

**MINUTES**

**MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN BRUCE D. CRIPPEN**, on January 8, 1997,  
at 10:00 a.m., in the Senate Judiciary Room (325) of the  
State Capitol.

**ROLL CALL**

**Members Present:**

Sen. Bruce D. Crippen, Chairman (R)  
Sen. Lorents Grosfield, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Sue Bartlett (D)  
Sen. Sharon Estrada (R)  
Sen. Mike Halligan (D)  
Sen. Reiny Jabs (R)  
Sen. Walter L. McNutt (R)

**Members Excused:**

Sen. Ric Holden (R)  
Sen. Steve Doherty (D)

**Members Absent:** None

**Staff Present:**

Valencia Lane, Legislative Services Division  
Jody Bird, Committee Secretary

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 16, January 8, 1997

Executive Action: None

**HEARING ON SB 16**

**Sponsor:** SENATOR MIKE HALLIGAN, SD 34, Missoula.

**Proponents:** Lawrence Scott, Missoula, family law practice  
Kerry Newcomer, Missoula, attorney

**Opening Statement by Sponsor:** SENATOR MIKE HALLIGAN, SD 34,  
Missoula. SB 16 requires mandatory disclosure of all assets and  
liabilities 45-60 days prior to first trial setting, and helps  
the court to make better decisions in divorce cases. Nearly  
everyone has been touched in some way by divorce, and this

legislation is needed to lend stability to families in this process.

The bill reduces costly discovery fees, is less adversarial, and means less trauma in divorce cases.

**Proponents' Testimony:** Lawrence Scott, Missoula family law practice, and member of the State Bar Committee on Family Law. Practitioners, judges and the public all saw inconsistencies in costs, and decided change was necessary. I endeavored to consider the peoples' agenda in developing this legislation.

Current law allows attorneys to find out necessary information, as long as they know how to ask the right questions. The process is fraught now with attorneys trying to be tricky and objecting to things, then filing motions and putting costs out of sight in the discovery process.

The bill will also be beneficial to attorneys with regard to malpractice insurance. Mandatory disclosure will result in a schedule of only 6 pages versus 45 pages of discovery from 200 questions.

There is a strict provision on non-compliance, whereby a party could lose the asset not disclosed for a period of up to five years. The bill, basically, comes from the State of California, and the Bar Committee was assisted in its research by a judicial student in Reno who checked the laws of each of the states.

**Kerry Newcomer, Missoula attorney,** practicing in the area of domestic relations. The bill is a good idea because Montana is a common law state and not a community property state. Property listed becomes liened in a divorce case for proper distribution by the court.

Twenty-five percent of divorce costs are in obtaining information, and another twenty-five percent may come from follow-up costs, but that this legislation will not eliminate discovery.

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It is becoming increasingly difficult to discover undisclosed property. I want to remind the Committee that the bill is self-enforcing.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:** SENATOR SUE BARTLETT. What will the repercussions be in situations of unintentional failure to disclose hidden assets? **Mr. Scott.** The initial penalty is possible contempt of court, but later on the penalty of loss in the bill could come, based on presumption.

**SENATOR BARTLETT.** Is there a basic right to argue this point before the judge? **Mr. Scott.** The judge would retain this discretion.

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**SENATOR SHARON ESTRADA.** Would items such as clothing and jewelry be considered assets? **Mr. Scott.** These are normally called personal effects, and if they are generally of no value, they do not enter into part of the marital estate.

**SENATOR LORENTS GROSFIELD.** What does the judge do with undisclosed property? **Mr. Scott.** The judge does what he or she deems equitable. The other party would have to make a motion to reopen the case and have an evidentiary hearing. By and large, the bill will be beneficial to the public, but I was very concerned with possible future ramifications as I was researching and preparing this legislation.

**SENATOR ESTRADA.** Does this information become public record when it is filed? **Mr. Scott.** It does.

**SENATOR GROSFIELD.** Does anything happen at the end of the five-year period? **Mr. Scott.** No. This time period is a jurisdictional issue.

**CHAIRMAN CRIPPEN.** Is California a community property state? **Mr. Scott.** It is. **Mr. Newcomer.** California recognizes both community property and common law, depending upon how and when the property is acquired. California has altered its statutes several times since 1979. A party could argue separate contribution of property to bring it into community, but these things usually don't come up in a typical marriage.

**CHAIRMAN CRIPPEN.** How a lien is removed? **Mr. Newcomer.** It is done by dismissal of the petition or entry of lien.

**CHAIRMAN CRIPPEN.** Is the lien were recorded? **Mr. Newcomer.** No, it is not.

**CHAIRMAN CRIPPEN.** Who would have first rights if a mortgage company came along and filed a lien? **Mr. Newcomer.** I believe the marriage would have first rights, and it's discoverable.

**CHAIRMAN CRIPPEN.** Could the parties waive disclosure? **Mr. Newcomer.** They could, but I do not know why the parties would wish to do so. I believe most would want to disclose significant items up front. Secreted property usually is well-hidden from disclosure.

**CHAIRMAN CRIPPEN.** What about the material versus the non-material in failure to disclose?. **Mr. Scott.** I removed "material or substantial" from the language of the bill draft, as I felt attorneys would play with it.

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**CHAIRMAN CRIPPEN.** How would the mental state of the parties affect disclosure? **Mr. Scott.** This has been a factor in cases which were ramrodded through the courts, especially where the wife has been a homemaker and needs to readjust entirely.

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**SENATOR AL BISHOP.** Could a meeting not follow property given to the other party in a failure to disclose situation? **Mr. Newcomer.** It could go a number of different ways, as decided upon by the court. **Mr. Scott.** Another option would be to sell the property.

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**SENATOR ESTRADA.** Will this proposed disclosure make it easier for attorneys to get together and settle cases out of court? **Mr. Scott.** It will.

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**SENATOR ESTRADA.** Will the bill create a lot of work for private investigators? **Mr. Newcomer.** Right now, unless it is within 180 days of the decree, the other party has no remedy if hidden property is discovered.

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**SENATOR ESTRADA.** Does the bill represent a major change? **Mr. Scott.** It does.

**CHAIRMAN CRIPPEN.** Did the drafters encounter any problems with the Montana Judges Association? **Mr. Scott.** The Judges were part of the drafting discussion, but have not yet reviewed the introduced bill.

**Closing by Sponsor: SENATOR HALLIGAN.** SB 16 will touch more citizens than a lot of other legislation this term. It's a 180 degree change, and shifts the responsibility to the parties rather than their attorneys. The bill changes unfair situations between parties when one has great resources and the other has very little.

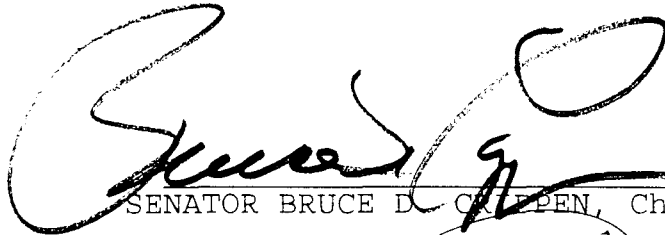
If passed, the bill would become effective July 1, 1997. Files will be much smaller with mandatory disclosure 44-60 days prior to trial. Senate Bill 16 a serious bill with major implications.

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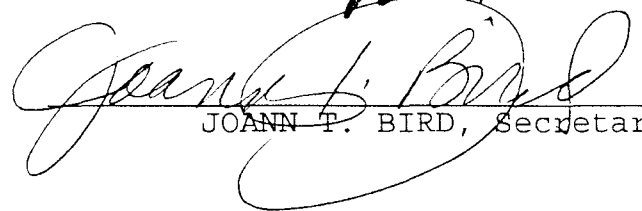
**CHAIRMAN CRIPPEN** advised the Committee of his intent to hold Executive Session early the following week for bills heard to date.

ADJOURNMENT

Adjournment: 11:00 a.m.



SENATOR BRUCE D. COOPER, Chairman



JOANN T. BIRD, Secretary

BDC/jtb