MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 2, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: None

Members Absent: Rep. Brad Molnar

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

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

Committee Business Summary:

Hearing:	SB 133, SB 185, SB 189, SB 218
Executive Action:	SB 132 BE CONCURRED IN
	SB 143

{Tape: 1; Side: A}

HEARING ON SB 189

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 35, brought SB 189 before the committee on behalf of the Department of Justice. In title 61, chapter 8 dealing with motor vehicles and driving under the influence of alcohol and drugs, he said the bill would amend sections 402 and 403. The bill would change the manner in which drivers would be informed of a suspension/revocation under the implied consent law and their right to a court hearing to contest the licensure action. The current practice involves mailing the driver a notice after the revocation or suspension. The bill would require notice at the time of the seizure. The bill would also codify the current practice of allowing a court to issue staying a license suspension or revocation pending a hearing to determine if the testing request was lawful. It would also give the Department of Justice explicit authority to recognize the seizure or suspension of a tribal member's drivers license by a tribal officer pursuant to tribal law. He said that any discomfort the tribal entities had had with the bill had been resolved through amendments which had been adopted in the Senate.

Proponents' Testimony:

Brenda Nordlund, Department of Justice, provided the committee with history on why they were asking to amend the implied consent laws to deal specifically with comparable tribal law provisions. She said the bill would give the department the authority they need when a tribe decides they want to use the suspension of a drivers license as a tool to enforce drunk driving or impaired driving laws on the reservation, they can send a testing refusal which the department can act upon.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

SEN. WELDON closed by asking for a favorable action on the bill.

HEARING ON SB 133

Opening Statement by Sponsor:

SEN. B. F. "CHRIS" CHRISTIAENS, SD 23, said that SB 133 would decrease from twelve to nine the number of jurors and in civil actions, unless certain conditions were met. it would decrease from four to three the number of pre-emptory challenges in a civil action. It would result in some savings to the court because of the reduction in numbers in jury trials. The reason for bringing this bill, he said, was because of the rising court costs all over the state and what it would mean in savings for taxpayers.

Proponents' Testimony:

Larry Fasbender, Cascade County, said they did not want to reduce the number of jurors just because it would save money if it meant not providing justice. They did not believe that the reduction in the numbers of jurors would lessen the effectiveness of justice as evidenced by the federal court system's experience.

Opponents' Testimony:

Ron Ashabraner, State Farm Insurance, stated that the reduction in the numbers of jurors does work well for the federal court system but their rules are different. In the federal court system there must be a unanimous decision. He said this bill would not provide for that. His experience has been that with a larger jury in a case with rules, justice is better served when the jury is larger because it is not unusual for someone on the jury to take control. This possibility lessens with a larger jury. If this bill had the federal rules, they would support the it. He did not believe the $500-per-case savings was adequate to justify the risks in a smaller jury trial without the adoption of the federal rules.

Questions From Committee Members and Responses:

REP. BILL TASH asked if there were times when insurance companies don't assist in the defense of cases.

Mr. Ashabraner said, "No." The only time that might happen, assuming an accident with an action brought against an insured, would be if the policy premium were unpaid or the policy was out of force and the defendant took the position that coverage should have existed, but did not exist. Insurance companies provide counsel as a part of the terms of the contract.

REP. TASH asked if the service is provided as co-counsel.

Mr. Ashabraner said that when a loss is filed and it proceeds to the filing of a lawsuit, counsel is appointed to represent the insured--not State Farm--though paid for by State Farm.

REP. DUANE GRIMES asked what was meant by "good cause" on line 18.

SEN. CHRISTIAENS said he believed that both parties go before the judge and if they agree that there is a good cause for a larger jury, then that would be allowed.

REP. GRIMES asked if good cause could be construed to be the fact that the defendant would be concerned about somebody overriding or dominating the jury.

SEN. CHRISTIAENS said that if both parties believe that to be the case, then that could be good cause.

REP. GRIMES asked **Mr. Fasbender** the same question.

Mr. Fasbender said they have a fairly good case history of what is considered just cause. He believed each case would be judged on its own merits.

REP. GRIMES asked **Mr. Ashabraner** if the Senate amendments were a result of his input in the Senate hearings.

Mr. Ashabraner said his concern was addressed before and he believed that the amendments were a response to the same type of position. He said they don't totally answer it, because there is always the question of what is good cause.

REP. DEB KOTTEL asked if it was correct that even though both parties may agree, it is only upon the judge's ruling that there is good cause.

Mr. Ashabraner said that was correct.

REP. KOTTEL said that she read line 19 to say that reduction of the jury does not take the judge's consent but is based on merely the agreement of the parties.

Mr. Ashabraner believed they could already by consent reduce the jury to a smaller number.

REP. KOTTEL said she had a problem with the portion which would reduce the number of pre-emptory challenges from four to three even though a party may win a 12-person jury for good cause. She asked if he had a problem with that.

Mr. Ashabraner answered that he did not to the extent they did with the reduction in the number of the jury.

REP. JOAN HURDLE asked if the sponsor's opinion was that the amendments change the bill significantly.

SEN. CHRISTIAENS responded that they did not, but they clarified some things that were not clear originally when the bill came

forward. The trial attorneys who worked with them in the Senate felt that these amendments would clarify and speed the procedure.

REP. HURDLE asked the sponsor to state the main purpose of the bill, whether it was to save money with a smaller number of jurors or if the reduction in the pre-emptory challenges was more important.

SEN. CHRISTIAENS said that his original plan was that it would be a cost saver for the courts and taxpayers.

REP. KOTTEL voiced her concern with page 1, line 15 that said that in criminal trials, with the approval of the court, it may consist of a smaller number. Then under an independent clause, lines 17 - 20, the trials by jury in a civil action reference do not include the approval of the court. She was concerned about a situation where a party would have an unequal bargaining position and the court would not have oversight. She asked to amend the bill by adding, "with the approval of the court" to line 19.

SEN. CHRISTIAENS said the one section did specify approval of the judge, but in line 19 it was the approval of both parties. He didn't believe that if both parties were in agreement that would cause a problem. He said if she thought it would strengthen the bill to add that protection, he would not oppose it.

REP. KOTTEL said that the pre-emptory challenges were always related to the numbers of jurors and she asked if the change in this bill to discontinue that relationship caused him concern.

SEN. CHRISTIAENS said it did not, nor did it cause concern for others involved in the drafting of the bill.

REP. TASH said the title referred to civil actions while line 14 referred to criminal actions.

SEN. CHRISTIAENS said he thought that was correct and should be amended.

{Tape: 1; Side: A; Approx. Counter: 35.2}

Closing by Sponsor:

SEN. CHRISTIAENS believed the bill had built-in safety for all parties because it called for agreement for a smaller jury and in most cases the judge would be a party to it and could determine whether there was good cause.

HEARING ON SB 218

Opening Statement by Sponsor:

SEN. "CHRIS" CHRISTIAENS, SD 23, opened by saying that SB 218 dealt with general changes to the landlord-tenant act primarily involving notice requirements in termination of rental-agreement issues. He said that in the 1993 session, they had done a great deal of work in landlord-tenant issues particularly surrounding mobile home parks. This bill would modify portions of that act.

Proponents' Testimony:

Ronda Carpenter, Montana Housing Providers Chairman, supported SB 218 and offered some amendments to the bill and explained the bill with the current amendment as well as the amendments they were proposing. **EXHIBIT 1**

Don McLean, Attorney representing Oakland Holding Company, said they believed the bill was fair and was important in clarifying the law. He did explain some problems he saw with the bill in reference to the 90-day notice. He said the interpretation of the law has been that no matter what the reason for eviction, 90 days is the minimum notice. When suspected illegal activities are occurring, for instance, a shorter notice period would be preferable. He reinforced other proposed amendments and gave reasons for his support of them.

He addressed the amendments to page 3, line 9 by saying there should be a shorter notice period. On page 4, lines 25, 26, 29 and 30, were amendments added in the Senate they did not agree with and wanted removed.

Mary McCue, Attorney, spoke in support of SB 218 representing a number of mobile home park owners. They particularly felt it was important that the matter of the notice periods for good cause evictions be cleared up. The amendments to section 3 were particularly important to them. They also supported the proposed amendments [**EXHIBIT 1**] and wanted to see the Senate amendments to section 3, lines 24 and 25 and 29 and 30 removed. They wanted those notice periods removed. Additionally she discussed page 5, lines 9 - 11 as needing absolute clarity by reinserting the language at lines 9 and 10 with qualifying language which would make very clear the only circumstance under which the 90-day notice is required for a legitimate business reason.

Their intent in these suggestions was to clarify that the other time periods which are stated on page 4 are qualifying circumstances and to avoid problems with judges who are saying that it has to be 90 days in all circumstances.

Melissa Case, Montana People's Action, supported the bill. She said that language other proponents were opposing had come about from a lot of negotiating and work in the Senate committee and

she described how the compromises were reached with that committee. She went through the bill section by section with suggested changes. She also discussed the proposed amendments.

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR DIANA WYATT.**

{Tape: 1; Side: B; Comments: Ms. Case's testimony is continued on Side B and the testimony of the next witness begins at Approximate Counter: 10.2.}

Ann Alberts, Montana Association of Realtors, supported SB 218 with the proposed amendments and urged the passage of the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. KOTTEL asked what it costs to move a mobile home.

Ms. Case believed that it could range from $1,700 to $4,000.

REP. KOTTEL asked if there were areas in Montana which are suffering from lack of space for mobile homes.

Ms. Case said that the urban areas especially were lacking in mobile home space. It may cause several problems such as turning down job offers because mobile homes cannot be moved to certain locations.

REP. KOTTEL asked if the rules were only enforceable if they were adopted at the time the tenant rents or if the landlord was authorized to adopt rules that are enforceable throughout the tenancy.

Mr. McLean said those rule can be changed during the term of the tenancy.

REP. KOTTEL in referring to the proposed amendments, said that she understood historically it had been interpreted that the landlord would have to give 90-days' notice. The compromise worked out in the bill was 30-days' notice. But the proposed amendments would reduce it to 15-days' notice. She asked if that was correct.

Mr. McLean said he was not sure that historically it had been 90 days, though perhaps since 1993 with some instruction it had been 90-days' notice. He said he did not have a particular problem with the 30-days' notice and felt it was an acceptable compromise.

REP. KOTTEL restated her question and he agreed that the proposed amendments would reduce it to 15 days' notice.

REP. KOTTEL pointed out that subsection (3), lines 24 - 26 has been interpreted by some courts as 90 days, the compromise in the Senate was 60 days and the amendment proposed to delete the 60-day notice and would reduce it to 15 days. She asked if that was correct.

Mr. McLean said that was correct but offered an explanation. He suggested that this was looking at it in isolation and out of context with the other amendments and the reasons for them.

REP. KOTTEL pointed out the possibility of a two-time rules violation (such as not cutting the grass) granting the landlord the right to evict with only 15 days to move the trailer. She asked if that was correct.

Mr. McLean said that was correct.

REP. KOTTEL asked if the problem his client referred to [a tenant engaging in illegal activities] would not come under section (d).

Mr. McLean said it possibly would come under subsection (g).

REP. KOTTEL asked what objection they would have to leaving the 60 days in the bill for subsection (e).

Mr. McLean answered that it would depend upon the rules and how they were enforced. He said that his client would not be evicting for slight rule violations (such as not cutting their grass twice in one year). A problem tenant is usually a problem for a number of reasons. It would not make good business sense for a landlord to evict people for minor violations.

REP. KOTTEL knew of cases where a landlord used minor rule violations to evict as a way to terminate the lease when there are other retaliatory reasons which the landlord could not legally use. She asked if that could happen under this legislation, citing subsection (e) of the bill.

Mr. McLean said, "No, ... because the law protects someone from retaliatory action by a landlord."

REP. KOTTEL restated her point that the landlord would not state they were evicting for retaliatory reasons, but because there had been two or more rule violations within a 12-month period.

Mr. McLean replied that it did not matter, because if they try to evict them within that time period, the presumption operates by reason of law. If there is an eviction no matter the stated reason, it will be presumed that it is retaliatory if it is within a certain period of time of the event for which the landlord might be retaliating.

REP. KOTTEL asked if in providing the flexibility to one party in changing the notice period, it would produce for the other party a lack of flexibility.

Mr. McLean said that though what she said was an argument, he did not know that he agreed with it.

REP. CLIFF TREXLER asked **Ms. Case** to look at page 2, line 19 which referred to an unauthorized pet. He said that this section did not apply to a rental agreement involving a tenant who rents a space to park a mobile home, but who does not rent the mobile home. He asked if this meant the person owned the mobile home and that an owner of the park could not enforce the rules (such as unauthorized pets) because the renter of the space owned the mobile home.

Ms. Case said this did not apply to the person who owned the mobile home because the issue was damage to the rental unit.

REP. TREXLER asked if there was any way [for a mobile park owner/landlord] to remove a disruptive animal even though the person owned the mobile home.

Ms. Case believed that there is a variety of areas under which a rule could be formed to handle it.

REP. TREXLER spoke to the section which dealt with an "unauthorized person." He wanted to know who that might be.

Ms. Case said their concern was that an unauthorized person could range from a visiting in-law to others. Any damage would occur within the crowded space and there are rules which could apply.

REP. TREXLER discussed an amendment which dealt with the situation where an older mobile home could not be disposed of by a landlord.

Ms. Case said that the amendment provided that as long as the mobile home was in good condition, the landlord could not order that it be moved.

REP. TREXLER discussed his concern about the limited areas for accommodating a mobile home. By the same token, he wanted to know if the landlord was "stuck" with the "obnoxious person--this lack of rent-payment person--or the hound" simply because there was nowhere to move the trailer. He asked about the proposed amendments, how long the person would be allowed to stay after notice.

Ms. Case said the amendments she had brought dealt with the age of the home restriction. It would not affect any termination issues. If there is a reason to terminate, they can be evicted, but it needs to be a reasonable length of time. She said that other proponents' amendments dealt with those lengths of time.

{Tape: 1; Side: B; Approx. Counter: 35.1}

Closing by Sponsor:

SEN. CHRISTIAENS closed by saying this was a complicated bill because of all the different time frames. The reason for the bill was to clarify some of the things enacted into law in 1993 which have been difficult for the courts to interpret. He said he did not want the committee left with idea that this was a compromise within the Senate. When the bill appeared before the Senate Judiciary Committee, before the hearing was half through, there was only one member of the committee left to hear the bill for one hour. It was rewritten by that committee member, so only one part of the group was invited to participate in reaching a compromise. He asked that the bill be passed as it came out of the Senate rather than to deal with the proposed amendments. He felt they could live with the bill as it came out of the Senate and those he had talked with concurred in that; therefore he asked that it be passed without the amendments.

CHAIRMAN CLARK resumed the chair.

HEARING ON SB 185

Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, SD 32, brought SB 185 at the request of the Department of Justice. The bill would provide for conversion of a procedure for determination of an habitual offender from a judicial proceeding to an administrative proceeding. It would provide a judicial means of appeal for someone who would disagree with such a decision by the Department of Justice and it would establish a minimum sentence of a violation of the habitual offender law of a 14-day jail sentence. The reason for the bill was to reduce administrative overhead. The habitual offender designation is one that is routine once someone has accumulated 30 points under the traffic violation point system. He described the process under current law and requirements of the department. He described the process under the proposed change in SB 185.

Proponents' Testimony:

Brenda Nordlund, Department of Justice, said this bill would reduce bureaucracy and streamline the process in declaring someone a habitual traffic offender. She outlined the traffic offenses and the numbers of points assigned to each. She described the current process as cumbersome. They desired to reverse the process so that when the department's computer notified them that the 30 points had been attained they would be authorized to notify the habitual offender that their drivers license had been revoked for three years. It would be incumbent upon the individual motorist to appear in district court to file a petition to challenge the accuracy of the records. It would be

at this point that the county attorney would become involved in defense of the record. She continued to clarify the proposed change to the system and the savings it was designed to bring. She said it was important to set a minimum sentence for habitual offenders because they do not respect Montana's traffic laws. Under current law there is no minimum sentence of the person who drives after having been declared an habitual traffic offender.

Opponents' Testimony:

None

{Tape: 1; Side: B; Approx. Counter: 48.6}

Questions From Committee Members and Responses:

REP. SHIELL ANDERSON asked if he heard correctly that revocation would begin three days after the notification was sent.

Ms. Nordlund said she spoke incorrectly on that and stated that the way the bill was currently drafted, service of the notice is complete upon mailing. Section 4 of the bill which would amend 61-11-211, MCA, did not state that there would be any delay. The revocation would then be effective as soon as the notice was mailed.

REP. ANDERSON asked if the person then had 30 days to contest the decision. If the person did not actually receive notice and came in 45 days later (for instance), could they still prove their innocence.

Ms. Nordlund replied that the county attorney representing the department would have the discretion whether or not they would interpose a 30-day time bar defense. It would be an allowable defense. It was similar to the implied consent statute. Typically there is a time bar, but there might be an equitable argument that would allow an individual to go forward.

REP. DANIEL MC GEE referred to the statistics which left 223 habitual offender cases which had not been adjudicated by the courts. He asked if any of these cases which were heard by a court involved a person identified not to be an habitual offender.

Ms. Nordlund replied in general terms that some courts look at the issue of 30 points in three years to be a rolling three-year period. So if an amount of time had passed since the department declared them to be habitual offenders, at the time the hearing would be held, it would have dropped off the first end conviction effectively becoming three years from the date of the hearing instead of three years from the date of the certification. The court might dismiss in that example.

REP. MC GEE asked where in the bill the department wanted to provide for the minimum sentencing.

Ms. Nordlund directed his attention to page 4, section 6, line 15.

REP. MC GEE agreed with the principle but asked her to address due process issues.

Ms. Nordlund answered that the way motor vehicle records are kept, the department does not create any conviction points against an individual's record until they receive the disposition copy of the citation from a court. For each and every point accumulated on the record, the individual has had an opportunity to contest the criminal citation and waive the opportunity or contest it. If found guilty, the court would provide the department with the disposition.

REP. MC GEE reiterated that the department would only have a tally and that each and every citation would have been afforded due process.

Ms. Nordlund said that was correct and that they would be given the additional provision to challenge the accuracy of the record at the time of revocation.

REP. MC GEE asked how they will guarantee that an individual will receive the mailed notice.

Ms. Nordlund replied that the whole system is based on the fact that individuals at the time they apply for the drivers license give an accurate address. At the time they are cited, they give the officer a correct address. Business is done throughout the state in many cases by first class mail. The individuals would have notice of the potential consequence of attaining 30-points. Due process issues have been examined in other states and it has been found that first class mail is an appropriate notice provision, particularly when the offense is only a misdemeanor.

REP. MC GEE asked if he shared the belief that was defendable in court.

SEN. VAN VALKENBURG believed that most judges would accept the proof that the state offered that the notice was sent by first class mail and was presumed to be received by the defendant. Some judges would make it more difficult, but by and large they are successful in convincing judges that people have received notice.

{Tape: 2; Side: A}

REP. MC GEE asked if he could see any way to strengthen it by some internal process in the department.

SEN. VAN VALKENBURG did not know of any. His opinion about the question regarding the difference between the number of people identified and the number of people declared as habitual offenders, was the number of people on whom they could not use personal service to get them into court. Some of them refuse to sign for certified mail. Even if the notice were made by certified mail, he was not sure it would improve it internally.

REP. LIZ SMITH asked if a person who had been accused would be obligated to pay for the court fees even though the court might eventually dismiss their case.

SEN. VAN VALKENBURG answered that if the court were to dismiss or to order the department to strike its determination that someone was an habitual offender, he could not imagine where the court would require the appellant to pay any court costs.

REP. SMITH said she was referring to recently passed legislation that anyone using the court system would have to pay a filing fee to fund the electronic system which would transmit their records. Even if they were innocent, they would be requested to pay.

SEN. VAN VALKENBURG said he was not familiar with that bill. He said he would trust the committee's judgment in that regard.

REP. HURDLE asked if they could assume that when someone had reached 30 points, they had been through other programs.

SEN. VAN VALKENBURG said it depended on which offenses they had committed to accumulate the points. The vast majority had accumulated their points through DUI convictions or driving while suspended. With some, the assumption could be made that they had been in various programs.

REP. HURDLE suggested a case where someone had accumulated 30 points without a DUI and asked if there was any kind of rehabilitation available to them.

Ms. Nordlund said the demands on the motor vehicle driver exam stations is quite high. There was a bill passed, HB 248, which would lengthen the term of drivers license and also allow drivers training programs. The purpose of that bill was to eliminate some of the demand on driver exam stations so that they could go back to counseling problem drivers. They envision that once that demand has been dissipated because they had converted to an eight-year license and once a person attained 20 points, they would be brought in for a counseling session along with educational films.

REP. LOREN SOFT asked for a description of the procedure once the printout is obtained showing the 30 points accumulation.

Ms. Nordlund replied that the letter would instruct the person to surrender the drivers license. They no longer have law

enforcement to pick up the license. Dispatch would have the information that that license is revoked on their computer system if the person is stopped by law enforcement.

REP. SOFT asked if it was correct that unless the person was picked up on a violation, they would continue to drive.

Ms. Nordlund said that any person can violate the revocation order or suspension order and continue to drive unlawfully. The fact that they have a physical drivers license in their possession, if that license is invalid, gives them no privilege on the highways.

REP. SOFT restated his question and she agreed that was reality.

REP. SOFT asked about the provision on page 4, line 15 for imprisonment if they are picked up with a revoked drivers license.

Ms. Nordlund said it referred to the county jail.

REP. SMITH asked if there was a fiscal note on SB 185.

Ms. Nordlund said there was not because they were talking about first class postage. If there was a concern about jail time, the committee might want to see what the impact of that would be.

REP. SMITH asked what percent per year would warrant the incarceration period provided for in this bill.

Ms. Nordlund did not have that information but said they would provide it.

Closing by Sponsor:

REP. VAN VALKENBURG closed with the fiscal note information that costs would be absorbed within the department and there would be no fiscal impact on state government.

{Tape: 2; Side: A; Approx. Counter: 12.9}

EXECUTIVE ACTION ON SB 132

Motion: **REP. GRIMES MOVED SB 132 BE CONCURRED IN.**

{Tape: 2; Side: A; Approx. Counter: 17.9}

Discussion: **REP. MC GEE** stated he would not want to see key man insurance jeopardized. He was not convinced that the current language in the bill would address both the concerns of the spouse and also the key man.

REP. KOTTEL said that the bill did address both issues, but the proposed amendments would delete the exemptions on page 15, lines 16 - 18.

REP. MC GEE understood that, but understood that by putting them in the spouse would not be protected because it was not part of the augmented estate.

REP. KOTTEL said it was clear to her in terms of the augmented estate that the life insurance and other payable-on-death benefits would not be included in the augmented estate. She said that his concern, that the spouses elected share could come in and take part of the benefit of insurance, was cleaned up by this language. Because it would not become part of the augmented estate, any spouse would lose their right of elected share to those assets.

REP. MC GEE said his question was in excluding all life insurance, from the augmented estate, would that eliminate the policy on the spouse.

REP. KOTTEL said that was incorrect, the spouse would be named as the beneficiary.

REP. HURDLE stated that she strongly believed that when a person buys a life insurance policy and names a beneficiary, that beneficiary ought to receive the benefit without it going through probate. She believed that the Senate amendments did that. She supported the bill as amended.

REP. SMITH asked if this covered credit life.

REP. KOTTEL said it would without the amendments.

REP. SMITH asked if the home mortgage had a credit life policy with the beneficiary as someone else, would the spouse then lose the home.

REP. KOTTEL said that was incorrect, that it was just the opposite. The credit life would pay the creditor off so that the spouse would get the asset free of debt.

REP. ELLEN BERGMAN asked if the amendment put in or took out the insurance from the augmented estate.

CHAIRMAN CLARK said it would take it out.

REP. MC GEE stated the following hypothetical question:

> "I have two life insurance policies, one is made out that the beneficiary is my wife and the other is made out that the beneficiary is my company, because I'm a key man, and then I die. Without the Senate amendments, as I understand

it, my wife can go after the life insurance that is reserved and specifically identified for my corporation."

CHAIRMAN CLARK said that was true prior to the Senate amendments.

REP. KOTTEL said that this is the spouse's right to an elective share based on how long they had been married. This bill attempted to look at the augmented estate rather than the probate estate. She proceeded to explain the process of arriving at the value of the augmented estate and the ramifications which might require the addition of the life insurance policies.

REP. ANDERSON had a question on pages 43 and 47 of the bill concerning the definition of a bona fide purchaser and why it would change.

Denny Moreen, without objection from the committee, answered that those changes did not relate to the questions with regard to life insurance. They related to circumstances where there had been a murder of the deceased or the spouse had been divorced from the deceased. In those circumstances, the designation to the spouse for the transfer of property wouldn't necessarily apply. This is a process to give notice to third parties so that the property isn't automatically transferred to the surviving spouse. The section was changed because under the old Uniformed Probate Code, it was a term which was used in regard to those things. A body of law has been established with regard to that term and in some states removing that "bona fide" would cause problems because it has been a term of art. The idea was to put the uniformed law in conformance with what happens in that body of law.

REP. ANDERSON asked if under the old Uniformed Probate Code it took on a meaning through case law.

Mr. Moreen said that was his understanding.

REP. ANDERSON asked him to address the Senate amendment on lines 17 and 18.

Mr. Moreen said that section provided for a circumstance where the deceased had been murdered or the surviving spouse is divorced, and if federal law affects the transfer of property, even though this section would be pre-empted by the federal law, the person would still have to turn the property back to the person who should get it under Montana's probate. The section with the amendment, however, said that wouldn't apply to those things which are controlled by the federal retirement laws.

Vote: The motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 143

Motion: REP. KOTTEL MOVED SB 143 BE NOT CONCURRED IN.

Motion/Vote: REP. WILLIAM BOHARSKI MOVED TO AMEND BY STRIKING ALL THE NEW SENATE AMENDMENTS AND REINSERTING ALL THE LANGUAGE WHICH WAS REMOVED. The motion carried 12 - 5; REPS. WYATT, SHEA, MC CULLOCH, HURDLE and KOTTEL voted no.

Motion/Vote: REP. BOHARSKI MOVED TO AMEND BY REINSERTING THE SENTENCE, "THE STATE'S REJECTION MAY BE IN THE FORM OF A BILL, JOINT RESOLUTION, OR EXECUTIVE ORDER."

Discussion: REP. DEBBIE SHEA asked if that wasn't something they already had the power to do.

REP. BOHARSKI said he was not sure if they needed the whole bill, but thought it clarified what the bill was intended to do.

REP. AUBYN CURTISS supported the amendment. She said the federal government is withdrawing funding every day which was provided for enforcement of certain things they expect of the state. When that becomes a burden to the state, she said they have to have some means of remedy. Even though in their Constitutions the states do have power that has not been delegated to the federal government, this would be an affirmation that would send a message to Washington that they are going to stand by their constitutional rights.

Vote: The motion carried 11-6; REPS. WYATT, SHEA, CAREY, HURDLE, KOTTEL and MC CULLOCH voted no.

Motion: REP. BOHARSKI MOVED SB 143 BE CONCURRED IN AS AMENDED.

Discussion: REP. MC GEE asked the opponents to the amendments to discuss their opposition.

REP. BILL CAREY said he did not think it was necessary. He felt it was much more than sending a message to Washington. He said it would amend the Constitution and was a serious matter that was not necessary.

REP. KOTTEL also responded that for her the "Whereas's" were inflammatory and using that type of language was not the way to accomplish the goal. She felt it went beyond what a constitutional amendment should be. She did not see any single supreme court case being mentioned behind the "Whereas" clauses. No other of the 50 states had attempted a constitutional amendment. Other states have passed resolutions and she would not be opposed to a resolution, but was opposed to the amendment because "the federal government took power [she was quoting **SPEAKER MERCER**] while we slept." She believed it was better to admit to the people of Montana her participation in "sleeping" while the federal government took over than to pass this

amendment which would lie to the people and become an excuse for inaction.

REP. SHEA pointed out where the state already had power and did not agree with giving money back as being irresponsible and not in line with constituents' wishes.

REP. ANDERSON agreed that they couldn't do everything that the bill would provide, but was going to support it because it would put into the Constitution the sentiment of the people of this day. He said that sentiment was that the people of the state are tired of complying with federal regulations which cost more money and they want to run the state as a state using the state's own money.

REP. HURDLE opposed the bill because it was drastic and did not reflect the sentiment of the people. She felt it expressed an extremely radical reactionary doctrine.

REP. BOHARSKI shared the sentiments regarding the "Whereas's" and thought it was right that they had been asleep and it did not serve a purpose other than to make it inflammatory.

Motion/Vote: **REP. BOHARSKI MOVED TO STRIKE LINES 24 AND 25 ON PAGE 1. The motion carried unanimously by voice vote.**

Discussion: **REP. CURTISS** said she saw this as really necessary, pointed out why and discussed some executive orders which proved the necessity of establishing Montana's position along with what other states are doing. Other states are raising money for a constitutional defense fund. She discussed the differences of the money coming in because of the actions of the federal government. She recounted testimony in Congress which also substantiated her point of view for the need of this bill.

{Tape: 2; Side: A; Approx. Counter: 59}

REP. KOTTEL said she would support a constitutional defense fund, but she felt this bill would delay it for another two years because of the process in putting it before the people without setting money aside for such a constitutional defense or a standing state federal relations committee. She felt the bill told the people that all constitutional decisions are wrong and that everything the federal government does violates the state's sovereignty.

REP. GRIMES felt the states lost their control earlier in the century because they chose to elect senators by popular vote rather than out of the state houses. He felt this was an attempt to gain back ground which was lost then.

{Tape: 2; Side: B}

REP. MC GEE asked for an explanation of the argument that it is not needed as a constitutional amendment from the state because the state already has the power. He asked where that power is enumerated.

REP. ANDERSON said they were acknowledging the U. S. Constitution has certain powers delegated to the federal government. The rights are already there, but this would not change any of those powers and this bill would simply say that the powers are going to be asserted.

REP. MC GEE asked why this was being done.

REP. BOHARSKI said there is something slightly different in that it would set up a mechanism as to how they would go about it. He said that currently federal mandates can be challenged in the supreme court. This bill would say that the elected people from the state of Montana can make that decision to challenge. He also thought it pointed out to the people of the state that they

had better start responding to some of those mandates. He expected it to pass the ballot in large numbers.

REP. LINDA MC CULLOCH believed this bill would encourage people to pit the state against the federal government and thereby eroding trust in the government. She said it would filter down in erosion of trust in the state government.

REP. KOTTEL pointed out that page 2 enumerated the rights. Article 2, section 2 addressed self government. She restated her objections to the bill. She felt it would be lying to the people to ask the people if "we have the power through various actions to protest federal actions that violate our sovereignty." She said they would not object to that, but her problem was that the power now exists and it should have been done for the last 100 years and this would not make it easier to do it.

REP. WYATT said that all of the arguments had been well articulated and stated her objection to the bill because of the federal allocation of funds and contributions to jobs to local communities. [She referred to the Malmstrom Air Force Base specifically.]

REP. ANDERSON responded to **REP. WYATT'S** arguments by saying that Malmstrom Air Force Base was not an unfunded federal mandate.

REP. WYATT said her school district would not agree with that because the federal impact money was not equal to the amount of money that those students use to attend that school district as one example.

REP. ANDERSON asked if language was submitted to the electorate that it was reasserting Montana's right to federal mandates, would she be more in favor of that.

REP. KOTTEL felt that was more honest.

REP. CURTISS responded to the statement that this was dishonest. She thought that it was telling people of Montana that they had heard them and know that they are tired of this legislature accepting every carrot that the federal government hands out and that the legislature had been guilty in the past of accepting it. She felt that Montana has to move as far as possible from the "federal fix."

REP. MC GEE said he wanted the perspective in the balance between Montana and the United States to be other than what it is. He wanted the federal government to request that Montana do certain things and for Montana to choose without the threat of withheld funds. They should send the funds because that is the right thing to do. He was not sure that this bill would accomplish that or that what would be sent to the electorate would work.

REP. KOTTEL and **REP. MC GEE** discussed how the process works without the proposed legislation and that this bill would not change the process.

REP. MC GEE had a problem with lines 10 through 16 and that line 30 didn't seem to be saying the same thing.

Motion: **REP. ANDERSON MOVED TO AMEND LINE 30, PAGE 2, "FOR ASSERTING MONTANA'S RIGHT TO REJECT FEDERAL MANDATES, ORDERS, DIRECTIONS OR COMMANDS DERIVED FROM POWERS NOT ENUMERATED IN OR OTHERWISE GRANTED BY THE UNITED STATES OR AGAIN ASSERTING MONTANA'S RIGHT TO REJECT FEDERAL MANDATES, ORDERS, DIRECTIONS OR COMMANDS DERIVED FROM POWER NOT ENUMERATED IN OR OTHERWISE GRANTED BY THE UNITED STATE CONSTITUTION."**

There was discussion about the number of words allowed in a constitutional amendment.

REP. HURDLE strongly urged that instead of forming a constitutional amendment they should be asserting those rights.

REP. SMITH felt that the power was already there and if they were utilizing it to its full potential, they would not have to point the finger at the federal government. Therefore, she felt the amendment was just trying to make it sound good but was something they should be telling themselves.

REP. TASH said he thought the amendment was intended to better explain it to the electorate for the purpose of exerting solutions, and not control, from the ground up instead of the top down. He felt that was important in all levels of government to take control of our own destiny rather than being dependent. He discussed why this was important in other areas such as in state lands use. He cited the executive orders which come out and are contrary to the U. S. Constitution as well as the Montana Constitution. He supported the amendment and the legislation.

{Tape: 2; Side: B; Approx. Counter: 26.9}

REP. CHRIS AHNER spoke to the amendment and the bill as being a message and a vehicle for people to say, "For the record, we stand thus and such."

REP. SOFT spoke in support of the amendment.

REP. ANDERSON restated the language of the amendment which brought it into line with the 25-word limitation. (For asserting Montana's right to reject federal mandates, orders, directions or commands derived from powers not enumerated in or granted by the United States Constitution.)

Vote: **The motion carried 14 - 4; REPS. HURDLE, CAREY, MC CULLOCH and SHEA voted no.**

Motion/Vote: **REP. ANDERSON MOVED SB 143 BE CONCURRED IN AS AMENDED. The motion failed by a tie roll call vote.**

Motion/Vote: **REP. MC GEE MOVED TO TABLE. The motion carried 9 - 8.**

REP. MC GEE withdrew the table motion because it was disclosed that with a tie vote, the bill would simply stay where it was and a table motion was not needed. There was further discussion about the effects of tabling versus leaving it on the tie vote.

Motion: **REP. AHNER MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on two 60-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 11:45 AM.

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 3/2/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar		✓	
Rep. Debbie Shea	✓ 8:15	~~✓~~	
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

March 3, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 132** (third reading copy -- blue) **be concurred in.**

Signed: Bob Clark

Bob Clark, Chair

Carried by: Rep. Anderson

mm
3/3
Committee Vote:
Yes 17, No 0.

501426SC.Hbk

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 3/2/95 BILL NO. SB 143 NUMBER _____

MOTION: Be Concurred In As Amended

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee		✓
Rep. Brad Molnar		
Rep. Debbie Shea		✓
Rep. Liz Smith		✓
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 3/2/95 BILL NO. SB143 NUMBER _____

MOTION: Table - this motion was withdrawn

NAME	AYE	NO	
Rep. Bob Clark, Chairman		✓	
Rep. Shiell Anderson, Vice Chairman, Majority		✓	
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner		✓	
Rep. Ellen Bergman	✓		
Rep. Bill Boharski		✓	
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss		✓	
Rep. Duane Grimes		✓	
Rep. Joan Hurdle	~~✓~~	✓	Changed her vote
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar			
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓	~~✓~~	Changed his vote
Rep. Bill Tash		✓	
Rep. Cliff Trexler			

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE _____

I request to be excused from the _____ Committee meeting this date because of other commitments. I desire to leave my proxy vote with _____.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*
~~SB 143~~	✓	

SENATE BILL/AMENDMENT	*AYE*	*NO*
143	✓	

Rep. _____
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE Mar 2

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Shirl Anderson.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*

SENATE BILL/AMENDMENT	*AYE*	*NO*
SB 132	✓	
/no amend.		
SB 143	✓	
Hinds	✓	

Rep. Josh
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE Mar 2

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with _____.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*

SENATE BILL/AMENDMENT	*AYE*	*NO*
SB 132	✓	
will support	✓	
amendment to		
exclude life		
insurance from		
augmented		
estate		
SB 13	✓	
support amendments	✓	
on page 2, line 4		
thru 8 and Delete		
Section 2 beginning on line 17		

Rep. Robyn Curtis
(Signature)

HR:1993
WP/PROXY

EXHIBIT 1
DATE 3/2/95
SB 218

MONTANA HOUSING PROVIDERS
PROPOSED AMENDMENT TO SENATE BILL NO. 218
THIRD READING
HOUSE JUDICIARY COMMITTEE
March 2, 1995

1. Page 3, line 7.
Following: mobile home,
Re-insert: "if rent remains unpaid 3 days after the tenant has received"

2. Page 3, line 8.
Delete: "PERIOD"
Following: "(2)(a)"
Insert: "the landlord may terminate the rental agreement"
Delete: IS
Following: "days"
Insert: "after the tenant has received that notice"

3. Page 4, lines 24 and 25.
Following: "rule"
Insert: ";"
Delete: ". FOR THIS SUBSECTION (1)(E), THE NOTICE PERIOD REFERRED TO IN 70-24-422(1) IS 60 DAYS."

4. Page 4, lines 29 and 30.
Following: "premises"
Insert: ";"
Delete: ". FOR THIS SUBSECTION (1)(G), THE NOTICE PERIOD REFERRED TO IN 70-24-422(1) IS 30 DAYS."

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 3/2/95

BILL NO. SB189 SPONSOR(S) Sen. Weldon

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Brenda Nordlund	Dept of Justice	X	

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

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 3/2/95

BILL NO. SB 133 SPONSOR(S) Sen Christiaens

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Rod Asha Branch	State Farm Ins		✓

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

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 3/3/95

BILL NO. SB 218 SPONSOR(S) Sen. Christiaens

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Anne Alberts	MT Assoc. of REALTORS	✓	
Dan McLean	Oakland Holding Co.	✓	
M. Case	Montana Peoples Action	✓	
Cecil Weeding	Income property Owners & Managers IPM.	✓	
J.V. Bennett	Mont PIRG		X
Ronda Chidester	Mt Housing Providers WMLA, MLA, IPM's	✓	

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

HR:1993
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CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 3/2/95

BILL NO. SB 185 SPONSOR(S) Sen Van Valkenburg

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Brenda Nordlund	D Justice	✓	
Joe Roberts	Mt. Cty. Attys Assn	✓	

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

HR:1993
wp:vissbcom.man
CS-14