

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **BRUCE D. CRIPPEN, CHAIRMAN**, on February 28, 1995, at 10:00 A.M.

ROLL CALL

Members Present:

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

Members Excused: None.

Members Absent: None.

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

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

Committee Business Summary:

Hearing: HB 135, HB 208, HB 173, HB 174, HB 175
Executive Action: HB 174, HB 175, HB 173, HB 208. HB 135

HEARING ON HB 174

Opening Statement by Sponsor:

REPRESENTATIVE A.R. "Toni" HAGENER, House District 90, Havre and Western Hill County, sponsored HB 174. The bill was requested by the **Montana Association of District Clerks**. She told the committee it was a housekeeping bill that would allow the clerks better reporting. The point of the bill, she said, is noted on Line 17-23, Page 2. Montana statute currently states that the Clerk of Court shall give notice of the dissolution or legal separation. Since legal separation does not terminate a legal marriage and there is no reference to invalid marriages or annulments (which are a termination of marital relationships)

some confusion exists. Amending the statute to read that the Clerk of Court shall give notice of the entry of a decree of dissolution or a decree of invalid marriage, where the marriage was recorded would clear up this matter and allow for more accurate recording. This very simple correction is what is proposed in the bill.

Proponents' Testimony:

Bob Gilbert, representing the Montana Association of Clerks of District Court, said that their organization wanted to rise in support of HB 174.

Nancy Sweeney, Clerk of District Court for Lewis and Clark County, appeared on behalf of the Montana Association of Clerks of District Court, to speak in favor of HB 174. Problems with Section 40-4-108 MCA, were identified at the Montana Association of Clerks of District Court Conventions in 1994. She presented and read from written testimony. (EXHIBIT 1)

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

CHAIRMAN BRUCE CRIPPEN asked REPRESENTATIVE HAGENER questioned about "invalid" marriages and asked if it would be a divorce or a separation?

Nancy Sweeney said that an invalid marriage would be an annulment.

Closing by Sponsor:

REPRESENTATIVE HAGENER closed HB 174 without further comment.

HEARING ON HB 175

Opening Statement by Sponsor:

REPRESENTATIVE A.R. "Toni" HAGENER, House District 90, Havre and Western Hill County, opened HB 175. The bill was brought in at the request of the Judicial Unification and Finance Committee. The committee was formed by the last legislative session to examine the court system and make recommendations. The bill is one of those recommendations. Current statutory language states that the Governor may temporarily assign district court judges to other districts to manage caseloads. This language is inconsistent with the principles of independence of the judiciary. The Montana Constitution vests the Supreme Court with the general supervisory authority over all other Montana courts. This bill seeks to correct this error in statute. As the title of the bill states, it provides that the Chief Justice of the

Supreme Court, rather than the Governor, may assign a district judge to hold court in a district other than the judges' own district. The Chief Justice already has the authority to appoint a retired judge to perform this duty. The Governor typically consults the Chief Justice regarding such an appointment anyway. This is a more direct and efficient method to provide for the expeditious handling of district court cases in the event that a judge is incapacitated or unable to handle the district's caseload. It eliminates the requirement that such assignment is pursuant to the request by an interested person or by written order as it was felt that the Chief Justice should not have to wait for such a request by an interested person before making a temporary assignment to handle the judge's caseloads.

Proponents' Testimony:

Patrick A. Chenovick, Administrator for the Supreme Court, explained that when the Judicial Unification and Funding Committee looked at this particular area, they consulted with the Governor and the Executive Branch of government to see if changing this particular section of the statute would result in a problem with separation of powers or the ability of the Executive Branch to operate efficiently. The Governor said he had no problems with the change. He had also talked to the Chief Justice and he wished to pass on that he's not looking for additional duties or work, but would gladly accept the assignment if they so chose.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

CHAIRMAN CRIPPEN asked **Pat Chenovick** how often this situation would happen. **Mr. Chenovick** stated that in the eight years of his employment, he was not aware of a single instance. When asked further by the chairman why they needed the bill, he replied that the committee felt that the bill would clarify the separation and allow for the appointment of a judge from a multi-judge district to go and take care of the caseload in an area. That way the process would not be slowed down more than it already is. **CHAIRMAN CRIPPEN** asked if they had ever had an instance where they felt a retired judge would not be desirable and had a sitting judge do it.? **Mr. Chenovick** stated that it could happen, based on the fact that many of the retired judges are up in age. At the present time, they had 8 judges they could call in.

SENATOR REINY JABS asked if the retired judges are chosen first, and then the district judges or can they choose any way they want? **Mr. Chenovick** replied that the usual method for calling in a judge is to ask a judge from a surrounding area to take the case. If the judge does not have a spot open, then the judge

requests the Chief Justice to call a retired judge to sit on the case.

Closing by Sponsor:

REPRESENTATIVE HAGENER closed on HB 175 without further comment.

HEARING ON HB 173

Opening Statement by Sponsor:

REPRESENTATIVE DAVID EWER, representing downtown Helena, House District 53, sponsored HB 173, "an act allowing the Department of Justice to provide certain gambling information to gambling regulatory agencies of jurisdictions outside the state." Nearly the entire bill is on Line 24-27, he said. This bill, if passed, would enable the State of Montana to provide information for those who are in the gambling business to other qualified entities under the jurisdiction of other states. Currently the state does not have that authority and while we are able to get information from other states, those states are unable to get information from Montana. Consequently, they were not getting reciprocity from other states. He said he had been asked in the House hearing on the bill about the process of disclosure. He said it was his understanding that the same procedures that are used to protect exchange and information with the criminal justice system, would be in place.

Proponents' Testimony:

Beth Baker, Department of Justice, said the bill was brought at their request. She read from written testimony. (EXHIBIT 2).

Dennis Casey, representing the Gaming Industry Association of Montana, spoke in full support of HB 173. Their association has been critical of the Gambling Control Division in the length of time it takes to process applications. This is a tool which would make the process more effective, he said.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR LARRY BAER asked REPRESENTATIVE EWER about the disclosure of requested information because he noted there was nothing in the bill that would require a reciprocal disclosure from a party requesting like information. He wondered if he would be adverse to adding something to the bill that would give such disclosure conditioned upon reciprocal disclosure or an equal dignity.

Beth Baker answered the question. She said they did not think the bill needs to require those stipulations because they are presently allowed under Montana law to receive this information.

They had not had any problems getting information from other states, she said, except for the fact that they were unable to reciprocate. The memoranda of agreement between gaming agencies specifically provides for reciprocal exchanges of information. She said they could go to court if the other party resists the exchange of the information. She thought the law was broad enough to allow them to get just about any information they requested.

SENATOR BAER asked then if they already had a reciprocal procedure built-in to the process already. **Ms. Baker** said that they did.

CHAIRMAN CRIPPEN asked about Line 25, Page 1, which referred to the disclosure of the information complying with the law of the jurisdiction, he asked if she was talking about the jurisdictions requesting the information? **Ms. Baker** said it was correct. She said that, for example, they would request an agency of the State of Nevada, to let them know that their law allows them to gather the information about the applicant and provide a citation or copy of the relevant authorizing statute. **CHAIRMAN CRIPPEN** asked further, why had they not seen this problem before? **Beth Baker** stated that when the gambling regulation was centralized and sent to the Department of Justice in 1989, there were a lot of concerns about disclosure of proprietary information. As they have come along in the process, both the licensed applicants and the regulators have realized that a free flow of information is helpful to everybody concerned in terms of the licensing process. She said for instance, they could not even comply with a request for a letter of good standing because they cannot disclose that information. The **Chairman** said it would go a lot further. **Ms. Baker** said it would not affect the vast majority of Montana licensees because most of the information that is restricted now pertains to the applicants from outside the state.

Closing by Sponsor:

REPRESENTATIVE EWER closed on HB 173 without further comment.

HEARING ON HB 208

Opening Statement by Sponsor:

REPRESENTATIVE JOHN COBB, Augusta, House District 50, sponsored HB 208. He said the bill would allow certain information relating to civil and criminal sanctions to be made public. The bill deals with gambling violations, 23-5-116 and that whole chapter. What happens presently, he said, is if there was a violation and people were fined, the information could not be given out. All that could be made public is the name and address of the business, ownership and the type of permits requested. The bill was worked on by the Legislative Council, Auditors, and the Department of Justice. The bill would allow that information to be given out upon request. Many thought it was contained within the law presently, but the law seems to imply that the

information cannot be given out. The bill would clarify that the information is available and would be good public policy to make this known.

Proponents' Testimony:

Beth Baker, representing the Department of Justice, said that **REPRESENTATIVE COBB** brought this bill independently of the bill heard previously, but they agreed that the bill was a good idea. It would make gambling information consistent with all the other information handled by the Department of Justice. Now, she said, everything they do is open to public inspection with the exception of confidential criminal justice information and other things specifically protected by privacy rights. This bill would make records of the Gambling Control Division consistent with the rest. She urged their concurrence.

Mike Voeller, represented Lee Newspapers of Montana. They supported HB 208, he said. The bill does what he had thought was already the law. He commended the sponsor for his effort and supported the bill.

Ellen Engstedt, representing Don't Gamble With The Future, said that one of the goals of her organization was the proper regulation of gambling currently legal in Montana. She thought that HB 208 would give the Department of Justice another regulatory tool to properly do its job. She urged support.

Charles W. Walk, Executive Director of the Montana Newspapers Association, which represents 75 Montana newspapers including all 11 dailies and 64 weeklies said that one of the reasons for their existence is to support increased legislation of awareness and knowledge to the public. They felt the bill would meet that criteria. It would increase the knowledge of past violations and penalties of persons seeking gambling licenses in Montana and they thought it would be entirely appropriate. He urged their support of the bill.

David Hemion, represented the Montana Association of Churches. He said that one of the positions that the association has on gambling is that the legislature and the public should have a full understanding of the impacts of gambling and take it into account in developing public policy. They supported HB 208.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

CHAIRMAN CRIPPEN told **Mr. Walk** that he had answered his question of, "who wants this legislation?" Then he realized the newspapers wanted the information. He asked if it was information he had tried to gain in the past and had been unable

to do so? **Mr. Walk** said that was true. He said they had made several efforts since the 1989 session regarding the disclosure of information. He said it was in everyone's best interest.

Closing by Sponsor:

REPRESENTATIVE COBB said that he did not bring this bill to the committee for the newspapers. The point of the audit, he said, was the concern that if the public learned of illegal chips in the machines, they would react very quickly in deciding whether or not to go to that gambling establishment.

HEARING ON HB 135

Opening Statement by Sponsor:

REPRESENTATIVE JOHN COBB, House District 50, Augusta, opened HB 135. He said the bill would require the Attorney General to represent the state in bankruptcy proceedings in which the state interest may be affected. It would have a termination date and if they didn't receive the funding for the new staff, they won't be able to do it, he said. Right now, he stated, each Executive Branch agency is responsible for collecting its own receivables and involves many disputes with bankrupt debtors. He said there were many lawyers in the agencies who were not specialists in bankruptcy laws, trying to collect money. **REP. COBB** said it would be helpful in looking at other states as they are starting to form a bankruptcy unit that actually works for the Attorney General. They were finding they were saving more money by consolidating into one unit. Texas alone collected over \$30 million in one year. Specialized attorneys would be cheaper than going outside to hire private lawyers. He gave an example of the Board of Investments who is involved in a \$25 million dollar suit in an Orange County, California bankruptcy court. He said they would have to hire outside attorneys. If the unit were in the Attorney General's office, they could have the background work done ahead of time and get the work done cheaper. If the funding is not available in House Bill 2, the sponsor said, then they will not implement the bill. In addition, the bill would sunset in two years if it is shown they cannot save money for the state.

Proponents' Testimony:

Chris Tweeten, Chief Deputy Attorney, representing the Department of Justice, said both **Governor Racicot and Attorney General Joseph Mazurek,** made a point of asking the people of Montana to put them into office so they could improve the efficiency by which they could deliver legal services to state agencies in government. He said the bill was a result of a study of legal services and there would be a report forthcoming any day. One of the recommendations will be the implementation of the proposal. He submitted written testimony. **(EXHIBIT 3).**

Dave Woodgerd, Chief Legal Counsel for the Department of Revenue, addressed the committee and gave written testimony. He said the Department supported HB 135. (EXHIBIT 4).

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BAER questioned Mr. Tweeten if the collection of taxes was the primary function of the bill, or was it unsecured debts in a creditor situation? Mr. Tweeten said it could be either, but the large bulk of the money owed to Montana was taxes.

SENATOR BAER asked for an example of a situation in which the state would involve themselves as a creditor for an unsecured debt. Mr. Tweeten said if the state were involved in a proprietary capacity in a contract and incurred an obligation in its favor against someone filing bankruptcy would be an example. SENATOR BAER asked if this was a process whereby the state could collect back taxes owed the State of Montana from insolvent people. Mr. Tweeten replied that it would mainly be taxes, but could be other debts as well.

SENATOR JABS asked, based on the DOR's staff of 1/10 of an attorney and a paralegal to do the job, how did they come to the conclusion that they would need so many FTE's on this bill? Mr. Tweeten said that the request was for two attorneys and a paralegal and an administrative support position. They intended to hire one attorney initially and one more if the workload would justify it. He said the attorney time was not large enough now and they were not recovering enough money in the bankruptcy court. He said if the fractional attorneys were added up, other agencies, including Workers' Compensation, Guaranteed Student Loans, and the Departments of Labor and Industry, it would come close to a full FTE. SENATOR JABS asked if this was based on the getting the money from HB 2? He asked if they would settle for half of that amount? Mr. Tweeten said that the funding for the FTE's is not in this bill, but in HB 2. He said they thought they needed four positions to make this program work. He had not looked at the language to see what would happen if it was only partially funded. He said they would be reluctant in taking on the responsibility of representing the state and all of its agencies in bankruptcy courts if not given adequate resources.

CHAIRMAN CRIPPEN stated that bankruptcy attorneys were highly specialized. He was concerned that they would hire people who may not have the expertise. He asked for an explanation on why they thought they would get better efficiency in hiring people than they would in contracting with bankruptcy attorneys in the marketplace? Mr. Tweeten said they could not pay the going rate of \$100 an hour in the private sector. Experience in other states has shown they were able to hire someone with 3 to 5 years of experience in bankruptcy courts for what the states are able

to pay. Most of the work can be handled by an attorney with that level of experience. **CHAIRMAN CRIPPEN** asked if they could hire someone like that, why couldn't they contract with someone like that? Then, he said, they would not have to provide a retirement or build a bureaucracy in the Department of Justice. **Mr. Tweeten** said they would pay a lot more for it. Experience has shown it costs twice as much on a hourly outside basis than with a house lawyer. The **Chairman** was concerned that they would not get the quality of attorneys they needed. He doubted, if in the Orange County cases, that they would have the necessary expertise and worried that the state would be ill-served by staff people. He asked to understand why they need the four FTE's. **Mr. Tweeten** said that's what they were doing at present. They would still have the option of hiring outside counsel in extremely complicated cases, he said. He said that by not being aggressive in the courts, they were losing large amounts of money. **CHAIRMAN CRIPPEN** asked what a large amount of money was. **Mr. Tweeten** replied that they were uncertain of how much money was not being collected. He said that the bankruptcy trustee did a survey for them of the filings in a four-month period from August to November of 1994. During that time, there were 115 bankruptcy cases filed in Montana involving debts owing the state. The total amount was in excess of a quarter of a million dollars. That would not be a true picture of what they would recover, he said, because debtors don't come clean in reporting their debts and it is the nature of bankruptcy not to recover every dollar owed. He said it would indicate the magnitude of the state's claims. **CHAIRMAN CRIPPEN** asked if they had recovered any of the quarter of a million dollars, to which **Mr. Tweeten** answered that most of it was still in litigation.

CHAIRMAN CRIPPEN asked **Mr. Woodgerd** about the collections. **Mr. Woodgerd** said most of it was taxes, but some would be student loans, also employment taxes due to the Department of Labor and Industry. When the **Chairman** quizzed him about student loans, he answered that they do, indeed, have their own lawyers now for the Board of Regents, but their function would be taken over with this bill. **CHAIRMAN CRIPPEN** asked if they were not handling their own cases and collecting the back taxes now for the Department of Revenue? **Mr. Woodgerd** replied that they thought they were doing an adequate job now. He said that in 1994 they worked on 1,500 claims and collected \$147,000, out of a total of \$2.2 million in claims. They have approximately 1,000 bankruptcy cases. The vast majority of the cases are "no asset" cases where they owe taxes but the Department would be unable to collect anything.

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He said fraud detection would be a lucrative area for the state to participate in. He said the attorney and paralegal could work on that and produce extra revenue for the state. **CHAIRMAN CRIPPEN** asked if they would be required to turn over to the

Department of Justice the 70 per cent of the cases with no assets?

Mr. Woodgerd said that the Department of Revenue would continue to file claims. It would only be when that process required an attorney to go to court that the Department of Justice would become involved. The DOR would continue to review and take care of those cases.

Closing by Sponsor:

REPRESENTATIVE COBB said they were trying to have a pro-active participation in their bankruptcy cases. Right now it is mostly reactive, he said. He stated that other states were like Montana previously, wherein all the little agencies did their own thing, then hiring outside counsel when they needed it. When they started doing the work in a centralized unit, they started to realize more money than ever before. As in the Orange County case, he said, someone has to prepare the work for the outside counsel still. It would be much better to have someone who knows bankruptcy. The bill is line-itemed, **REPRESENTATIVE COBB** said, which means if the money is granted in House Bill 2, it cannot be spent for anything else, or move it anywhere else in their budget. It would also terminate in two years. He urged the committee to agree with a pro-active stance, and give it two years to prove it can make a lot more money than they are making now. If it doesn't work, even two attorneys would be hard to justify, he said.

EXECUTIVE ACTION ON HB 174

Motion/Vote: **SENATOR MIKE HALLIGAN MOVED THAT HB 174 BE CONCURRED IN.** The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON HB 175

Motion/Vote: **SENATOR HALLIGAN MOVED THAT HB 175 BE CONCURRED IN.** The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON HB 173

Motion: **SENATOR SHARON ESTRADA MOVED THAT HB 173 BE CONCURRED IN.**

Discussion: **SENATOR BAER** said he was concerned about a reciprocal condition of the bill, but he had been assured by **Beth Baker** that it does exist already somehow in the process, although he pointed out the bill did not contain the language. He said he would rely on her integrity to assure that there would be reciprocity of this information with those involved.

Vote: The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON HB 208

Discussion: CHAIRMAN CRIPPEN said the bill concerned public access to criminal and civil sanctions on gambling violations. He asked SENATOR HALLIGAN if the information was not available prior to this. SENATOR HALLIGAN said it was all considered proprietary information.

Motion: SENATOR HALLIGAN MOVED THAT HB 208 BE CONCURRED IN.

Discussion: SENATOR HALLIGAN said that in addition to the newspapers, who wanted the information, the neighboring businesses would like to know who was buying the business, what the associations were, etc. He said he thought it was a health and safety sort of disclosure. CHAIRMAN CRIPPEN asked him for an example of a confidential criminal justice information exception on Line 20. SENATOR HALLIGAN said the officers' theft report, for example, even if a charge is made, would be a confidential criminal justice information and perhaps the person's attorney would be able to get the report, but it would not be available for public disclosure.

Motion: SENATOR HALLIGAN MOVED THAT HB 208 BE CONCURRED IN.

Discussion: SENATOR ESTRADA said she would not have had a problem if the newspapers hadn't testified for it. On Line 20, where it lists, "all records and other information," she wondered it that would include their tax records, etc., and how deep would they go into other people's lives. Janet Jessup, Administrator, Gambling Control Division, Department of Justice, said that what the sponsor was interested in would be the final dispositions of violations, so the other records would not be available. What they foresaw is the finalist position of a violation upon "conviction or settlement." SENATOR LINDA NELSON asked how the intended law would pertain to Indian reservations, as they pursue gambling on those lands. Ms. Jessup said the bill only addresses violations and make them public. As far as pending investors, both this bill and HB 173 would help achieve that purpose. The information would then be available to the tribes as it would the public. SENATOR NELSON further questioned if the Indian tribes could negotiate on their own, leaving the state out entirely and would not do a background check. Ms. Jessop said that they do not provide those services under the current contract unless the tribes specifically desire. SENATOR STEVE DOHERTY said it would be useful to find out what the new neighbors are like, but he was concerned about the information going to a competitor, in order to determined if one individual could outbid another for a liquor license, or find out that one was up for sale. He said if the Department has to balance an individual's right to privacy vs. the public's right to know, they would be saying all of the information is public domain information regardless of invasion

of privacy or proprietary information. **SENATOR HALLIGAN** said the bill would not relate to the applicant's information, but with sanctions and penalties. **CHAIRMAN CRIPPEN** said 44-5-103 defined the criminal justice information. **SENATOR ESTRADA** said she did not want to intrude in people's lives if it is not necessary. She inquired about Line 25, "In addition to the information . . ." She said it concerned her. **SENATOR HALLIGAN** explained it was existing law. **SENATOR SUE BARTLETT** said in addition, it says they can disclose the information to a federal, state, city, county or tribal criminal justice agency or to the Department of Revenue or the federal IRS, not to the media, or whoever else.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 135

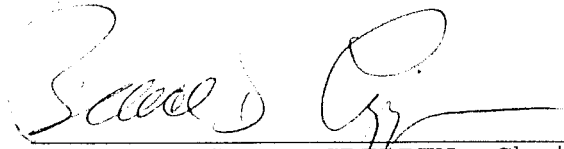
Motion: **SENATOR HALLIGAN MOVED THAT HB 135 BE CONCURRED IN.**

Discussion: **SENATOR HALLIGAN** stated that the Governor and Attorney General were in agreement and making good on a campaign promise. He said it would have a two-year limitation in which it would have to pay for itself, or sunsets. He said they may not get all the FTE's they asked for. **CHAIRMAN CRIPPEN** said he was not convinced and would not vote for it at present. He wanted more time to consult with the Attorney General. He stated that the building of a bureaucracy flies in the face of privatization. He thought the hiring of outside counsel was not all bad.

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

ADJOURNMENT

Adjournment: CHAIRMAN CRIPPEN adjourned the hearing at 10:25
A.M.



BRUCE D. CRIPPEN, Chairman



JUDY FELAND, Secretary

BDC/jf

DATE _____

2-28-95

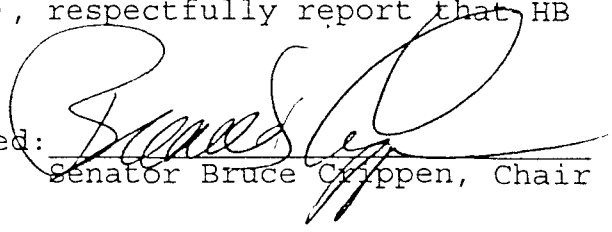
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SENATE STANDING COMMITTEE REPORT


Page 1 of 1
February 28, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 173 (third reading copy -- blue), respectfully report that HB 173 be concurred in.

Signed: 

Senator Bruce Crippen, Chair

 Amd. Coord.

SA Sec. of Senate

Grosfield
Senator Carrying Bill

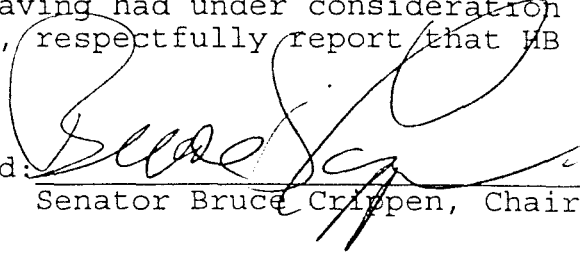
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 28, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 174 (third reading copy -- blue), respectfully report that HB 174 be concurred in.

Signed: 
Senator Bruce Crippen, Chair


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

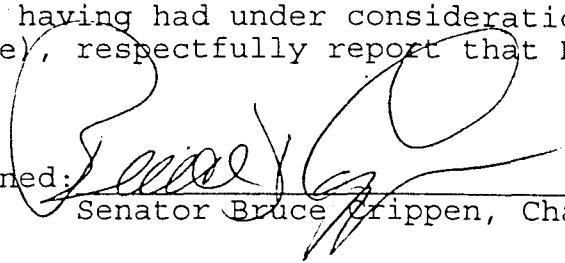
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 28, 1995

MR. PRESIDENT:

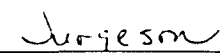
We, your committee on Judiciary having had under consideration HB 175 (third reading copy -- blue), respectfully report that HB 175 be concurred in.

Signed: 

Senator Bruce Crippen, Chair




Amd. Coord.
Sec. of Senate


Senator Carrying Bill

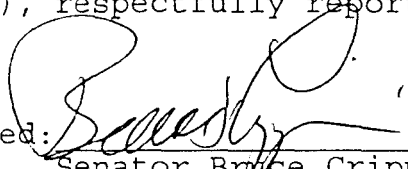
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SENATE STANDING COMMITTEE REPORT


Page 1 of 1
February 28, 1995


MR. PRESIDENT:

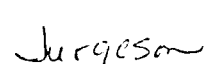
We, your committee on Judiciary having had under consideration HB 208 (third reading copy -- blue), respectfully report that HB 208 be concurred in.

Signed: 

Senator Bruce Crippen, Chair

 Amd. Coord.

 Sec. of Senate


Senator Carrying Bill

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NANCY SWEENEY
CLERK OF DISTRICT COURT
Lewis and Clark County Courthouse
P.O. Box 158
Helena, MT 59624-0158
W-447-8215 H-449-8970

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-28-95
FILE NO. HB174

February 28, 1995

Senator Bruce Crippen, Chairman
Senate Judiciary Committee
Capitol Station
Helena, MT 59620

Chairman Crippen and Members of the Committee,

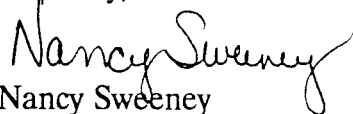
House Bill 174 is simply a clarification of language regarding notices of entry of dissolution that a clerk of court is required to send to the county where the marriage license was issued.

At the Montana Association of Clerks of District Court's convention in June of 1994, we passed a resolution to change this statute. It was the consensus of the members attending the convention that notices of legal separation were not being sent. Notices of dissolution were being mailed the appropriate jurisdictions at the beginning of the month when we processed the statistical reports required by the State Bureau of Records and Statistics. The Bureau of Records and Statistics does not require a report on legal separations and none of us had an established procedure to send notice of legal separations. Lewis and Clark county issues approximately 500 marriage licenses each year and we have never received a notice of legal separation.

The intent of this statute is to record the termination of a marital relationship with the agency that recorded the marriage. The provisions of statute does not fulfill its intent. The statute does not include invalid marriages (annulments) which are a termination of a marital relationship and does include decrees of legal separation which are not terminations of marital relationships. House Bill 174 would enable the clerks to fulfill the intent of the statute and accurately record the termination of marital relationships where the marriage was recorded.

The provisions contained in House Bill 174 would clean up language which requires a clerk of district court to do something they actually have rarely, if ever, done and it adds the provision of sending notice on invalid marriages, which more precisely performs the intent of the original statute. The Montana Association of Clerks of District Court would urge your support of this housekeeping legislation.

Sincerely,


Nancy Sweeney
Clerk of District Court

**DEPARTMENT OF JUSTICE
House Bill 173:**

Sharing Gambling Information With Other Enforcement Agencies

Purpose

To clarify the authority of the Department of Justice's Gambling Control Division to share information with its counterparts in other states and countries.

Background

Montana law places strict limitations on the information that can be disclosed about applicants for gambling operators' licenses. Section 23-5-116 allows disclosure only of the applicant's name and address, the name of each person having an ownership interest in the business, and the types of permits requested by the applicant.

Although the statute does allow disclosure of other relevant information to federal, state, city, county, or tribal criminal justice agencies, most gambling enforcement and regulatory agencies in other states and countries do not meet Montana's strict definition of "criminal justice agency." The Montana Criminal Justice Information Act defines "criminal justice agency," in relevant part, as "any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice." (MCA 44-5-103(7)(b))

The "administration of criminal justice" means "the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information." (MCA 44-5-103(2))

The standard practice of gambling enforcement agencies is to enter into written agreements to set forth the circumstances under which information within each agency's possession may be shared with other agencies. The agreements ensure protection of confidential information and require a court order or written consent of the originating agency before any information may be disclosed. Because of the definition of criminal justice agency, Montana has been unable to join these standard agreements.

The Problem

Multi-jurisdictional businesses are common in the gambling industry. For example, the Gambling Control Division currently is investigating applicants based throughout the United States, as well as in Japan, Germany and Australia. Under state law, each applicant must undergo detailed review of the applicant's financial, business, and criminal history. The Department's review is hampered by the roadblocks to open exchange of information:

→ In a recent case, investigators from Montana and Colorado were both working on the same applicant from Illinois. The investigators were limited in the information they could share due to Montana's restrictive statutes.

→ The Nevada Gaming Control Board--an agency with criminal justice powers whose agents are sworn peace officers--recognizes the Montana Department of Justice as a criminal justice agency for purposes of sharing criminal justice information. Montana law does not, however, provide Nevada with reciprocal status. The result is an ineffective regulatory and enforcement structure for both states, which share many common licensees and applicants.

These barriers to open communication cost the state--and license applicants--time and money by slowing down background investigations and the overall licensing process.

Proposal

HB 173 would allow the Department of Justice to exchange information with its counterparts in other states, local and tribal governments, and foreign countries, provided the receiving agency is approved by the Attorney General and the disclosure meets the requirements of the receiving jurisdiction's governing law.

HB 173 will expedite the Department's review of out-of-state businesses that apply for gambling licenses in Montana, and will improve the state's ability to provide relevant information to other enforcement agencies.

HB 173 will not affect the vast majority of Montana-based licensees, since most of the information that is now restricted pertains to companies located outside the state. By facilitating exchange of information, the overall licensing process will be expedited and time will not be wasted duplicating investigative work done elsewhere.

DEPARTMENT OF JUSTICE

House Bill 135: Bankruptcy Representation

Purpose: To give the Attorney General authority to represent the state's interest in bankruptcy matters.

Background

Currently, each executive branch agency is responsible for collecting any money owed the agency. Collection disputes frequently involve bankrupt debtors. Because bankruptcy law is a specialty, general practitioners who do not practice frequently in bankruptcy court are unlikely to be effective in collecting the money due from bankruptcy estates.

Estimated Revenue

The federal bankruptcy trustee has noted that the State and its agencies are inconsistent in their efforts to pursue bankrupt debtors, and that the State is losing many thousands of dollars annually as a result. While an accurate count of the uncollected money is impossible, a recent survey by the bankruptcy trustee showed that, in a four-month period from August to November 1994, bankruptcy cases were filed in the Montana federal bankruptcy court involving 115 debts to state agencies, including the Department of Revenue, the Department of Labor and Industry, and the Guaranteed Student Loan program. The total amount reported exceeded \$258,000.

The amount of debt reported in these schedules is frequently not entirely accurate, and it is the nature of bankruptcy that it may not be possible to collect the entire amount owed. However, many debts owed the State are for taxes of various kinds and, under federal bankruptcy law, these are priority claims entitled to be satisfied before other creditors are paid. If the State pursues these claims aggressively, it is reasonable to project that significant amounts will be recovered.

Creation of a Bankruptcy Unit

House Bill 135 adds representation in bankruptcy matters to the duties of the Attorney General under Mont. Code Ann. § 2-15-501. This proposal is also part of the Department of Justice's budget, and funds for creation of a bankruptcy unit are in the Governor's proposed budget. Preliminary approval was given this proposal by the Joint Appropriations Subcommittee on Institutions.

Other states that have recently centralized their bankruptcy collection attorneys have recovered significant funds. In Texas, the legislature created a bankruptcy unit consisting of nine attorneys and support staff. In one fiscal year, state collections in bankruptcy cases increased by over \$30 million. While Montana can reasonably expect a much smaller return due to our smaller population base, the Department of Justice believes that, with a modest initial investment, the State can recover many times the cost of this program over time.

Termination Date

The unit is designed to sunset in two years if it fails to pay its way through collections.

If the unit collects sufficient funds to pay its own way, it could be set up on a proprietary account. A percentage of the money collected would be set aside to pay for the operation of the unit each biennium, with the balance accounted for under existing statutes and practices.

Coordination With House Bill 2

HB 135 will be void if House Bill 2 does not include an appropriation to implement the bankruptcy collection unit in the Attorney General's Office.



U. S. Department of Justice
Office of the United States Trustee
District of Montana

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December 6, 1993

Hon. Joseph P. Mazurek
Attorney General
State of Montana
Post Office Box 201401
Helena, MT 59620-1401

Re: State Participation in Bankruptcy

Dear Joe:

My apologies for not addressing this correspondence to you earlier. Since visiting with you I have been to New York, Seattle, Washington, D.C., and several points in between. My attention has been preoccupied by a troublesome trustee on Long Island who I was charged with investigating. And I have participated in a few seminars since our visit. In fact, as an indication of the interest state agencies have in the bankruptcy area, I am giving two presentations in Helena on December 15, 1993. First, I will be talking to the Public Law Section of the State Bar; followed by a talk to the staff of the Secretary of State's Office. I am encouraged by the recognition shown by government employees of the importance of a greater knowledge and involvement in this field of law.

Perhaps it is no coincidence that an article recently appeared in the "American Bankruptcy Institute Journal" authored by Dan Morales, the Attorney General for the State of Texas, entitled "The 'New' State Attorneys General: The Sleeping Giants Awake." (I have enclosed a copy.) The point of Mr. Morales' remarks is that state agencies must devote the time and resources necessary to adequately protect the States' interests in bankruptcy cases. "The simple truth," Mr. Morales states, "is that increased budget expenditures in bankruptcy collections pay for themselves many times over in terms of returns to state treasuries." Mr. Morales concludes his article with the statement that "proactive participation in bankruptcy cases is absolutely necessary to success in the bankruptcy system, and absolutely vital in this economy... (Given) the size of the current deficits at both the state and federal level... the

Hon. Joseph P. Mazurek
December 6, 1993
Page 2

States simply cannot afford to let any potential source of revenue go untapped." I emphatically agree. It is time Montana begins to "flex its muscles".

My review of a list of Montana state departmental legal offices suggests that the following agencies have routine exposure to bankruptcy cases: Agriculture; Auditor; Commerce; Fish, Wildlife & Parks; Health and Environmental Sciences; Justice; Labor & Industry; Natural Resources and Conservation; Public Service Commission; Revenue; Secretary of State; Compensation Mutual Insurance Fund; State Lands; and the University System. Most of these agencies sent people to a seminar I taught in February of this year for state employees, and all in attendance agreed that consolidation of legal resources for representation of Montana in bankruptcy cases would be most helpful, given the unique and sometimes perplexing nature of bankruptcy law.

Two agencies that are increasingly active in the context of bankruptcy cases are Revenue and Environmental Sciences. The former is a creditor in some fashion or another in practically every case filed in Montana (and, no doubt, to some extent in cases filed in other states); and the latter is encountering more and more instances of debtors attempting to "dump" their toxic waste problems on a bankruptcy trustee. And, frequently county treasurers are involved in liquidation and reorganization cases as creditors as a result of real or personal property tax obligations owed by bankruptcy debtors. For years, treasurers could be counted on to acquiesce to any kind of treatment proposed in Chapter 11, 12 or 13 plans due to their non-involvement.

I strongly believe that state and county governments would benefit greatly by the creation of a position within your office dedicated, at least in part, to handling the majority of the bankruptcy issues which involve such governments. A person filling this position could take the time to attend seminars and read the latest literature; could come to know the players in Montana and the "rules of the road"; and could be in contact for the State with the rest of the bankruptcy bar. Such a person would not be snowballed by a cagey debtor's attorney's attempt to stick it to the State through the numerous loopholes available under the Bankruptcy Code. Such a person might even pay a visit to the Bankruptcy Section of Texas' Collections Division, to learn first-hand how Texas has established a workable structure to deal with bankruptcy.

I would urge the State's new bankruptcy expert, when designated, to join the American Bankruptcy Institute, the National Association of Bankruptcy Trustees, and other such

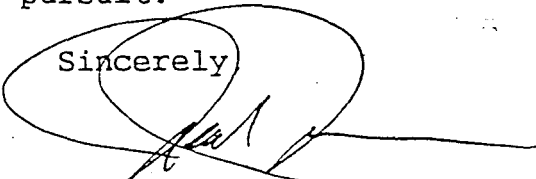
EXHIBIT 3
DATE 2-28-95
71 HB 135

Hon. Joseph P. Mazurek
December 6, 1993
Page 3

organizations devoted to disseminating useful and timely information about the latest issues being litigated in this arena. As an example of the "good stuff" that can be regularly found in the ABI Journal, I enclose copies of several articles dealing with environmental subjects found in the monthly section entitled "Toxins-Are-Us". I know that Laura Bassein and Cassandra Noble would be interested in these materials and would ask that you pass them along. A review of these articles will confirm the regular involvement of state agencies in "messy" bankruptcy cases. I also enclose a brochure for a treatise entitled Environmental Obligations in Bankruptcy, published by Warren Gorham Lamont, which also publishes the very best one volume work on bankruptcy I have ever found: The Bankruptcy Law Manual, which is annually supplemented. These and other books on the subject should be procured for the State Law Library, if they have not been already. Only a well-armed State can hope to defend itself and its taxpayers in Bankruptcy Court these days. Montana needs to pump up its muscles for what lies ahead. And I remain more than willing to act as an exercise trainer in this endeavor.

I hope the enclosed materials will provide additional insight into the various ways bankruptcy impacts on state and local governments. For an even better understanding, perhaps I could poll my audiences on December 15, to find out what agency attorneys themselves see as the government's involvement in bankruptcy cases. If you desire more information on this subject or any other assistance in your attempt to implement a bankruptcy specialist within your office please feel free to give me a call. Good luck in this most important pursuit.

Sincerely



Neal G. Jensen
Assistant U.S. Trustee

TESTIMONY IN SUPPORT OF HB 135

Department of Revenue
February 28, 1995
Senate Judiciary Committee

The Department of Revenue supports HB 135. We would like to provide the committee with some background concerning the current Department of Revenue process since the Department does the majority of the bankruptcy work in state government.

The Department must review every bankruptcy which is filed in the State of Montana to determine whether the debtor owes any taxes. In addition, we review many out-of-state bankruptcies when we have been listed as a creditor by the debtor. This review process is computerized as much as possible but requires close cooperation and communication with each one of the tax divisions within the Department. The accounts receivable for each and every tax administered by the Department must be reviewed to determine whether the debtor owes any taxes.

If it is determined that the debtor owes the state any taxes, a claim is prepared and filed with the bankruptcy court. Once the claim is filed with the bankruptcy court it must be monitored to ensure that the state receives it's share of the estate, if any. In addition, the staff must constantly look for new debts and update the claims as necessary. Again, there is a constant need for communication with the divisions during the process.

This task is performed on a part time basis by two administrative assistants and one administrative officer. Their total time is approximately one FTE. In 1994, the staff worked on approximately 1,500 claims and collected about \$147,000 in debts. The claims totaled about \$3.2 million.

The Department's attorney's spend very little time representing the state in bankruptcy court. Once in a while a case will require attorney time but it is less than one-tenth of an FTE.

It is our understanding, from talking to the Department of Justice that the current process at the Department of Revenue will remain the same as far as the claim filing process is concerned. However, the Department's attorneys would no longer be required to represent the Department before the bankruptcy court. The Department supports this concept. It makes sense to have attorneys in the Attorney General's Office with expertise in Bankruptcy work. It also makes sense to have the claim filing process remain in the Department of Revenue because of the close cooperation and communication necessary.

We would be happy to answer any questions.

DATE FEBRUARY 28, 1995

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 135, HB 208, HB 173,
HB 174, HB 175

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Check One

Name	Representing	Bill No.	Support	Oppose
Beth Baker	Dept of Justice	208 173	✓	
Dave Woodgerd	Dept. of Revenue	HB 135	✓	
Bob Gilbert	MT Assoc Banks & B. Co.	HB 174	✓	
Mike Voeller	Lee Newspaper of Mont	HB 208	✓	
CHARLES W. W. PLE	MT Newspaper Assn	HB 208	✓	
DEANIS CASKY	GIA	HB 173	✓	
Nancy Sweeney	Howis & Clark County Clk of District Court	HB 174	✓	
PATRICK A. CHENOVICK	MONTANA SUPREME CT	HB 175	✓	
ELLEN EUGSTEN	Mont Gambel with the future	208 173	✓	
David Hernim	MT Assoc. of Churches	208 173	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY