

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS & LABOR**

**Call to Order:** By **CHAIRMAN BRUCE T. SIMON**, on March 14, 1995, at 8:00 A.M.

#### **ROLL CALL**

##### **Members Present:**

Rep. Bruce T. Simon, Chairman (R)  
Rep. Norm Mills, Vice Chairman (Majority) (R)  
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)  
Rep. Vicki Cocchiarella (D)  
Rep. Charles R. Devaney (R)  
Rep. Jon Ellingson (D)  
Rep. Alvin A. Ellis, Jr. (R)  
Rep. David Ewer (D)  
Rep. Rose Forbes (R)  
Rep. Jack R. Herron (R)  
Rep. Bob Keenan (R)  
Rep. Don Larson (D)  
Rep. Rod Marshall (R)  
Rep. Jeanette S. McKee (R)  
Rep. Karl Ohs (R)  
Rep. Paul Sliter (R)  
Rep. Carley Tuss (D)  
Rep. Joe Barnett (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Stephen Maly, Legislative Council  
Alberta Strachan, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: SB 246, SB 311, SB 350, SB 298,  
Executive Action: SB 246, SB 298, SB 335, SB 224, SB 264

#### **HEARING ON SB 246**

##### **Opening Statement by Sponsor:**

**SEN. JEFF WELDON, SD 35, Lake County**, said this bill is an act providing for the issuance of an administrative warrant directing the pawnbroker to hold property for 30 days; providing for a

challenge to an administrative warrant and authorizing restitution to a person suffering economic loss as a result of the crime.

**Proponents' Testimony:**

**Lee Ash, Cargo Liquidators of Billings**, said at last count there were 90 pawn shops in Montana with \$18 million invested in these businesses. There are 400 plus employees, \$7.3 million in salaries, \$1.3 million in property taxes, \$437,400 in state income tax. The money these businesses loan out is an average of \$50 a loan which provides \$5.4 million in consumer spending. They serve about 180,000 people that don't have the opportunity to borrow money at any other financial institution. Because of the close cooperation with law enforcement officials, only one-half of 1% of all the merchandise they take on pawn is stolen. Even this small amount can add up to thousands of dollars in losses they suffer in their industry. Of the stolen merchandise, three out of five times it is stolen or borrowed by a family member. His pawn shop lost \$1,255.50 in un-recoverable money. Because of the way the statutes are now written, they have no way to recoup their losses. This bill would protect the pawn broker from having to return merchandise to a victim unless they can be reimbursed in the amount of the original pawn either through the court system or by the person who originally pawned the item. Hopefully, this bill will give pawn brokers those rights.

**Todd Coutts** said he supported this bill and supplied written testimony from **Steve Briggs and Scott Fairfull, Missoula Pawnbrokers**. EXHIBIT 1

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

**REP. DON LARSON** questioned what steps are taken to insure merchandise is not stolen. **Mr. Ash** said they check with the police, they require an identification card, they are permitted to ask for a thumb print and may require a document of ownership.

**CHAIRMAN SIMON** asked whether, if an article was taken as evidence before the trial and the charges were dropped, the pawn broker is still out. Since there would be no sentencing court then the restitution would also be null and void. **REP. WELDON** said in those situations a contract action could be developed. **CHAIRMAN SIMON** said if the charges were not pressed and it does not go to court, then a restitution cannot be brought before a court, and the pawn broker is out again. **SEN. WELDON** said if this could be rectified, he would be amenable to it.

REP. CHARLES DEVANEY questioned the holding of an item for 30 days. SEN. WELDON said the 30-day holding requirement is under current law.

REP. LARSON said there seems to be some similarities between this law and the law of condemnation proceedings for mini-warehouse storage. SEN. WELDON said he did not know the answer. Perhaps, the law of search and seizure is the same.

REP. LARSON then said the laws are very straight forward regarding the disposition of abandoned property. SEN. WELDON said he would check with the legislative council.

REP. ALVIN ELLIS asked how guns were identified. Mr. Ash said they are identified by a serial number.

REP. JON ELLINGSON asked if it were expected that there would be some probable cause showing before the administrative officer and, if so, whether the bill could be left as it is without imposing that requirement or whether there should be some more detail. SEN. WELDON said current practice is that there must be probable cause showing.

REP. KARL OHS questioned the administrative warrant policy. SEN. WELDON said current law, after 1993, required the police officer to go to the pawn broker. If the officer saw a particular kind of gun which they had been notified had been stolen, the officer informs the pawn broker that the piece of property is stolen verbally. After thirty days of being held, he can then demand that particular piece of property and give the pawn broker a receipt. The only real exchange between the pawn broker and the officer is verbal information, demand of 30-day hold, and a receipt. The administrative warrant adds an additional step. Rather than verbally informing to acquire an administrative warrant, the pawn broker can then go to the court system and prove the ownership of the article. The court can then issue an order concerning the particular validity of the warrant.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 311

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 35, Lake County, said this bill is an act revising the Montana Small Business Licensing Coordination Act; establishing a plan for a business registration and licensing system; establishing a board of review and providing an effective date and a contingent voidness provision.

**Proponents' Testimony:**

Andy Poole, Deputy Director, Department of Commerce, provided a copy of the Montana Business Licensing Handbook which he explained further in his testimony. **EXHIBIT 2**

Jim Tutweiler, Montana Chamber of Commerce, said they support this bill. Although this bill has been drastically amended, it still moves toward the objective of obtaining a planning session to test that these abilities will move forward.

Riley Johnson, Montana Federation of Businesses, said they support this bill.

Jeff Miller, Administrator, Miscellaneous Tax Division, Department of Revenue, said the Department rises in support of this bill. This bill would streamline the climate of business in the state.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

REP. LARSON said he did not see the Department of Justice and Department of Revenue supporting this bill. SEN. WELDON said this bill will ultimately be the best method for this system.

**Closing by Sponsor:**

The sponsor closed.

**EXECUTIVE ACTION ON SB 311**

**Motion:** REP. LARSON MOVED SB 311 BE CONCURRED IN. REP. LARSON MOVED THE LARSON AMENDMENTS.

**Discussion:**

REP. LARSON explained the amendments.

**Vote:** Motion carried to adopt the Larson amendments 18-0.

**Discussion:**

REP. MILLS said if there was additional revenue required, the funding source was required. The source will come from HB 2.

**Motion/Vote:** REP. COCCHIARELLA MOVED THE COCCHIARELLA AMENDMENT. Motion carried to adopt the Cocchiarella amendment 18-0.

**Motion/Vote:** REP. COCCHIARELLA MOVED SB 311 BE CONCURRED IN AS

AMENDED. Motion carried 18-0.

HEARING ON SB 350

Opening Statement by Sponsor:

REP. FRED R. VAN VALKENBURG, SD 32, Missoula County, said this bill is an act requiring the Department of Corrections and Human Services to notify an employer if a probationer or parolee has been convicted of an offense involving theft from an employer.

Proponents' Testimony:

Jeff Langin said he is a businessman from Missoula. He reiterated an incidence of embezzlement from the company which he owned. He then stated he fully supported this bill.

TAPE 1, SIDE 2

Mike Ferriter, Chief, Community Corrections Bureau, said he supports this bill. The admission statement of the Bureau calls for officers to aid in public safety. This bill certainly falls within the goal to prevent new crimes and prevent new victims. Presently, officers become somewhat confused on issues relative to informing employers of an offender's background. Confidentiality relative to an employer's rights to know versus the employer's need to know, places an officer in a dilemma. This bill will simplify this process while reducing the probation and parole bureau's exposure to litigation via a breach of confidentiality.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. ELLIS asked if this bill is too limited. He questioned if the bill should include other employees being protected against sexual assault. Mr. Ferriter reiterated his testimony regarding the right to know versus need to know and this is something a officer must decide. Information about sex offenders is an obvious situation which an employer must know about.

CHAIRMAN SIMON asked if forgery were in the theft statute. SEN. VAN VALKENBURG said there is a general section in the criminal law. Theft is a very specific offense and forgery is another specific offense and both of them fall within that general area.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 298Opening Statement by Sponsor:

**SEN. FRED R. VAN VALKENBURG, SD 32, Missoula County,** said this bill is an act providing for a service charge upon the dishonor or stop payment of a check, draft, or order for payment.

Proponents' Testimony:

**Jeff Koch** said he supports this bill. The legislative climate is such that merchants are in a vacuum with regards to adding a service fee. Approximately half of the states have statutory codes regarding a service charge on checks which are returned. There are two reasons for creating a statute. Merchants do indeed have a right to recover the un-anticipated costs they incur when they un-wittingly accept a check that returns from the bank. Many banks are already charging their own customers from \$1 to \$10 for each check returned on deposit by the merchant even though the merchant is the victim. Merchants need to recoup these costs. At this time the merchant has no protection and there have been at least two lawsuits filed against Montana merchants who have charged such a fee; those lawsuits were based on the state's lack of such a statute. Consumers also deserve some protection from erratic service charges. This bill will set a uniform fee because it will leave citizens with no doubt as to the potential penalty they may face for leaving a merchant with a bad check. Provision is clearly stated that at the merchant's or assignee's discretion, the fee may be waived. He then supplied an article from a newspaper regarding this matter. **EXHIBIT 3**

**Dan McLean, Credit Bureau of Missoula,** said they support this bill. This bill is necessary because of lawsuits.

**Brad Griffin, Montana Retail Association,** said they support this bill.

**Charles Brooks, Montana Food Distribution Association,** said they concur with the remarks already made on this bill and they offer their support of the bill. He also said the company which he had liquidated recently wrote off \$15,000 worth of checks which could not be collected upon.

**Mike McQueen** said he supported the bill.

**Kevin Loftis, Manager, Credit Bureau of Havre and President, Montana State Collectors Association,** said they support this bill.

**Pat O'Malley, Owner, Clear Check of Montana,** said they support his bill.

**Darrell Micklewright, Manager, Credit Bureau of Kalispell,** said they support this bill.

Jean Hannick, Owner, Check Rite of Billings, said they strongly support this bill.

Raul Luciani, Owner, Check Patrol of Bozeman, said they support this bill.

Kevin Wipple, Clear Check of Great Falls, said they support this bill,

Kay Farris, Check Rite of Great Falls, supported this bill.

Sara McQueen, Check Rite of Montana, said they support this bill as amended.

Rod Kline, Check Patrol of Billings, stated their support of this bill.

Jan Strickland, Check Rite of Montana, said there is wording in the new bill which will clarify many problems regarding check collecting.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. PAVLOVICH said he blamed this situation on the banks. He also asked why banks do not monitor how much money is left in an account. Consumers get charged service charges that customers are complaining about. SEN. VAN VALKENBURG said banks are increasingly sensitive to the issues which are raised. With the new advances in electronic banking, there will be a debit card in the future that people could find out instantly whether the person has sufficient money in their account. There are many businesses doing that with credit cards now.

REP. DAVID EWER asked whether, under the current law when a person pays with a check and it is returned, that is grounds under current law for immediate criminal action. SEN. VAN VALKENBURG said intent is primary. It must be shown the person acted knowingly under the criminal law to prove criminal liability. It is a matter of business practices.

REP. JACK HERRON asked if the bill could be a percentage charge instead of a certain amount. SEN. VAN VALKENBURG said there never was any consideration of putting this at a percentage. It is really to reflect what the current practice is in Montana.

REP. MILLS asked if there was any way if a person has more than one bank account there a way to authorize the bank to tap the second account. SEN. VAN VALKENBURG said he did not know the answer.

CHAIRMAN SIMON said it cost the merchant the same amount of money to go after someone who has written a \$2 check or a \$2000 check as far as the time involved and process. SEN. VAN VALKENBURG said this was essentially correct but the merchant would not be as inclined to pursue it as much.

Closing by Sponsor:

The sponsor closed.

TAPE 2, SIDE A

EXECUTIVE ACTION ON SB 246

Motion: REP. ELLIS MOVED SB 246 BE CONCURRED IN.

Discussion:

CHAIRMAN SIMON said the one saving grace the pawn brokers would have is that they can keep the merchandise in their possession and they can force redemption of the item. If the police get the item the charges are dropped. He said this may not be a cure-all.

REP. ELLIS said pressure could be placed on the person to confront the thief before the charges are dropped.

Vote: Motion carried 18-0.

EXECUTIVE ACTION ON SB 298

Motion/Vote: REP. MCKEE MOVED SB 298 BE CONCURRED IN. Motion carried 18-0.

EXECUTIVE ACTION ON SB 335

Discussion: CHAIRMAN SIMON said this bill was re-referred from the House floor.

Motion/Vote: REP. MILLS MOVED TO RECONSIDER SB 335 FROM THE HOUSE FLOOR. Motion carried to re-refer 18-0.

Motion/Vote: REP. FORBES MOVED THE ELLIOTT AMENDMENT. Motion carried to adopt the Elliott amendment 18-0.

Motion: REP. FORBES MOVED THE KOTTEL AMENDMENT.

Motion: REP. MILLS MOVED TO STRIKE THE KOTTEL AMENDMENT.



**Discussion:**

**REP. LARSON** said he was speaking against the amendment because the whole House floor voted on the amendment and said it should not be removed without the consideration of the House floor.

**REP. MILLS** said THAT since the bill was re-referred to the committee the committee should be able to do as it pleases with the bill.

**REP. OHS** said this bill would refer to any charge account.

**CHAIRMAN SIMON** said it is not a credit card. Some facilities have cards and some do not. It would be possible for someone to levy that kind of a charge. However, it would be highly unlikely a merchant would place that fee on a charge.

**REP. SLITER** asked for an explanation of the difference between the account referred to in this bill and revolving charge accounts.

**Mr. Griffin** said that if a person enters into a contractual agreement whereby the customer signs a credit application just as in a credit card, a company is entitled to collect a late fee. There are stipulations necessary in a written contract. If a company does have the necessary language stated in the bill, they are entitled to charge a late fee.

**CHAIRMAN SIMON** said a merchant in Montana may or may not issue a plastic card; but if they have a revolving account, the company may still charge a late fee.

**Vote:** Motion carried to adopt the Mills substitute amendment 13-5 with REPS. ELLINGSON, TUSS, MARSHALL, LARSON and COCCHIARELLA voting no.

**Motion/Vote:** REP. FORBES MOVED SB 335 BE CONCURRED IN AS AMENDED. Motion carried 15-3 with REPS. ELLINGSON, LARSON and COCCHIARELLA voting no.

**EXECUTIVE ACTION ON SB 224**

**Discussion:**

**CHAIRMAN SIMON** said that a number of amendments were adopted in previous executive action and are already included in the bill.

**Motion:** REP. MILLS MOVED SB 224 BE CONCURRED IN AS AMENDED.

**Discussion:**

**Steven Maly** said the fourth amendment has yet to be adopted. The first three amendments have already been adopted.

**Motion:** REP. MILLS MOVED THE FOURTH AMENDMENT.

**Discussion:**

REP. EWER questioned statutory brokers in this bill. The statutory broker could well be the status quo. This bill lets realtors pass through information when they should be taking some diligence to ascertain that they are not repeating mis-statements of fact.

REP. MILLS said a statutory broker facilitates an agreement that two people have already reached. It does not necessarily represent one over the other but facilitates the transaction and does not put the two people together. They are already together when they come to him.

CHAIRMAN SIMON said a statutory broker is one that merely helps people fill out forms on a deal which has been formulated. The broker does not have anything to do with making the deal. They are not really acting on behalf of the seller or buyer.

REP. LARSON said he liked the amendment. He did suggest striking the first four words of the amendment. The broker keeps the two parties out of trouble.

REP. MILLS said that often statutory brokers never see the property. He then reiterated an instance of someone in Montana attempting to purchase property from an owner out of state in which a broker would be required to draw up the necessary documents.

REP. SLITER said the state requires that someone with a real estate license facilitate the sale.

REP. ELLINGSON asked about relieving the statutory broker of any sort of responsibility but does not want to impose upon the statutory broker responsibilities which are not consistent with what that person is actually going to do. He also asked what type of duties were imposed on a statutory broker.

Mr. Sullivan said the statutory broker is not intended to be an agent. In commercial transactions where the parties are very sophisticated and do not want to be tied to an agent they want someone to do particular things and that is all. It is not an agency relationship and hence it has been exempted from that requirement. In all the other relationships they are obligated to do that. The broker has a duty to conduct those activities which are requested in a confident and capable fashion. They are going to be liable for negligence in the handling of the transaction, putting together the paperwork or doing whatever the parties request them to do.

REP. LARSON said that the amendment does not require the statutory broker to make an investigation. That information is achieved by asking both parties the question.

REP. DEVANEY said the statutory broker does not actually need to go out and physically inspect the property. He can rely on what the two parties agree upon.

Vote: Motion carried to adopt the #4 Mills amendment. Motion carried 18-0.

Motion: REP. LARSON MOVED THE LARSON AMENDMENT.

Discussion:

REP. MILLS said if a commercial institution has its own real estate department and has gone out and decided to buy a piece of property and there is a complete meeting of the minds, law requires them to use an agent of the state. That agent, who does not know anything about the property, should not be obligated to ascertain the facts because the buyers already have the facts.

REP. ELLINGSON suggested that the first four words of the amendment be struck to indicate that the licensee must endeavor to ascertain all pertinent facts consistent with his role as either seller's agent, broker's agent or statutory agent concerning each property in the transaction.

Motion/Vote: REP. LARSON MOVED A SUBSTITUTE MOTION TO REVISE HIS PREVIOUS MOTION USING THE ELLINGSON LANGUAGE. Motion carried to adopt the Larson substitute amendment 18-0.

Motion/Vote: REP. MILLS MOVED SB 224 BE CONCURRED IN AS AMENDED. Motion carried 18-0.

#### EXECUTIVE ACTION ON SB 264

Motion/Vote: REP. COCCHIARELLA MOVED SB 264 BE CONCURRED IN. REP. COCCHIARELLA MOVED THE #1 COCCHIARELLA AMENDMENT. Motion carried to adopt the #1 Cocchiarella amendment 18-0.

Motion/Vote: REP. COCCHIARELLA MOVED THE #2 COCCHIARELLA AMENDMENT. Motion carried to adopt the #2 Cocchiarella amendment 18-0.

Motion/Vote: REP. MILLS MOVED THE STATE AUDITOR'S AMENDMENT. Motion carried to adopt the State Auditor's amendments 18-0.

Motion: REP. EWER MOVED THE EWER AMENDMENT.

Discussion:

REP. EWER explained his amendment.

REP. ELLIS asked if the amendment had been shared with the proposers of this bill. REP. ELLIS said he opposes the amendment.

CHAIRMAN SIMON said there had been a change made in Workers' Compensation where there is payment in advance. There is not as much of a problem in today's market as there once had been.

Vote: Motion carried to adopt the Ewer amendment 18-0.

Motion: REP. TUSS MOVED THE #1 TUSS AMENDMENT.

Discussion:

REP. BARNETT asked if REP. TUSS was referring to the second license.

REP. MILLS said that the leasing industry itself is not going to be worried about these except as they affect their clients.

REP. EWER said if there is an incorporated body that has been created they should protect from bad characters. He asked whether it was just this entity or whether it should be the principles of that entity. Corporate officers should be used in the amendment.

TAPE 2, SIDE B

CHAIRMAN SIMON said this does go beyond where it needs to go. He opposed the amendment. The language which this contains goes too far.

REP. TUSS said the amendment is necessary. A mistake still stays on a credit record for seven years. It is not unreasonable to offer a businessman the assurance that if someone has a criminal history, that person is not going to be offering them services.

REP. EWER said he favored the amendment.

Vote: A roll call vote on the #1 Tuss amendment which failed 4-14 with REP. COCCHIARELLA, ELLINGSON, EWER and TUSS voting yes.


Motion/Vote: REP. TUSS MOVED THE #2 TUSS AMENDMENT. Motion carried 16-2 with REPS. MILLS and HERRON voting no.

Motion/Vote: REP. EWER MOVED THE GAGE AMENDMENTS. Motion carried 18-0.

Motion/Vote: REP. MILLS MOVED SB 264 BE CONCURRED IN AS AMENDED. Motion carried 18-0.

ADJOURNMENT

Adjournment: 11:20 A.M.

  
\_\_\_\_\_  
BRUCE T. SIMON, Chairman

  
\_\_\_\_\_  
ALBERTA STRACHAN, Secretary

BTS/ajs

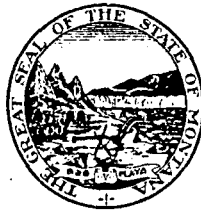
# HOUSE OF REPRESENTATIVES

## Business and Labor

ROLL CALL

DATE 2-14-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		



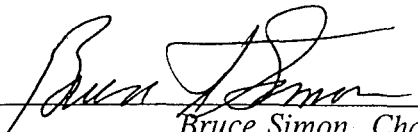
## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 246** (third reading copy -- blue) be concurred in.

Signed: \_\_\_\_\_

  
Bruce Simon, Chair

Carried by: Rep. Ellis

Committee Vote:  
Yes 18, No 0.

601417SC.Hdh



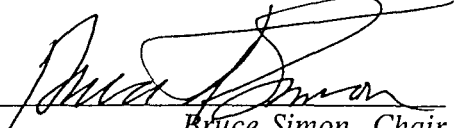
## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 298** (third reading copy -- blue) be concurred in.

Signed: \_\_\_\_\_

  
Bruce Simon, Chair

Carried by: Rep. McKee

Committee Vote:  
Yes 18, No 0.

601415SC.Hdh





## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 335** (third reading copy -- blue) be concurred in as amended.

Signed: \_\_\_\_\_

*Bruce Simon, Chair*

And, that such amendments read:

Carried by: Rep. Simon

AMEND HOUSE COMMITTEE OF THE WHOLE REPORT DATED MARCH 11, 1995,  
AS FOLLOWS:

Strip amendments 1 through 3 in their entirety.

AND THAT SENATE BILL NO. 335, THIRD READING COPY, BE FURTHER  
AMENDED AS FOLLOWS:

Page 2, line 5.

Following: "cycle."

Insert: "However, the buyer may pay the entire account balance at  
any time without incurring an additional finance charge from  
the date of the close of the last billing cycle."

-END-

Committee Vote:  
Yes 15, No 3.

601434SC.Hdh




## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Business and Labor report that Senate Bill 224 (third reading copy -- blue) be concurred in as amended.

Signed:

  
Bruce Simon, Chair

And, that such amendments read:

Carried by: Rep. Bohlinger

1. Page 1, lines 27 and 28.

Following: "had" on line 27

Strike: "AIDS or another"

Insert: "a"

2. Page 7, following line 23.

Insert: "(b) disclose to a buyer or the buyer's agent when the seller's agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;"

Renumber: subsequent subsections

3. Page 8, following line 11.

Insert: "(b) disclose to the seller or the seller's agent when the buyer's agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;"

Renumber: subsequent subsections

4. Page 9, line 23.

Insert: "(10) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation,

Committee Vote:

Yes 18, No 0.

601421SC.Hdh

or concealment of pertinent facts."

-END-



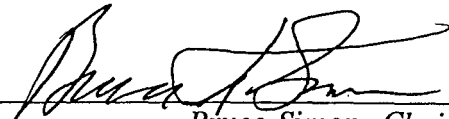
## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 7

Mr. Speaker: We, the committee on Business and Labor report that Senate Bill 264 (third reading copy -- blue) be concurred in as amended.

Signed:

  
Bruce Simon, Chair

And, that such amendments read:

Carried by: Rep. Wiseman

1. Title, line 9.

Following: "PENALTIES;"

Insert: "AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA;"

2. Page 1, lines 21, 27, and 29.

Page 2, line 14

Page 3, lines 14, 16, 18, 20, 27, and 30

Page 5, line 29

Page 6, line 20

Page 7, line 20

Page 8, lines 9, 13, 18, and 22

Page 11, lines 28 and 29

Page 12, line 28

Page 14, lines 12, 13, 14, 15, 21, and 22

Page 15, line 13

Page 16, lines 13 and 15

Strike: "15"

Insert: "17"

3. Page 3, line 13.

Following: "arrangement"

Insert: "or an employee leasing arrangement"

4. Page 8, line 26.

Following: "to"

Committee Vote:

Yes 18, No 0.

601429SC.Hdh

Insert: ": (i) "

5. Page 8, line 27.

Following: "department"

Strike: "and to"

Insert: "; (ii) notify each client in writing that the client shares joint and several liability, retroactive to the date of the client's entering into a contract with the licensee, for any wages, workers' compensation premiums, payroll-related taxes, and any benefits left unpaid by the professional employer organization or group; and (iii) "

6. Page 9, line 16.

Following: "worker"

Strike: "subject to a professional employer arrangement"

Insert: "supplied to a client by a professional employer organization or group"

7. Page 9, line 17.

Following: "joint"

Insert: "and several"

8. Page 9, line 18.

Following: "group"

Strike: " ; "

Following: "and"

Insert: "that, in the event that the licensee's license is suspended or revoked, this liability is retroactive to the client's entering into a contract with the licensee; and"

9. Page 12, line 29.

Following: "33"

Insert: "unless the professional employer organization or group:

(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee benefit program as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is exempt under 33-17-103(4)."

10. Page 14, line 16.

Strike: "\$500"

Insert: "\$1,000"

11. Page 14, line 18.

Insert: " NEW SECTION. Section 12. Practice without license -- investigation of complaint -- injunction. (1) The department shall investigate complaints concerning practice by an unlicensed person of activities for which a license is required under [sections 1 through 17].

(2) The department may file an action to enjoin a person from practicing without a license as a professional employer organization or group.

NEW SECTION. Section 13. Violation of injunction -- penalty. A person who violates an injunction issued under [section 12] shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund."

Renumber: subsequent sections

12. Page 16, line 2.

Following: "ADVISORY"

Insert: "or rating"

Following: "ORGANIZATION"

Insert: "of which the insurer is required to be a member under Title 33, chapter 16, part 10,"

13. Page 16, line 12.

Insert: "**Section 18.** Section 39-71-117, MCA, is amended to read:  
"39-71-117. **Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased

employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) ~~An~~ Except as provided in [sections 1 through 17], an employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) ~~Notwithstanding the provisions of subsection (3), an~~ An interstate or intrastate common or contract motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

**Section 19.** Section 39-71-118, MCA, is amended to read:

**"39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an aircrew member or other person employed as a volunteer under 67-2-105;

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or



hearings officer.

(g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner or sole proprietor is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(6) ~~An~~ Except as provided in [sections 1 through 17], an employee or worker in this state whose services are furnished by

a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(8) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under subsection (7)(d)."

Renumber: subsequent sections

-END-



## HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Business and Labor report that Senate Bill 311 (third reading copy -- blue) be concurred in as amended.

Signed: \_\_\_\_\_

*Bruce Simon*  
Bruce Simon, Chair

And, that such amendments read:

Carried by: Rep. Raney

1. Title, line 8.

Following: "DATE"

Strike: "AND A CONTINGENT VOIDNESS PROVISION"

2. Page 4, line 18.

Following: "revenue,"

Insert: "justice,"

3. Page 5, line 9.

Following: "revenue,"

Insert: "justice,"

4. Page 6, lines 15 through 19.

Strike: section 8 in its entirety

Renumber: subsequent section

-END-

Committee Vote:

Yes 18, No 0.

601419SC.Hdh

# HOUSE OF REPRESENTATIVES

## BUSINESS AND LABOR COMMITTEE

### ROLL CALL VOTE

DATE 3-14-95 BILL NO. SB 264 NUMBER       

MOTION: Tuss amendment

Failed

NAME	AYE	NO
Rep. Bruce Simon, Chairman		✓
Rep. Norm Mills, Vice Chair, Maj.		✓
Rep. Bob Pavlovich, Vice Chair, Min.		✓
Rep. Joe Barnett		✓
Rep. Vicki Cocchiarella	✓	
Rep. Charles Devaney		✓
Rep. Jon Ellingson	✓	
Rep. Alvin Ellis, Jr.		✓
Rep. David Ewer	✓	
Rep. Rose Forbes		✓
Rep. Jack Herron		✓
Rep. Bob Keenan		✓
Rep. Don Larson		✓
Rep. Rod Marshall		✓
Rep. Jeanette McKee		✓
Rep. Karl Ohs		✓
Rep. Paul Sliter		✓
Rep. Carley Tuss	✓	

TESTIMONY IN SUPPORT OF SB246 BY:  
STEVE BRIGGS AND SCOTT FAIRFULL,  
EMPLOYEES OF: MISSOULA PAWNBROKERS, MISSOULA, MT

THIS IS AN EXAMPLE THAT SHOWS THE NEED FOR MONTANA PAWNBROKERS TO GAIN DUE PROCESS IN THE CASES OF STOLEN PROPERTY TO WHICH PAWNBROKERS HAVE A POSSESSORY CLAIM.

IN 1994 WE LOANED MONEY TO A YOUNG MAN WHO USED AS COLLATERAL FOR THIS LOAN, THREE GUNS HE STOLE FROM HIS FATHER. THE PARENTS PRESSED CHARGES AND RESTITUTION FOR OUR LOAN CLAIM WAS DETERMINED BY THE COURTS. HE OWED US \$450.00. AS OF THE DATE OF THIS COMMITTEE HEARING WE HAVE RECEIVED, \$10.00. HE IS NOT IN JAIL AND HE IS NOW INJURED, CLAIMING DISABILITY AND CANNOT WORK.

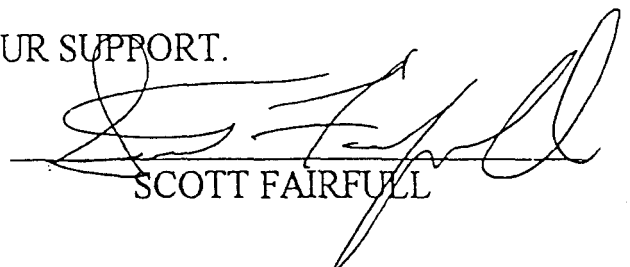
WHEN WE ASKED HIS PAROLE OFFICER TO PRESS HIM FOR RESTITUTION SHE SAID, "DO YOU WANT BLOOD OUT OF A STONE?" "CALL ME BACK IN TWO AND A HALF YEARS." (3 YEARS IS THE STATUE OF LIMITATIONS ON RESTITUTION.)

NOW WE KNOW THAT SB246 IS NOT GOING TO SOLVE ALL OF OUR PROBLEMS WITH THIEVES. HOWEVER, IT IS A STEP TOWARD WORKING WITH THE LAW COMMUNITY, REGAINING RESTITUTION AND PUTTING CULPABILITY ON THE THIEF, NOT ON THE PAWNBROKER OR ON LAW ENFORCEMENT.

PERSONALLY, WE FEEL THAT WE UNCOVER CRIME AND RETURN GOODS TO THE TITLED OWNERS AND TECHNICALLY QUALIFY FOR RESTITUTION FROM THE FUND CALLED "CRIMESTOPPERS". THIS IS NOT AT ISSUE WITH SB246, BUT IT IS ONE OF THE WAYS THAT ALL OF US, INCLUDING THE MONTANA LEGISLATURE, CAN WORK TOGETHER TO COME UP WITH IDEAS FOR SOLVING PROBLEMS ASSOCIATED WITH THEFT CRIMES.

THANK YOU FOR YOUR TIME AND YOUR SUPPORT.

  
STEVE BRIGGS

  
SCOTT FAIRFULL

THE PURPOSE OF THE SPECIFIC CHANGES TO THE MONTANA CODE WITH SB246 IS TO GIVE BACK TO THE PAWNBROKER ACCESS TO THE COURTS AND DUE PROCESS WHEN STOLEN PROPERTY IS DISCOVERED IN OUR SHOPS. THE LAW AS IT STANDS NOW DENIES DUE PROCESS TO PAWNBROKERS ONLY. IT DISCRIMINATES AGAINST PAWNBROKER CASH LOAN BUSINESSES AND DOES NOT AGAINST OTHER LENDING INSTITUTIONS. IN OTHER WORDS, THE LAW, AS CHANGED IN THE LAST LEGISLATIVE SESSION, SAYS, ALL PAWNBROKERS ARE FENCES FOR STOLEN PROPERTY AND THAT ALL CUSTOMERS WHO USE PAWNSHOPS ARE CROOKS.

THIS, SIMPLY STATED, IS A FALLACY.

PAWNSHOPS ALREADY PARTICIPATE IN A SYSTEM DESIGNED TO FILTER THE STOLEN GOODS WE DO GET. ACCORDING TO THE NATIONAL PAWNBROKERS ASSOCIATION, THIS IS LESS THAN 1% OF OUR TOTAL BUSINESS. THE SYSTEM WE USE REQUIRES US TO IDENTIFY EVERY PERSON WHO PAWNS OR SELLS AN ITEM TO US AND WE HAVE TO REPORT TO THE LOCAL SHERIFF'S AND POLICE DETECTIVES WHO THESE PEOPLE ARE AND WHAT ITEMS THEY BROUGHT IN. WE ARE THE ONLY CASH LOAN INSTITUTES IN THE WORLD WHO HAVE TO DO THIS. IMAGINE ASKING YOUR LOCAL BANK FOR A LOAN AND HAVE THEM REPORT YOUR COLLATERAL TO THE POLICE THE VERY PERSONAL INFORMATION YOU GIVE IN CONFIDENCE.

WHAT PAWNSHOPS DO IS PROVIDE CASH FOR COLLATERAL TO PEOPLE WHO DO NOT HAVE CREDIT OR ACCESS TO OTHER CASH, PEOPLE WHO ARE UNDEREMPLOYED AND PEOPLE WHO ARE JUST LOOKING FOR EXTRA CASH; FOR A VACATION, TO TIDE THEMSELVES OVER BEFORE SCHOOL LOANS COME IN, TO INVEST IN A USED CAR, ETC. THEY MUST PROVIDE ACCURATE INFORMATION ABOUT OWNERSHIP OF THE COLLATERAL THEY BRING IN.

IF A THIEF DECIDES TO USE THE PAWNSHOP TO PASS OFF STOLEN GOODS, THE SYSTEM KICKS INTO GEAR AND THE PEACE OFFICERS ARRIVE. AS THE LAW STANDS NOW, THE ITEM CAN BE SEIZED AND RETURNED TO THE TITLED OWNER WITHOUT DUE PROCESS FOR THE PAWNBROKER WHO HAS A POSSESSORY CLAIM AGAINST THE ITEM. WE ARE ASKING FOR ACCESS TO THE COURTS THROUGH AN ADMINISTRATIVE WARRANT AND WE ARE ASKING FOR RESTITUTION FOR OUR INVESTMENT FROM THE THIEF.

SUBJECT: SENATE BILL 246 TO AMEND CURRENT MONTANA CODE HB241,  
CURRENT 46-5-212.

CODE SEARCH AND SEIZURE. PART 2. SEARCH WARRANTS.  
PAWNBROKER TO SURRENDER STOLEN PROPERTY. When a peace officer informs a pawnbroker or dealer who buys and sells secondhand merchandise that property pawned to or purchased by the pawnbroker or dealer is stolen property, as defined in 45-2-101, the pawnbroker or dealer who buys and sells secondhand merchandise shall hold the property for 30 days unless demanded by a peace officer and, upon demand, shall surrender the property to the peace officer. the peace officer shall give the pawnbroker or dealer a receipt for any property surrendered by the pawnbroker or dealer.

THE 9TH AND 10TH CIRCUIT COURTS HAVE RULED IN FAVOR OF THE PAWN, INDUSTRY SAYING THAT TO SEIZE PROPERTY FOR THE SOLE PURPOSE TO

RETURN THE PROPERTY TO THE ORIGINAL VICTIM DENIES DUE PROCESS OF LAW TO THE PAWNBROKER. THE PAWNBROKER ALSO HAS A CLAIM AGAINST THE PROPERTY. TITLE OF OWNERSHIP CANNOT BE TRANSFERRED THROUGH A THEFT BUT THE PAWNBROKER HAS A POSSESSORY CLAIM AGAINST THE PROPERTY.

ARTICLE II. SECTION 17. DUE PROCESS OF LAW. No person shall be deprived of life, liberty, or property without due process of law.

UNFAIR SEIZURE WITH INTENT TO DENY PAWNBROKERS OWNERSHIP OF PROPERTY IS UNCONSTITUTIONAL.

MONTANA CONSTITUTION IS MORE PROTECTIVE THAN FEDERAL. THE CURRENT SEIZURE LAW ENACTED AGAINST THE PROPERTY INTERESTS OF THE PAWNBROKER GOES AGAINST THE INTENT OF THE MONTANA LAW.

PRAGMATICALLY IT IS UNFAIR.

ARTICLE II. SECTION 10. RIGHT OF PRIVACY. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

THE PAWN INDUSTRY RELIES ON THE HONESTY AND RESPONSIBILITY OF THE CUSTOMER. THE CURRENT LAW REFLECTS THE FRUSTRATION OF LOCAL LAW ENFORCEMENT THROUGHOUT THE STATE AND VIEWS THEFT AS THE SOLE CONCERN OF LAW ENFORCEMENT AND THE ORIGINAL VICTIM. IT DOES NOT CONSIDER THE PROPERTY CLAIM OF RESPECTABLE CASH LOAN BUSINESSES WHO INADVERTENTLY TAKE IN STOLEN PROPERTY AS COLLATERAL. THE PAWNBROKER BECOMES THE SECOND VICTIM THROUGH A FRAUDULENT TRANSACTION.

I have included a copy of the 9th Circuit Court case: G & G Jewelry vs. City of Oakland.

The Montana Pawnbrokers, with SB 246 want to establish good working relations with state law and law enforcement to place the blame for theft on the criminal and not on the small business community of cash loans.

THANK YOU FOR YOUR TIME.

SINCERELY,



LINDA HELDING  
111 WEST ALDER  
MISSOULA, MT 59802  
(406) 543-5896

SUMMARY

Civil Litigation and Procedure/Summary Judgment

The court of appeals reversed a summary judgment of the district court and remanded. The court held that when police effected that the warrantless seizure of stolen property from a pawnbroker was for criminal investigation purposes, but the police forms used and the pawnbroker's affidavit indicated otherwise, a genuine issue of material fact was raised making summary judgment inappropriate.

Appellant G & G Jewelry, Inc., owned by appellant Robert Goldstone, received in pawn a camera from Frederick Bras-. Goldstone informed the Oakland Police Department of transaction. The camera was reported as stolen by Michael Watson. Pursuant to statute, the police placed a hold on the property, requiring Goldstone to retain the camera. The police investigation concluded that the camera did appear to be Watson's, but that Brasley had not stolen it. Before the expiration the hold period, appellee Jonathan Madarang of the Oakland Police Department presented to Goldstone a document authorizing release of the camera to Madarang for Watson. The police also furnished to Goldstone a notice of claim of ownership indicating that the camera would be turned over to Watson unless Goldstone showed cause to believe Watson was not the owner. Madarang seized the camera. Goldstone appealed City of Oakland. The district court granted summary judgment for the City, concluding as a matter of law that seizure was investigative in purpose, and that it was justified under the plain view doctrine.

[1] The document authorizing release to Madarang for Watson indicated that the seizure was not for investigative purposes, but to return the camera to Watson [2] The notice of claim of ownership reinforced that indication by stating that the camera would be turned over to Watson unless Goldstone

EXHIBIT 1  
DATE 3-14-95  
SB 246

gave reason to believe that Watson was not the owner. [3] The statute under which the hold was placed recognizes the legitimate possessory interest of the pawnbroker, and resolves only the right to possession until ownership is established by agreement, civil litigation, or is simply not contested. [4] The police had no authority to determine ownership or the right to possession pending such a resolution. [5] If the camera was taken for the purpose of delivering it to the alleged owner, the procedure was improper under the statute, and inconsistent with United States and California due process precepts. Because of the conflicting evidence, a genuine issue of material fact existed as to whether the police took the camera for a lawful purpose. Therefore, summary judgment was improper.

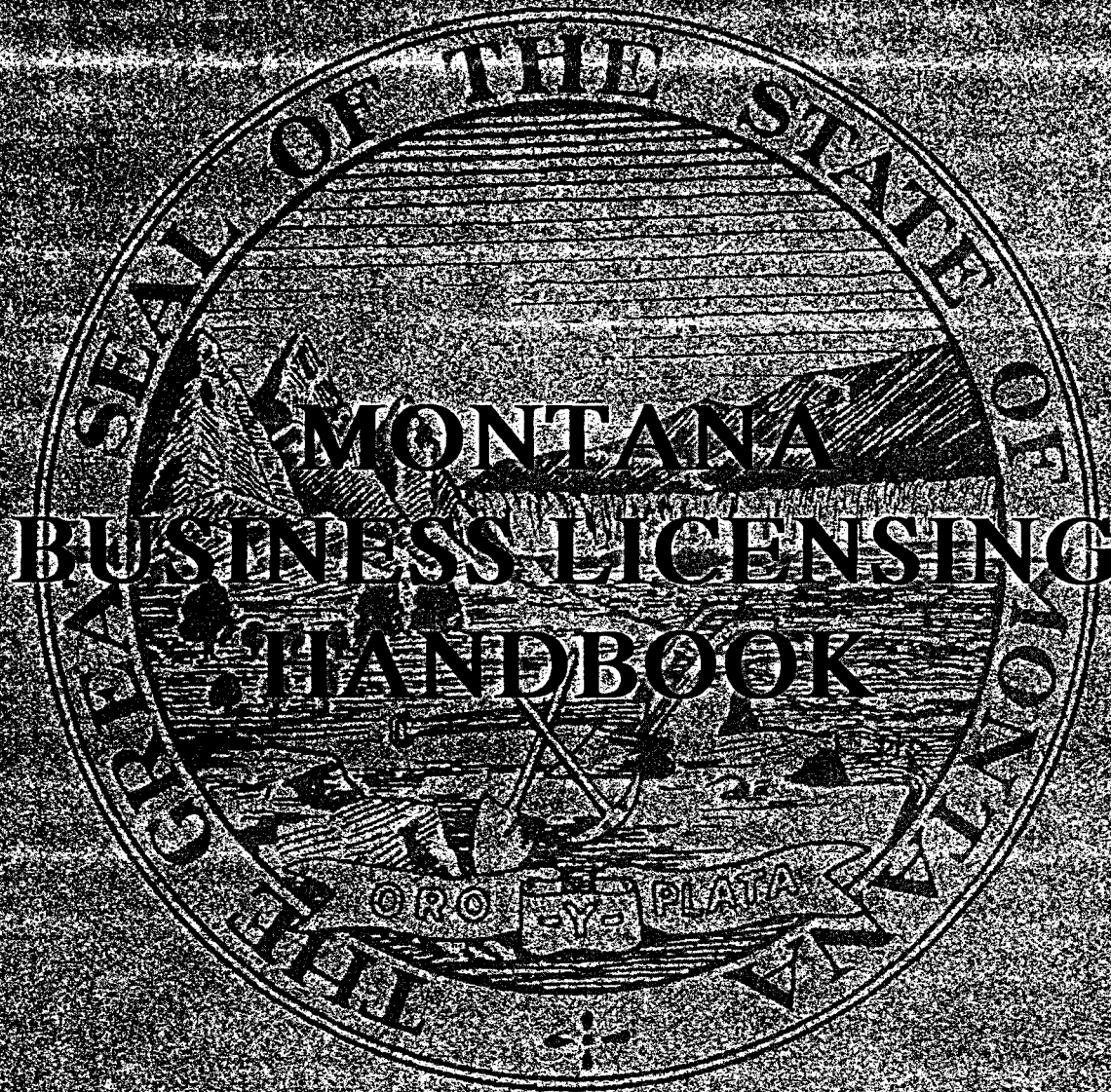
[6] The district court correctly held that plain view seizure of the camera for investigative purposes did not violate Fourth Amendment prohibitions. [7] Plain view seizure, however, did not authorize the police to seize the camera for the purpose of turning it over to Watson. [8] Under the California statute, police may seize from a pawnbroker property needed for a criminal investigation or trial by placing a hold on it, taking voluntary delivery from the pawnbroker, or seizing it and providing a receipt. [9] When the property is no longer needed for investigation or trial, the statute requires it to be returned to the pawnbroker.

COUNSEL

Henry O. Noffsinger, Pleasant Hill, California, for the plaintiffs-appellants.  
Diane J. Simon, Assistant to the City Attorney, City of Oakland; Catherine M. Steane, Oakland, California, for the defendants-appellees.



EXHIBIT 2  
DATE 3/14/98  
HB 377



Montana Department of Commerce  
Business Development Division

The original of this document is stored at  
the Historical Society at 225 North Roberts  
Street, Helena, MT 59620-1201. The phone  
number is 444-2694.

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

G & G JEWELRY, INC., dba UNITED  
JEWELRY MART; ROBERT P.  
GOLDSTONE,

*Plaintiffs-Appellants,*

v.

CITY OF OAKLAND, HENRY L.  
GARDNER, City Manager; GEORGE  
T. HART, Chief of Police; THOMAS  
O. DONAHUE, Deputy Chief of  
Police; JAY CRAWFORD, Sergeant;  
CRAIG D. STEWART, Sergeant;  
JONATHAN MADARANG, Officer;  
JANE W. WILLIAMS, City Attorney;  
WENDY P. ROUDER, Assistant City  
Attorney,

*Defendants-Appellees.*

No. 90-15771

D.C. No.  
CV-89-3600-EFL

OPINION

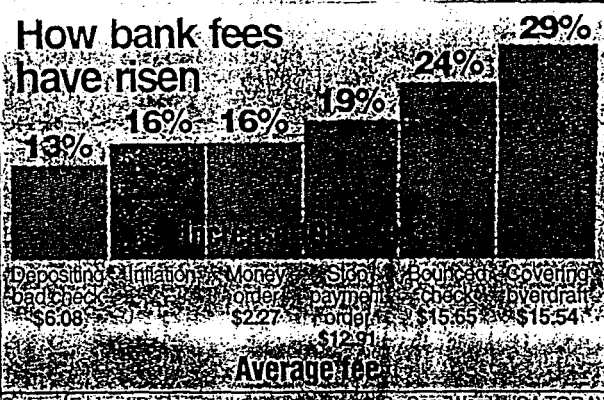
Appeal from the United States District Court  
for the Northern District of California  
Eugene F. Lynch, District Judge, Presiding

Argued and Submitted  
June 10, 1991—San Francisco, California

Filed March 31, 1993

Before: Procter Hug, Jr., Mary M. Schroeder, and  
Charles Wiggins, Circuit Judges.

Opinion by Judge Hug



Source: Federal Reserve By Sam Ward, USA TODAY

**COVER STORY**

# Consumers are snarling over charges

**Banks say they are just passing on rising costs**

By Janet L. Fox  
 USA TODAY

In Vancouver, Wash., Gordon Bemrose is "madder than hell" at his bank. It charged him \$30 for two bounced checks—even though he had \$90,000 in his other accounts.

Steve Weiss says his Philadelphia bank is ripping him off. He doesn't bounce checks, but he pays \$1,000 a year in fees on checks other people bounce. He is charged \$15 each time a customer of his mail-order percussion instrument shop bounces a check.

In Ironton, Ohio, Charles Kiser's bank charged him \$30 because he repaid a car loan five months early. "I've always heard bankers are a bunch of thieves," says Kiser, a state tax assessor in Carter County, Ky. "Now I know they are. They stole \$30 from me."

Millions of consumers are steamed at stiff fees charged by banks for services that once were cheap or free, while

Please see COVER STORY next page ►

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Business + Labor

DATE 3-14-95

BILL NO. SB 350

SPONSOR(S) \_\_\_\_\_

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
JEFFREY M. LANGAN	NETWORKS INC. MISSOURIA MT.	X	
Mike Ferriter	DCHS	X	

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

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Business & Labor

DATE \_\_\_\_\_

BILL NO. SB 298

SPONSOR(S) \_\_\_\_\_

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
<u>Ray Manno</u>	<u>Chickadee Great Falls</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Leon Stalupp</u>	<u>MT Restaurant Assoc</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Business & Labor

DATE 3-14-95

BILL NO. SB 298 SPONSOR(S) \_\_\_\_\_

PLEASE PRINT

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jim Frohlich	CREDIT BUREAU OF MISSOIA	X	
Daniel N. McLean	Credit Bureau of M-ssoula	X	
Jeff Koch	Collection Burc Services	X	
D Micklewright	Credit Bureau Kabis.	X	
Rod Kline	check patrol of Billings Inc	X	
Raul Luciani	Check Patrol Boz	X	
Sarah McQueen	Check Rite of MT, Inc.	X	
Mike McQueen	CHECK RITE of MT, Inc.	X	
Jan A. Strickman	PS/PT Services	X	
Charles R. Brooks	MT Food Dist Assoc	X	
Jean Hamich	CheckRite Bkps - Helena	X	
Pat O'Malley	Clear check - Helena	X	
Kevin R. Whipple	CLEAR CHECK - G.F.		

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

Brad Griffin  
Marsha Paulson

MT Retail Assoc. X  
Montana Collectors Assoc X  
Am. Part President

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Business & Labor

DATE 3-14-95

BILL NO. SB 246

SPONSOR(S) \_\_\_\_\_

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Todd Coetts	Missoula Pawnbrokers	✓	
Lee Ash	Billings Pawnbrokers	✓	
Ally Carter	Helena	✓	

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

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Business & Labor

DATE 3-14-95

BILL NO. SB 311

SPONSOR(S) \_\_\_\_\_

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
<del>Jan G. Strickland</del>	<del>PS/PJ Services</del>	<del>X</del>	
<del>R. J. [unclear]</del>	Check Petrol Boz	X	
<del>R. J. [unclear]</del>	<del>Check Petrol Boz</del>	<del>X</del>	
Riley Johnson	NFIB	X	
Jim Twissell	Mr. Chamberz	✓	
Jeff Miller	DOR	✓	
Andy Poole	DOC	✓	

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