

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on January 14, 1997, at 10:00 A.M., in Room 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 56; SB 58; Posted 1-8-97
Executive Action: None

HEARING ON SB 56

Sponsor: SENATOR JOHN "J.D." LYNCH, SD 19

Proponents: ANNIE BARTOS, Department of Commerce
ARLETTE RANDASH, Eagle Forum
STEVE YERKEL, MT Funeral Directors Association

Opponents: JOHN EVANS, Owner of private cemetery in Butte

{Tape: 1; Side: A; Approx. Time Count: 10:00 a.m.; Comments: N/A}

Opening Statement by Sponsor:

SEN. JOHN "J.D." LYNCH, SD 19, Butte presented SB 56. This bill is in response to a number of complaints that occurred not only

in Butte and Anaconda, but also in the Bozeman area as well. Some private cemeteries around the state have not been keeping their cemeteries in a good state of repair. Some cemeteries are doing a good job and they feel they should not be included in this bill. I sympathize with them, but am not sure if there is a way to eliminate it. The Department of Commerce had an enormous number of complaints and looked at what recourse could be taken. Quite frankly, there wasn't. There are the courts and one could sue, but this is costly. I would ask **Ms. Annie Bartos** from the Dept. of Commerce to answer questions on this bill.

{Tape: 1; Side: A; Approx. Time Count: 10:05 a.m.; Comments: N/A}

Proponents' Testimony:

Annie Bartos, Underchief, Legal Council of the Dept. of Commerce. For the record, the Dept. does support HB 56. The Consumer Affairs Office of the DOC had received many complaints relative to cemeteries in the State. I will happy to answer any questions.

Gordon Boe, Bozeman, MT. My mother is buried in the Sunset Cemetery in Bozeman. I took a video of the care of the cemetery. As poorly as it is cared for, it is not necessarily the grass mowed, etc.that is so upsetting, it was that the graves were sinking, the caskets were showing, the headstones are being run over by machinery and destroyed. All they do is give excuses why they cannot take care of the cemetery. I have a video that I took of the cemetery. (The video was shown to the Committee.) This is the Sunset Cemetery between Belgrade and Bozeman. Some holes were 2 to 3 feet deep; old graves have new dirt on top of them; the road has not been paved; grave markers are sunk down into the ground; markers have been run over by backhoe machinery and broken in half; grave markers are missing.

Arlette Randash, Helena, MT. My sister and her family have personally cared for a cemetery in Bozeman on North 7th and I-90. The condition of the cemetery has been very poor. They have mowed the grass for two years.

Steve Yerkel, representing the MT Funeral Directors Association. We stand in strong support of this bill. This may seem unusual, since we are not in favor of over-regulation. There are two concerns of this bill. The first concern is for the families that we serve. The recourse as you can see from (**EXHIBIT 1**) is a long and convoluted process of going through the court system to get some financial remedy. The second concern is the impact that the stories, that you see in your hand, have on the profession of funeral service in the State. Our profession is one, perhaps more than many other, that is absolutely dependent upon the credibility that is placed in us by the families that we serve. We feel there is a need to be addressed. There seems to be no provision for private cemeteries that hold them accountable such as licensing, certification process and continuing education.

Opponents' Testimony:

John Evans, Butte and owner of a private cemetery in Butte. I sympathize with what we have seen here on the screen and what has been said. But I can assure you that that is not the case with our cemetery. We take very good care of our cemetery. And I am sure that there are other private cemeteries that feel and do as we. We oppose the bill mostly from the standpoint that there are regulations in place right now that have not been enforced. If they had been enforced, this situation might not be in existence. If the new regulations are put in place, they will be very costly from an auditing standpoint, from a licensing standpoint, etc. From our perspective, private cemeteries are not money-making entities. If we have to withstand more costs, we are going to be in a position of not being able to provide the services that we do now. For these reasons we oppose this bill.

Informational Testimony: None

{Tape: 1; Side: A; Approx. Time Count: 10:16 a.m.; Comments: N/A}

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked **Mr. Evans** to give a ballpark figure on what it costs for a plot in a cemetery. **Mr. Evans** replied that in their cemetery it costs \$250.

SEN. BENEDICT asked **Mr. Evans** another question concerning the 15% to be set aside in the bill and how much would that would impact his business in terms of monetary dollars. **Mr. Evans** felt that it would not be very much. You might be looking at 7% on 15% of \$250 per year.

SEN. C.A. CASEY EMERSON had a question for **Mr. Evans**. He asked if **Mr. Evans** could give a short summation on the regulations that are in the old law but have not been enforced. **Mr. Evans** said that the permanent care and trust fund is in place where 15% has to be added to the fund on every plot that is sold. The books are open for inspection.

CHAIRMAN JOHN HERTEL asked **Mr. Evans** if he worked under someone else for the cemetery. **Mr. Evans** said that he and his wife own and operate the cemetery and also have a trust fund which they administer.

SEN. BEA MCCARTHY asked **Mr. Evans** if this private ownership is unusual. **Mr. Evans** replied there are two privately owned cemeteries in Butte. He does not know about the rest of the State. Churches and lodges do own cemeteries which would be private.

SEN. EMERSON asked **Mr. Evans** if the county attorney would handle a complaint against him. **Mr. Evans** did not know who enforces the regulations.

SEN. BENEDICT asked **Annie Bartos** what are all the repealers in this bill. She reported that the repealers are under Title 35, Chapter 21, Part 101 all the way through 713 and are the old archaic laws concerning mausoleums. They are essentially outdated. They have not been enforced in regard to the mausoleums either. **SEN. BENEDICT** then asked about the permit application under Section 8, it didn't mention a fee, and wondered if she had an idea of what this fee will be? **Ms. Bartos** said there was a fiscal note that was prepared and it does indicate that the initial permit fee will be \$170 for the first year and then each year thereafter there will be a renewal fee of \$170.

SEN. MCCARTHY asked **Ms. Bartos** if there were any provisions in the bill that would be retroactive in order to address the cemeteries that were evidently not keeping their part of the contract. **Ms. Bartos** replied that in the present law there are ways that can be used in order to assist Montana consumers. The Dept. of Commerce is relying upon the Consumer Protection Act in those complaints which consumers have filed with the Department that pertain to individual plots for graves. In regard to the way cemeteries have been maintained, no state agency has authority to force these cemeteries to maintain the cemeteries.

SEN. WILLIAM CRISMORE asked **Ms. Bartos** if this bill will address the situation that created the need for drafting SB 56. **Ms. Bartos** replied yes, it does take care of the problem.

SEN. BENEDICT asked **Ms. Bartos** two questions: Is it correct that the perpetual maintenance fund is something that has never been in statute before, requiring private cemeteries to have a perpetual maintenance fund with 15% of their total sales? **Ms. Bartos** answered that she believed that that was correct. I would like to check Title 35. **SEN. BENEDICT'S** second question was: Does the Board of Funeral Directors through the Department have the ability to require an audit and how much would that audit be? **Ms. Bartos** replied that she would like to defer that question to the secretary of the Board of Funeral Directors. **Cheryl Smith** answered: I am the Board Administrator for the Board of Funeral Services. We anticipate that since we do have an auditor on staff, if the cemetery has not had an independent audit done, we could use staff personnel to perform the audit. **SEN. BENEDICT** interrupted and clarified his question. He wanted to know what it would cost the cemetery for this audit and how often would the Board inspect the cemeteries concerning audits. **Ms. Smith** answered that they anticipate auditing half of the cemeteries the first year and half the second year. The cemetery would pay \$100 audit examination fee. This is in addition to their annual licensing fee.

SEN. EMERSON asked **Mr. Evans** if he had not already set aside the 15% and that was it not already on the books. **Mr. Evans** replied yes. **SEN. EMERSON** responded that this seemed to be a different answer and wondered if someone could clear up this contradiction.

Ms. Bartos stated that the perpetual fund has existed in statute but that it pertains only to the county and municipal cemeteries with no provisions for privately owned cemeteries.

SEN. BENEDICT asked **Ms. Bartos** what the fees and fines would be to the operators who do not comply with the law. **Ms. Bartos** read, under Section 16, what the penalties would be.

SEN. MCCARTHY continued with that line of questioning and wanted to know what happens to cemeteries that have long ago been pre-sold. **Ms. Bartos** replied that this law will become effective in 1998 and will require cemeteries to obtain their certificates or permits through the Board in 1998. Therefore, the problems that exist with the cemetery at that time would have to be corrected before they could obtain their permit.

SEN. BENEDICT asked **SENATOR LYNCH** if that this bill was not basically a tax--this 15% would be a tax on consumers when they purchase a plot. **SEN. LYNCH** didn't feel that it was an additional tax.

{Tape: 1; Side: A; Approx. Time Count: 10:35 am; Comments: N/A.}

Closing by Sponsor:

SEN. LYNCH thanked the committee for a good hearing. He feels that there needs to be a law on the 15%. There seems to be a problem that exists and this problem needs legislation. **SEN. LYNCH** offered the possibility that those cemetery owners who keep their cemeteries in good condition and receive no complaints might somehow be exempt from the fees until they should receive complaints.

CHAIRMAN HERTEL asked **SEN. LYNCH** if he would be willing to work on an amendment to address this situation. **SEN. LYNCH** suggested that **Ms. Bartos** through the Department of Commerce might be able to work this up and that he would be amenable to that.

HEARING ON SB 58

{Tape: 1; Side: A; Approx. Time Count: 10:42 am; Comments: N/A}

Sponsor: SENATOR CHARLES "CHUCK" SWYSGOOD, SD. 17, Dillon

Proponents: TARA MELE, Montana Public Interest Research Group
ARLETTE RANDASH, Eagle Forum

Opponents: BOB PYFER, MT Credit Unions League
GEORGE BENNETT, MT Brokers Association
JOHN CADBY, MT Bankers Association
BRAD GRIFFIN, MT Retail Association

Opening Statement by Sponsor:

SENATOR CHARLES "CHUCK" SWYSGOOD, SD. 17, Dillon, presented SB 58. I bring before you, SB 58, and I have had constituents come to me about problems that had occurred with the issuance of credit cards to minors. I will hand out (EXHIBIT 2) for your perusal as we go through this bill. I believe that this problem has gotten out of hand on these pre-approved credit cards. This bill does not keep these applications from coming, but it does say that if an application comes to a minor and they do not get the consent of that minor's parents or legal guardian, and if that minor runs up a debt and cannot pay it, they cannot collect that debt. I would like to remind these companies that it is a different ball game when it comes to dealing with minors.

Proponents' Testimony:

Tara Mele, Montana Public Interest Research Group. Ms. Mele presented her testimony which is contained in (EXHIBIT 3).

Arlette Randash, Eagle Forum. Ms. Randash presented her testimony which is contained in (EXHIBIT 4).

{Tape: 1; Side: B; Approx. Time Count: 10:49 am; Comments: N/A.}

Informational Testimony:

Bob Pyfer, Senior Vice President of the MT Credit Unions League. We are here more as a matter of informational testimony. We, as credit unions, have been very responsible in the issuance of credit cards. To my knowledge, no credit unions have issued credit cards to a minor without a co-signature of parent or guardian. We do not see any affect on credit unions with this bill. We do have one concern in the language and that is the term "credit cards or similar devices". We feel that this might be interpreted to include ATM cards or cash cards. Credit unions do issue checking or share draft accounts to minors. It is a good way to learn about finances. And with those accounts a cash card may be issued. We suggest as a possible amendment that you add "loan advanced access" between similar and device. It would then read "credit cards or similar loan advanced access devices".

Opponents' Testimony:

George Bennett, Counsel for MT Bankers Association. According to my understanding there are very few banks in Montana that would directly issue credit cards, and I doubt they would issue credit cards, to minors. However, I would like to give you some background about the law on minors in Montana and which is the same throughout the states. The law on a contract with minors provides a shield to the minor. If a minor makes a contract it is voidable at the option of the minor. This is the shield that a minor has. Minors are allowed to contract and they are allowed

to void those contracts. They are starting businesses, getting married, etc. What this bill will do, and this is why we are here to oppose this bill, it turns the shield the minor has into a sword. This will allow the minor to obtain goods and services and then not pay for them in that situation where the minor may have lied about their age or parental consent may not have been obtained. As Mr. Pyfer said we are moving into a whole new era where we will have debit cards and credit cards. They are a useful tool for minors and others.

John Cadby, MT Bankers Association. Banks in Montana such as Norwest and First Interstate do not knowingly issue credit cards to anyone under 18 years of age. Two applications came to my home the other day. One from L.L.Bean Visa that asks for a birth date and the same from a bank back east. On the back of both of them they state you must be 18 years of age. This is a common statement on these applications. We have a situation here that is subject to the Interstate Commerce Laws. And that is where we may run into some conflicts. Congress passed The Truth In Lending Act some years ago that regulates credit card disclosure, how to compute interest, etc. If you are going to be doing business across state borders nationwide, you must have the same rules throughout the nation. This bill may create less competition. We want competition because that keeps interest rates as low as possible.

Brad Griffin, MT Retail Association. We represent virtually every major retailer in the State. We oppose this bill because we see several problems with it. Two of them revolve around the issue of verification. We see that we may get into a situation that we would have to verify the age of every applicant. The other problem we see is verifying the authenticity of the signature of the parent or guardian. We are not sure how that would be done whether through a notary or something else. We also have a concern whether this would create a joint liability where none currently exists.

{Tape: 1; Side: B; Approx. Time Count: 10:59 am; Comments: N/A.}

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked the sponsor, **SEN. CHARLES SWYSGOOD** if the Senator would have any objection inserting after the word similar "loan advanced access"? **SEN. SWYSGOOD** replied that his understanding of the testimony was that most of those cards are issued by agencies for an ATM card and they would have a checking account to draw against and in that case, those people should not be penalized under this bill. He would not have any objection to inserting those words.

SEN. DEBBIE SHEA asked **SEN. SWYSGOOD** what would this do to a minor's credit if they are not held responsible for this debt. Would they then have a credit report that would follow them through their life? **SEN. SWYSGOOD** answered that if they are not

responsible for this debt there would seem to be no cause for a bad credit rating.

SEN. SHEA asked **Mr. Griffin** if he truly felt there was a problem in checking on the age. **Mr. Griffin** replied that in many cases the age is not even filled out on the application. Some people just do not like to disclose their age. So if everything else on the application works, a credit card is issued. If they have a job and a credit history, there is no reason not to issue a card.

SEN. SHEA continued with a question asking if the social security number is requested on the application. **Mr. Griffin** said that he was sure the social security number is requested, home address, things like that. **SEN. SHEA** then stated that there should be ways of validating that age. **Mr. Griffin** said that he did not know how the computer checks go. People, he felt, could misrepresent their age.

SEN. CASEY EMERSON asked **Mr. Griffin** what happens when a minor comes in with a credit card and legally buys a used car for \$800 and drives it for six months and decides he does not want the car anymore. And this he can do under the law as it is now written as I understand it. Who takes the loss on this car? Does the credit card company or do they come back on the auto dealer who sold the car. **Mr. Griffin** answered that he imagined that the credit card company would take the loss.

SEN. BEA MCCARTHY said that it was her understanding that an incoming freshman can charge their total tuition on a credit card. If this is the case, **SEN. SWYSGOOD**, we are talking about a loss and since there is nothing to repossess, who takes the hit on the loss? **SEN. SWYSGOOD** replied that under this bill it would be the issuer of the card.

SEN. WILLIAM CRISMORE asked **Mr. Bennett** if a student who was 17 years old and went to college and paid the tuition with their credit card and then said sorry I don't have any money, without this bill would they not be held responsible for this debt? **Mr. Bennett** answered that under the present law, if a minor has borrowed money, then in order to rescind the contract they would have to restore the loan.

{Tape: 1; Side: B; Approx. Time Count: 11:09 am; Comments: N/A.}

Closing by Sponsor:

SEN. SWYSGOOD closed by saying: I understand the concern that the folks who oppose this bill have. I also understand the concern that what **SEN. CRISMORE** just brought up to **Mr. Bennett** that loan has to be repaid to get it off the books is right now under current law. I don't have a problem with that. If someone enters into a debt they should be responsible for that debt. What I have a problem with is the solicitation of unknowing individuals who at a time in life are less than responsible for a lot of pressures and things that happen. It is too easy to take

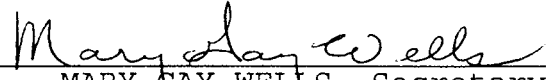
these cards and go out and charge without having the funds to repay the debt. We need to protect our minors in this state and I don't think there is a problem at all with interstate commerce. We just want parents or guardians to give their consent for a minor to receive a credit card. This may put a burden on the issuing companies and could reduce the number of solicitations, but that is what we have to weigh in our minds. Thank you for a good hearing.

ADJOURNMENT

Adjournment: 11:14 A.M.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW