

# MINUTES

## MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

### COMMITTEE ON JUDICIARY

**Call to Order:** By **CHAIRMAN BRUCE CRIPPEN**, on January 9, 1997, at 10:00 A.M., in the Senate Judiciary Room

#### 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. Steve Doherty (D)  
Sen. Sharon Estrada (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter L. McNutt (R)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Valencia Lane, Legislative Services Division  
Judy Keintz, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 32 - January 6  
SB 33 - January 6  
SB 36 - January 6  
Executive Action: None

#### HEARING ON SB 32

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

**Proponents:** --P. Mars Scott, State Bar of Montana, Domestic Relations Study Commission  
--Mary "Marty" Phippen, Montana Association of Clerks of District Court

**Opponents:** None

**Opening Statement by Sponsor:**

SENATOR MIKE HALLIGAN, SD 34, Missoula, introduced SB 32. He commented that a package of bills was being introduced to address stability in family law. The purpose of this bill is to make sure assets are not disposed of without the other party's consent to that action. This does not prevent the sale of property, it simply makes sure there is the consent of both parties. After a temporary motion for maintenance or support is filed, it often becomes necessary for another independent motion requesting a temporary restraining order. This bill would provide for a standard procedure, which would be signed by the clerk of court, for a temporary restraining order.

**Proponents' Testimony:**

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P. Mars Scott, State Bar of Montana, Domestic Relations Study Commission, spoke in favor of SB 32. Under section 40-4-121, there is a provision for any party to get a temporary restraining order to restrain transferring of property. In seventeen years of practice, he has not seen one of those motions denied by a district court judge. There is a cost to the public to get the restraining order. Preparing the motion, brief, etc., costs approximately \$150 to \$300 per side every time a restraining order is obtained. Also, both sides need to be in court. Because it is a foregone conclusion that the restraining order will be issued, the Commission thought it would be a good idea to make this an automatic procedure. In a recent case, one party decided to sell a \$2,000 horse to a friend for \$300. If there had been an automatic restraining order in place, the party selling the horse would have had to make application to the court. The attorney had to get an affidavit from his client, file the motion, file the brief, go to court, etc. The cost of this action was \$342. His client was given the restraining order. An automatic restraining order would have taken care of this problem.

The last legislature passed a law stating that both parties need to make independent applications to the court for automatic restraining orders. Judges will not now grant mutual restraining orders. The cost has doubled.

Another example of the need for this bill is a case wherein the other side went to the joint bank account, withdrew \$50,000 and by 10:00 a.m. that morning had a restraining order put on the other party not to move the marital property. The other side had \$50,000 at their disposal. He filed his motions and received a restraining order. An automatic restraining order would address this problem as well.

This bill specifically addresses the issue of insurance. Clients feel that health insurance and life insurance policies are not property. People will take someone off of their insurance

policy as soon as they file for divorce. There is tremendous exposure at this point to the marital estate. Another section of law states that in medical cases both parties are liable for the medical expenses of the other party, whether the other party consented to the expenses being incurred or not. They are considered necessities of life. There is no reason for insurance policies to be changed during the pendency of the action. This is a judge's decision.

Opponents' Testimony: None.

Informational Testimony:

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Mary "Marty" Phippen, Montana Association of Clerks of District Court, questioned the administration of SB 32, particularly page 2, lines 12 and 13. Clerks of the district court have the statutory authority to sign summons but do not have the authority to sign temporary restraining orders. There should be specific language incorporated into the statute stating that the clerk of the district court shall issue the summons containing the temporary restraining order in order to give them the statutory authority to do so. (EXHIBIT 1)

Questions From Committee Members and Responses:

SENATOR SHARON ESTRADA had a concern with page 2, line 1, of the bill which dealt with changing the beneficiary. She felt that people should be able to change the beneficiary of their will, estate, or insurance policy at anytime.

Mr. Scott replied that this bill was not designed to prevent someone from being able to develop a will or an estate plan within the context of going through a dissolution action. Anyone should have a right to make a will at anytime to distribute their property. It is, however, important to maintain the status quo of all assets and liabilities once a dissolution action is started. Nothing in this bill prevents someone from asking the other side to change the beneficiary. The control should rest with the district court and not the parties.

SENATOR AL BISHOP felt the restraining order would be an encumbrance on real property.

Mr. Scott felt it would not be an encumbrance which would show up on the record. The divorce action would show on the record. It would not show up on a title report. It would restrict a party's ability to sign a deed because the property was solely in his\her name. If this became law, title companies may start placing this information on the title report.

SENATOR BISHOP stated that this restraining order would be filed in a court of record, since it would be filed in district

court. The title company would be charged with knowledge of that action. In the case of a developer selling lots, with this encumbrance, no purchaser would be safe in buying a lot unless they had a release of the restraining order as it pertained to the property.

Mr. Scott replied the last paragraph of the bill allows a bona fide purchaser in interest to be protected in a case where they in good faith purchased the property.

CHAIRMAN CRIPPEN asked what constitutes actual knowledge.

Mr. Scott commented that actual knowledge would be other than constructive knowledge. Constructive knowledge means that you should have known or should have gone to the title company with the matter. Actual knowledge would mean that you would know that this person should not be transferring the deed or property to you.

SENATOR BARTLETT, referring to page 2, line 30, commented that the current law provides that a person seeking relief under subsection (2), without filing a petition for dissolution or separation, may request relief under Title 27, chapter 19, part 3. She asked for an explanation of the interaction of the amendments which Mr. Scott was proposing to the existing law.

Mr. Scott commented they have not changed the law. They are only jump starting the system. There is no problem getting a restraining order. They are simply trying to expedite the process.

SENATOR BARTLETT asked if this provides for an exception in the usual course of business or for the necessities of life and whether there is a common understanding of what necessities of life would constitute?

Mr. Scott replied that the language in this bill is current law and to date that has not been a problem.

Closing by Sponsor: SENATOR HALLIGAN closed on SB32.

#### HEARING ON SB 33

Sponsor: SENATOR MIKE HALLIGAN, SD 34, Missoula

Proponents: --P. Mars Scott, State Bar of Montana, Domestic Relations Study Commission  
--Mary Ann Wellbank, Administrator of the Child Support Enforcement Division (CSED)

Opponents: None

Opening Statement by Sponsor: SENATOR HALLIGAN introduced SB 33. This bill is another part of the package. When a dissolution action is started the bills do not stop. This bill attempts to

provide some stability so that someone is still responsible for family support.

Proponents' Testimony:

P. Mars Scott, Domestic Relations Study Commission, stated SB 33 was drafted after the Oregon bill. This bill came into existence because of the frustration expressed by district court judges in having mini trials on motions for temporary maintenance and child support. This bill provides a motion for temporary family support. When people start the divorce process there are bills which need to be paid. It is easy to figure out identifiable sources of income. This would allow the court to assign bills to both parties so these obligations were met until such time as an appropriate decision would be made about maintenance and child support. The bill provides that the district court go back retroactively to the date of the filing, if necessary, and allocate the family support which went out as maintenance, child support or property division. The judges are already doing this.

Informational Testimony:

Mary Ann Wellbank, Administrator of the Child Support Enforcement Division (CSED), stated she had technical concerns which could be addressed by amendments. The Child Support Enforcement Division is authorized under Title 4D of the Social Security Act and this is required in order for states to have a welfare program. Like district courts, the CSED may establish a child support order and is required to do so if one isn't already established. Both district courts and CSED are required by Montana law and federal regulations to use the Child Support Guidelines which are published in the Administrative Rules of Montana to establish child support orders. This order would be called a family support order and the district courts would be able to establish it. They would not have to be using the Child Support Guidelines and CSED could not collect because they only have the authority to collect child support. CSED also has the authority and responsibility to enforce district court orders and administrative court orders for both child support and spousal support if child support is being collected. Again, they do not have the authority or funding to collect family support. Under federal regulations and state law, when a family is receiving public assistance, assignment of child support and spousal support is a mandatory condition of receiving AFDC. This money isn't in addition to the child support. Persons who receive a child support check and are also receiving public assistance need to turn that child support check over to the Division. It is unclear which portion of family support would be considered child support. If collected, child support is retained by the state for families under public assistance and it funds the state's share of the CSED, which is matched by 66% federal funds. Out of 4,000 cases, fifty percent involve AFDC. They have prepared amendments which have been given to SEN. HALLIGAN to include that

in a case involving AFDC the court would be required to separate out the temporary family support order from the temporary child support order.

Opponents' Testimony: None

Questions From Committee Members and Responses:

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SENATOR ESTRADA asked SENATOR HALLIGAN if he had any problems with the Division's amendments?

SENATOR HALLIGAN replied that he had no problems with the amendments but since this was a temporary order and not a final order he felt the Division would not be enforcing the temporary order. The amendment would not hurt the bill.

CHAIRMAN CRIPPEN asked Ms. Wellbank why she was concerned with the temporary order since the Division was only involved at the end of the proceedings?

Ms. Wellbank stated the CSED also has the authority and the obligation to establish a child support order when none exists. In this situation, no child support order would exist. It is also conceivable that there may be a temporary family support order wherein one party would not be receiving the money because of lack of enforcement.

Closing by Sponsor: SENATOR HALLIGAN closed on SB 33.

HEARING ON SB 36

Sponsor: SENATOR J.D. LYNCH, SD 19

Proponents: --Greg Petesch, Code Commissioner  
--Jacqueline Lenmark, American Insurance Association

Opponents: None

Opening Statement by Sponsor: SENATOR J.D. LYNCH, SD 19, presented SB 36. This bill is called the Code Commissioner Bill. This bill contains revisions made to statutes which are non-controversial and non-substantive in terms of debate. A date has been removed which may have some substance to the bill itself. This will need to be addressed.

Proponents' Testimony: Greg Petesch, Code Commissioner, stated that during this interim they made a concerted effort to completely search the code for all references. They also searched all references to federal law and either updated the reference to reflect the current codification of the federal law

or, where appropriate, inserted references to the United States Code so that practitioners would be able to more easily find the federal law being referenced. There were changes which needed to be made due to reorganization. There were references to former agencies which were inserted in legislation last session which were not corrected. They updated references to the Uniform Enforcement of Family Support Act. That was a culmination of three uniform state laws. Several definition sections were amended to remove definitions which were never used. They extended some references in part. They updated references to archaic terms in the code.

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Section 178, page 174, included a provision which allowed the Commissioner of Labor to designate an assigned risk pool for Workers' Compensation insurance. They intended to remove archaic references to date. Inadvertently, they may have extended the authority of the Commissioner to do this. As written, the Commissioner had to act no later than the date which is stricken. By removing the date, they may have made it discretionary with the commissioner to do that even now. That was not their intent. This bill had to be submitted to the Legislative Council by November 1. It was then sent to all agencies in July. It was sent to the Labor Department and they approved it. The best thing to do at this point would be to remove that provision from the bill by striking it. The other non-substantive way to handle the problem would be to repeal this section so it could be stricken from the bill and added to the repealer section.

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Jacqueline Lenmark, American Insurance Association, remarked she was the person who brought this concern to Mr. Petesch. She urged the committee to repeal Section 178 because the time in which the Commissioner of Labor could act has passed. The Commissioner of Labor at the time did make a decision under the provisions of that statute to not create an assigned risk pool under that authority. If that is not done, she asked that the section be stricken from the bill.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

SENATOR ESTRADA asked if there was anything in the bill which pertained to judges.

Mr. Petesch commented the only section which dealt with the court system would be Section 16, page 18. This transfers the warrant writing function from the State Auditor to the State Treasurer to reflect a bill passed last session.

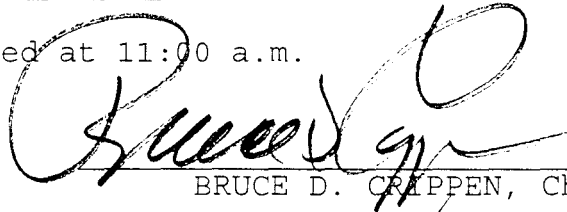
CHAIRMAN CRIPPEN suggested that instead of appointing a subcommittee to look at the bill, a synopsis of the bill be provided for SENATOR LYNCH to present the bill at the floor session. Valencia Lane and Mr. Petesch agreed to provide the same and review with SENATOR LYNCH. He also asked for their recommendation on Section 178, whether it should be stricken or repealed. He asked Mr. Petesch if repealing the section would handle the problem or whether they would be faced with the same problem two years from now.

Mr. Petesch wanted some time to review it so that the repeal would not affect provisions other than subsection (1).

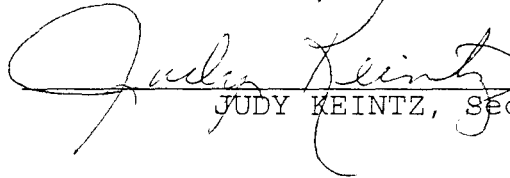
Closing by Sponsor: SENATOR LYNCH closed on SB 36.

ADJOURNMENT

Adjournment: Meeting adjourned at 11:00 a.m.



BRUCE D. CRIPPEN, Chairman



JUDY KEINTZ, Secretary

BDC/jjk