MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 3, 1995, at 9:00 AM

ROLL CALL

Members Present:

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

Members Excused: None.

Members Absent: None.

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

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

Committee Business Summary:

Hearing: HB 232, HB 234
Executive Action: None

HEARING ON HB 232

Opening Statement by Sponsor:

REPRESENTATIVE RICK JORE, House District 73, Ronan, presented HB 232. This bill is a revision in the statute regarding a permit to carry concealed weapons. Currently the sheriff of each county is responsible for issuing concealed weapon permits. He does so at his discretion. Anytime an applicant is denied a concealed weapon permit, the applicant would be furnished with the reason for denial in writing. If the applicant has shown familiarity with firearms during military service, that would be a

qualification which would demonstrate his ability to operate firearms. The sheriff would have the opportunity to delegate to any person or entity which he desires the authority to test the applicant regarding familiarity with the firearm. Page 3, lines 19-27, allow the governor to establish a council comprised of interested persons to negotiate reciprocity agreements with other states which have similar concealed weapon permit laws. Any individual who has acquired a concealed weapon permit would be exempt from any five-day waiting period due to federal laws.

Proponents' Testimony:

Gary Marbut, President of Montana Shooting Sports Association, Gun Owners of America, Citizens Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association, Big Sky Practical Shooting Club, spoke in support of HB 232. Prior to 1991, the district court judges issued concealed weapon permits. As of 1989, in over half the counties in Montana, permits were not issued. In the other half of the counties, with exception of Butte-Silver Bow County, a person needed a personal contact to get a permit. A bill was passed in 1991 which required mandatory issuance of permits to people who met necessary qualifications. They switched the authority for issuing permits to the sheriffs. They wanted the district court judges available for an appellate and review role. The Montana Shooting Sports Association has been very active in helping to implement the provisions of that legislation. By tracking the legislation closely, they have learned that there are some problems with the law. HB 232 improves the law and will make this a better law. The first change was the change requiring the sheriff, upon denial of a permit, to disclose his cause for denying the same. In the 1991 Legislature the Senate Judiciary Committee added a new provision at the request of Senator Towe. The Towe amendment put discretion back into the law. They saw this as a mistake which would be subject to abuse. The Towe amendment stated that if the sheriff had reasonable cause to believe that the applicant would constitute a threat to the peace and good order of the community, the sheriff could deny the permit. A sheriff decided that if he issued any permits at all in his county, that would constitute a threat to the peace and good order of the community and, thus he would not issue any permits in the county. Senator Towe stated that was totally outside of what he intended. He wrote a letter to the sheriff explaining this. However, the sheriff believed that was how the law read and he would deny permits based on this. Other sheriffs have imprudently used this provision. This bill requires that if a sheriff denies a permit because of the Towe amendment, they must explain the grounds for denial. The applicant may wish to appeal this to the district court. Law enforcement has some concerns with this requirement. Between 1987 and 1993 there were approximately 188,000 permits issued in the state of Florida. Of those, 18 were revoked due to criminal activity. The original bill required that applicants for permits show that they have familiarity with firearms. People are having trouble finding ways to meet that criteria. There are not very

many firearm safety instructors in Montana, thus there is a bottleneck. This bill provides that if a person qualified with firearms in the military that would show familiarity with firearms. There also is a provision allowing the applicant to be physically tested for safe gun handling skills. They have prepared a draft for the gun safety check. The next change in the bill is with the appeals process. The original bill was silent regarding what process would be used between the sheriff and the district court. This bill states people should follow the process already identified in the law for going from justice to district court. Another change in the bill deals with reciprocity with other states. Currently 14 other states have laws similar to Montana. There are bills before the legislatures of about 10 or 12 other states to enact bills similar to Montana. People in other states with similar laws have gone through the same scrutiny and screening provided in Montana. The negotiation of reciprocity is limited to other states with similar laws. A committee appointed by the governor will negotiate that reciprocity. The final change in the bill deals with exempting people in Montana with concealed weapon permits from the Brady 5-day waiting period. They have had a much more thorough check than what is required under Brady.

A. M. (Bud) Elwell, Montana Weapons Collectors and Northwest Arms Collectors, spoke in support of HB 232. The Brady 5-day waiting period has proven to be detrimental to the gun shows of this state.

Stan Fraiser stated the portion of this bill which interested him is the requirement that a sheriff give a written reason for denying a permit. The sheriff in this county makes it difficult for people to pick up permits.

Opponents' Testimony:

Jim Smith, Montana Sheriffs and Peace Officers Association, spoke in opposition to HB 232. He presented his written testimony, **EXHIBIT 1.** The changes to current law recommended in HB 232 upset the delicate balance regarding the issue of the right to carry a concealed weapon in the state of Montana. If there are problems with the current law, these are local problems which should be handled locally.

Bill Slaughter, Gallatin County Sheriff, Montana Sheriffs and Peace Officers Association, spoke against HB 232. He referred to the section of the bill which requires a written statement for the sheriff's cause for denial of a concealed weapon permit. The 1991 Legislature realized that judgment decisions would need to be made concerning public safety in each county. The sheriff was given that responsibility. In most cases they can advise the applicant about why they were denied. However, there are times they can't. If the applicant is under investigation, notification will jeopardize that investigation as well as the personal safety of officers. He has personally issued permits to

citizens and later those permits were revoked for felony domestic abuse and possession and sale of dangerous drugs. He was elected to make judgments about public safety. He is accountable.

Gregory Hintz, Missoula County Sheriff's Department, Montana Sheriffs and Peace Officers Association, addressed three areas in this bill: minimum training requirements, reciprocity agreement and the exemption from the Brady law requirements. He presented his written testimony, **EXHIBIT 2.** He is assigned to crimes against persons. He takes photographs and processes the permit cards. The applicants use certificates obtained for hunter safety programs and/or military service. The hunter safety program does not cover the use of force and the consequences of taking someone's life. Judgment skills needed to use concealed weapons are not covered as well. Referring to reciprocity, he does not feel comfortable with people from out-of-state having the same rights and privileges as Montanans. They ask that that part be stricken from the bill. In reference to the Brady Law requirement, he commented that this is something they do in Montana. Anyone in Missoula County who has been issued a concealed weapon permit or is a law enforcement officer may walk into any gun dealer's shop and purchase a handgun without the 5-day waiting period.

Troy McGee, Captain - Helena Police Department, Montana Police Protective Association, Montana Association of the Chiefs of Police, spoke in opposition to HB 232.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN asked if the House passed the bill without consideration of the opponents testimony?

Mr. Marbut stated that was correct. There was one opponent in the hearing who expressed the same concerns.

SENATOR HALLIGAN asked if there was room for negotiation in terms of reciprocity.

Mr. Marbut stated he and **Deputy Hintz** discussed the issue of recognizing military qualifications with firearms. They would not resist an amendment which specified military qualification with handguns as opposed to firearms in general. Regarding the reciprocity provision, it would be up to the governor's advisory council to negotiate reciprocity with other states. The advisory council would include law enforcement. Regarding the Towe amendment, they feel that they have already compromised. People who have permits do not misuse them. They would modify the provision by leaving out the words "and evidence supporting". The applicant who has been denied does not need the evidence. He needs to know the reason so he can appeal to the district court.

SENATOR LINDA NELSON stated there are certain people in our communities who do not have both oars in the water. These people should not be packing a gun. How does the sheriff handle this?

REPRESENTATIVE JORE commented that the sheriff would simply have to use some tact.

SENATOR REINY JABS asked why so many people need to carry a concealed weapon.

Mr. Marbut stated that in the states which have allowed ready issuance of concealed weapon permits there has been a drop in crimes against persons. There are tourists being attacked in Florida because the criminals no longer find it safe to attack Florida residents because they know there are 188,000 concealed weapon permits issued in the state of Florida. Women apply for concealed weapon permits to take responsibility for their security and become equal with their potential attackers.

SENATOR SUE BARTLETT stated that **Mr. Marbut** agreed to an amendment specifying that the qualification during military service would have to have been in relation to handguns. Would it be equally as acceptable if the amendment also specified that this qualification have taken place within the past five years?

REPRESENTATIVE JORE stated that would be taken into consideration. Any individual who was dishonorably discharged from the military is not qualified to apply for a concealed weapon permit.

SENATOR BARTLETT asked why the advisory council and the negotiation of reciprocity agreements would be assigned to the governor instead of the attorney general.

Mr. Marbut commented they had a similar amendment before the legislature in 1993. In 1992, he contacted Attorney General Racicot and asked who should handle reciprocity. He was told that should be assigned to the governor who is the person who represents Montana.

SENATOR RIC HOLDEN asked what the fee is for a concealed weapon permit.

Mr. Marbut stated there was a $50 fee for the first four years. There was also a $5 fingerprinting fee. Renewals are $25 for four years.

SENATOR HOLDEN asked if it would be legal to wear a unconcealed side arm.

Mr. Marbut stated it was legal to wear one anywhere in Montana except in public buildings, banks or lending institutions, or buildings which have liquor licenses.

SENATOR HOLDEN stated he had a concern with accepting out-of-state people into Montana with concealed weapons.

Mr. Marbut stated that other states which have laws similar to Montana, have honorable, law abiding citizens. If the governor and the governor's advisory council determine the law is a similar law and the people are screened in the same manner as Montana screens applicants, those people should be responsible people he would trust.

Closing by Sponsor:

REPRESENTATIVE JORE stated there is great respect and reverence between proponents and opponents on this bill. Most of the issues were very well covered.

HEARING ON HB 234

Opening Statement by Sponsor:

REPRESENTATIVE CHASE HIBBARD, House District 54, Helena, presented HB 234. This bill is intended to help prevent misunderstandings between lenders and borrowers by requiring the terms of business loans of over $75,000 to be put in writing. This will exclude letters of credit, personal lines of credit, credit cards, sales transactions, account overdrafts, loans for personal, family or household uses in any amount. Covered under the bill will be banks, savings banks, savings and loans, credit unions, loans of the Farm Credit System and Farm Home Administration, SBA, loans of Department of Commerce Board of Investments and insurance companies. There were substantial changes made in the bill in the House. They raised the threshold from $25,000 to $75,000. They also amended in a duty to inform which shows up in the title and on line 3, section 3, which states that a "In a transaction involving a loan or credit agreement, the person providing the loan or credit shall inform the borrower orally and in writing prior to obtaining the borrower's signature on an agreement that all previous oral representations are void." There are two friendly amendments. On line 22, page 2, the word "personal" is inserted after "credit". That would exempt personal lines of credit. On page 3, line 5, the word "orally and" would be stricken. This litigation grew out of the liability crisis in the 80s where substantial verdicts were awarded on bad faith, breach of oral commitments to lend, fiduciary obligations and oral statements made by a lender. Between 1985 and 1990, because of this crisis, 31 states responded with liability protection. In 1991 the American Bar Association formed a task force from which a model statute emerged and this legislation is modeled after that statute. Currently 40 states around the country have similar legislation. Montana and Wyoming are the only states in the west which do not. By requiring loan and credit agreement terms and conditions to be written down, there is far less chance for misunderstandings for both borrowers and lenders. From the

borrowers standpoint, it becomes impossible for the lender to deny the existence of an agreement. From the lender's standpoint it becomes impossible for the borrower to claim that a lender reneged on an agreement when no such agreement existed.

Proponents' Testimony:

Fred Flanders, President of Valley Bank of Helena, spoke in support of HB 234. The bill will require that there be documentation and that there not be any implied agreements or understandings which are not clearly defined in documents. Currently, there is an opening for misunderstandings to occur between the borrower and the bank.

Bruce Gerlock, Montana Independent Bankers Association, spoke in support of HB 234. The Association represents 47 commercial and federal savings banks throughout Montana. They are concerned over a recent court ruling which stated written loan agreements do not necessarily govern the relationship between a lender and a borrower. They believe that the writing contained in loan documents is the one absolute source to which parties to a loan agreement may turn to should a dispute or problem arise. A promissory note, a security agreement, a deed of trust, and a personal guarantee are some of the tools of the trade used by lenders when granting loans to businesses whether they be corporations, partnerships or proprietorships. These documents outline and stipulate the terms and conditions of the approved loan. They include dollar amount, interest rate, term and collateral. They also include boiler plate language which protects as well as informs both lender and borrower as to what may and may not happen should a default occur. When these documents are signed by the borrower, he or she acknowledges understanding and acceptance of the terms and conditions outlined in the loan approval. He finds it hard to believe that courts would even hear cases which involve disputes between lenders and borrowers based upon verbal or oral representations. To throw out or reverse a written loan agreement in favor of so called verbal agreements certainly inhibits commercial banks and other lenders from making loans. Why put depositors money and shareholders at risk? When that happens, local economies suffer and businesses can not get the capital needed to fund growth or expansion. When dealing in business matters, agreements must be in writing. It is their job as bankers not to confuse the borrower when explaining the loan agreement. It is also the borrowers responsibility to understand the business loan agreement before signing it.

George Bennett, Montana Bankers Association, spoke in support of HB 234. This bill is taken from the model act and is based on the experience of 31 states. Forty states have adopted this statute. The situation involved borrowers who had defaulted and were raising oral agreements as a defense and obtaining large verdicts. A case in Montana had actual damages of $114,000; however, the punitive damages were $1 million. There were tort

theories being injected into the commercial contract area. Of the western states, only Montana and Wyoming do not have this type of statute. The statute will require borrowers and lenders to be more careful in their negotiations and closing. The Graveley case involved the Farm Credit Bank. In that case, the Graveleys borrowed money to buy another ranch. They did not want to encumber the home place. The mortgage was signed on the second ranch. The misunderstanding in this case was that the bank had told the borrower they would not take a mortgage on a home place. However, with a mortgage on the second ranch, if that is foreclosed and there is a deficiency judgment, the deficiency becomes a lien on all property of the judgment debtor. He has been authorized by Ward Shannahan to state that the Savings and Loan League supports this bill. In the House there was discussion pertaining to bankers misleading borrowers. In every instance, the situations dealt with false statements. This bill and the statute of fraud, still preserves fraud as a claim which allows parole evidence. If a lender makes a false statement and the other elements of fraud are there, that remedy is still available. A mistake would also allow parole evidence. If there is a question of interpreting the terms of the written agreement, oral evidence is allowed to show the meaning of certain language. Validity of the contract is still available. Previously there was so much litigation that bankers were frozen with fear of litigation and the multiple expenses which were coming from that situation. The lender liability has abated but it could return. If Montana was the only state without this type of legislation, it would red flag Montana for lenders who may want to do business here.

Don Hutchinson, Acting Commissioner of Financial Institutions, spoke in favor of HB 234.

John Cadby, Montana Bankers Association, stated that this bill will protect both lenders and borrowers who are involved in loans over $75,000. Anytime there is potential litigation, the parties involved will look very harshly at a potential loan if they cannot rest on the assurance that what is in writing will not stand. It is important to make credit available to commercial borrowers, farmers, ranchers and entrepreneurs. This bill will help both parties to the agreement and save everyone litigation costs.

David Owen, Montana Chamber of Commerce, spoke in support of HB 234. There are two emotions he runs into from business people in Montana. Assurance that the written document is what will be looked at and bringing that certainty to it is understood and embraced. They support the bill for that reason. There is also sadness and hesitation that this is necessary. It feels un-Montana where business is handled with a handshake and trust. Montana is heading into a new century. We are not immune from the litigation surrounding us.

Tom Hopgood, Montana Independent Bankers Association, emphasized new section 3 which would require disclosure that all oral representations are void. Section 2, lines 27 and 28, states that if the borrower is not informed that oral representations do not count then oral representations do count.

John Alke, Montana Liability Coalition, appeared in support of HB 234. Contracts are put in writing so there will not be a disagreement about what you agreed to. When a contract is signed, you are not permitted to then introduce evidence to impugn the very terms you agreed to. Clear exception, fraud, or ambiguity will allow the person to introduce all the evidence he or she wants. If an unambiguous agreement is signed, that person should not be able to contend that really was not what he agreed to.

Opponents' Testimony:

Maureen Cleary-Schwinden, Women Involved in Farm Economics, spoke in opposition to the bill. Farmers and ranchers must borrow working capital in order to maintain a viable business. The intent of this bill could have devastating effects on farmers and ranchers who use their property as collateral on bank notes. On the surface, this bill makes good sense. It is good business policy to get the agreement in writing, they do not disagree with that part of the bill. The hidden agenda in this bill states that agreements in good faith or verbal interpretations of the bank loan paperwork could not be used as evidence in any litigations. Page 2, line 5, section 2, states that a person may not maintain an action for legal or equitable relief, or a defense, based upon a failure to perform an alleged promise, undertaking, accepted offer, commitment or agreement. The words "or a defense" means she would not have the right as a consumer to go into court and use as evidence the banker's interpretation of the bank loan. She trusts her banker to interpret what the bank loan agreement means. If her banker told her something which was an honest misrepresentation of the banking agreement, she could not use this as a defense in court. This is a pro-banker, anti-consumer bill. The banks are currently protected and this bill would give them additional protection. Page 2, line 19, (f) "negligent misrepresentation" is excluded. How can negligence be proven in the court if the borrower is not allowed to include verbal interpretations by the banker? Page 2, line 22, would be amended to add the word "personal" after the first "credit". Also, line 26, talks about the exclusion in any case in which the funds are to be used for "personal, family, or household purposes". Her farm is a business. However, it has been in her husband's family for three generations. That would pose a question as to whether the farm would be "personal, family". To her it is a family farm. To a lawyer, it may be a business. She believes this bill could increase litigation because of the vagueness in the wording. She represents farmers and ranchers who make verbal agreements over the phone with their bankers who tell them they will send them the paperwork which is

to be signed and returned. Superseding the line of credit is the bank note.

Russell Hill, Montana Trial Lawyers Association, appeared in opposition to HB 234. What is at stake here is clients who have substantial assets. This would include businesses, farms, and others who enter into large loans. If you have an agreement, the safest thing to do is put it in writing. The problem with this bill is that the proponents not only want everything in writing, they still want to be able to make oral representations. There is nothing in this bill which will limit all the oral representations which they are making. This bill increases misunderstandings and prevents the fair resolution of those misunderstandings. This bill states that whenever a misunderstanding arises over an oral representation, one side is right and one side is wrong. The lender is always right and the borrower is always wrong. He presented his written testimony, **EXHIBIT 3,** and highlighted the last page which included sections which are current law which address this situation. Section 28-2-904 provides: "The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument." That is current law. There is also similar language in the following section. What does this bill do? Page 2, line 26, contains the language "personal, family, or household purposes". MTLA believes that this language excludes precisely family farms, family businesses, sole proprietorships and those kinds of entities mentioned earlier and the reach of this bill is only impersonal, corporate transactions. He suspects the proponents of the bill disagree. He urged the committee to resolve that doubt. This bill refers to implied agreements as if someone dreamed up the agreements. This bill will exclude evidence of oral representations by multiple witnesses. It doesn't matter if everyone agrees on the oral representation which the lender made, this bill excludes that representation. It excludes notes, even the bank's notes. If the bank, in its own records, has information and acknowledges its oral misrepresentation, they are excluded. It excludes videotapes and audiotapes. The bill doesn't exclude fraud but it absolves lenders of all accountability for carelessly misrepresenting the meaning or consequences of a written contract in the terms of an oral representation. This bill presumes to eliminate the common law doctrines of promissory or equitable estoppel. The bill says these are doctrines in the law which say there are people smart enough to technically comply with every law and completely exploit people who are depending on them. This bill lets people misuse the law. MTLA proposed a amendment which would say that this bill would not apply in any case in which the person seeking to maintain the action or defense has acknowledged making oral representations inconsistent with the writing. If they acknowledge it, they should not be allowed to have a safe harbor.

Don Bottrella stated that in the 80s he was involved in the litigations going on between businesses and banks. His case was upheld by the Supreme Court in Montana. Under this bill, he would not have had the opportunity to defend in his situation. He talked to his banker in 1983 and explained that he had never been in default. He had a operating note due in October of 1983. He missed a contract which would possibly affect his ability to repay this note in full. In July he told his banker he was concerned about how this situation would affect his ability to perform on the October note. He was told by his bank that they would work with him by extending his credit into a long term note. They told him they knew he was busy and they would get some documents put together. They asked him to bring in his collateral. Two days later, after they were presented with all the necessary documentation, they asked him to sign some UCCs. He did so in good faith. That afternoon all his accounts were set aside. For the next six years he was in litigation. This made it extremely difficult to run his business. They went to his main vendor and told them to send the bank all his income. He was awarded $400,000 in actual damages by the Supreme Court. During this time he had a negative net worth of $400,000. He didn't file bankruptcy. No bank in Montana will touch his company; however, he now runs a business in excess of $12 million per year. The only reason he was able to succeed with his litigation was that he had the right to go to court with the oral promises which he had.

David Paoli spoke in opposition to HB 234. He referred to **Mr. Owen's** comment about this bill being un-Montana. There is no question to that. What is more Montana in this state than the family farm? Small businesses in this state are made promises and representations by bankers and insurance companies that the money will be there. They rely on those promises, sometimes to their detriment. They do not want to sue, but they are left with no choice. The courtroom is the great equalizer for these people. What do bankers fear of a courtroom and 12 jurors? There is no lender liability crisis. What is the purpose of this bill? Banks are fully protected. **Mr. Gerloch** stated that it is the borrower's responsibility to understand what is in the loan agreements. Who explains the documents to the borrower? Those explanations of what is in a loan document are oral representations which could never see the light of a courtroom. The bankers are saying that oral representations and promises are being made up. Honorable bankers will represent to the borrower how business will be conducted. However, two or three years down the road it doesn't come true. The loan officer, as an honorable man or woman, says they did believe what they said. The defense lawyer for the bank can then tell the loan officer not to worry, that was oral representation which will not come into court. This is a bill to specially protect banks, credit unions, savings and loans, and insurance companies. The Graveleys ranched since the 30s. They purchased another parcel of land to expand their operation. They contacted the Farm Credit Bank of Spokane for additional funds to buy additional land for their sons. When the

loan documents were prepared, the Graveleys told the bank they did not want the home place in jeopardy. They put up the second piece of property and the new land. After a year, Mr. Graveley told the bank that he would not be able to continue and offered the two deeds in lieu of foreclosure to the bank. The deeds were over secured so the Farm Credit Bank told him to sell the land himself. Shortly after, the land values dropped and they were then under secured. The bank then wanted the home place. The Graveleys said they were told that the home place would not be in jeopardy and that the bank would accept deeds in lieu of foreclosure. The loan officer admits that she distinctly understood that the Graveleys were concerned about the home place and did not want it attached in any way nor foreclosed upon for any deficiency. There is a dispute between that loan officer and the Graveleys. The oral representations used in that case would no longer be able to be used under this bill. There is a jury instruction which defense lawyers want in every case. It says that the case should be considered and decided by the jury as an action between persons of equal standing in the community and holding the same or similar situations in life. Corporations are entitled to the same fair trial at the jury's hands as is a private individual. The law is no respecter of persons and all persons including corporations stand equal before the law and are to be dealt with as equals in a court of justice. This bill doesn't let farmers and small businesses in Montana stand equal before the law. It gives banks, savings and loans, credit unions, and insurance companies extra protection which is unwarranted.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR HOLDEN stated he was confused by **Ms. Schwinden's** comments to the grey area.

Ms. Schwinden commented that they feel that often times between bankers and farmers there are some verbal communications. They would like to maintain the opportunity to use verbal communications as evidence. It is prudent to have any agreement in writing, however, they would like to use any evidence in court. They do not want to go to court but if they have to they would like to continue to use a verbal agreement as evidence.

SENATOR STEVE DOHERTY asked **REPRESENTATIVE HIBBARD** if the banks had notes, why wouldn't they want that kind of evidence to come in regarding contemporaneous writing.

REPRESENTATIVE HIBBARD commented there would be some duty to adequately summarize the final agreement and put it in writing. There is protection for both parties. If the borrower is uncomfortable with the final agreement, the borrower has the option of taking it or not.

SENATOR DOHERTY asked what real need there is in Montana for this bill?

REPRESENTATIVE HIBBARD answered that it is good business practice. There have been problems in the past.

SENATOR DOHERTY asked **Mr. Bottrell** if he believed he was conducting himself with good business practices?

Mr. Bottrell stated he had been in business for six years before his problems occurred. He did not mislead his banker in any way. He was always told that he had to keep his banker informed.

SENATOR DOHERTY further asked **Mr. Bottrell** whether he would have been able to succeed in his lawsuit under this bill?

Mr. Bottrell stated that he would not. The bank would have had the opportunity to foreclose at that time. The litigation afforded him the protection of being able to continue his business.

SENATOR HALLIGAN asked **REPRESENTATIVE HIBBARD** if he could sue the banker under the scenario wherein he phoned his banker for a $2000 loan and was told he would have the money; however, the money was not available.

REPRESENTATIVE HIBBARD stated loans of under $75,000 were exempt. If there was a line of credit agreement of $75,000 or over with the bank for business transactions, he would have capabilities to call the bank and receive an advance under that line of credit. The master agreement would have been subjected to the writing. If the phone request was for $76,000 and it was for business purposes, the banker had the obligation to disclose in writing what the deal was.

SENATOR HALLIGAN questioned the noticing necessary by the financial individuals that what they are saying over the phone may not be something which they will finally agree to.

Mr. Alke commented on the scenario wherein based on a phone call a check was written and then the loan fell through. If the banker did this for a fraudulent purpose, he would not be protected by this bill.

SENATOR NELSON stated that Section 28-2-904, MCA, cleary states that written contracts supersede oral agreements. Couldn't the banks have a policy that requires only written statements? Why does this need to be legislated?

Mr. Cadby stated the banks do require written documentation. They do put everything in writing. However, when a borrower alleges there was a verbal deal, the bank must immediately retain an attorney for defense. Some of these cases were settled out of court because it was less expensive than pursuing it.

Mr. Bennett stated the statutes referred to were in place at the start of the litigation crisis. Lawyers for borrowers who were in default relied on doctrines which were moved up to the level of being fraud to shift over into a tort theory rather than a contract theory. A tort is a civil wrong. In the contract area, a doctrine of bad faith was being developed. The Supreme Court said bad faith was the denial of one party's reasonable expectations under a contract. There were doctrines of fiduciary obligation. Even though there was a written agreement, the bank because it lent money in the past, had to lend in the future. The doctrine of equitable estoppel and promissory estoppel involve elements of fraud. The courts were blurring those distinctions. This bill will return the contract law to the area where they thought it was before the liability crisis started. The parole evidence rule had so many exceptions, it ceased to be a rule during the lender liability crisis.

SENATOR NELSON asked if this would threaten a farmer's line of credit?

Mr. Bennett stated he did not see that at all. In the Graveley case, they said they did not want to mortgage the home place. The bankers understood that they were not mortgaging the home place. They were mortgaging another place. If the bank forecloses, a judgment is a lien on all the property. The Graveleys had an attorney at closing and should have raised every question possible. They signed a promissory note which stated they had to pay in money, not in land. The reasonably prudent borrower will want to have everything in that written agreement so there will be no surprises. All the agricultural borrower has to do is tell their banker to fax them a signed document which states that credit will be extended.

SENATOR SHARON ESTRADA asked if this bill is passed, if a bank has dated notes in a customer's file, do they now have to sign new contracts?

Mr. Cadby stated most commercial loans are operating lines wherein the bank agrees and approves at the outset of the year a certain amount of money. The borrower draws on that approved credit throughout the course of the year. It has to be paid back on a certain date.

SENATOR DOHERTY asked **Ms. Schwinden** how this would affect farmers and ranchers.

Ms. Schwinden stated that the farming community agrees that it is prudent business practice to get it in writing. They don't disagree with that. If there is an occurrence of a verbal agreement or a verbal understanding between the banker and the borrower, it will not be able to be used as evidence.

CHAIRMAN BRUCE CRIPPEN asked about the situation wherein a bank farms out part of a loan and there are multiple lenders. Later

there is a question which arises under the interpretation of the agreement. The multiple banks have differing opinions. There is correspondence in the files. There is a disagreement regarding interpretation of the agreement. Could the written correspondence in the file be subpoenaed and used at trial?

Mr. Hutchinson stated that when a bank negotiates a participation to a second bank or lending institution those terms are described in writing as to who will do what.

CHAIRMAN CRIPPEN, referring to page 2, line 9, which states "received from the party to be charged or the party's agent a writing", stated he may not have that writing in his possession. He wants to make sure this bill covers all correspondence and writing between the originating bank and any participating bank that the borrower may not have but would need it in a lawsuit.

Mr. Bennett stated this was a loan participation. The situation wherein one of the participating lenders wrote a letter which disagreed with the major lender would be covered by existing law. Existing law allows parole evidence.

CHAIRMAN CRIPPEN questioned the situation wherein a banker received a phone call from a borrower who has a line of credit. There is no written agreement. The borrower states he would like to borrow $100,000. The banker states the terms and then he writes this information in his file. The borrower goes ahead with his business. The written agreement does not arrive. The banker is fired. Would the writing in the file be covered by this bill?

Mr. Bennett stated that if this loan falls under the agreement, the notes in the handwriting of the banker which were never delivered to the borrower, could not be used. In 1991, the American Bar Association appointed a committee to draft a model statute. This bill is patterned after that model. The committee studied what was happening in the 31 states which had adopted this legislation. Most states required both parties to sign the writing to have it qualify under the statute of fraud. In the model act it is only the party to be charged that has to sign the document. The reason they required it be delivered is because there could be a lot of notes in the borrower's or lender's file which are written but not dated and are not clear.

CHAIRMAN CRIPPEN asked if notes in the file were thorough and stated that the borrower would do certain things which did not happen, would these notes be used by the bank in a lawsuit?

Mr. Bennett stated they could not be used. This works both ways. There will be no surprises for borrowers which isn't in writing.

Closing by Sponsor:

REPRESENTATIVE HIBBARD stated this bill has good protection for customers as well as bankers. The banker has a duty to inform the borrower that he can only rely on what is in writing.

ADJOURNMENT

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

SENATOR BRUCE D. CRIPPEN, Chairman

JUDY J. KEINTZ, Secretary

BC/jjk

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3/3/95

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

SEN:1995
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Testimony in Opposition to House Bill 232
Presented by the
Montana Sheriffs and Peace Officers Association
February 28, 1995

Mr. Chairman and members of the Senate Judiciary Committee: My name is Bill Slaughter. I am the Sherrif of Gallatin County and I am on the Board of Directors of the Montana Sherrifs and Peace Officers Association (MSPOA). I am before you this morning on behalf of the Montana Sheriffs and Peace Officers Association in opposition to House Bill 232 .

MSPOA stands in opposition to HB 232, as we did when this bill was heard in the House Judiciary Committee. We understand the difficult job you face in trying to strike, through legislation, a proper balance between the Second Amendment rights that all citizens enjoy; and the need to preserve the peace and protect the public. Peace Officers face the identical challenge, although in a very different environment, every day.

It is the position of MSPOA that HB 232 upsets the delicate balance that has existed for several years concerning the issue of the right to carry a concealed weapon in the state of Montana; and that the peace in our communities and the protection of our citizens will be jeopardized if HB 232 is enacted into law by the 54th Legislature.

By way of background, the questions of to whom and under what circumstances permits for the carrying of concealed weapons ought to be given were first raised in the 1989 Legislature. In the 1991 Session, after some tough negotiations, the law currently on the books was passed, with the concurrence of concealed weapon advocates and local law enforcement agencies.

MSPOA believed that the issue had been resolved to the satisfaction of all interested parties in the 1991 Session; and that the permitting process agreed to and enacted was working quite well in Montana counties.

We were surprised, therefore, to see concealed weapon advocates come forward in the 1993 Session with amendments to current law very similar to what is found today in HB 232.

Those amendments were rejected by the 1993 Legislature; just as HB 232 should be rejected by this Legislature.

MSPOA believes that the current law is working, as evidenced by the fact that the number of concealed weapon permits has increased dramatically in the last few years. According to the State Identification Bureau at the Dept. of Justice, these are the figures with regard to concealed weapon permits in Montana:

•1993	837	concealed weapon permits on file w State ID Bureau.
•1994	1369	concealed weapon permits on file w State ID Bureau.
•1995 (Jan. 1st)	2925	concealed weapon permits on file w State ID Bureau.

Obviously, permits are being issued to many, many applicants.

If there are problems with the current law, MSPOA's contention is that these are local problems that can be solved locally. If other remedies cannot be found there is the option of voting the Sherrif out of office and electing a new one

MSPOA sees no compelling need for the revisions to current law found in HB 232.

MSPOA has several other specific concerns with HB 232, Mr. Chairman. These are as follows:

1. Page 2, Lines 16-18: Requires the Sheriff to give a concealed weapon applicant a written reason for the denial of a concealed weapon permit. This written statement must contain the "reasonable cause" upon which a denial is made; and must include "evidence supporting the reasonable cause finding."

Our belief is that this language compromises the ability of law enforcement to conduct investigations into wrongdoing by persons suspected of engaging in criminal activity.

Suppose for example, that a suspected drug dealer, who is the object of an ongoing, covert investigation applies for a concealed weapon permit? Our understanding of HB 232 is that we would have to issue the permit; or provide, in writing, the reason for its denial; plus the 'reasonable cause' for the denial; plus the 'evidence supporting the reasonable cause finding.' It's not as easy or simple, as the proponents of HB 232 stated, as writing a note saying: 'permit denied because the applicant is the subject of an ongoing investigation.'

That statement alone would be quite damaging to our ability to conduct investigations. Our reading of HB 232, however, leads us to conclude that we would be required to provide much more than a simple denial to an applicant. We would be required to provide a reason for the denial; and provide evidence that supports the denial.

It's not only suspected drug dealers who would benefit from this change to the current law: suspected burglars, arsonists, poachers, and others suspected of being engaged in illegal activities would benefit from this language in HB 232.

EXHIBIT 1
DATE 3-3-95
HB 232

2. Page 2, Line 30 and Page 3, Lines 1-2. Contains new language stating that 'evidence that the applicant, during military service, was found qualified to operate firearms' is adequate to demonstrate familiarity with a firearm.
Our belief is that this test is inadequate. It fails to account for several sets of very possible circumstance. For example, we have WWI veterans in Montana who may not have handled a firearm in 50 years. Also, a dishonorable discharge from the military, for reasons that may well be the same reasons to deny an applicant a concealed weapon permit, might have been given to someone who was found qualified to operate a firearm.

3. Page 3, Lines 8-11. This is a very troubling clause in HB 232. The first six words alone provide an insight into the thinking of the proponents: 'If the Sherrif and the applicant agree...' To MSPOA, this language implies something like contract language between two potential business partners.

There is much more at stake here than that. Sheriffs and Deputies are local law enforcement authorities. They are elected (Sheriffs) or hired (Deputies) to preserve the peace and protect the citizens of Montana counties. Ours is a special role and a unique responsibility; and we do not think that Peace Officers and applicants for concealed weapon permits are required to 'agree' to the need for a field test of an applicant's ability to demonstrate familiarity with a firearm.

At the very least, MSPOA suggests changing the language to read: 'If the Sherrif deems it necessary...'

This keeps the civil authority where it belongs: in the hands of the Peace Officers who are elected or hired to make exactly these kinds of decisions and judgments, on exactly these kinds of issues.

Second, there is the delegation clause on Page 3, Line 10 of HB 232. MSPOA believes that this is something that should not be delegated to persons or parties other than the Sheriff or Deputy responsible for the issuance of concealed weapon permits in a county .

In order to understand the underlying rationale for our objection to this language, it's necessary to go back to 1991, and to the language in current law found on Page 2, Lines13-15. That language was included in order to provide the Sheriff the opportunity for subjective, field based, first person observation of an applicant for a concealed weapon permit, in order to determine or detect the conditions described on lines 14,15 of Page 2: evidence of mental illness, mental defect, mental disability or other disabling conditions that may be the basis for denial of a concealed weapon permit.

This opportunity for field based, first person, professional observation of an applicant is not something that MSPOA believes should be delegated away to hunter safety courses, rod and gun clubs or any other group, club or organization.

Current law already contains several provisions that allow a Sheriff or Deputy to issue a concealed weapon permit without requiring a field demonstration of the applicant's familiarity with firearms. The language in current law, Page 2, Lines 21-30, gives law enforcement all the discretion it needs in this area.

Our position is that the new language on Page 3, Lines 8-11 in unnecessary, and it should all be stricken from the bill.

4. Page 3, Lines 15-17. Appeal. Our position is that the new language is not necessary.

5. Page 3, Lines 19-27. Concealed Weapon Reciprocity Agreements. MSPOA is concerned about quality control and quality assurance when it comes to reciprocity agreements with other states. HB 232 references other states 'that have concealed weapon permit laws similar to those of Montana.' There is plenty of room for error in the word 'similar.' MSPOA's concern centers on who will be coming into Montana, from which other states, carrying concealed weapons; and what degree of assurance does Montana have that proper background checks have been made, and that proper safeguards are in place in the other states?

In conclusion, MSPOA believes that the law currently in place is adequate; and that it does not revisions of the kind contained in HB 232 in this Session of the Legislature.

We have maintained the position that carrying a concealed weapon is a privilege--not a right. We have maintained that there are many legitimate reasons for carrying a concealed weapon: as a means of added protection for persons in certain trades, occupations or businesses; in conjunction with sporting or recreational pursuits.

In the last two years, more than 2000 new concealed weapon permits have been issued by local law enforcement officers. This tells us that the current law is working as intended. Our position is that this legislation is not needed; and that it could do much more harm than good if enacted into law.

Thank you very much for your time and attention this morning. I will be pleased to try to answer any questions you may have.

Testimony in Opposition to House Bill 232
Presented by the
Montana Sheriff and Peace Officers Association
March 3, 1995

Mr. Chairman and members of the Senate Judiciary Committee: My name is T. Gregory Hintz, I'm a 21 year veteran of the Missoula County Sheriff's Department with the rank of Lieutenant. This morning I'm before you on behalf of the Montana Sheriffs and Peace Officers Association (MSPOA).

Because of many concerns over this new legislation the Montana and Sheriffs and Peace Officers Association stands in opposition to House Bill 232.

With the current trend of legislation at our Nation's Capital over gun control bill issues and controlling violent crime on our streets, you as a committee must decide the balance between the Second Amendment rights that all citizens are guaranteed and the need by law enforcement to preserve the peace and protect the public.

So as to not repeat any of our concerns I'm specifically going to address the changes dealing with:

1. Minimum training requirements
2. Reciprocity Agreements
3. Exemption from Brady Law Requirements.

T R A I N I N G

The current law allows for the use of a firearms safety or training course approved or conducted by the department of Fish, Wildlife and Parks. These courses were specifically designed as Hunter Safety Courses, and generally don't deal with the aspects of Handgun Safety. Those of us who attended these courses as a requirement to hunt in Montana never left the classroom, were tested on classroom information and never fired a weapon of any kind during this training. Courses offered by recognized instructors from state and national firearms associations are more acceptable sources of training and cover issues that directly relate to safe handling of Handguns, and concerns directly dealing with Use of Deadly Force. They also offer a more acceptable means of testing the student at the local range to his/her capabilities. That language should never of been accepted in the first place and should now be stricken from current state law.

The same concerns hold true for accepting evidence that the applicant was found to be qualified to operate firearms during Military Service. This language should also be stricken from the bill. All branches of Military service have a way and need to qualify large numbers of trainees with military weapons, usually long arms. I find it irresponsible to accept a military discharge with a qualification of M-1 carbine as meeting our current training needs.

EXHIBIT 2
DATE 3-3-95
HB 232

This language should not be considered as acceptable. The military has a way of dealing with incidents of Killed By Friendly Fire. Somehow those number of incidents don't correlate to Qualified to Operate Firearms.

I think it is more acceptable to hold our citizenry to the same standards as they hold law enforcement to when it comes to training and and safe handling of firearms.

R E C I P R O S I T Y A G R E E M E N T S

The Montana Sheriffs and Peace Officers Association is concerned about quality control and quality assurance when it comes to reciprocity agreement with other states. Accepting those permits from other states who's permit laws are similar to those of Montana is not acceptable. There is plenty of room for error in the word " Similar ". Montana's concern for meeting those needs of our citizenry to meeting their needs for self protection are not generally the same as those of a surrounding state, or populous states such as California, Texas or Minnesota.

This language should not be considered, under the existing state law, law enforcement has been able to afford you the best quality control.

J. Gregory Hintz
Lieutenant

MISSOULA COUNTY SHERIFF'S DEPARTMENT
200 W. Broadway
Missoula, Montana 59802

(406) 721-5700, Ext. 3302
523-4757 After Hours
721-8575 FAX
9-1-1 Emergency

B R A D Y L A W R E Q U I R E M E N T S

Those applying for permits to carry concealed weapons in Montana should be exempt from the federal requirements imposed by the Brady Law. Background checks for these permits are more thorough and should be accepted as meeting the requirements for any purchase of a firearm, and exclude the five day waiting period. Several counties in Montana have already adopted this policy. This language is acceptable for adding to state law.

In closing I hope that this committee will consider and address our concerns before taking any action on this new legislation. Quite frankly the current law is meeting the needs of your constituents, and the concerns of the law enforcement community.

Montana Trial Lawyers ASSOCIATION

Russell B. Hill, Executive Director
#1 N. Last Chance Gulch
Helena, Montana 59601
Tel: (406) 443-3124
Fax: (406) 443-7850

March 3, 1995

Sen. Bruce Crippen, Chair
Senate Judiciary Committee
Room 325, State Capitol
Helena, MT 59620

RE: HB 234

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to House Bill 234, which would insulate one special class of Montana citizens--banks--from accountability in their dealings with all other Montanans.

Background. In essence, HB 234 declares that banks are trustworthy--*and their Montana customers aren't.* Yet there seems to be no basis for such a blanket preference:

- No demonstrated "lender liability crisis" in Montana;
- No substantial number of lawsuits against Montana lenders based on oral representations;
- Certainly no evidence that Montana lenders lose more than their tiny share of lawsuits based on oral representations;
- No evidence that Montana lenders need special protection from their Montana customers (Norwest, for example, has assets worth more than $54 *billion*; U.S. banks posted record profits last year); and
- No evidence that Montana lenders deserve special protection from their Montana customers (for example, less than 7 percent of the money entrusted to Norwest by Montanans is used for loans to Montanans).

At best, HB 234 simply does for banks what they can *already* do for themselves--completely reduce their agreements to writing. But at worst, HB 234 surrenders the precious rights of Montana's business and agricultural citizens to huge, often

unresponsive financial corporations.

House Bill 234. This bill, which amends Sec. 28-2-903, MCA, does not fill a void in Montana law. The two Montana statutes immediately following Sec. 28-2-903, MCA, *already protect lenders from groundless allegations.*

- First, Sec. 28-2-904, MCA, guarantees that an agreement which has been reduced to writing "supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument."
- Second, Sec. 28-2-905, MCA, guarantees that, "Whenever the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms." Only under certain strictly limited circumstances can the parties to a written contract rely on oral representations about that contract.

HB 234, however, gives huge corporate lenders ***a license to mislead Montanan citizens.*** And regardless of how many lenders intentionally take advantage of that license, more Montanans will be victimized by careless misrepresentations. Specifically:

- HB 234 will not reduce disputes or disagreements between lenders and borrowers. HB 234 will only reduce fair resolutions of those disputes. In fact, by removing crucial incentives for banks to be careful about what they say to their Montana customers, HB 234 will increase disputes and disagreements.
- By using the undefined and incredibly broad phrase "personal, family, or household purposes" at page 2, line 26, *HB 234 invites more, not less, litigation.* MTLA believes that the phrase limits the "writing" requirement of HB 234 to large corporations and similar business entities which are genuinely immune to "personal" considerations; by the same token, sole proprietorships, partnerships, personal businesses, personal landholdings, and even closely-held corporations come within the "personal, family, or household purposes" clause of HB 234.
- HB 234, by focusing only on written contracts, ignores all other types of evidence which just as reliably reflect the intentions of parties to a contract. No matter how many independent witnesses heard a banker's oral representations, no matter how precise or accurate their notes may be, no matter if they even captured the banker's oral representations on video or audio tape, nothing matters but the "writing."
- By precluding actions based on negligent misrepresentation (page 2, line 19) and the fiduciary relationship between a bank and its customer (page 2, line 15), ***HB 234 absolves lenders of all accountability for carelessly misrepresenting the meaning or consequences of written contract.*** Customers who place special trust in their banks, such as elderly Montanans, second- or third- or fourth-generation farmers and ranchers, long-time customers, etc., will either hire attorneys or risk their most precious assets under HB 234.
- Importantly, HB 234 abolishes the fundamental protections of "promissory or equitable estoppel" (page 2, line 16) which now guarantee that a statute designed to prevent fraud cannot be used to perpetrate fraud. Equitable

estoppel, for instance, would otherwise allow a court to intervene if a lender uses technical compliance with HB 234 to exploit or abuse its customers.

- HB 234, by requiring that a "writing" be both signed by the lender and received by the customer (page 2, lines 8-11), completely disregards such reliable evidence as a loan officer's comment sheets or notes in the bank's own loan files. Likewise, HB 234 would completely ignore repeated written references or correspondence by a borrower confirming oral representations by the lender--in other words, *the bank can allow such a misunderstanding to continue without fear of accountability.*
- By making "course of dealing" and "performance" (page 2, lines 13 and 14) completely irrelevant to loan and credit agreements, ***HB 234 elevates paper over people*** and ignores the real-life relationships between lenders and borrowers which also determine their responsibilities to each other.

Proposed "Put it ALL in Writing" amendment. Since HB 234, the so-called "Put it in Writing" bill, would preclude consideration of all oral representations regarding loan or credit agreements, MTLA suggests that *such oral representations no longer be allowed.* If the proponents of HB 234 insist that nothing but the written agreement matters, then they cannot also insist that lenders need to make oral representations without fear of accountability. Consequently, MTLA proposes adding a new subsection (2)(g) on page 2, following line 29:

> "(f) any case in which the person seeking to maintain the action or defense has acknowledged making oral representations inconsistent with the writing."

In short, if the proponents of HB 234 insist that real-world lenders and their customers must frequently discuss and explain written agreements orally, then those proponents can hardly complain about being held accountable for their explanations.

Thank you again for this opportunity to express MTLA's opposition to House Bill 234. If I can provide additional information or assistance to the Committee, please allow me to do so.

Respectfully,

Russell B. Hill
Executive Director

Power of attorney to execute mortgage, 71-1-102.

Mortgage of real property, Title 71, ch. 1, part 2.

28-2-904. Effect of written contract on oral agreements. The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

History: En. Sec. 2186, Civ. C. 1895; re-en. Sec. 5018, Rev. C. 1907; re-en. Sec. 7520, R.C.M. 1921; Cal. Civ. C. Sec. 1625; Field Civ. C. Sec. 795; re-en. Sec. 7520, R.C.M. 1935; R.C.M. 1947, 13-607.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-2-905. When extrinsic evidence concerning a written agreement may be considered. (1) Whenever the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms. Therefore, there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) when a mistake or imperfection of the writing is put in issue by the pleadings;

(b) when the validity of the agreement is the fact in dispute.

(2) This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as described in 1-4-102, or other evidence to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement", for the purposes of this section, includes deeds and wills as well as contracts between parties.

History: En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13; amd. Sec. 22, Ch. 117, L. 1979.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

Fraud, mistake, condition of the mind, Rule 9(b), M.R.Civ.P. (see Title 25, ch. 20).

Uncertainty to be resolved against party causing it, 28-3-206.

Interpretation of terms that are ambiguous or were intended in a different sense by different parties, 28-3-306.

Reference to circumstances permissible, 28-3-402.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-2-906. When written contract takes effect. A contract in writing takes effect upon its delivery to the party in whose favor it is made or to his agent.

History: En. Sec. 2187, Civ. C. 1895; re-en. Sec. 5019, Rev. C. 1907; re-en. Sec. 7521, R.C.M. 1921; Cal. Civ. C. Sec. 1626; Field Civ. C. Sec. 796; re-en. Sec. 7521, R.C.M. 1935; R.C.M. 1947, 13-608.

Cross-References

Formation in general — U.C.C. — sales, 30-2-204.

Offer and acceptance in formation of contract, 30-2-206.

U.S. banks report record profits

WASHINGTON (AP) — The once-teetering banking industry is reporting record profits. Despite a cloud or two, a federal official says, the picture has never looked brighter.

Bank earnings were at an all-time high of $11.8 billion in the third quarter and profits are headed toward another record for the year, the Federal Deposit Insurance Corp. said recently.

"The commercial banking industry has never been in better shape," FDIC Chairman Ricki Tigert told a news conference. "We see nothing in these figures that suggests any change in the positive outlook any time soon."

The nation's 10,700 commercial banks made more loans at higher interest rates and also benefited from a drop in bad loans and the lowest loan losses in nearly a decade.

Meanwhile, the industry's capital, which acts as a cushion against loss, grew by $6.8 billion in the July-September quarter for the best showing of the year. Capitalization is at its highest level in 30 years.

The only concerns, Tigert said, are that banks will lower loan underwriting standards and will be become o active in risky derivatives markets.

"It is our job to worry even in good times," she said.

Tigert noted that there have been scattered reports of banks lowering loan standards but said FDIC examiners have found no evidence of systemic problems.

Earlier this week, she announced that the FDIC has hired a market research firm to use testers to find out whether banks are giving customers enough warning that mutual funds are not federally insured.

Bank earnings for the third quarter are $300 million above the previous $11.5 billion record set in the same quarter last year. The latest earnings also are 5.4 percent higher than the $11.2 billion mark of the second quarter this year.

The FDIC said banks are on target to break last year's record of $43.4 billion in profits even if fourth quarter earnings fail to keep pace with the first nine months of this year.

Seven commercial banks failed in the third quarter, bringing the total for the first nine months of 1994 to 11. That contrasts with 36 failures during the first three quarters last year.

Two years ago, there were hundreds of bank failures and many warned of an impending crisis. Economy growth and a sustained period of lower interest rates are credited for the turnaround.

Loans grew by $60.2 billion in the third quarter and 96 percent of banks showed a profit, the FDIC said.

The number of banks on the FDIC's problem list fell to 293, the lowest total in 12 years. That was down from 338 troubled institutions in the second quarter.

Banks charged off $2.4 billion in loans in the third quarter, the smallest amount since the first quarter of 1985. They also reduced provisions for future loan losses to $2.6 billion, the smallest since the first quarter of 1984.

Tigert also noted that the savings and loan industry continues to recover from its financial debacle of the 1980s, although at a slower pace than commercial banks.

The Office of Thrift Supervision reported Monday that S&Ls earned $1.52 billion in the July-September quarter compared to $1.24 billion the previous three months.

Great Falls Tribune, December 21, 1994

DATE 3/3/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 232
HB 234

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
David Paoli	Self	234		X
Don Bottomly	Self	234		X
Gary Marbut	MSSIA GOA CCRKBA WMFGA BSPSC	232	X	
Troy McGee	MT Assoc. Chiefs MT. Police Assoc	232		X
Bill Slaughter.	Sheriff Gallatin County Mont Sheriffs + Peace Officers	232		X
T. Gregory Hintz	Missoula Co. Sheriff Dept Mt. Sheriff & Police Assn			X
Donald Marquardt	MT League of Savings Insts	234	X	
GEORGE T. BENNETT	MONT. BANKERS ASSN	234	X	
Bruce Gulick mt.	IN Dependent Bankers	234	X	
Stan Fresier	Self	232	X	
Maureen Cleary-Schwinden	WIFE WOMEN IN FARM ECONOMICS	234		X
JOHN CADBY	MT BANKERS ASSN.	234	X	
FRED FLANDERS	VALLEY BANK HELENA	234	X	
David Owen	MT Chamber	234	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
John Alke	mt Liability Coalition	HB 234	✓	
Tom Hopgood	Mt. Indep. Bankers Assoc.	HB 234	✓	
A. M. (Bud) Elwell	WCSM / MCWA	HB 232	✓	
Russell B Hill	MT Trial Lawyers	HB 234		—

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10