

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on February 6, 1997, at 8:00 A.M., in Senate Judiciary Room, 325.

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 279, 2/4/97
SB 215, 1/27/97
SB 227, 1/27/97

Executive Action: SB 247, SB 212, HB 135, SB 232

EXECUTIVE ACTION ON SB 247

Motion: SEN. RIC HOLDEN MOVED SB 247 BE TABLED.

Discussion: SEN. HOLDEN commented that in our system of justice you are innocent until proven guilty. This bill would say that you are guilty until you can prove yourself innocent. This bill also interlocks the criminal aspects of our judicial system with the civil aspects of our judicial system.

SEN. LORENTS GROSFIELD disagreed. We have absolute liability in our statutes. The problem is that there are a lot of instances of property damage, especially dealing with livestock in which

there is not much hope of getting anything accomplished. The current system is not working.

CHAIRMAN CRIPPEN had a problem with the fact that under this bill a civil wrong becomes a criminal wrong. The county attorney becomes the legal representative of a landowner for a civil case. Although an insurance company will not pay until it becomes a criminal act, they would still have exclusions for criminal acts in the policy. He feels that the landowner or the person who committed the act could buy appropriate insurance. We are going too far by making this an absolute liability. The landowner could be held liable for full restitution of the market value of the property which is damaged or destroyed and could be convicted and receive a fine of up to \$500. What is full restitution for market value?

SEN. AL BISHOP stated that in 1977 through 1981 he was Fish and Game Commissioner, representing District 5. There were reports of hunters shooting animals. He had the wardens investigate every one. In four years there was not one verifiable animal that was shot.

SEN. REINY JABS commented that 90% of the people would say that they shot the cow or damaged the property and that either they or their insurance company would take care of it. There are always a few who will not follow through.

SEN. SHARON ESTRADA asked what recourse the individual had? If an individual comes onto your property and damages your property they should be liable. Why should the individual have to go to his insurance company?

CHAIRMAN CRIPPEN replied that it is not a question of liability. This bill would make that liability absolute and there would no defense to it. When you shoot a horse by mistake, there is no criminal purpose involved. We are taking a civil liability and turning it into criminal liability which is an absolute criminal liability.

SEN. ESTRADA asked what the guy was shooting at? He shot directly at the horse.

CHAIRMAN CRIPPEN stated he thought it was an elk. He was not shooting at the horse because it was horse.

SEN. HOLDEN explained that a rancher has several ways to recover when his animal is shot. If he belongs to the Montana State Block Management Program, which is administered by the fish and game, they have a fund which pays ranchers if an animal is killed during a hunting accident. Another way is if the individual who shot the animal does not have an insurance policy, the rancher can file an action in small claims court for the killing of his animal. Typically the person's homeowner policy would cover under the liability coverage. That will protect you for any

liability for an act you committed. In this case, there were people who didn't understand what it took to file the insurance claim. It would be bad policy for the legislature to take one isolated case and enact legislation when the system already runs quite well.

Vote: The MOTION CARRIED with SEN. JABS, ESTRADA and GROSFIELD voting no.

EXECUTIVE ACTION ON SB 212

{Tape: 1; Side: a; Approx. Time Count: 8:33; Comments: .}

Amendments: sb021201.avl - EXHIBIT 1

Motion: SEN. MIKE HALLIGAN MOVED TO AMEND SB 212.

Discussion: SEN. HALLIGAN explained that the amendment addressed the language at the bottom of page 1 after the word "a" on line 30 "that a defendant is liable" would be stricken. This would require a jury verdict to be unanimous for punitive damages as to liability and the amount. This would make it consistent with federal law. This is the amendment **Rus Hill** asked for and that **John Alke** indicated would make the bill consistent with federal jury verdict practice with respect to punitive damages.

SEN. HOLDEN stated that the language would then read "a jury verdict determining a claim for punitive damages."

Mr. Alke stated he understood what SEN. HALLIGAN proposed. He stated that when they testified they assumed the purpose of the bill was to use the federal standard of unanimous jury verdict symmetrical for punitives. That may not have been the intent of the bill. SEN. WALTER MCNUTT may want an asymmetrical standard requiring unanimity at one end. The amendment makes it clear that what is intended is a symmetrical unanimity requirement. The argument of the plaintiffs was that the original bill attempted to impose a unanimity requirement only on a finding of liability and that it did not require a unanimity requirement for a finding of no liability. The amendment attempts to clarify that it is a unanimity requirement both that there is liability for punitive damages or that there is not. It would also have to be unanimous on the amount. In state court on any civil matter when the jury is asked to render a verdict, there must be at least eight members agreeing on the verdict. In federal court there is a unanimity requirement.

CHAIRMAN CRIPPEN asked if there would be a hung jury under a punitive verdict?

Mr. Alke did not believe there would ever be a hung jury in a civil case. In a criminal case, the defendant is either guilty or not. In a civil case the jury gets to negotiate the verdict from top to bottom. There are jurors who have found the

defendant liable and award one dollar. In theory you can have a hung civil jury. In a punitive damages case, they have already voted for actual liability and voted to award damages. For a hung jury, the jury would have to say they had already voted for liability and they already voted to award actual damages and then they would have to throw that whole verdict out and say they could not agree to anything. He says that does not happen in the federal system where there is a unanimity requirement.

SEN. HOLDEN asked **Greg Van Horssen** if he was familiar with the amendment.

Mr. Van Horssen commented that he was aware in concept that an amendment was being prepared but he had not seen the amendment. He felt that (6) as amended appeared to require a unanimous decision by the jury as to whether punitives will be awarded or a unanimous decision by the jury as to whether punitives will not be awarded and the amount. His concern is precisely what would happen if the jury can't agree one way or the other as to liability. What happens to the case at that point in time? In the criminal sphere, unanimous is required to exact the punishment. Unanimous is not required to not exact the punishment. He has a concern that this amendment may be construed to require a unanimous verdict for not awarding punitives.

SEN. MCNUTT stated that the intent of the bill was that if someone was being held liable for punitives there would be a unanimous verdict by the jury. It becomes confusing when language is interjected which states there has to be a unanimous decision not to award punitives.

CHAIRMAN CRIPPEN clarified that without the amendment there would have to be a unanimous verdict to award the damages. How about the amount of damages?

SEN. MCNUTT stated that would be the same principle.

CHAIRMAN CRIPPEN questioned if the verdict was 8/4 against punitive damages, would that then be sufficient?

SEN. SUE BARTLETT asked **SEN. MCNUTT** if his intent in this bill was to establish a higher standard for determining that punitive damages are owed and what the amount would be and a lower standard for determining that punitive damages are not owed? The way the bill was written, in order for a plaintiff to receive punitive damages in a trial, the jury of 12 people would have to agree unanimously that punitive damages should be paid and all 12 would also have to agree that the amount of punitive damages should be "X" amount. The amendment would make it a requirement that a defendant would not receive punitive damages only if there is a unanimous verdict.

SEN. MCNUTT answered that his intent was unanimity in both the fact that punitives would be awarded as well as an unanimous decision in the amount.

SEN. BARTLETT asked what his intent was in relation to a jury finding that punitive damages should not be awarded?

SEN. MCNUTT assumed that if an unanimous decision could not be reached that spoke to the issue that there would not be punitives.

SEN. STEVE DOHERTY stated that the arguments for making this the same as the federal standard are premised on the notion of symmetry as well as the notion that what is good for the goose is also good for the gander. It is a fundamental question of fairness. Having a double standard and a different standard both ways would violate equal protection and due process and would make this bill and the requirement for a unanimous jury verdict one way to award damages but not require an unanimous verdict to not award damages. This is fundamentally flawed because of the unfairness to both sides. This would be giving one party a major leg up as opposed to the equal playing field. The amendment would cut both ways.

SEN. GROSFIELD disagreed. In the criminal system it is 12/0. If it is 11/1, there is no conviction. Why is that not a double standard under the same scenario?

SEN. DOHERTY explained that as we are just learning in the O. J. Simpson case, there are different standards of proof. There are different evidentiary issues. It involves civil versus criminal. The civil law system is fundamentally different from the criminal law system. Punishment in criminal law is based on a deprivation of freedom. In civil law, not only was the person negligent but with the evidentiary standards, malice and fraud have been shown in that negligence. That is the reason for punishing civilly, not criminally.

CHAIRMAN CRIPPEN stated that under present law it would be 8/4 as to punitive damages and amount. This would be the same standard as for compensatory damages. Under the federal law it is unanimous in both areas.

Mr. Alke commented that the jury verdict in federal court must be unanimous on both.

CHAIRMAN CRIPPEN further explained that with the amendment the same jury would be unanimous for punitive and the amount of punitives. That would go along with punitive damages being designed for penalty and have nothing to do with making the plaintiff whole. Why wouldn't it be appropriate to make it unanimous all the way around?

Mr. Alke stated that when they testified in support of the bill, they assumed the bill was simply attempting to apply the federal unanimous verdict requirement to the state court finding of punitive damages. They polled their members after the hearing and explained that the intent of the bill was a much more rigorous standard. The vote of his board was that they would support the bill with the proposed amendment.

SEN. GROSFIELD asked if there would be equal protection problems with the bill without the amendment?

Mr. Alke felt the plaintiff's bar would argue that it was. He believes that the plaintiffs bar would argue that this bill as originally written was unconstitutional. He would not predict what the outcome of that would be.

Vote: The MOTION FAILED on a five to five vote.

Motion: SEN. MCNUTT MOVED SB 212 DO PASS.

Discussion:

SEN. BARTLETT stated that it was fundamentally unfair to set one standard for one verdict and a different standard for a different verdict. The jury size in federal court is six people. Even without this bill, punitive damage awards would require eight people in state court because the jury is larger. Without this bill, we have a higher standard than the federal government approach to civil trials and punitive damages.

SEN. DOHERTY reiterated that eight is two more than six.

{Tape: 1; Side: b; Approx. Time Count: 8:50; Comments: .}

When the federal system went from twelve to six, they decided there would have to be unanimity on those six individuals for fairness. The prior federal system did not require unanimous verdicts. When you reduce the number of individuals on the jury, you reduce the number of our peers who are supposed to judge these matters. That was the tradeoff. The issue of jury size needs to be flushed out a little more. We have the practitioners from the plaintiffs bar and the defense bar being opposed by one insurance company. In this case we ought to listen to the folks who try the cases. The bill is now unfair.

SEN. HOLDEN stated that punitive damages are not covered by insurance policies. They are specifically excluded. This is a small business issue.

SEN. DOHERTY rebutted that if a policy limits demand is made and the insurance company does not pay, the insurance company can then be on the hook if the award is above the policy limits. If an insurance company has the ability to settle at policy limits

and they don't, that would make them very interested in this bill. If they don't have a dog in the fight, why are they here?

SEN. HALLIGAN commented that a few minutes ago they tabled a bill because it was unfair. This amendment would simply level the playing field. When excellent attorneys, who are on opposing sides all the time say that this amendment is needed for balance, we should take that into consideration.

SEN. ESTRADA said she could no longer support the bill because this is a fairness issue.

SEN. MCNUTT said his interest in this bill was as a businessman and not a lawyer. If punitives were to be awarded, the purpose of this bill would be to make that an unanimous decision, not a majority. He will bow to the legal people, but it is really difficult to stay abreast with this when you are trying to run a business.

Vote: The MOTION FAILED on roll call vote.

Amendments: sb021201.avl - EXHIBIT 1

Motion: SEN. HALLIGAN MOVED THAT THE COMMITTEE RECONSIDER THEIR ACTION IN NOT ADOPTING THE AMENDMENT. sb021201.avl

Discussion: SEN. MCNUTT stated that in interest of salvaging the bill, he would be in favor of the amendment. If the amendment makes this a fair issue, he is in favor of the amendment.

Vote: The MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. HALLIGAN MOVED SB 212 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 135

{Tape: 1; Side: b; Approx. Time Count: 9:14; Comments: .}

Amendments: hb013502.avl - EXHIBIT 2

Discussion:

Ms. Lane explained that in addition to hb013502.avl, the title should have been amended by the House when they adopted the House amendments. They didn't. She recommended that this committee amend the title to conform to the House amendments as well.

Motion: SEN. HOLDEN MOVED TO AMEND HB 135.

Discussion: SEN. GROSFIELD liked the amendments. The Board of Pardons is the one with the expertise to handle the review. The purpose of this bill as passed last session was to provide a

mechanism to save money. It is not working as is. This amendment will take care of that problem.

Vote: The MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. JABS MOVED HB 135 BE CONCURRED IN AS AMENDED.
The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 232

{Tape: 1; Side: b; Approx. Time Count: 9:20; Comments: .}

Motion: SEN. CRIPPEN MOVED SB 232 DO PASS.

Discussion:

SEN. CRIPPEN commented that SB 232 would modify the statute of limitations for civil actions to recover damages arising out of the practice of public accounting. He was surprised that the Montana Trial Lawyers Association supported the bill. His main concern was whether this covered the situation wherein there would be an audit by the IRS for anything but fraud. The client would have one year after the audit to bring the action.

SEN. HOLDEN felt that the one year statute of limitation should have been three years like the rest of the statutes of limitations.

SEN. CRIPPEN explained that there were three standards. The first one sets forth the statute of limitation. The action can be based no later than (1) the date that the act was or should have been discovered, (2) three years after completion of the service that is the basis of the action, or (3) three years after the date of the initial issuance of the accountant's report on the financial statements. Three years would cover an audit from the IRS.

SEN. HOLDEN questioned line 15 where it talked about three years after the completion of service. It appeared to him that line 13 would never be implemented because if you referred back to line 15 that would establish the top end of your statute of limitations.

Ms. Lane stated that subsections (1)(a) and (b) are in the alternative. Line 15 has an "or" making them alternatives. You would have to find one, but not all. If you could prove that the one year had passed and they should have discovered the negligence, that could knock out an action under (3).

SEN. DOHERTY recalled the trial lawyers saying they were in favor of definite standards as far as statutes of limitations. The bill as proposed creates accountants as a special class. If actions for legal malpractice were amended to one year, he could support this bill. Acts for medical malpractice have a three

year limitation as do actions for legal malpractice. Acts for legal malpractice have a three year limitation from the date of omission or when you should have found it and in no case no longer than ten years. Their arguments could apply to attorneys as well.

SEN. GROSFIELD asked if accountants currently have a statute of limitations?

SEN. DOHERTY stated there is no specific statute for accountants. It would be covered in general torts, which is three years. The problem is when the act or omission happened but the person is not aware of the action until later.

SEN. GROSFIELD felt that three years is a short time. The three year limitation was a problem in the water adjudication process because the deadline came and the attorneys are now off the hook. You may not discover an error until the next year's taxes are in.

Motion: **SEN. HOLDEN** MOVED TO AMEND SB 232.

Discussion:

SEN. HOLDEN explained that this amendment would be on page 1, line 13, one year would be changed to three years.

Ms. Lane suggested that an easier way to amend would be on the end of line 12 which states "the recovery damages must be commenced not later than three years." Then on lines 13, 15 and 16 strike "1 year", "3 years" and "3 years". That would make it three years for any of those subsections.

SEN. DOHERTY offered a friendly amendment to include the three years from the date it was discovered or with reasonable diligence you should have found it and then in upper cap "AND IN NO EVENT NO LONGER THAN 10 YEARS."

SEN. HOLDEN wanted to keep the cap at three years from the date on which the services would have been rendered.

SEN. DOHERTY felt that if you knew about the problem and did nothing, three years would be a reasonable cap. If the individual doesn't know that there has been a mistake, a longer cap would help.

SEN. GROSFIELD explained that line 15 establishes a cap of three years. In order to establish a longer cap it would have to read three years on line 13 and 10 years on line 15.

SEN. HOLDEN said he would not have a problem with gearing it for three years and then have the cap the way it is handled in current statutes for other professional industries.

Ms. Lane felt that SEN. DOHERTY wanted the 10 year cap to go in on (a) but that SEN. HOLDEN and GROSFIELD suggested that it apply across the board.

SEN. DOHERTY explained he wanted it to be as SEN. GROSFIELD suggested which he understood as a three year cap from the date of the occurrence or with the exercise of reasonable diligence you should have known about, but in no case longer than 10 years.

SEN. HOLDEN felt it should state three years from the date of service and with current statutes it would be capped at 10.

Ms. Lane suggested that the three years applied to all three subsections but that the 10 year cap apply to (a) and be written into the end of (a) because that would be the equivalent of the legal malpractice statute of limitations which were being looked at by committee members.

CHAIRMAN CRIPPEN asked that the committee pass consideration on this bill.

HEARING ON SB 279

{Tape: 2; Side: a; Approx. Time Count: 9:39; Comments: .}

Sponsor: SEN. BRUCE CRIPPEN, SD 10, Billings

Proponents: Derek Birnie, Montana People's Action
Rebecca Dorobis, Montana People's Action
Bernard Jay, Montana People's Action
Louis E. Bunge, Montana's People Action
Kelly Polington
Vickie Bagley, Montana People's Action
Persey Jones
Don Killian

Opponents: Howard Horton
Greg Van Horssen, Montana Housing Providers
Rhonda Carpenter, Montana Housing Providers
George Lewis
Jan Rehberg, Oakland Companies
Martin Behner
Robert Dunlop

Opening Statement by Sponsor:

SEN. CRIPPEN, SD 10, Billings, introduced SB 279. This is one of a series of bills which deals with landlord/tenant relationships in mobile home parks. This is the third session where this issue has been before us. Housing is difficult to come by and more and more people are living in mobile homes. We have a situation where we have more mobile homes in the same amount of parks and this has caused problems. This bill would allow that a landlord could terminate a rental agreement if two or more violations of

the same rule occurred within a twelve month period. Section 70-24-436 should be read in conjunction with 70-24-422 which are all part of the Residential Landlord and Tenant Act of 1977. The two set forth the rights and obligations and duties in this relationship. Section 70-24-436 deals specifically with mobile home parks. Lines 28 and 29 would eliminate the provision of providing grounds for termination of a rental agreement where two or more violations occurred within a 12 month period for the same rule.

Proponents' Testimony:

{Tape: 2; Side: a; Approx. Time Count: 9:44; Comments: .}

Derek Birnie, Montana People's Action, testified in support of SB 279 for two reasons. They want to stop evictions on the basis of petty rules. The other reason is to stop the consistent threat of eviction. In 1993, the bill which was passed was to make sure that no eviction took place without reasonable cause. What has happened is a proliferation of rules in mobile home parks. In a park in Bozeman, there are 117 individual rules in their rule book. They are not talking about all landlords, but they need legal protection from the few who use their power in an abusive way. If landlords are pursuing eviction against people who are breaking the same rule twice, and that violation has a significant adverse impact on the park, they could still pursue that eviction under other clauses of the law.

Rebecca Dorobis, Montana People's Action, rose in support of all three bills being heard today. They are the people who keep the cities that you live in running. We are certified nurses aides, retired police officers and small business owners. Mobile homes account for 79% of all new residential housing units in Montana from 1980 to 1990. In some counties, 20 to 30% of the residents live in mobile homes. They pay almost a million dollars in personal property taxes in Missoula and Yellowstone Counties every year and approximately \$15 to \$20 million per year in personal property taxes across the state. They are tired of being treated like children by their landlords.

Bernard Jay, Montana People's Action, stated he lives in West View Park in Missoula. In the court he lives in, residents are routinely written up for notices of rule violations. Sometimes the notices are related to court written rules, sometimes they are not. People have been written up because the color they painted their sheds does not match the color they painted their house. They have been written up for leaving their children's toys in the yard. One woman left her refrigerator on her porch for 24 hours while she was installing her new refrigerator. A 71 year old woman was told to paint her fence. She did so and one month later the fence was removed. He was written up for having leaves in his yard in October and November. He cleaned them up but the leaves were still falling. Under current Montana law these rule violations can be the basis for eviction. Park owners

have a strong incentive to evict people because they can charge a mobile home dealer a bonus fee, sometimes in the thousands of dollars, in order to guarantee that dealer a space. Owners have the right to make fair and reasonable rules and such rules would work to the residents' advantage as well as theirs. They should not be forced to move their homes because they fail to rake the leaves and mow the lawn. Residents who repeatedly violate rules should be evicted if those rules have a deterrent effect on their neighbors and the court.

Louis E. Bunge, Montana's People Action, spoke in favor of SB 279. He lives in a fifteen unit court. He owns a small business. There are no written rules except one which has been signed by a couple of the recent residents. The state law requires mobile home court owners to keep the roads passable and safe in the winter. An elderly couple had to leave their car at the bottom of an incline because the car would not negotiate the ice and walked 600 feet to their home pushing their groceries in his wheelchair. He wrote the court owner a letter about this situation. He also informed him that that same day three people had slipped and fallen. Residents can be evicted for frivolous rules while the court owners can do very little and still collect the monies from the court residents. If the owners can evict us for any rule, they can single out those residents who have the ability to stand up to them. The solution is to have written rules.

Kelly Polington lives in a 212 unit mobile home court in Bozeman. Last summer a number of people were given citations for brown lawns. She works two jobs and cannot water her lawn all the time. She is for realistic rules. If she stacked her wood in the wrong place twice, she could be evicted. There are no spaces to move into in Bozeman.

Vickie Bagley, Montana People's Action, presented her written testimony in support of SB 279, **EXHIBIT 3**. If there is paper debris in a yard following a windstorm and the resident cannot pick it up before going to work, they are written up for a violation. She received a notice to repair and paint her porch. She did so. She then received a violation notice in the mail that now it needed to be a 10 x 10 deck. She lives paycheck to paycheck and cannot afford to build a porch. She has seen people abandon their homes after thirteen years because they do not know who to go to for help. They cannot afford to hire an attorney.

Persey Jones spoke in favor of SB 279. They were told to move their vehicles by 8:00 a.m. when there was heavy snowfall. If the vehicles were not moved, they would tow the vehicles. A trailer space is defined in state law as the place designed for the placement of a single trailer and is for the exclusive use of its occupants. Their rental agreement states that each mobile home owner is assigned two parking spaces exclusively for parking the mobile home owner's licensed and registered automobiles. State law maintains that it is unreasonable to expect employed

tenants who might be at work in the mornings to move their vehicles out of their spaces by 8:00 a.m. The law requires a 24 hour notice from the landlord prior to entering the trailer space. He advised the landlord of state laws. There has been no response from his landlord.

Don Killian stated he owned his own trailer in Bozeman. There needs to be a compromise between the rights of the property owners and the landlord.

Opponents' Testimony:

{Tape: 2; Side: a; Approx. Time Count: 10:15; Comments: .}

Howard Horton commented that none of his tenants were at this hearing. There are many people from Montana's People Action, a group of 4000 members who have \$20 dues per year. This gives them \$80,000 to work with. Existing laws can take care of their problems. His tenants have had some problems. There was a drinking and stabbing incident in his park. It took over six months to evict these tenants and it was also very expensive. One of his tenants married a man who brought in five motorcycles and three pickups. The lot was strewn with second hand furniture. The man built on three additions to his trailer. He gave them six months to move. Eventually they did not pay the rent and he was able to evict. The JP was able to move the trailer but they continued to live in the additions and a camper. It has been a year since he started eviction proceedings. A camper and two motorcycles are still setting there. His tenants deserve better. There have been three fires caused by code violations on trailers.

Greg Van Horssen, Montana Housing Providers, rose in opposition to SB 279. The passage of this bill will have an adverse impact on those who live in mobile home parks. This bill deletes subsection (e) of 70-24-436. Life in a mobile home park is life in close quarters. Section 70-24-436 recognizes three separate and distinct rules. Subsection (c) recognizes those rules, violation of which would pose an immediate threat to health and safety. Section (d) recognizes those rules, violation of which would have a significant adverse impact on life in the mobile home park. Section (e), the section to be deleted, simply references all other rules. This leaves no remedy for an entire set of rules which may be necessary to guarantee peaceful living in the park. He asked the committee to consider the provision of 70-24-311 which clearly states that the landlord may enforce rules only if (1) they promote convenience, safety or welfare of the occupants, (2) they are reasonably related to the purpose for which they are adopted, (3) they apply to all occupants of the park in the same manner, and (4) they are explicit enough to be fairly understood and provide notice to the residents. Section 70-24-313 provides that for rules to be enforceable, they must be reasonable and applied uniformly. The law provides for prohibition against retaliation by landlords at 70-24-431. SB

279 deletes all remedies available for a certain class of rules. There are provisions in the law that for violations of the landlord/tenant act attorneys fees may be awarded.

Rhonda Carpenter, Montana Housing Providers, rose in opposition to SB 279. Business owners do not chase away good customers. This bill will lower the standards of living in mobile home parks. There will be a small percentage of people who violate rules. They will bring in uncontrolled animals, vehicles they are working on, numerous lean-to sheds, lawns will be uncared for, additions will be built without any consideration for code or they will be started and not finished. Current law exists to solve the problems which were brought here today. There are over 1100 mobile home parks in the state of Montana. The average mobile home park has 18.2 spaces.

{Tape: 2; Side: b; Approx. Time Count: 10:29; Comments: .}

George Lewis spoke in opposition to SB 279. He has owned a mobile home park for four years. There is no shortage of spaces in Missoula. He has had over 25 empty spaces for two years. Without proper rule enforcement, he could not have brought this park up to family park standards.

Jan Rehberg, Oakland Companies, appeared in opposition to SB 279. This bill eliminates one of the tools which the landlords have to protect the courts for their tenants and to protect their own private property interests. Developing courts is a costly and long term investment. Each restriction put on will make it more likely that the competition will be decreased which is the real solution for these problems. There are remedies in the statute for the problems which exist.

Martin Behner stated his opposition to SB 279.

Robert Dunlop stated that he purchased the worst trailer park in the Helena Valley six years ago. There are close living quarters in trailer parks. The reason for more rules has come about as a result of 1993 legislation. Zoning commissions do not want trailer parks. There are reasons for rules.

Questions From Committee Members and Responses:

{Tape: 2; Side: b; Approx. Time Count: 10:38; Comments: .}

SEN. BARTLETT, referring to (d), which would remain in the bill, asked what kind of rules would not be designated as having a significant adverse impact and thus fall under (e)?

Mr. Van Horssen answered that these rules would affect the aesthetics of the park. This would involve raking leaves, mowing the lawn, etc. When the legislature put three distinct sections in the law, it recognized that there are certain rules which may

not have an adverse impact, but are still necessary for peaceful enjoyment of the community setting.

SEN. BARTLETT commented that his answer meant that those rules would not have a significant adverse impact.

Mr. Van Horssen replied that those types of rules, although necessary for aesthetics, may not have an adverse effect on the community.

SEN. GROSFIELD asked if there is a time frame for adoption of rules?

Mr. Van Horssen explained that under the statute the promulgation of a rule and its implementation are at the discretion of the person who owns the mobile home park. He would advise that person to take a close look at 70-24-311 and make sure the rules are reasonable and that they apply to all of the occupants equally. Notice must be given for rules. That is addressed in (3) of 70-24-311 indicating that 30 days written notice must be given.

SEN. GROSFIELD asked how often rules could be changed or added?

Ken Manning, mobile court owner in Kalispell, commented that rules at his court are made up one year at a time. When he changes a rule, he gives at least 30 days notice before the rule goes into effect.

SEN. GROSFIELD questioned whether each of the 1100 courts in the state had their own rules? Was there any consistency regarding these rules?

Mr. Birney explained that each court has its own set of rules. Some courts are managed by property management companies and in those case the rules are consistent from court to court. If a new set of rules is promulgated in one court and opposition from the tenants is not too strong, the same rule will show up in other courts.

Jim Fleshman, Montana People's Action, explained that state law requires that people be given 30 days advanced notice on new rules. An owner drafts the rules, distributes them to all the residents and tells them that the rules will be going into effect in 30 days. If tenants do not sign and return the rules within 30 days, they are cited for a rule violation for a failure to return the new rules.

Closing by Sponsor:

{Tape: 2; Side: b; Approx. Time Count: 10:50; Comments: .}

SEN. CRIPPEN closed in advance on SB 279.

HEARING ON SB 215

Sponsor: SEN. DOROTHY ECK, SD 15, Bozeman,

Proponents: Derek Birnie, Montana People's Action
Trish Flynn, Montana People's Action
Kevin Flynn, Montana People's Action
Bee Gantert, Montana People's Action
Elvin Ness
William Spilker, Montana Assoc. of Realtors
Mary Bouchard
Andy Gardner, Montana People's Action

Opponents: Greg Van Horssen, Montana Housing Providers
Rhonda Carpenter, Montana Housing Providers
Ken Manning
Janice Rehberg, Oakland Companies
Brian Givett
Jeanine Williams, Manager of Casa Village Mobile
Home Park
Sandy Isabel
Howard Horton

Opening Statement by Sponsor:

SEN. DOROTHY ECK, SD 15, Bozeman, introduced SB 215 which clarifies the rights of mobile home owners to sell their mobile homes. Affordable housing is a difficult issue. Oftentimes the first home is a mobile home. This bill requires that a mobile home court have rules and these rules include some criteria for selling a home. People have been able to sell their mobile home, but the mobile home court owner would not allow that person to buy in the court.

Proponents' Testimony:

{Tape: 2; Side: b; Approx. Time Count: 10:57; Comments: .}

Derek Birnie, Montana People's Action, spoke in favor of SB 215. This bill establishes a right of a mobile home court resident, who owns the home and rents the lot, to sell the home in the lot and allow it to stay. The landlord can then evaluate the new tenant for whether or not that tenant will be an acceptable resident of the lot. It allows the landlord to deny tenancy: (1) if the landlord has criteria for tenancy in writing, (2) if the criteria is readily available and the manager is readily available if an interview is required, and (3) if the criteria is

reasonable, uniform and does not violate any laws. This application must be approved or denied within 14 days. If there is a denial, it must be put in writing upon request of the new tenant. Information and criteria requested for the application must be reasonable and necessary. This could include the purchase price, payments, and the credit worthiness of the buyer. They may not inquire as to the relationship between the seller and the person brokering the home for them.

Trish Flynn, Montana People's Action, commented that they have had struggles with various issues with their landlord. If they could sell their home in place, it is valued at \$8,000 to \$10,000. They plan to use this for their down payment on a stick house. If they have to move it, it will have very little value. Hard working Montanans who are trying to get ahead, should not lose their equity.

Kevin Flynn, Montana People's Action, commented that enforcement of rules depends on personal relationships. The same rules need to be enforced for everyone.

Bee Gantert, Montana People's Action, stated that 120,000 residents of Montana live in mobile home parks. Ninety percent of people over 70 years old own their own mobile homes but only half rent the space that they are located on. They have seen two or three rent increases per year and decreasing services.

Elvin Ness stated he has lived in the same mobile home park for 10 years. His father-in-law decided to sell his mobile home to pay for his medical expenses. He talked to the manager of the park and was told that the trailer had to be updated if it were to remain on the premises. The price of upgrading was \$3,100. It had just been painted and the yard was immaculate. Management would not bend at all. They had to reduce the price by \$3,000 to sell it.

{Tape: 3; Side: a; Approx. Time Count: 11:12; Comments: .}

William Spilker, Montana Association of Realtors, spoke in support of the bill. Park owners should not be able to deny the sale of a mobile home. There have been cases where the park owner becomes the only buyer unless the mobile home is moved. They have a problem with the bill on page 2, lines 18 and 19, where it states that the park owner gives the prospective borrower denied tenancy, a written explanation of the denial within three days of receiving a written request for that explanation. That imposes an unknown liability on a park owner. You should be able to chose who you want to do business with when selling or renting property. He asked **SEN. ECK** to work with them on amendments.

Mary Bouchard spoke in favor of the bill. They needed a larger home. They asked the mobile home park owner if they could improve their home on the site. That was not allowed. They

decided to buy a new mobile home and trade in their old mobile home. They were not allowed to do so. The mobile home park they are in sells their own mobile homes. People should be able to sell their mobile home on the lot if it is in good repair.

Andy Gardner, Montana People's Action, rose in support of SB 215. He presented his written testimony, **EXHIBIT 4**.

Opponents' Testimony:

{Tape: 3; Side: a; Approx. Time Count: 11:22; Comments: .}

Greg Van Horssen, Montana Housing Providers, rose in opposition to SB 215. He represents business owners who provide space in mobile home parks. This bill applies to anyone who has two or more mobile homes on their property. Section 3 strips the park owner of the right to determine which homes are placed on his or her property and which remain. It then sets a cap on the amount the park owner can charge to process a tenancy application. For those park owners who are licensed dealers, Section 3 limits that portion of his business by prohibiting the owner from offering any incentives to use his or her brokering services. Section 4 takes from the owner the discretion to choose who will occupy their property. Park owners may have to choose to deny tenancy and that decision should be left to the owner.

Rhonda Carpenter, Montana Housing Providers, disagreed with the solution this bill suggests. There are existing legal avenues to address the problems. At the bottom of page 1, this bill asks the businessman who makes his living as a licensed manufactured home dealer in operating his park, to not give preferential treatment to his customers.

Page 2, (3) on line 8 requires that they be available at all reasonable times but does not define reasonable times. Most real estate agents will tell you that they make most of their sales on weekends and evenings. The Montana Department of Public Health already says when mobile home park owners must be on site and how they are to be available in case of emergencies. This would expand that to the point that by investing in a mobile home park you will never be able to take a weekend off.

Page 2, line 18 and 19, is their most serious concern. When a tenant comes to buy a mobile home, they list their past landlords as their references. These people have no part in this mobile home park deal. They are not the listing agent. They are not renting to the mobile home tenant. They have no ability for the mobile home owner to make them accept this tenant or not. If they give a reference and there is a possibility that they are misquoted or that they do not have court proof to back up, they fear the need of legal representation.

Ken Manning presented a list of letters to the committee, **EXHIBIT 5**. There are many mobile home parks which are mom and pop

operations. They have sold mobile homes for their tenants as a service. They do not charge a fee.

Janice Rehberg, Oakland Companies, rose in opposition to SB 215. They have concerns with page 2, lines 18 and 19. The door is opened for potential litigation involving defamation claims. There are many legitimate reasons why people may not want to lease property to a prospective tenant. Those are business judgments. Would we want to require a tenant to provide a list of criteria as to on what terms they could leave the mobile home park? We are doing that for the mobile home park owner?

Brian Givett submitted letters to the committee, **EXHIBIT 5 & 7**.

Jeanine Williams, Manager of Casa Village Mobile Home Park, submitted letters to the committee **EXHIBIT 6**.

Sandy Isabel stated that a tenant can walk away from your court and leave you with a mess. The owner is left with the entire expense. They do sell trailers at their court. If the trailer is well kept, there is no problem with that.

Howard Horton commented that we should preserve the ma and pa operations in Montana.

Questions From Committee Members and Responses:

{Tape: 3; Side: a; Approx. Time Count: 11:40; Comments: .}

SEN. GROSFIELD asked the cost of moving a mobile home.

Mr. Dunlop stated he had one moved for \$200 but they had to skirt and plumb the home. It would probably cost \$1000 to move one.

Closing by Sponsor

{Tape: 3; Side: a; Approx. Time Count: 11:42; Comments: .}

SEN. ECK stated she would be willing to work with Mr. Spilker and anyone on the committee who had problems with page 2, lines 18 and 19. She understands there is a bill coming in which asks for an ombudsman. She feels the tenants are willing to pay for that.

HEARING ON SB 227

Sponsor: SEN. STEVE DOHERTY, SD 24, Great Falls

Proponents: Julia Wirtz
Derek Birney, Montana People's Action
Don Killian
Matt Warner
Andy Gardner

Opponents: Jeffrey Balis, Fidelity Management Services
 William Spilker, Montana Association of Realtors
 Greg Van Horssen, Montana Housing Providers
 Brian Givett
 Jeanine Williams, Casa Village Mobile Home
 Community
 Janice Rehberg, Oakland Companies
 Rhonda Carpenter, Montana Housing Providers
 Dennis Rasmussen
 Vern Fisher
 George Lewis

Opening Statement by Sponsor:

{Tape: 3; Side: a; Approx. Time Count: 11:43; Comments: .}

SEN. STEVE DOHERTY, SD 24, Great Falls, introduced SB 227. There is a need to strive to find a balance between the property rights of the individuals who own the parks and the property rights of the individuals who own the mobile homes. SB 227 is not directed to landlords and tenants in the state of Montana. It is limited to mobile home parks. It is also limited to owners of mobile homes, not renters. SB 227 is an attempt to look at the costs of trying to stay in those spaces. In Great Falls, it costs \$1500 to \$2000 to move a mobile home. Rents have increased two to three times a year by 5-12%. This bill provides that rent on the space may not be increased more than 5% during any 12 month period unless there are improvements, losses, increased costs due to taxes or insurance, or other costs attributable or proportionally attributable to the space that is rented. The problem with mobile homes is that they are not mobile.

Proponents' Testimony:

Julia Wirtz stated she enjoys living in her mobile home park. In December their rent was changed to \$240. There has been a 9% increase per year for the last five years.

Derek Birney, Montana People's Action, stated that rent caps are a very serious problem for members of his organization.

Don Killian stated that one of the reasons that rents increase in parks is because of a change of ownership.

Matt Warner commented that if rents increase at the same rate as they have been going, in seven years he will be on the street.

Andy Gardner spoke in support of SB 227.

Opponents' Testimony:

{Tape: 3; Side: a; Approx. Time Count: 11:55; Comments: .}

Jeffrey Balis, Fidelity Management Services, stated that this is a cyclical business. His vacancies are up and his rent revenues are down 10%. The market will correct itself. If we start fixing prices in one industry, it will affect all people.

William Spilker, Montana Association of Realtors, stated they oppose any kind of government imposition of rent controls.

Greg Van Horssen, Montana Housing Providers, rose in opposition to SB 227. Anytime rents were raised more than 5%, they would have to open their books and prove whether the costs were associated with improvements, insurance, taxes, etc. The method in which someone operates their business is their own business.

Brian Givett submitted letters for the committee, **EXHIBIT 5 & 7**.

Jeanine Williams, Casa Village Mobile Home Community, rose in opposition to SB 227. Rent control of a mobile home community is discriminatory.

Janice Rehberg, Oakland Companies, stated that this bill would cause the most harm to tenants. Developing a mobile home park is like developing a subdivision. It may take two years to fill the lots. There are examples of rent controls in this country. They have not worked out very well. This will destroy the ability to keep and maintain quality housing in this state.

Rhonda Carpenter, Montana Housing Providers, commented that since mobile home parks have been regulated, the number of mobile home park spaces in Montana has dropped by 1600 in the last six years. Adding more regulation will not encourage them to built. She submitted letters to the committee, **EXHIBIT 8**.

Dennis Rasmussen stated that as a mobile home park owner, they charge \$175 which includes sewer and water. In the last fifteen years, taxes have gone up 60 to 70%.

Vern Fisher submitted letters for the committee, **EXHIBIT 7**.

George Lewis rose in opposition to the bill and submitted letters for the committee, **EXHIBIT 9**.

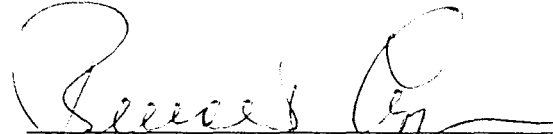
(Tape recorder quit operating at this point.)

Closing by Sponsor:

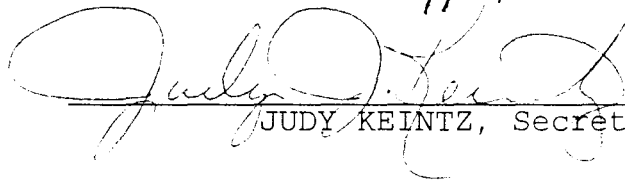
SEN. DOHERTY thanked everyone for attending the hearing. A five percent rent increase would provide for rent stabilization. There are competing interests at work here. People who live in manufactured homes are oftentimes looked down upon. These people have the same rights and interests as anyone else.

ADJOURNMENT

Adjournment: The meeting adjourned at 12:20 p.m.



SEN. BRUCE D. CRIPPEN, Chairman



JUDY KEINTZ, Secretary

BDC/JJK

Note from secretary: Exhibits 5 and 7 consist of 200+ letters which have been organized in file folders. Most letters are handwritten and are on various sizes of paper.