissolution action. **Mr. Jarussi** stated there is a statute which makes this discretionary for the court in divorce cases. SB 308 would make it mandatory. The judge ultimately rules and determines who is the prevailing party. Under current law he wouldn't have to award fees to either party. Under SB 308 the prevailing party would be entitled to costs and attorney fees.

Closing by Sponsor:

SENATOR ESTRADA stated that it had been mentioned that this bill might be harmful to elderly people and small business. She would never intentionally do anything to harm either one.

{Tape: 1; Side: B}

HEARING ON SB 340

Opening Statement by Sponsor:

SENATOR BRUCE CRIPPEN, Senate District 10, Billings, presented SB 340. This Act amends Title 30 and 35 and provides for a new form of business which is active in other jurisdictions called a limited liability partnership.

Proponents' Testimony:

David Dietrich, State Bar Business Law Section, spoke on behalf of SB 340. He presented his written testimony, **EXHIBIT 1.** As of October 14, 1994, there are 18 jurisdictions which have enacted the limited liability partnership. An additional nine are

considering it. There are approximately 25 states that have enacted this legislation. This legislation is similar to the Limited Liability Act which was enacted by the 1993 Legislature. If a partner commits an act of malpractice, the other partner's personal assets are not at risk. However, the partnership assets are fully at risk. There are two exceptions to the limited liability shield that others have asked to have placed in other portions of the code for unemployment insurance and workers' compensation. The State Bar has no opposition to those provided they are placed in current HB 100 and HB 200 which are currently being considered. If a Limited Liability Company Act has already been enacted, why are they asking for a Limited Liability Partnership Act? The reasons are: (1) All states recognize partnership. (2) A limited liability partnership, as distinguished from a limited liability company, is available in all states irrespective of whether or not those states have actually enacted a Limited Liability Partnership Act. You can do business as a partnership in all other states, whether or not those others states will actually recognize the shield depends on whether that state has actually enacted a Limited Liability Partnership Act. There is more uniformity. The Limited Liability Company is a new entity. It requires a complex operating agreement and it is more expensive to form. With this, you can take existing partnership agreements and create them as limited liability partnerships. The partnership structure which is currently in place is maintained. This type of a limited liability partnership will not protect sham operations. People still have the ability to pierce the corporate veil of an undercapitalized, uninsured business.

Max Stevens appeared in support of SB 340. He appreciates the ability to practice in an llp environment. As a partner in an llp, his personal capital and assets invested in the partnership are at risk, should he or people under his supervision make an error. He accepts that. His personal assets are not at risk if a partner in a distant office should make an error costing the firm all of its assets.

Garth Jacobson, Secretary of State, spoke in support of SB 340. They offered two amendments, **EXHIBIT 2.** The first amendment applies to assumed business names. Given the demand for the filings in this area, they will need to accommodate more businesses with similar names. The safeguard involved is if two business are operating in a similar marketing territory they do have the name contest provision in 35-1-310. This gives the Secretary of State's Office an opportunity to referee any name disputes. The second amendment simply reduces the fees from $250 to $50. This makes it consistent with the same fees charged for corporations and llcs.

David Scott, Chief Counsel, Department of Labor and Industry, provided copies of proposed amendments, **EXHIBIT 3.** to the bill so that the individual partners of an llp will be jointly and severely liable for unemployment insurance.

Charles Brooks, Billings Chamber of Commerce, appeared in support of SB 340. Enactment of llp is consistent with public policy which has already been adopted by the state.

Tom Harrison, Montana Society of CPAs, spoke in support of SB 340. Montana firms that wish to merge with firms in other states, have been reluctant to go outside the state because of potential liability from those partners outside the state. Also, firms from outside the state have been reluctant to come into the state of Montana because they prefer to do business under this business form. This will benefit the people in Montana.

Jim Tutweiler, Montana Chamber of Commerce, spoke in support of SB 340.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR HALLIGAN asked how people are kept from allocating more of their personal assets than they should outside of the company.

Mr. Dietrich commented they have a very well developed body of law which provides that if there is deliberate under-capitialization of a corporation, a limited liability company or a limited partnership, the injured party has the ability to pierce the veil. The same piercing the veil arguments apply to a limited liability partnership as they apply to a corporation for deliberate undercapitialization, failure to maintain a reasonable amount of insurance, etc. In terms of allocation, this needs to be looked at on a case by case basis.

SENATOR HALLIGAN commented they ran into a problem in the interim after they passed the Limited Liability Company Act with respect to workers' compensation. Are partners limited or are they required to obtain workers' compensation?

Mr. Dietrich commented it was his understanding that partners have the right to opt out, if the only persons to be covered as employees are the partners themselves. In the amendments which they have agreed to, the partners would be individually, jointly and severely liable for unpaid workers' compensation premiums for employees of the partnership.

SENATOR HALLIGAN asked if partners are responsible to be covered?
Dennis Zeiler, Bureau Chief in the Employment Relations Division of the Department of Labor and Industry, commented that sole owners and working members of partnerships are exempt from the Workers' Compensation Act. They can opt into the system if the insurer allows them to do so and adds an endorsement to the policy. The amendment which is being offered would make the partners jointly and severely liable for the workers'

compensation premiums which would be due or the unemployment insurance taxes as well.

Closing by Sponsor:

SENATOR CRIPPEN offered no additional remarks in closing.

HEARING ON SB 402

Opening Statement by Sponsor:

SENATOR DOROTHY ECK, Senate District 15, Bozeman, presented SB 402. This is the Montana Medical Support Reform Act. This bill was developed by the SRS in cooperation with their Medicaid Service Division, The Insurance Commissioner's Office and the State Department of Labor and Industry. They have had substantial input from insurance companies and small businesses. This bill will strengthen the ability to collect child support and strength the access to health care for our children. In August of 1993, the Omnibus Budget Reconciliation Act (OBRA) was passed. There are mandatory provisions in that bill which require us to pass legislation implementing it by July 1, 1995. One of the major problems in Montana is controlling the increase of Medicaid as a part of our budget. Montana gets approximately $6 to $7 of federal aid for every $1 we spend. This is still a substantial amount to us. The provisions of SB 402 are intended to conserve the expenditure of Medicaid funds. This is done by attempting to assure that children of divorced or separated parents have access to reasonable health insurance coverage provided by their parents. The obligation to provide health insurance coverage will be enforced by the SRS Child Support Enforcement Division to a greater extent than it is currently in existing law.

Mary Ann Wellbank, Administrator of the Child Support Enforcement Division in the Department of SRS, spoke in support of SB 402. They have worked closely with the Medicaid Division in SRS, the Department of Labor, the Insurance Commissioner's Office, health care providers, the insurance industry and small employers in Montana to come up with a bill which meets the federally mandated requirements of OBRA and also works well for Montana and does not place additional burdens on small business. Medicaid is only to be a safety net for parents who are unable to provide medical insurance and do not have adequate income to do so. This bill gives health care providers and insurers consistent guidance on how to deal with divided families. Currently the non-custodial parent may carry insurance on children but when the custodial parent submits expenses to the insurance company for reimbursement, the insurer issues the checks directly to the non-custodial parent and the custodial parent never recovers that money. They do not intend to adopt rules for anything but the expedited procedures. The bill makes the parents of the children responsible for the support of the children. It ensures that children are covered by private insurance when that is available

at reasonable cost to the parents. It shouldn't be the role of Medicaid to insure every child in the state when the parents can pay for insurance. This bill does not extend coverage for certain individuals under any plan where coverage does not now exist for any other person covered under the plan. Because the bill requires parents to enroll their children if they have health benefits available, it may expand the class of children who are now allowed coverage under the health benefit plan. Children born out of wedlock are required to be covered under certain circumstances. Children who are not declared as dependents on taxes are required to be covered under this bill but it does not expand the insurance that an insurer must offer. If an insurer has certain exceptions in the plan, those exceptions will still continue to exist. Sections 5, 6, and 7 are relocated and consolidated from other sections of the Uniform Parentage Act, the Administrative Procedures Act and the Uniform Marriage and Divorce Act. This will all go into Title 40 so its apparent to insurers and employers dealing with child support and medical support issues what governs their operations. One addition, is the prohibition to count a child's receipt or eligibility for Medicaid as insurance. This is required by OBRA. The court or the administrative agency cannot consider the child's eligibility for a public assistance program as a factor in determining a parent's financial ability to afford health insurance. Medicaid is not a substitute for health insurance when the court finds that health insurance is available to an obligated parent at a reasonable cost. Section 6 describes the contents of a medical support order. OBRA requires a plan be deemed reasonable if it is available through an employer or other group participation. This bill goes one step further than OBRA because it allows the court or the administrative agency some guidelines in which they might find the cost is reasonable such as when the cost of the insurance exceeds 25% of the child support order. For example, the grounds keeper of a major corporation who has insurance available but only nets $900 a month, won't be required to get insurance at $300 a month. Section 7 describes the mandatory provision of a medical support order. It is not required by OBRA but provides a method to address medical support in a single order without having to return to a tribunal for a decision later on or repeatedly in any situation. In a support order, it describes the type of insurance which may be available at the time. If that insurance is no longer available, the support order could give alternatives so the parents would not need to keep returning to the tribunal for a different order every time the parents change employment. Section 8 discusses the persistence and duration of the obligation. This section is required by OBRA and provides for medical coverage for children for the duration of a monetary support obligation. The medical support obligation runs as long as the financial support obligation does. It restates that custody and visitation are separate issues. It also holds a guardian free from liability for any medical expenses for a child which that person has not voluntarily agreed to pay. Section 9 is the effect of the order on health benefit plans. It is

required by OBRA. It makes whoever administers the plan responsible to cooperate to get a child enrolled, to keep a child enrolled and to get the benefits paid to the appropriate person. If the obligated parent is required to provide insurance and the custodial parent wants to use that insurance, the insurer is required to communicate with the custodial parent even though the obligated parent is the one who has insurance. Section 10 is required by OBRA. It allows another party, other than the parent required to provide medical coverage, to enroll a child and otherwise work directly with the plan administrator even if the obligated parent is uncooperative. Section 12 is required by OBRA and it allows the plan to cooperate with anyone trying to obtain or maintain coverage or benefits for the minor child under a medical support order without fear of legal action by the obligated parent. It allows the plan to withhold premiums from an obligated parent's check when given a medical support order, even if the obligated parent tells the plan not to withhold the premiums. It gives the plan administrator guidance about when it can properly terminate coverage on a child. Section 13 is the obligation of the payor. This is also required by OBRA. It protects the payor of an obligated parent's income when the payor properly pays for insurance coverage for a minor child under a medical support order. Section 14 is required by OBRA. It makes it easy for plans to work with the appropriate party to get benefits to the child. Section 15 is required by OBRA. It allows payment to go to the provider directly or to the parent or other party providing they have paid a reimbursable expense. There is an amendment to Section 16. The insurers were concerned that it would expand coverage to newborn children when they did not already cover that. The language they would like to use is, "The coverage will only cover the birth when the insurer would otherwise have been obligated to pay had the existence of the birth been known." Some insurance plans cover a newborn child immediately but within 30 days the parent needs to make the decision whether or not to enroll the child. Their intent is not to require the insurer to go back a year and enroll the child from birth to forever. Their intent is, if they had the 30 days in which to enroll the child and paternity is established in an out of wedlock birth within one year, they would be able to go back and obtain the newborn coverage and the 30 day after coverage if that is what the plan provided as long as the premiums were paid for that period. She feels this is acceptable to the industry. Section 17 refers to adoptive children and refers to existing law. Section 18 is required by OBRA. It limits the reasons for which a plan cannot enroll a child. Section 19 is the key to OBRA. It relates to saving Medicaid dollars. If there is other coverage available that coverage is primary and Medicaid is secondary. Section 22 covers the duties of the parents. It is not required by OBRA, but it provides even greater methods to get parents to cooperate in getting coverage for their children. Section 23 is not required by OBRA but is required to provide an obligated parent or an intended obligated parent the right of due process. Section 24 speaks to expedited enforcement procedures to ensure that the parent gets due process

without any unnecessary delays. The other amendment is on page 10, line 18. It covers penalties to a payor. The word "knowingly" needs to be included. It is not their intention to assess any penalties against a payor who unknowingly violates this section. The last amendment is coordination instructions. A fiscal note has not been requested; however, they feel it is necessary. The Child Support Enforcement Division would need sufficient funding to add two additional FTEs plus contracted hearing officers. One FTE to become familiar with insurance plans, because the order needs to be very specialized as to the type of insurance offered and the other FTE would help with the hearings. This would be approximately $50,000 general fund in 96 and $43,000 in 97. Medicaid savings would cover that.

Ed Grogan, Montana Medical Benefit Plan, the Montana Medical Benefit Trust, and the Montana Business and Health Alliance, spoke in support of SB 402. He referred to page 11, Section 16, line 13, and commented that 33-22-301 deals with coverage of newborns under Montana law. In (4) of the section it states, "If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that modification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31 day period." They want to strike the word "1 year" on line 13 and insert "31 days". This will be consistent with current law. From an insurers standpoint it makes very good sense. It is hard for them to construe that a newborn would be a year old. It is difficult to go back one year and provide coverage for a child.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR HALLIGAN, referring to page 14, Section 23, stated that in that section it states that if the obligated parent does not pay the insurance the Department is authorized to purchase an individual insurance policy and then be reimbursed from the individual. He asked what funds would be used for that?

Ms. Wellbank answered this would be a child who is covered by Medicaid and Medicaid could go out and make the purchase of insurance if they felt that was economically feasible rather than cover it out of the other public funds. Medicaid would purchase a private insurance policy.

SENATOR HALLIGAN commented that he is dealing with a divorce in his practice. They are both working poor. Neither one has access to insurance. Referring to page 5, line 19, they would be required to pay $50. To whom would they pay the $50.

Ms. Wellbank commented this is only if public assistance is involved. They pay it to the Department to offset the cost of Medicaid.

SENATOR BARTLETT stated that in relation to SB 29 there were concerns that the custodial parent would not provide the social security number of a child or other information which was essential to enroll the child in a health plan that the noncustodial parent was willing to provide. She asked if there was anything in SB 402 which would give the Department, the Child Support Enforcement Division or a court in the state of Montana some recourse against the custodial parent who does not cooperate.

Ms. Wellbank stated there was nothing specific in SB 402 which would give some recourse; however, the bill says that the Department may provide the information. If the Department had the social security number of the child, it would have to provide the information to get the child covered. The noncustodial parent could request the social security number through the Social Security Administration. In the hearing, the Administrative Hearing Officer could enforce that by holding a hearing and ordering the custodial parent to provide the information necessary for insurance coverage.

SENATOR BARTLETT, in referring to Section 21, wondered if it would be worthwhile to include a requirement that the custodial parent is obligated to cooperate. This could be a part of every medical support order issued.

Ms. Wellbank stated that could be done by administrative order. It would not need a rule. Their rulemaking will not include penalties. That could be a part of it.

SENATOR BARTLETT commented that courts would be left out of the obligation to include that kind of a provision.

SENATOR JABS commented that the stated purpose of the bill is to improve efficiency and effectiveness of the Child Support Enforcement Division. However, two additional FTEs will be needed. He believed there will be no money saved by this bill.

Ms. Wellbank commented that there is a long term Medicaid savings which will be a fairly large savings. Short term they cannot immediately identify the impact. In the Child Support Enforcement Division they will need two additional FTEs to know what the insurance requirements are and to help with the hearings. They should be able to save a little less than $50,000 each year in general fund. Over the long term it should save a lot more in general fund and Medicaid.

Closing by Sponsor:

SENATOR ECK, referring to the amendment on page 11 which **Mr. Grogan** suggested, stated that the intent there is to deal with situations where the paternity might not be established for up to a year. It would be a way of requiring that the father's insurance would pick up these costs through that period of time. **Ms. Wellbank** is working on an amendment which should be acceptable. This bill will provide insurance and health care for children who are not now covered. It will also provide some real savings in Medicaid.

{Tape: 2; Side: A}

HEARING ON SJR 16

Opening Statement by Sponsor:

SENATOR J. D. LYNCH, Senate District 19, Butte, presented SJR 16. He commented that an amendment would be need on page 2 to correct a mistake. The federal government will be taking some serious steps to eliminate frivolous appeals involving the death sentence. It is a very serious matter. The last execution was 1943. Some people are totally opposed to using the ultimate weapon of the death penalty. In a poll, 85% of the people in Montana who participated believed that for some crimes the death penalty must be used. The attempt of this resolution is to let Congress know that as the representatives of the people in the legislature from 150 districts urge them to come up with some meaningful reform to limit death penalty appeals.

Proponents' Testimony:

Beth Baker, Department of Justice, stated a significant amount of their appellate bureau workload is federal habeas cases. They now have eight capital cases they are working on. The problem of successive habeas petitions is particularly acute in capital cases. The closer to the date of execution, the more petitions are filed. The U.S. House of Representatives has passed a bill calling for significant habeas reform including a one year statute of limitations from the date the judgment becomes final as well as limits on successive petitions. The legislation passed in the House states that successive petitions will not be allowed at all if they have to do with issues which have previously been raised before the court. As to issues which have not been raised before, there will be an innocence component before the petition will be allowed to be filed. She suggested the amendment on page 2 read "6-month period following the date on which the conviction becomes final". That would include the situation wherein a defendant appeals to the Montana Supreme Court and then petitions the U. S. Supreme Court for a writ of certiorari. The time would start running the date the U.S. Supreme Court acts on that petition assuming its denied or the date that the Supreme Court renders its final judgment. That

would ensure that there are not parallel proceedings in state and federal courts.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

SENATOR LYNCH offered no further remarks on closing.

EXECUTIVE ACTION ON SJR 16

Discussion: **Valencia Lane** clarified the amendment on page 2, line 1, following the word "following" insert "the date on which the" following "conviction" insert "becomes final".

Motion/Vote: **SENATOR BISHOP MOVED TO AMEND SJR 16.** The motion **CARRIED UNANIMOUSLY** on oral vote.

Motion/Vote: **SENATOR BISHOP MOVED SJR 16 DO PASS AS AMENDED.** The motion **CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON SB 340

Discussion: **CHAIRMAN CRIPPEN** stated there are two amendments. If this bill makes it to the House, he would follow up on additional amendments. The first amendment was recommended by the Secretary of State's Office.

Motion: **SENATOR HALLIGAN MOVED TO AMEND SB 340.**

Discussion: **CHAIRMAN CRIPPEN** commented this amendment would bring the fees more in line with other fees.

Vote: The motion **CARRIED UNANIMOUSLY** on oral vote.

Discussion: **Valencia Lane** commented that the additional amendments were requested by the Department of Labor and Industry. They requested that the bill be amended to address both unemployment insurance compensation laws and workers' compensation laws. The amendments which were handed out address only the unemployment insurance laws, **EXHIBIT 4.** There would be one more amendment added to the title. This would state that the bill provides that partners are jointly and severely liable for unemployment insurance taxes. The amendments amend existing provisions in law in Title 39, Chapter 51, which is the unemployment insurance laws, to make appropriate references to limited liability partnerships. If the committee would like to pass a concept amendment making similar changes in the workers' compensation laws, she would work with David Scott from the Department of Labor and David Dietrich from Billings to make

corresponding changes in Title 39, Chapter 71, to make appropriate references to the new llps in the worker compensation statutes. The amendments before the committee were only the unemployment insurance statutes.

SENATOR CRIPPEN commented that if this bill passes, they would not report it out until everyone had an opportunity to look at the amendments. If there was a problem with the amendments, they would strike the amendments and add the amendments in the House. A hearing on the additional amendments would be held in the House.

Motion: **SENATOR HALLIGAN MOVED TO AMEND SB 340 BASED ON THE DEPARTMENT OF LABOR'S TESTIMONY AND RECOMMENDATION WITH RESPECT TO THE JOINT AND SEVERAL LIABILITY FOR THE UNEMPLOYMENT INSURANCE AREA AND IN THE WORKERS' COMPENSATION AREA.**

Discussion: **SENATOR GROSFIELD** questioned that this was not taken care of in the Limited Liability Company Act last session.

SENATOR HALLIGAN answered there was a question as to the workers' compensation application.

Mr. Scott commented that exemptions were not allowed for limited liability companies and the Department of Labor and the State Fund were involved in a lawsuit in Missoula. Those problems have been taken care of in this session's housekeeping bills. That is why they are asking for the amendments in this bill.

SENATOR GROSFIELD stated that if there are 18 to 25 states which have adopted llps, has it been typical in those states to make exceptions for unemployment insurance and workers' compensation.

Mr. Scott stated he did not know the answer to that question. The treatise that he consulted and the statutes which he is familiar with do not contain such an exception. That is not to say they do not exist.

SENATOR GROSFIELD stated that if he were a partner in a professional firm and he had professional staff working for him, he would be responsible for their unemployment insurance and workers' compensation.

Mr. Scott stated that under a general partnership, without respect to any limited liability company shield or limited liability partnership shield, he would be jointly and severely liable for unpaid unemployment insurance and unpaid workers' compensation.

SENATOR GROSFIELD stated that even under a limited liability partnership he would still be responsible to pay this for his own employees; however, maybe not for another partner's employees.

Mr. Scott answered that with respect to a limited liability company, he does not have the answer. With respect to the proposed amendment, they are proposing that each partner be jointly and severely liable for unpaid unemployment insurance and unpaid workers' compensation.

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

Motion/Vote: **SENATOR HALLIGAN MOVED SB 340 DO PASS AS AMENDED.** The motion **CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON SB 308

Motion: **SENATOR ESTRADA MOVED SB 308 DO PASS.**

Discussion: **SENATOR HOLDEN** commented that it seemed to him that the people this bill is trying to help might actually be hurt by passage of this bill.

SENATOR BAER stated that SB 308 and SB 212 do not conflict. They support one another.

SENATOR JABS commented that **Mr. Meloy** stated with this bill he would have more lawsuits. This bill then would not cut down on lawsuits.

SENATOR NELSON stated that although this would cut down on frivolous lawsuits, it would probably stop some that should be filed.

SENATOR BARTLETT commented she saw a connection between SB 212 and SB 308. She found difficulty supporting SB 308 until she saw what happened with SB 212.

SENATOR HALLIGAN commented that back in the 80s he was a participant in the major tort reform interim study. They looked very hard at this issue and determined that this was not something they would recommend to the legislature. This bill will have a reverse effect.

CHAIRMAN CRIPPEN stated there are frivolous lawsuits out there and it is frustrating when you are a party to a lawsuit and even though you win, you lose. His concern is that Montana is an isolated state. As a person who does business in this state, he has dealt with some high powered companies. There are a lot of good companies; however, many are not. Their bigness has overtaken them. He has seen cases where a small business person has been deliberately taken advantage of by a big company. He would be hesitant to risk what he had saved to go into court and try a case which he might lose if for no other reason than being overwhelmed. You are governed by the laws of your general partner. He may have a legitimate cause of action against a company, but he would be shut out.

Vote: The motion **FAILED** 2-9 on roll call vote.

Motion/Vote: **SENATOR GROSFIELD moved SB 308 BE TABLED.** The motion **CARRIED** on roll call vote with **SENATORS BAER** and **ESTRADA** voting **"NO".**

EXECUTIVE ACTION ON 402

Discussion: **Valencia Lane** commented that her understanding of the proposed amendments would be that they would substitute the existing Section 16 which is in the bill regarding newborn children. This would be Amendment No. 1. Section 2 on page 1, line 21, strikes the second sentence and adds "to adopt rules for expedited procedures". Amendment No. 3 puts in a "knowingly" standard on page 10, line 18. Amendment No. 4 is a codification instruction.

Motion: **SENATOR HALLIGAN MOVED TO AMEND SB 402.**

Discussion: **Ms. Wellbank** clarified that the first amendment is the newborn children section. This is the amendment **Mr. Grogan** mentioned in his testimony. They worked with him on the amendment and believe other insurers will support this as well. It states that a health benefit plan shall provide the coverage required by the insurance code to a newborn child. It does not change existing law. They only intend to adopt rules for administrative procedures and do not need the additional language in the Statement of Intent regarding rulemaking. The second amendment would strike the entire second sentence and add to the first sentence "to adopt rules for expedited procedures." The third amendment is on page 10, line 18. The section talks about a payor violating this section is subject to the contempt powers. They intended to say a payor "knowingly" violating this section. The word "knowingly" would be inserted. The last amendment is a codification instruction.

SENATOR BARTLETT questioned if there would be anything in the bill which would affect the insurance code and need to be codified in that section.

Ms. Wellbank stated that this bill would not change the insurance code.

Vote: The motion **CARRIED UNANIMOUSLY** on oral vote.

Motion: **SENATOR HALLIGAN SB 402 DO PASS AS AMENDED.**

Discussion: **SENATOR BISHOP** commented it was ironic that Medicaid would go into the private sector to buy insurance. This would leave one to believe the system is not working very well.

SENATOR HOLDEN asked how important it was to pass this bill to comply with federal law.

SENATOR BARTLETT commented the law being referenced is the Omnibus Budget and Reconciliation Act of 1993. This was the major deficient reduction act by the federal government in 1993. The intent behind the child support requirements in OBRA and in this bill is to reduce, to the maximum extent possible, the use of public assistance. In respect to this bill, this would address replacing Medicaid assistance that a parent who is a noncustodial parent, or in the case of medical support perhaps both parents, should be providing to their children. It directly goes to the issue of whether or not we want parents to be responsible for the support and the medical coverage of their children regardless of whether they are married or divorced.

Vote: The motion **CARRIED** on oral vote with **SENATORS BAER** and **ESTRADA** voting **"NO".**

EXECUTIVE ACTION ON SB 206

Motion: **SENATOR HALLIGAN MOVED TO AMEND SB 206.**

Discussion: **SENATOR HALLIGAN** explained the amendments. Pursuant to the Chairman's direction in terms of his discussion with **SENATOR BURNETT,** the decision had been made to remove everything in the bill with exception of the video language. The amendments did not remove all the language if some of it was new and reasonable, **EXHIBIT 5.** The major change is that they did not allow the criminal charges to be filed before a child could be removed. Those provisions were removed from the bill. They deleted some of the definitional sections which no longer applied once the language was removed regarding filing criminal charges. On page 6 his definition of sexual abuse of touching of an infant was left in except for the last part. A portion of line 20 and lines 21, and 22 were deleted because that had reference to broad language. The video portion is at the bottom of page 9. The original bill wanted every examination to be videotaped. They changed the tenor of that because there are many statements made to teachers, neighbors, and friends in which there would never be a videotape. That statement could not be used in court if it was not videotaped. They stated that, "If the child's interview is videotaped an unedited videotape and audio track must be made available, upon request," to the family. His concern was that there would not be an opportunity to view that. If the police or social workers make one, it would be available. On line 17, they left a major change. "(2) An initial investigation into the home of the child may be conducted when an anonymous report is received. However, the investigation must develop corroborative information in order for the investigation to continue."

Valencia Lane explained a couple of clerical changes. On page 10, line 10, the stricken word "and" needs to be reinserted. At the bottom of page 11, line 30, there is a stricken word "without" and "with" is inserted. The word "with" needs to be stricken and the word "without" needs to be reinserted.

SENATOR HALLIGAN, referring to the amendment at the bottom of page 12, stated that **SENATOR BURNETT** was concerned that members of the family who were experiencing this would not be able to go public. They left the section in which states this may not be construed to compel a family member to keep the proceedings confidential. They could go to the press or anyone else that they wanted to. On page 13 on the top it states that they could go to a news organization as long as they maintained the confidentiality of the child.

SENATOR BARTLETT, referring to the last provision in terms of allowing the family to talk about a proceeding, asked if the Department would be restricted from discussing this if the family makes the situation public.

SENATOR HALLIGAN believed that they would be restricted.

Ann Gilkey, Department of Family Services, commented that they would be prohibited. HB 186, the Department's general revision bill for child protective services, includes an amendment which would allow the Department to speak to the media as long as the privacy of the family of the child is protected. Under current law they could not respond.

SENATOR BARTLETT commented that in all contested case proceedings where there is a difference of opinion, it is unfair to authorize one party to a situation to make statements without also authorizing the other party to make statements. In these cases, all the parties need to keep the identity of the child protected. She would hate to see the Department limited to say that they are unable to comment on anything. Also, the fiscal note did not address the cost of the videotaping or any increased fiscal impact from videotaping. Would there be a fiscal impact?

Ms. Gilkey commented the Department prepared a fiscal note which did include a fiscal impact for videocameras, tapes, filing cabinets, etc., and **SENATOR BURNETT** chose not to sign that and prepared an amended fiscal note which took out these expenses. With the proposed amendments, there should not be a fiscal impact in that regard. They could use existing equipment; however, if the amendments do not pass, the original bill did require every worker to have a camera at their disposal.

SENATOR BAER asked how the amendment would affect the fiscal note.

CHAIRMAN CRIPPEN commented it appeared there would not be a need for an amended fiscal note. The bill does not require a video tape. The bill states "if".

SENATOR ESTRADA questioned if **SENATOR BURNETT** was aware of the amendments.

CHAIRMAN CRIPPEN stated the committee tabled the bill. In subsequent discussions he had with **SENATOR BURNETT,** they discussed another bill which addressed some of his concerns as well as getting something out of his bill in terms of videotaping. He indicated to **CHAIRMAN CRIPPEN** that he would be satisfied with that situation.

Vote: The motion **CARRIED UNANIMOUSLY** on oral vote.

Motion: **SENATOR HALLIGAN MOVED SB 206 DO PASS AS AMENDED.** The motion **CARRIED** on oral vote with **SENATORS BARTLETT, ESTRADA** and **NELSON** voting **"NO".**

{Tape: 3; Side: A}

EXECUTIVE ACTION ON SB 212

Discussion: **SENATOR BISHOP** commented that the amendment would notify the parties named in the nonparty defense contained in the answer. They would be notified by certified mail.

SENATOR HALLIGAN commented the amendment does not use the right language. The handwritten amendment, **EXHIBIT 6,** uses the language of the bill.

Motion: **SENATOR BISHOP MOVED TO AMEND SB 212.**

Discussion: **SENATOR HALLIGAN** explained that the intent of the amendment is to clarify that a person named in an answer to a lawsuit, if alleged in whole or in part to have caused any of the claimant's injuries, the person will be notified by certified mail that they have been named.

SENATOR BISHOP commented that it is only fair to those parties to have a notice.

Vote: The motion **CARRIED UNANIMOUSLY** on oral vote.

Motion: **SENATOR BISHOP MOVED SB 212 DO PASS AS AMENDED.**

Discussion: **SENATOR BISHOP** disagreed with one of the biggest contentions made by the opponents in that people would be brought into the nonparty defense frivolously.

SENATOR DOHERTY commented that the testimony the committee heard in regard to the verdict form proposed by defense counsel is an example of why the empty chair defense is a question of fairness. He believes that the defense, if they believe someone is involved in an action and may bear some responsibility, has an obligation not only to notify them but should also bring them into the lawsuit as third-party defendants. If they truly believe that the person has some degree of culpability for whatever has happened, they ought to do that. Simply notifying someone so

that at a later date you can argue in front of the jury that there was someone else who may be responsible but unfortunately are not present, begs the question. The reason they are not present is because (1) the plaintiffs don't believe that they ought to be there and (2) the defense counsel in a strategic move is using the law to benefit their client. In the Newville case, he would have done the same thing. Setting up the rules which would allow defense counsel to do that, creates an unfair advantage for them. They can bring in people as party defendants. If they believe they are involved and want to argue that to the jury, they ought to bring them into the lawsuit. What is lost in the question of deep pockets is the innocent party. The person who was injured. In the case of two defendants, one of whom may have been terribly wrong and another who had some contribution to the injuries, it is unfair to shift the burden to the injured person or corporation.

SENATOR BISHOP stated that if a prospective defendant has settled with the plaintiff, under the Deer opinion, that person cannot be brought into the lawsuit. If two people were responsible for the accident and the one who was most responsible had settled out, they cannot be brought into the lawsuit. The person minimally responsible could bear the burden of the entire lawsuit.

SENATOR DOHERTY stated that would not be correct under comparative negligence. If they are less than 50% negligent, they are out. You want them to have every incentive to settle the case as quickly as possible. If they know that they could be stuck in that situation, they would be more likely to settle. Early settlement on valid cases helps everyone.

SENATOR BISHOP commented if you require the defendants to bring in other people, they are getting hit twice. They may have already settled. They would have to hire an attorney to defend themselves.

SENATOR HALLIGAN stated they have had special sessions involving tort reform. The proponents had done a superb job in developing the procedural safeguards in the bill. The part of the Newville case which he has a difficult time with is the part which states that they concluded that the allocations of percentages of liability to nonparties violates substantive due process. They have already handled the procedural due process. There is a separate component which is called substantive. How can this be solved? All states accomplish this in different ways. If this bill is passed there is still a problem and it is still unconstitutional. Perhaps the Court will have to decide.

SENATOR BISHOP commented that if nonparties are alleged in the answer, it is up to the defendant who does that to prove the extent of their involvement. The burden does not shift to the plaintiff in that case. Whatever the jury does in that case is not binding on nonparties.

Vote: The motion **CARRIED** on roll call vote with **SENATORS BARTLETT, DOHERTY,** and **HALLIGAN** voting **"NO".**

EXECUTIVE ACTION ON SB 314

Motion\Vote: **SENATOR GROSFIELD MOVED SB 314 BE TAKEN OFF THE TABLE.** The motion **CARRIED** on oral vote.

EXECUTIVE ACTION ON SB 212

Motion: **SENATOR BISHOP MOVED TO RECONSIDER THE SB 212 DO PASS AS AMENDED MOTION FOR PURPOSES OF AMENDMENT.**

Discussion: **SENATOR BISHOP** believed the "Wetch" amendment was added to the bill. This amendment apparently did not get into the bill. The Montana Defense Trial Lawyers testified about the Wetch case. In this case, the secretary of an employer fell into a hole by the door which she was accustomed to using. This hole was dug by Unique Concrete Company. She was party to a conversation between the concrete company and the employer regarding the hole. She forgot the hole was there, walked out the door and fell into the hole. The concrete company wanted the door barricaded but the employer said he wanted the door left open for ventilation. An employee cannot sue an employer under a workers' compensation situation, the concrete company could not show that conversation or anything regarding it at trial. The secretary was able to collect from the concrete company. They were very minimally responsible. This amendment would correct that situation.

Vote: The motion **CARRIED** on oral vote.

Motion/Vote: **SENATOR BISHOP MOVED TO FURTHER AMEND SB 212.**

Discussion: **SENATOR BARTLETT** stated the proposed amendment concerned her. It deals with workers' compensation and the exclusive remedy of the employer. She believes that there are some extreme circumstances wherein if an employer knowingly and negligently kept a work place in an unsafe condition, there may be grounds for a suit in addition to the workers' compensation coverage. She suggested the amendment be turned down at this point so that it could be offered on the floor. They would then have an opportunity to examine that dimension of the issue before this is made a part of the bill. That not being the case, perhaps they could have an expert address this issue tomorrow in executive session.

SENATOR BISHOP commented this did not have anything to do with workers' compensation. It was not part of the action at all.

SENATOR DOHERTY, referring to the wording in the amendment "negligence on the part of the claimant's employer or coemployee may be considered and determined as part of a nonparty defense", stated that if that can be considered as a nonparty defense this

may be allowing an opening of the exclusive remedy provision under the Workers' Compensation Act.

John Alke commented that **SENATOR BARTLETT** is right in a sense and wrong in a sense. The Wetch case was a unique case that said you couldn't consider fault of the employer because the statute had two sentences. Page 2 of SB 212, line 4 and 5, says that when you allocate fault, you are allocating fault between persons released from liability by the claimant, persons immune from liability to the claimant. . . The employer is immune because of the exclusivity rule under workers' compensation. In 1987, when this bill was drafted the sentence was added which **SENATOR BISHOP'S** amendment strikes. This sentence states that in attributing negligence among persons, the trier of fact may not consider or determine the negligence on a part of an injured persons employer . . . When that sentence was added they thought they were protecting the exclusivity. The exclusivity exists irrespective of the statute. The Supreme Court in Wetch said they had no choice but to prohibit even the evidence of this conversation because of this nonsensical second sentence. They indicated that the legislature put the second sentence in and until that sentence is removed, this would be the way they would have to rule. It is not intended in any way to affect the worker's right to workers' compensation without any showing of negligence. It is not intended in anyway to affect the exclusivity provision. In a trial against the third party wherein a machine blew up in a workshop, the injured employee would not only receive workers' compensation but would be able to go after the third party who designed the machine. This bill says that when the lawsuit between a manufacturer of the equipment and the plaintiff is considered, if the employer was negligent, that is something they can consider in determining how much fault to give to the manufacturer. It does not touch the benefits program. It does not touch the exclusivity rule.

SENATOR DOHERTY questioned if there is negligence which can be considered on the part of a third party as part of a nonparty defense, is there any validity to the notion that if that negligence is considered you also ought to be able to act on that negligence and thereby open the door that the injured party would be able to go against the employer directly for their negligence.

David Scott, Department of Labor, commented he did not have enough knowledge about the subject to answer the question.

Vote: The motion **CARRIED** on roll call vote with **SENATORS BARTLETT** and **DOHERTY** voting **"NO"**.

Motion\Vote: **SENATOR BISHOP MOVED SB 212 DO PASS AS AMENDED.** The motion **CARRIED** on oral vote with **SENATORS BARTLETT, HALLIGAN** and **DOHERTY** voting **"NO"**.

ADJOURNMENT

Adjournment: The meeting adjourned at 12:00 p.m.

SENATOR BRUCE CRIPPEN, Chairman

JUDY J. KEINTZ, Secretary

BC/jjk

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 2-16-95

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	✓		

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SENATE STANDING COMMITTEE REPORT

February 17, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 340 (first reading copy -- white), respectfully report that SB 340 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 21.
Following: "or"
Strike: "deceptively similar to"
Insert: "not distinguishable on the record from"

2. Page 1, line 22.
Strike: "to"
Insert: "from"

3. Page 3, line 11.
Strike: "$250"
Insert: "$50"

4. Page 3, line 12.
Strike: "$250"
Insert: "$50"

-END-

Amd. Coord.
Sec. of Senate

411403SC.SRF

SENATE STANDING COMMITTEE REPORT

February 16, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SJR 16 (first reading copy -- white), respectfully report that SJR 16 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 2, line 1.
Following: "following"
Insert: "the date on which the"
Following: "conviction"
Insert: "becomes final"

-END-

Amd. Coord.
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

February 16, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration SB 206 (first reading copy -- white), respectfully report that SB 206 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, lines 5 and 6.
Following: "ABUSE" on line 5
Strike: remainder of line 5 through "WELFARE" on line 6
Insert: "OR NEGLECT"

2. Title, lines 6 through 12.
Following: ";" on line 6
Strike: remainder of line 6 through "HOME;" on line 12

3. Title, line 12.
Strike: "40-8-111," and "41-3-201,"

4. Title, line 13.
Strike: "41-3-204,"
Following: "41-3-205,"
Insert: "AND"

5. Title, lines 13 and 14.
Following: "41-3-206,"
Strike: remainder of line 13 through "41-3-1103," on line 14

6. Page 1, line 18.
Following: "constitutions"
Strike: "; and"
Insert: "."

7. Page 1, lines 19 through 29.
Strike: lines 19 through 29 in their entirety

8. Page 2, line 3 through page 3, line 6.
Strike: section 1 in its entirety
Renumber: subsequent sections

9. Page 3, lines 16 through 21.
Following: "possible" on line 16
Strike: remainder of line 16 through "associate" on line 21

Amd. Coord.
Sec. of Senate

10. Page 4, line 1.
Following: "~~and~~"
Insert: "and"

11. Page 4, lines 1 and 2.
Following: "appropriate" on line 1
Strike: remainder of line 1 through "family" on line 2

12. Page 5, lines 6 through 10.
Strike: subsections (8) and (9) in their entirety
Renumber: subsequent subsections

13. Page 5, line 13.
Following: "(a)"
Strike: "knowingly"
Following: first "or"
Strike: "knowingly"

14. Page 5, line 14.
Following: "(b)"
Strike: "knowingly"
Following: first "or"
Strike: "knowingly"

15. Page 5, lines 16 and 17.
Strike: subsection (c) in its entirety
Renumber: subsequent subsections

16. Page 5, line 28 through page 6, line 3.
Strike: subsections (11) through (13) in their entirety
Renumber: subsequent subsections

17. Page 6, line 20.
Following: "sanitary"
Insert: "or health care"

18. Page 6, lines 20 through 22.
Following: "parent" on line 20
Strike: remainder of line 20 through "parent" on line 22

19. Page 7, line 14.
Strike: "(22)"
Insert: "(17)"

20. Page 7, line 23 through page 9, line 6.
Strike: section 4 in its entirety
Renumber: subsequent sections

21. Page 9, line 11.
Following: "~~thorough~~"
Strike: "an initial"
Insert: "a thorough"

22. Page 9, line 18.
Following: "must"
Strike: "within 48 hours"
Following: "develop"
Strike: "independent,"
Following: "corroborative"
Strike: ", and"

23. Page 9, line 19.
Strike: "attributable"

24. Page 9, lines 19 and 20.
Following: "continue." on line 19
Strike: remainder of line 19 through "home." on line 20

25. Page 9, lines 28 and 29.
Following: "(4)" on line 28
Strike: remainder of line 28 through "worker." on line 29

26. Page 9, line 29.
Following: "If the"
Strike: "child is interviewed by the social worker"
Insert: "child's interview is videotaped"

27. Page 9, line 30.
Following: "available"
Insert: ", upon request,"

28. Page 10, line 6.
Following: "and"
Insert: ", upon request, to"

29. Page 10, line 10.
Following: "~~and~~"
Insert: "and"

30. Page 10, line 11.
Following: "located"
Strike: ", and the family of the child who is the subject of the report"

31. Page 10, line 13 through page 11, line 9.
Strike: section 6 in its entirety

Renumber: subsequent sections

32. Page 11, line 30.
Following: "~~without~~"
Strike: "with"
Insert: "without"

33. Page 12, line 29.
Following: "member"
Strike: "who believes that the family is being victimized by an unfair or unwarranted process"

34. Page 12, line 30.
Strike: "secret"
Insert: "confidential"

35. Page 13, line 3.
Following: "reporter"
Strike: "has made every effort to avoid publicly identifying"
Insert: "maintains the confidentiality of"

36. Page 13, line 11.
Strike: "under oath"

37. Page 13, line 13.
Strike: "under oath"

38. Page 13, line 19 through page 24, line 12.
Strike: sections 9 through 19 in their entirety

-END-

SENATE STANDING COMMITTEE REPORT

February 16, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 402 (first reading copy -- white), respectfully report that SB 402 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 21.
Following: "services"
Insert: "to adopt rules for expedited procedures"

2. Page 1, lines 21 through 23.
Following: "." on line 21
Strike: remainder of line 21 through "providers." on line 23

3. Page 10, line 18.
Following: "payor"
Insert: "knowingly"

4. Page 11, lines 13 through 16.
Following: "**children.**" on line 13
Strike: remainder of line 13 through "birth." on line 16
Insert: "A health benefit plan must provide the coverage required by 33-22-301 to a newborn child covered by [sections 1 through 25]."

5. Page 30, line 4.
Insert: "NEW SECTION. **Section 32. Codification instruction.** [Sections 1 through 25] are intended to be codified as an integral part of Title 40, and the provisions of Title 40 apply to [sections 1 through 25]."
Renumber: subsequent sections

-END-

Amd. Coord.
Sec. of Senate

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2/16/95 BILL NO. SB 308 NUMBER 1

MOTION: DPAA - Estrada

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		✓

SEN:1995
wp:rlclvote.man

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/16/95 BILL NO. SB308 NUMBER 2

MOTION: SB 308
Table - Grosfield

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	✓	

SEN:1995
wp:rlclvote.man

9 9

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2/16/95 BILL NO. SB 212 NUMBER 3

MOTION:

DPAA - 2nd -

(Lost DPAA Reconsidered - amendment added - 2nd DPAA)

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	✓	

SEN:1995
wp:rlclvote.man

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2/16/95 BILL NO. SB 212 NUMBER 4

MOTION: DPAA - Bishop

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	✓	

SEN:1995
wp:rlclvote.man

WHY MONTANA SHOULD ENACT A LIMITED PARTNERSHIP ACT

Chairman Crippen and members of the Committee. I greatly appreciate the opportunity to appear before you today to speak in favor of Bill Number Senate Bill No. 340, the Proposed Montana Limited Liability Partnership Act.

Selecting a form or organization in which to operate is one of the most significant decisions an individual starting a business, or continuing an existing one, will have to make with respect to their business. There are a variety of considerations, both tax and non-tax, including the application of relevant federal, state and sometimes local law, as well as the objectives and desires of the business owner.

The choice of organization will have broad implications. It will affect how the business is conducted, the personal affairs of its owners, and will even impact on the business' employees. Consequently, it is important that states provide businesses with a full choice of forms in which they may operate.

The Limited Liability Partnership (LLP) is a new type of general partnership that is beginning to sweep the nation. As of June 24, 1994, twelve jurisdictions adopted it.

The LLP form is particularly appealing to the segment of the economy that is growing the fastest -- small businesses and

start-up ventures. This is because LLPs have low start-up costs, are flexible and are relatively easy to operate.

The complications associated with organizing a business (and keeping it operating) are often a major reason for small business failure. LLPs provide a flexible form of organization for small businesses that helps them obtain parity with larger, better capitalized organizations which can afford the ancillary benefits of more complicated business organizations.

The Limited Liability Partnership has many of the positive attributes of a general partnership.

It is simple to form -- one needs only to file with the Secretary of State (obtain insurance and pay a fee) to organize as an LLP.

It is simple to operate -- unlike general corporations and limited liability companies, there are no required articles of incorporation, board of directors meetings, etc.

And it is taxed like a partnership -- meaning that the tax liability flows through directly to the LLP's partners and there is no tax at the entity level.

The Limited Liability Partnership also has many of the positive attributes of more complicated business forms.

Partners in an LLP are not <u>personally</u> liable for the debts and obligations of the LLP arising out of errors, omissions,

negligence, incompetence or malfeasance committed in the course of the partnership business by another partner or representative of the partnership who is not under their direction or supervision.

While the other forms of organization that provide protection for the personal assets of a business owner are more comprehensive, generally covering any action against the entity, these forms also carry with them greater costs and require a level of greater sophistication to set up and operate when compared to an LLP.

Consequently, the Limited Liability Partnership should appeal to the types of businesses that are now operating as partnerships: Mom and Pop grocery stores, plumbing supply companies, architectural offices and other small businesses.

From our state's perspective, it will be a tremendous advantage to offer business the LLP form for the following reasons:

1. States at the forefront of economic development are there because they offer an expansive menu of organizational alternatives for doing business -- corporations, limited liability companies, limited partnerships, professional corporations, limited liability partnerships, and so on. They enable the businesses in their states to be competitive with

businesses from other states and abroad by enabling them to use the business form most suitable to their business situation.

2. The LLP should be revenue positive to the state. The types of businesses that would use an LLP are typically partnerships. Partnerships currently do not have to register with the state or pay a fee for operating here. An LLP, on the other hand, would be required to pay a minimal fee to form in the state.

3. Enactment of an LLP is consistent with public policy positions already adopted by the state. Like any business form, the partners in an LLP always remain responsible for their own actions and the partnership remains responsible for the actions taken on its behalf by employees or partners.

4. Our state has already taken a significant step toward providing a favorable business climate by enacting Limited Liability Company Legislation. Adoption of a Limited Liability Partnership Act will provide an even more favorable business climate -- and will especially benefit that portion of the economy growing the fastest, small businesses and start-up ventures.

5. An LLP will enable the state to keep pace with the rest of the nation and allow businesses that are resident here to better compete with out of state firms.

EXHIBIT 1
DATE 2-16-95
SB 340

For these reasons we urge you to adopt this legislation.

Thank you for allowing me to appear before you. If you have any questions, I will be happy to answer them.

340

SECRETARY OF STATE
STATE OF MONTANA

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 2/16/93
BILL NO. SB340

Mike Cooney
Secretary of State

Montana State Capitol
PO Box 202801
Helena, MT 59620-2801

Memorandum

TO: Members of the Senate Judiciary Committee

FROM: Garth B. Jacobson
Chief Legal Counsel

RE: Proposed Amendments to SB 340

The following are some very short proposed amendments to SB 340, the Limited Liability Partnership Act. The first amendment adjusts the filing standard for assumed business names from deceptively similar to distinguishable in the records. This enables limited liability partnerships (llp) to have the same name filing standard as corporation or limited liability companies (llc). If there are any problems with deceptively similar names they can be resolved through the name contest procedures found in Section 35-1-310, MCA.

The next two amendments just adjusts the fees to be the same as corporate fees. Presently small corporations or llcs pay a $50 license fee when they are created. (The minimum corporation license fee is $50 for 0 - 50,000 shares of stock.) They then pay $10 per year for filing their annual reports. This is the same amount as the $50 every 5 years that will be charged for renewal of an llp.

2/16/95
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 2/16/95
BILL NO. SB 340

PROPOSED AMENDMENTS TO SENATE BILL NO. 340
Introduced Copy (White)
Requested by ~~Senator Crippen~~ Department of Labor + Industry

SENATE JUDICIARY COMMITTEE

1. Title, line 7.
Following: "35-10-636, MCA"
Insert: 39-51-201, 39-51-204, 39-51-1105, 39-51-1303, and 39-51-1304.

2. Page 14, line 10
Following: "formed."
Insert: "**Section 21.** Section 39-51-201, MCA, is amended to read:

39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state

unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, LIMITED LIABILITY PARTNERSHIP THAT HAS REGISTERED WITH THE SECRETARY OF STATE, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(b). All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program

of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(17) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer, if the payment was made under a plan established for the employees in general or for a specific class or classes of employees, to or on behalf of the employee for:

(A) retirement;

(B) sickness or accident disability under a workers' compensation law;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office; or

(iii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits the individual would be entitled to receive for 1 week of total unemployment.

Section 21. Section 39-51-204, MCA, is amended to read:

39-51-204. Exclusions from definition of employment. (1) The

term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the

services and the services are not covered. As used in this subsection:

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to his main duties, carries or delivers papers.

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop shall not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such

employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors or working members of a partnership, OR PARTNERS OF A LIMITED LIABILITY PARTNERSHIP REGISTERED WITH THE SECRETARY OF STATE;

(o) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution.

(4) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter.

EXHIBIT 3
DATE 2-16-95
SB 340

Section 23. Section 39-51-1105, MCA, is amended to read:

39-51-1105. Liability of corporate officers, PARTNERS OF A LIMITED LIABILITY PARTNERSHIP, for taxes, penalties, and interest owed by corporation, OR LIMITED LIABILITY PARTNERSHIP. (1) When a corporation subject to Montana corporate law has failed to file the annual corporation report with the Montana secretary of state as required by law the department shall hold the president, vice-president, secretary, and treasurer jointly and severally liable for any taxes, penalties, and interest due for the period in which the corporation is delinquent in filing the annual corporation report. If the required annual corporation report is made and filed after the time specified, such officers may not, on account of prior failure to make report, be held liable for the taxes, penalties, and interest thereafter accruing.
(2) ALL PARTNERS OF A LIMITED LIABILITY PARTNERSHIP ARE LIABLE JOINTLY AND SEVERALLY FOR ANY TAXES, PENALTIES,AND INTEREST OWED.

Section 24. Section 39-51-1303, MCA, is amended to read:

39-51-1303. Collection of unpaid taxes by civil action. (1) If, after due notice, any employer, OR LIABLE PARTNER OF A LIMITED LIABLITY PATNERSHIP REFERRED TO IN 39-51-1105 defaults in any payment of taxes, penalties, or interest thereon, the department may at its discretion initiate a civil action in the name of the Montana department of labor and industry to collect the amount due, and the employer, OR LIABLE PARTNER OF A LIMITED LIABLITY PARTNERSHIP REFERRED TO IN 39-51-1105 adjudged in default shall pay the costs of such action.
(2) An action for the collection of taxes due must be brought within 5 years after the due date of such taxes or it is barred.
(3) The department may pursue its remedy under either this section or 39-51-1304, or both.

Section 25. Section 39-51-1304, MCA, is amended to read:

39-51-1304. Lien for payment of unpaid taxes -- levy and execution. (1) Unpaid taxes, including penalties and interest assessed thereon, have the effect of a judgment against the employer, OR LIABLE PARTNER OF A LIMITED LIABLITY PARTNERSHIP REFERRED TO IN 39-51-1105, arising at the time such payments are due. The department may issue a certificate setting forth the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real and personal property of the employer, OR LIABLE PARTNER OF A LIMITED LIABLITY PARTNERSHIP REFERRED TO IN 39-51-1105. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at any time within 10 years of the creation of the lien.
(2) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal

property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(3) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer, OR LIABLE PARTNER OF A LIMITED LIABLITY PARTNERSHIP REFERRED TO IN 39-51-1105 under this section or 39-51-1303, or both, to collect the delinquent taxes, penalties, and interest.

(4) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable.

Renumber: subsequent sections

SB340.AM01

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 2/16/95
BILL NO. SB 402

Amendments to SB 402

Page 11
Line 13 NEW SECTION Section 16. Newborn Children. (Strike all)
Then add: A health benefit plan shall provide the

(1) coverage required by 33-22-301 to a newborn child covered by [Sections 1 through 26]

Page 1 Statement of Intent. Strike "," after "services"
Line 21 and strike the entire second sentence, then add:

(2) "TO ADOPT RULES FOR EXPEDITED PROCEDURES."

Page 10 Insert: "KNOWINGLY" between "payor" and
Line 18 "violating".

(3)

Amendments to SB402

Page 30:

(4) Following: line 8

Insert: "NEW SECTION. Section 34. Codification instruction. [Sections 1 through 25] are intended to be codified as an integral part of Title 40, and the provisions of Title 40 apply to [sections 1 through 25].

Renumber: subsequent section

Amendments to Senate Bill No. 206
First Reading Copy

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Valencia Lane
February 15, 1995

1. Title, lines 5 and 6.
Following: "ABUSE" on line 5
Strike: remainder of line 5 through "WELFARE" on line 6
Insert: "OR NEGLECT"

2. Title, lines 6 through 12.
Following: ";" on line 6
Strike: remainder of line 6 through "HOME;" on line 12

3. Title, line 12.
Strike: "40-8-111," and "41-3-201,"

4. Title, line 13.
Strike: "41-3-204,"
Following: "41-3-205,"
Insert: "AND"

5. Title, lines 13 and 14.
Following: "41-3-206,"
Strike: remainder of line 13 through "41-3-1103," on line 14

6. Page 1, line 18.
Following: "constitutions"
Strike: "; and"
Insert: "."

7. Page 1, lines 19 through 29.
Strike: lines 19 through 29 in their entirety

8. Page 2, line 3 through page 3, line 6.
Strike: section 1 in its entirety
Renumber: subsequent sections

9. Page 3, lines 16 through 21.
Following: "possible" on line 16
Strike: remainder of line 16 through "associate" on line 21

10. Page 4, line 1.
Following: "~~and~~"
Insert: "and"

11. Page 4, lines 1 and 2.
Following: "appropriate" on line 1
Strike: remainder of line 1 through "family" on line 2

12. Page 5, lines 6 through 10.
Strike: subsections (8) and (9) in their entirety
Renumber: subsequent subsections

13. Page 5, line 13.
Following: "(a)"
Strike: "knowingly"
Following: first "or"
Strike: "knowingly"

14. Page 5, line 14.
Following: "(b)"
Strike: "knowingly"
Following: first "or"
Strike: "knowingly"

15. Page 5, lines 16 and 17.
Strike: subsection (c) in its entirety
Renumber: subsequent subsections

16. Page 5, line 28 through page 6, line 3.
Strike: subsections (11) through (13) in their entirety
Renumber: subsequent subsections

17. Page 6, line 20.
Following: "sanitary"
Insert: "or health care"

18. Page 6, lines 20 through 22.
Following: "parent" on line 20
Strike: remainder of line 20 through "parent" on line 22

19. Page 7, line 14.
Strike: "(22)"
Insert: "(17)"

20. Page 7, line 23 through page 9, line 6.
Strike: section 4 in its entirety
Renumber: subsequent sections

21. Page 9, line 11.
Following: "~~thorough~~"
Strike: "an initial"
Insert: "a thorough"

22. Page 9, line 18.
Following: "must"
Strike: "within 48 hours"
Following: "develop"
Strike: "independent,"
Following: "corroborative"
Strike: ", and"

23. Page 9, line 19.
Strike: "attributable"

24. Page 9, lines 19 and 20.
Following: "continue." on line 19
Strike: remainder of line 19 through "home." on line 20

25. Page 9, lines 28 and 29.
Following: "(4)" on line 28
Strike: remainder of line 28 through "worker." on line 29

26. Page 9, line 29.
Following: "If the"
Strike: "child is interviewed by the social worker"
Insert: "child's interview is videotaped"

27. Page 9, line 30.
Following: "available"
Insert: ", upon request,"

28. Page 10, line 6.
Following: "and"
Insert: ", upon request, to"

29. Page 10, line 11.
Following: "located"
Strike: ", and the family of the child who is the subject of the report"

30. Page 10, line 13 through page 11, line 9.
Strike: section 6 in its entirety
Renumber: subsequent sections

31. Page 12, line 29.
Following: "member"
Strike: "who believes that the family is being victimized by an unfair or unwarranted process"

32. Page 12, line 30.
Strike: "secret"
Insert: "confidential"

33. Page 13, line 3.
Following: "reporter"
Strike: "has made every effort to avoid publicly identifying"
Insert: "maintains the confidentiality of"

34. Page 13, line 11.
Strike: "under oath"

35. Page 13, line 13.
Strike: "under oath"

36. Page 13, line 19 through page 24, line 12.
Strike: sections 9 through 19 in their entirety

SENATE BILL NO. 206

INTRODUCED BY Burnett Simpkins GRINDE
AKLESTAD Benefit Card

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE INVESTIGATION AND REMOVAL OF A CHILD FROM THE HOME IN A CASE OF SUSPECTED ABUSE ~~OR ENDANGERMENT OF THE CHILD'S WELFARE~~ OR NEGLECT; ~~PROHIBITING ANONYMOUS REPORTING OF SUSPECTED ABUSE OR ENDANGERMENT; REQUIRING CRIMINAL CHARGES TO BE FILED AGAINST A PERSON SUSPECTED OF ABUSE OR ENDANGERMENT PRIOR TO FILING A PETITION FOR REMOVAL OF THE CHILD FROM THE HOME; REQUIRING EVIDENCE OF SUSPECTED ABUSE OR ENDANGERMENT TO BE GIVEN TO THE FAMILY; GUARANTEEING A FAMILY'S COMMUNICATION WITH A CHILD REMOVED FROM THE HOME; REQUIRING INFORMATION ON FOSTER HOME PLACEMENT TO BE GIVEN TO THE FAMILY OF A CHILD REMOVED FROM THE HOME;~~ AND AMENDING SECTIONS ~~40-8-111~~, 41-3-101, 41-3-102, ~~41-3-201~~, 41-3-202, ~~41-3-204~~, 41-3-205, AND 41-3-206, ~~41-3-301, 41-3-303, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-609, AND 41-3-1103~~, MCA."

WHEREAS, the Legislature finds it necessary to restore public confidence in the child protective system and to provide protection of individual and family civil rights as guaranteed by the state and federal constitutions~~, and~~;

~~WHEREAS, present Montana law arguably allows the Department of Family Services to circumvent~~ the constitutional rights of individuals and families; and

WHEREAS, Montana law should require that the burden of proving allegations of child abuse or neglect be on the Department and that those allegations be proved beyond a reasonable doubt, which would reduce the incidence of false charges of alleged abuse, resulting in a corresponding savings to the general fund; and

WHEREAS, there is no room for error in the removal of children from the home, and extreme care must be taken to avoid ruining a family, parent, or individual through government intrusion or mistake; and

WHEREAS, it is necessary to restore the sacred principle of "innocent until proven guilty" to the process of removal of a child from the home in cases of alleged abuse or neglect; and

~~WHEREAS, child abuse and neglect is a crime and must be addressed as a crime~~;

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 40-8-111, MCA, is amended to read:~~

"**40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of:

(A) assault on the child, as provided in 45-5-201;

(B) endangering the welfare of children, concerning the child, as provided in 45-5-622; or

(C) sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been permanently judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as ~~defined~~ set forth in 41-3-102~~(8)(d)~~(10)(e);

(iv) who has caused the child to be maintained by any public or private children's institution, any charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during ~~said~~ the period, if able;

(v) if it is ~~proven~~ proved to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and ~~such~~ the guardian has authority by order of the court appointing ~~him~~ the guardian to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to ~~such~~ the agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in ~~such~~ the agency with authority to consent to adoption of ~~the~~ child; or

~~(d) any person having legal custody of a child by court order if the parental rights of the parents~~ have been judicially terminated, but ~~in such case~~ the court having jurisdiction of the custody of the child ~~must~~ shall consent to adoption, and a certified copy of its order ~~shall~~ must be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) ~~shall~~ must be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department, ~~of family services or of an agency, or witnessed by a representative of the court.~~

Section 2. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is ~~hereby declared to be~~ the policy of the state of Montana to:

(a) ~~insure~~ ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible; ~~and~~

(d) preserve the unity and welfare of the family whenever possible ~~and provide legal redress for the unlawful interference with the family's right to remain intact; and~~

~~(e) ensure that there is no forced removal of a child from the family because of suspected abuse or endangerment of the child's welfare by an immediate family member or family associate without the filing of a criminal complaint charging abuse or endangerment against that immediate family member or family associate.~~

(2) It is the policy of this state to:

(a) protect, whenever possible, family unity;

(b) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection; and

(c) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage free from proselytism.

(3) It is intended that the mandatory reporting of ~~such~~ abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children,

and preserve family life ~~wherever~~ whenever appropriate ~~and provide legal redress to interference with the family~~."

Section 2. Section 41-3-102, MCA, is amended to read:

"**41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent;

(b) a staff person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(3) (a) "Adequate health care" means any medical care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) ~~Nothing in this~~ This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, ~~nothing in~~ this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

(4) "Child" or "youth" means any person under 18 years of age.

(5) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare~~, as defined in subsection (8)~~; or

(ii) threatened harm to a child's health or welfare~~, as defined in subsection (15)~~.

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

(6) "Department" means the department of family services provided for in 2-15-2401.

(7) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody and whose legal custody has been transferred to a licensed agency.

~~(8) "Family" means at least one natural or adoptive parent or legal guardian with at least one minor child.~~

~~(9) "Family associate" means a person who may or may not live within the household of a child but who is or has been granted unencumbered access to the child by a natural or adoptive parent, stepparent, or legal guardian of the child.~~

(8) ~~(8)~~ ~~(10)~~ "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) ~~knowingly~~ inflicts or ~~knowingly~~ allows to be inflicted upon the child physical or mental injury;

(b) ~~knowingly~~ commits or ~~knowingly~~ allows to be committed sexual abuse or exploitation of the child;

~~(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;~~

(c) ~~(c)~~ ~~(d)~~ causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) ~~(d)~~ ~~(e)~~ abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or ~~by~~ willfully ~~surrendering~~ surrenders physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) ~~(e)~~ ~~(f)~~ is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

~~(11) "Immediate family member" means a parent, guardian, or natural relative of a child and includes the natural grandparent of the child.~~

~~(12) "Infant or toddler" means a child who has yet to be trained in personal hygiene skills required~~

~~to care for the child's own sanitary requirements and who is not beyond the age when a reasonable person would expect hygiene skills and training to be completed.~~

~~(18) "Knowingly" has the meaning provided in 45-2-101.~~

(9) ~~(9)(14)~~ "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(10) ~~(10)(15)~~ "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(11) ~~(11)(16)~~ "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

(12) ~~(17)~~ "Proselytism" means the change or attempted change through undue influence of the religious beliefs or affiliation of a child who has been removed from the family to a religion other than that affiliated with the child's race, culture, or heritage by an adult, other than a family member, in a position of power over the child or by constant exposure of the child to dogma, tradition, or religious teachings and practices preferred by the adult.

(13) ~~(12)(18)~~ (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent ~~or any acts that would otherwise be considered by a reasonable person to be a comforting of the infant or toddler by a concerned or loving parent~~.

(14) ~~(13)(19)~~ "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(15) ~~(14)(20)~~ "Social worker" means an employee of the department whose duties generally involve the provision of either child or adult protective services, or both.

(16) ~~(15)(21)~~ "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

(17) ~~(16)(22)~~ (a) "Withholding of medically indicated treatment" means the failure to respond to an

infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions. ~~However, the~~

(b) The term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

~~(a)~~(i) the infant is chronically and irreversibly comatose;

~~(b)~~(ii) the provision of treatment would:

~~(i)~~(A) merely prolong dying;

~~(ii)~~(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

~~(iii)~~(C) otherwise be futile in terms of the survival of the infant; or

~~(c)~~(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(22)~~ 17, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(18) ~~(17)~~(23) "Youth in need of care" means a youth who is dependent, abused, or neglected ~~as defined in this section~~."

~~Section 4. Section 41-3-201, MCA, is amended to read:~~

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information that they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department ~~of family services~~ or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

~~(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission;~~

examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science ~~practitioner~~ practitioners and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator, or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official; or

(h) a member of the clergy.

(3) Any person may make a report under this section if ~~he~~ the person knows or has reasonable cause to suspect that a child is abused or neglected.

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A ~~clergyperson~~ member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the ~~clergyperson~~ member of the clergy or the priest in ~~his~~ that person's capacity as a ~~clergyperson~~ member of the clergy or a priest;

(ii) the statement was intended to be a part of a confidential communication between the ~~clergyperson~~ member of the clergy or the priest and a member of ~~his~~ the church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the ~~clergyperson~~ member of the clergy or the priest.

(c) A ~~clergyperson~~ member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) The reports referred to under this section ~~shall~~ must be made under oath and must contain:

(a) the names and addresses of the child and ~~his or her~~ the child's parents or other persons responsible for ~~his or her~~ the child's care;

(b) to the extent known, the child's age, and the nature and extent of the child's injuries, including

~~any evidence of previous injuries,~~

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of the person or persons responsible ~~therefor~~ for the injuries or neglect; and

(d) the facts ~~which~~ that led the person reporting to ~~believe~~ testify under oath that the child has ~~suffered injury or injuries or willful neglect~~, within the meaning of this chapter.

3

Section ~~5~~. Section 41-3-202, MCA, is amended to read:

"41-3-202. **Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly conduct ~~a thorough an initial~~ a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters ~~which~~ that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's, care, except as necessary to ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406.

(2) An initial investigation into the home of the child may be conducted when an anonymous report is received. However, the investigation must ~~within 48 hours~~ develop ~~independent~~ corroborative ~~and attributable~~ information in order for the investigation to continue. ~~Without the development of independent corroborative and attributable information, a child may not be removed from the home.~~

~~(2)~~(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer ~~shall~~, consistent with reasonable medical practice, ~~have~~ has the right of access to the child for interviews, photographs, and securing physical evidence and ~~have~~ has the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

(4) ~~All examinations of the child must be attended by the independent examining psychologist or physician representing the family and by the social worker.~~ If the ~~child is interviewed by the social worker~~ child's interview is videotaped, an unedited videotape with audio track must be made available for unencumbered review by the family, upon request,

~~(3)~~(5) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child pursuant to 41-3-301 and may provide protective services to any other child under the same care. The department ~~will~~ shall advise the county attorney and the child's family of its investigation.

~~(4)~~(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. The department shall maintain a record system containing child abuse and neglect cases.

~~(5)~~(7) Any person reporting abuse or neglect ~~which~~ that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency ~~shall be~~ is responsible for ensuring that the report is made to the department ~~of family services~~, its local affiliate, ~~and~~ the county attorney of the county in which the facility is located ~~and the family of the child who is the subject of the report~~."

~~Section 6. Section 41-3-204, MCA, is amended to read:~~

"41-3-204. Admissibility and preservation of evidence. (1) In ~~any~~ a proceeding resulting from a report made pursuant to the provisions of this chapter or in ~~any~~ a proceeding ~~where~~ in which the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report ~~shall~~ may not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) ~~Any~~ A person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section ~~shall~~ must be paid by the department.

(3) When ~~any~~ a person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, ~~he~~ the person ~~must~~ shall include in ~~his~~ the report either a written description or photographs of the evidence.

(4) A physician, either in the course of ~~his~~ providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken when in ~~his~~ the physician's professional opinion, there is a need for radiological evidence of ~~suspected abuse or neglect. X-rays~~ may be taken under this section without the permission of the parent

~~or guardian. The cost of the x-rays ordered and taken under this section shall~~ must be paid by the county child protective service agency.

(5) Evidence collected in the questioning of a child by an investigator without the presence of a videotape with audio track is inadmissible in a court to support a motion to temporarily remove the child from the family, grant temporary custody, or terminate parental rights.

~~(5)~~(6) ~~All~~ At the time that the written confirmation report is sent or as soon after the report is sent as possible, all written, photographic, or radiological evidence gathered under this section ~~shall~~ must be sent to the local affiliate of the department and copies must be sent to the child's family ~~at the time the written confirmation report is sent or as soon thereafter as is possible~~.

Section 4. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of social and rehabilitation services, the department ~~of family services~~ and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential, except as provided by this section. ~~Any~~ Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized dissemination of ~~their~~ the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, ~~or~~ guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, ~~without~~ with disclosure

of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department if disclosure of the records is necessary for administration of programs designed to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(j) a youth probation officer working in an official capacity with the child who is the subject of a report in the records;

(k) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect;

(l) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(m) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

(n) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in subsection (3); or

(o) members of a local interagency staffing group provided for in 52-2-203.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member ~~who believes that the family is being victimized by an unfair or unwarranted process~~ to keep the proceedings confidential.

(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (4) if the news organization, employee, writer, or reporter ~~has made every effort to avoid publicly identifying~~ maintains the confidentiality of the child who is the subject of the proceeding.

~~(5)~~(6) ~~Nothing in this~~ This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

5

Section ~~8~~. Section 41-3-206, MCA, is amended to read:

"**41-3-206. Procedure in case of child's death.** (1) ~~Any~~ A person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report ~~under oath~~ ~~his~~ the person's suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report ~~under oath~~ ~~his~~ the person's suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit ~~his~~ findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, the family of the deceased child, and, if the person making the report is a physician, the physician."

~~Section 9. Section 41-3-301, MCA, is amended to read:~~

"**41-3-301. Emergency protective service.** (1) ~~Any~~ A child protective social worker of the department ~~of family services~~, a peace officer, or the county attorney who has reason to believe that ~~any~~ a youth is in immediate or apparent danger of harm may immediately remove the youth and place ~~him~~ the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon ~~thereafter~~ after placement as possible.

(2) ~~No~~ A child who has been removed from ~~his~~ the home or any other place for ~~his~~ the child's protection or care may not be placed in a jail.

(3) A petition ~~shall~~ must be filed pursuant to 41-3-401 within 48 hours of emergency placement ~~of a child unless arrangements acceptable to the agency for the care of the child have been made by the~~

parents. Criminal charges must be filed against a family member or family associate believed by a county attorney, the attorney general, or an attorney hired by the department to have abused or endangered a child. A family member or family associate charged with abuse or endangerment is entitled to a jury trial.

(4) If criminal charges are not filed within 20 days of emergency placement, the child must be returned to the home unless clear and convincing evidence exists to support an allegation that the child, if returned to the home, is in imminent danger of being abused or endangered by a family member or family associate. If evidence of imminent danger exists, the child may be removed from the home only for a period of time sufficient to allow the development of the required criminal complaint. In all cases, an emergency placement of a child may not continue beyond 60 days without criminal charges being filed against the person believed to have abused or endangered the child.

~~(4)~~(5) The department ~~of family services~~ shall make ~~such~~ necessary arrangements for the youth's well-being as are required prior to the court hearing."

Section 10. Section 41-3-303, MCA, is amended to read:

"**41-3-303. Guardian ad litem.** (1) ~~In~~ When a child is temporarily removed from the home and in every judicial proceeding, the court shall appoint for ~~any~~ a child alleged to be abused or neglected a guardian ad litem. The department or any of its staff may not be appointed as the guardian ad litem in a judicial proceeding under this title. ~~When necessary the~~ The guardian ad litem ~~may~~ must be a person chosen from a roll of volunteers who have undergone a background check and who have parental experience. They may serve either at their own expense or at public expense.

(2) The guardian ad litem is charged with the representation of the child's interests. The guardian ad litem has the following general duties:

(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview ~~or~~ and observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or ~~custodians~~ legal guardian;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child, testify regarding the guardian ad litem's observation of the child's needs and emotional state during

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 2/16/95
BILL NO. SB 212

Page 3; following line 11

Insert: (e) If a defendant asserts a nonparty defense, all nonparties whom the defendant alleges caused, in whole or in part, the claimants injuries, will be notified of the allegations by mailing the defendants answer to them at their last known address using certified mail, return receipt requested.

DATE 2/16/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 308 SJR 16
SB 340 SR 402

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Gene Jarussi	self	SB 308	X	
Keith Colbo	Sec of State	SB340	✓	
David Dietrich	State Bar	SB 340		
Mac Stevens	Self	SB 340	✓	
Jacqueline T. Lenmark	Am. Ins. Assn	SB 308		✓
Deb Sprague	Sen. #6	SB 308	✓	
Mike Cok	Self	SB 308	✓	
Charles R. Brooks	Bldg Chamber	SB340	✓	
Greg Van Gorssen/jntl	~~AIA~~. State Farm	SB 308		✓
Kate Cholewa	MT Womens Lobby	SB 402	✓	
Russell B Hill	MT Trial Lawyers	SB 308		✓
M A Wellak	SRS-CSED	SB402		
Tom Harrison	MT Soc of CPA's	S-340	✓	
Jim Tutwiler	MT Chamber Comm	SB 340	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Tom McNab	Mont. Tech. Council	SB340	✓	
David Scott	Dept Labor & Industry	SB340	✓	
Ron Kunik	MMCA	SB402	✓	
Ed [illegible]	MMBC	SB402	✓	
Beth Baker	Dept of Justice	SJR16	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10