

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 21, 1997, at 8:06 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

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
Jody Bird, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: Sb 382, SB 383, posted
February 18, and SB 385,
posted February 20

Executive Action: SB 374, SB 382, SB 383, SB 385

EXECUTIVE ACTION ON SB 374

Amendments: sb037401a.avl (EXHIBIT #1)

SEN. STEVE DOHERTY asked Mary Ann Wellbank and Amy Pfeifer to explain the amendments. **Amy Pfeifer.** Amendments 1 and 10 were requested by the Department of Fish, Wildlife and Parks; amendment 2 is from DPHHS and makes language compatible to federal language on forms; amendment 3 pertains to new hire reporting penalty for each employee; amendment 4 corrects an omission; amendment 5 provides for an automated data match with financial institutions; amendment 6 pertains to withholding from

retirement systems; amendment 7 addresses SEN. DOHERTY's concerns; amendment 8 corrects a typographical error; amendment 9 is a clarification requested by the Department of Fish, Wildlife, and Parks. (EXHIBITS #a, #b, #c, and #d from Mary Ann Wellbank, DPHHS)

Motion/Vote: SEN. DOHERTY MOVED SB 374 BE AMENDED-sb037401.avl. THE MOTION CARRIED UNANIMOUSLY.

Motion: VICE CHAIRMAN LORENTS GROSFIELD MOVED TO FURTHER AMEND SB 374 - sb37403.avl (EXHIBIT #2).

Discussion: VICE CHAIRMAN GROSFIELD. I understand the need for this bill, but it is the most intrusive bill I've ever seen, and that scares me. I don't see how Congress passed this. I also have several other ideas for amendments that are not on paper yet. These amendments would: amendment 1 lowers the fine to \$3 per employee; 2 addresses an issue similar to 1; and 3 de-earmarks funds to the State General Fund. Regarding amendments 4) and 5) - it is not good public policy for fines to go to specific funds in agencies. On page 16, I would strike lines 21-22, Subsection (b). This is an untenable position to ask an employer to be in. Regarding amendments 6) and 7) - the Department of Public Health and Human Services (DPHHS) wanted liability protection, but I don't believe we need this. In fact they will be more careful if they don't have this protection.

SEN. DOHERTY. If we drop the fines would we be in the same position as we were with the Montana Highway Patrol where it costs more to write a ticket and process it than the fine is? I do agree, however, with the general thrust of the amendment.

VICE CHAIRMAN GROSFIELD. You made a good point. I'm not sure what amount is right, but I don't want to let employers off the hook.

CHAIRMAN BRUCE CRIPPEN. We have several options: pass the bill as it is; kill it; hold it and make a revised bill; or make amendments and send it to the House with a request for an early hearing and a Free Conference Committee.

SEN. MIKE HALLIGAN. Could we get the Department to react immediately after the sponsor of the amendment makes the motion? Mary Ellen Wellbank. Amendments 1 and 2 are okay, amendment 3 pertains to state revenue in excess of the \$400,000 going to the general fund.

SEN. SUE BARTLETT. Has this money been reverting to the general fund? Mary Ellen Wellbank. Not this year, but last year it did. We have no general fund money in our budget now. Amendment 5 is UIFSA - direct income withholding to the employer (a copy was given to SEN. HALLIGAN). Amendments 6 and 7 are required under federal law and could be a problem.

SUBSTITUTE MOTION: CHAIRMAN CRIPPEN MADE A SUBSTITUTE MOTION TO ADOPT AMENDMENTS 1 AND 2 OF sb37403.av1. THE MOTION CARRIED UNANIMOUSLY.

CHAIRMAN CRIPPEN. We will eliminate amendment 3 from the proposed amendments.

MOTION: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENTS 4 AND 5.

SEN. SHARON ESTRADA. I believe it is difficult to collect child support, and I can't support this bill.

VOTE: SEN. GROSFIELD'S MOTION TO ADOPT AMENDMENTS 4 AND 5 CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS MCNUTT AND ESTRADA WHO VOTED NO.

{Tape: 1; Side: A; Approx. Time Count: #29.6,; Comments: 8:35 a.m..}

SEN. BARTLETT. I believe it is unlikely this bill will get a two-thirds vote, and so I prefer not to adopt amendments 3 and 4.

SEN. DOHERTY. I can't believe other personal, proprietary information could be given to the Department and that, if misused, we'll not hold DPHHS liable. I like SEN. GROSFIELD's amendment.

MOTION/VOTE: VICE CHAIRMAN GROSFIELD MOVED THAT AMENDMENTS 6 AND 7 BE ADOPTED. THE MOTION FAILED WITH ALL MEMBERS VOTING NO EXCEPT SENATORS GROSFIELD, BISHOP, HOLDEN, AND DOHERTY WHO VOTED AYE.

HEARING ON SB 385

Sponsor: SEN. BARRY 'SPOOK' STANG, SD 36, St. Regis

Proponents: Chris Person, Paradise

Opponents: None

Opening Statement by Sponsor: SEN. BARRY 'SPOOK' STANG, SD 36, St. Regis. SB 385 deals with father's rights and custody. Section 1, lines 18-19 are the main part of the bill.

Proponents' Testimony: Chris Person, Paradise. (EXHIBIT #3) This bill will eliminate \$700 in legal fees and make the role "volunteer" rather than legally protected, especially when the biological father has no interest in raising his child. This helps families and the child.

Dawn Person, Paradise (EXHIBIT #4). Informed fathers get 30 days longer than a mother to make a legal decision about a child at birth. Child custody and child support are two separate issues.

This would also allow health insurance coverage for the child of a step-father.

Opponents' Testimony: None

Questions From Committee Members and Responses: SEN. RIC

HOLDEN. I am concerned with the language in Section 2 pertaining to birth registration and the exception on page 4. Also, Hank Hudson, DPHHS, is here to answer any technical questions on the bill.

SEN. HALLIGAN. Regarding your language that the mother is entitled to sole custody and the father being given notice, what if the man sends a letter to the mother acknowledging he is the parent? I see tremendous problems with notice here, and for the courts. SEN. STANG. I don't have a problem with clarifying this language. The intent of the bill is that the Courts will give a form to the mother to send to the father to see if he would respond.

SEN. HALLIGAN. On page 2, line 6, even though the father loses parental rights, he must still be liable for child support. SEN. STANG. This language is necessary for child support statutes. Hank Hudson. HB 163 heard in the House Judiciary Committee addresses putative father registry issues and nothing in that bill changes the current situation.

SEN. HOLDEN. Is HB 163 the revision of adoption laws by REP. JOHN JOHNSON? Hank Hudson. It's a revenue bill, so it's not subject to transmittal, and is still being worked on.

Closing by Sponsor: SEN. STANG. I would be happy to make necessary changes to get this bill to the floor as my constituents feel very strongly about this, and it is an issue, especially in low income areas.

HEARING ON SB 382

Sponsor: SEN. JOHN HARP, SD 42, Kalispell

Proponents: Janice Rehberg, Semi-Tool and Crowley law firm
Allan Karell, Crowley Law Firm, Billings for Semi-Tool
John Sullivan, CEO, Semi-Tool
David Dennis, General Counsel for D.A. Davidson and DADGO Companies
John Cadby, Montana Banker's Association
Steve Browning. Pacific North

Opponents: Mark O'Keefe, State Auditor
Russell Hill, Montana Trial Lawyers Association (MTLA)
Paul Stahl, Deputy Lewis and Clark County Attorney

Irene Theurer, American Association of Retired
Persons (AARP)

Dick Pattison, President, Montana Senior Citizens
Association

Gordon Morris, Director, Montana Association of
Counties (MACO)

Opening Statement by Sponsor: SEN. JOHN HARP, SD 42, Kalispell.

In 1995 Congress passed this legislation. The vote was 3 to 1 in favor in the House and 65 percent of the Senate voted for it. Congress was trying to alleviate speculative and frivolous lawsuits against securities companies. This bill would implement the federal act in Montana. It would avert forum-shopping by plaintiffs.

A threshold occurs and protects corporations from the expense of frivolous law suits. This is a concern of the opponents, the MTLA, as the process identifies meaningless cases early in discovery.

Another issue I appreciate in the bill, is that nothing would take away from the enforcement mechanism of the State Auditor's Office. As a matter of record, Montana has domiciled 13 publicly traded companies, and they are concerned about the potential of frivolous litigation. There are protections in the bill for consumers.

Proponents' Testimony: Janice Rehberg, Semi-Tool and Crowley law firm. We did have to make some adjustments from the federal act for Montana, so I have a few amendments which make these corrections. (EXHIBIT #5). I will also have one other amendment.

I believe SEN. HARP reflected the intent accurately. This is not an abnormal procedure. It applies to publicly traded companies and I believe it is more fair to have similar rules in both the State and Federal Courts.

Securities litigation can be very costly and time-consuming. The effort at the federal level began in 1991, and hearings were held for four years. Companies were caught in a 'catch 22' situation and this bill was an attempt to protect consumers and companies, as well.

{Tape: 1; Side: A; Approx. Time Count: #12.5; Comments: 9:06 a.m..}

A plaintiff must show that a case is legitimate. We need to let this system work by allowing this bill to pass. We have a representative here from Semi-Tool, and others.

Allan Karell, Crowley law firm, Billings for Semi-Tool. Sections 4 and 5 are the salient points of the bill. The first section deals with types of pleadings required for elements of the case regarding public securities trading. There is a provision for a

stay of discovery to protect a company from huge respondent costs.

Section 2 deals with sanctions. Current Montana law is Rule 11. Section 4 deals with damages and establishes a 90-day market period to measure the price of stock for the purpose of calculating damages. This is a buffer against immediate miscreate suits when stock prices drop.

Section 5 allows companies to provide information if they choose to do so. Section 9 has a loss causation limit up to the amount from the alleged mistake and no more. Section 10 is proportional liability and brings Montana securities laws up to date concerning losses and damages in general. It does retain joint and several liability for all defendants in a 'knowing' violation.

Three thoughts: 1) the bill is narrowly tailored and applies only to public companies; 2) it outlines defendant's expenses; and 3) it makes an adjustment to level the litigation field between the plaintiff and the defendant, and makes Montana conform to federal law.

John Sullivan, CFO, Semi-Tool. We are the first company in Montana to be bit by one of these suits. We are traded on the NASDAQ. Suits are increasing against companies whose stock price drops, many of which are frivolous and designed to inflict pain and get a settlement.

In 1995 Congress tried to address this, resulting in the Private Securities Litigation Reform Act (PSLRA). Both of Montana's legislators voted for this. Two months later Semi-Tool was hit with a lawsuit, so our potential adversaries are operating on a different set of laws. We need SB 382 to put all parties under similar laws.

David Dennis, General Counsel for D.A. Davidson and DADGO Companies. A lot of securities laws are very complicated. Former University of Montana Law School instructor, Bruce McKenzie, told us as law students that the purpose of the Federal Securities Act was to level the playing field.

These private causative action suits for 'knowing' fraud are class action suits and are very expensive to defend, costing from several hundred thousand dollars to over one million dollars. Therefore, some companies are settling for large amounts rather than going through expensive litigation.

In the 1990s this trend became worse, and Congress formed a committee to examine these abuses, and came up with this Act in 1995 which received overwhelming support by both the House (319 votes) and the Senate (68 votes). President Clinton vetoed the bill, but Congress overrode the presidential veto.

State Court laws usually mirror federal court laws, but Montana has not yet corrected this situation. The federal law encourages disclosure, which drives the securities industry and is very important.

D.A.D. has a vested interest, and needs to be able to give the best advice possible to its clients. This legislation does not change the standard for a fraud claim, but for pleading a fraud claim.

John Cadby, Montana Banker's Association. We heartily endorse this bill - both large and small banks. We ask that the Committee pass the bill.

Steve Browning. Pacific North has retained me for three days for deregulation of the electronics industry which means additional need for securities offerings, which is also regulated by the PSC. (EXHIBIT #6 and #7). As the time for a separate bill has passed, I am offering this amendment for consideration. I believe this fits within the title, except for the word 'litigation'.

{Tape: 1; Side: A; Approx. Time Count: #37.9-#41.6; Comments: None.}

Opponents' Testimony: Mark O'Keefe, State Auditor (EXHIBIT #8), read from prepared testimony in opposition to the bill. False and misleading statements are not easy for a consumer to prove. We do not need to foster deliberate ignorance in this industry. Financial means tests would prevent plaintiffs from collecting who have valid claims. Most in the industry are honest. We're concerned with the one-tenth of one percent who aren't. I believe this is a grey area to tinker with. I have a copy of a Forbes magazine article on Wall Street Sleaze (EXHIBIT #9).

In Lewis and Clark County two Houston securities companies sold collateralized securities obligations to the County. They created internal documents and misrepresented the investments. Seven million of taxpayer dollars were invested in these CMOs. Under SB 382 my ability to order the restitution would disappear, and the county would have no private remedy. This legislation could take certain safeguards from Montanans.

I want to make two points: 1) the extraordinary levels of proof are a hurdle; and 2) the bill denies the victims the ability to move quickly via delay of discovery and motion to dismiss. This creates a higher standard of proof in the securities industry than in banking, insurance, or real estate. This is a basic issue of fairness. It's a bad bill for the financial industry profession, markets, and for investors. Please do not pass this bill.

Russell Hill, Montana Trial Lawyers Association (MTLA). We vigorously oppose this bill. On the floor of the Senate in 1995,

SEN. HARP withdrew a bill he had on the floor when it was no longer necessary, and I respect him for that. Contingent-fee attorneys only get paid when they do their job, while securities industry companies could still keep the money. The area of the bill addressing reckless conduct means their fee. Page 6, Subsection (4) feeds into Subsection (b)(2) and is an incredible relaxation of standards.

{Tape: 1; Side: B; Approx. Time Count: #13.6; Comments: 9:48 a.m..}

Page 11, lines 11-14 are patently unconstitutional in Montana. Subsection (d) reduces the way a settlement is given back to a party.

A bill in House Judiciary Committee changes Montana's comparative negligence law significantly (page 12, lines 2-4).

On page 11, lines 1-2, we still haven't seen a fully-informed jury amendment, and this is opposite in the bill, as one can't disclose to the jury what the company is up to. It protects Montanans from attorneys who assume the risk of being wrong.

Paul Stahl, Deputy Lewis and Clark County Attorney. Fourteen other counties bought the CMOs you heard about, in addition to Lewis and Clark County. I believe we need balance in the bill. The State Auditor did a remarkable, outstanding job in helping us, but it takes time because of budgets. The SEC is still in the discovery stage in our situation. I see the bill as preventing us from going after these companies who have wronged us.

I've been a defense attorney for seventeen years, but this bill is unfair. I'm also an attorney for adult protective services, and I hear stories daily of elderly persons being taken advantage of by unscrupulous salesmen. A rancher in Augusta sold his ranch and invested the money with such a salesman and lost that money.

Irene Theurer, American Association of Retired Persons (AARP) (EXHIBIT #10). This bill is a safe harbors for sellers only, and not for buyers. It places the entire burden and cost of proof on the buyer. Standards allow a judge now to determine if a suit is frivolous.

Dick Pattison, President, Montana Senior Citizens Association read from prepared testimony. This bill is really about people, and not about corporations. A study at Berkeley showed only 20 suits were filed out of 589 times stocks dropped suddenly, during the time of the study. Please do not pass this bill.

Gordon Morris, Director, Montana Association of Counties (MACO). Local government officials oppose this, just as they opposed S240 in 1995 in Congress, because of the risk to public dollars. We

asked what would have happened to Charles Keating back in the 1970s with this legislation?

{Tape: 1; Side: B; Approx. Time Count: #27.0; Comments: 10:02 a.m..}

Questions From Committee Members and Responses: SEN. DOHERTY.

Are you defending or familiar with this law suit? **Allan Karell.** No. I defended securities lawsuits in Oregon for a very large corporation.

SEN. DOHERTY. Have your attorneys filed Rule 11 sanction motions, and if so, what has happened? **John Sullivan.** Rule 11 has been discussed. There have been no specific pleadings since December, 1996.

SEN. DOHERTY. You said this bill would not change the standard of proof with regard to fraud. I looked at Rule 9(b) and Sections 1 and 2. If this bill doesn't change this standard of proof with regard to fraud, it does significantly change the standard with regard to proof of fraud.

{Tape: 1; Side: B; Approx. Time Count: #29.6; Comments: None.}

This is a significant piece of legislation. Why, in the section on page 10 regarding proportional liability, is the net worth of the plaintiff important in whether they can collect on the judgment? **SEN. HARP.** That is a good questions. I will call Senators Baucus and Burns to check on this today.

SEN. HOLDEN. Russell Hill made some points, on page 9, lines 1-2 concerning reckless conduct. **Allan Karell.** Subsection 3) of this must be read in context. It doesn't mean they can't collect, but that they can collect on a proportional basis.

SEN. HOLDEN. What about Russell Hill's comments on page 11, lines 1-2, and lines 11-14? **Allan Karell.** The intent is to take away the tremendous leverage against defendants. I don't know that is unfair. Again, this has been taken out of context. I don't know that it is unfair to tell the jury the amount of damage.

SEN. HALLIGAN. On lines 14-15, how will you every be able to prove approval by an executive officer? By oral statements? **Allan Karell.** That merely places limits on early discovery.

SEN. HALLIGAN. How would someone prove an older person's word against a young salesperson's word? **Allan Karell.** This bill doesn't do that much for securities salespeople, but deals with forward-looking issues.

SEN. DOHERTY. How many 'blitzkrieg" suits were filed in Montana courts the past five years? **Allan Karell.** I don't know. Most

are at the federal level, but there is potential to move now into state courts.

SEN. DOHERTY. Why are you amending comparative negligence in Sections 12 and 13, and can that be stricken? They may dovetail with federal law, but that will affect every other single cause of action in Montana will it not? **Allan Karell.** I don't believe so.

Closing by Sponsor: **SEN. HARP.** The State Auditor needs to look at Section 11. Why didn't he bring reform suggestions to the Legislature. I am disappointed by the example of Lewis and Clark County, as nothing in this bill will impair that situation. Fraud situations will continue to occur in Montana.

VICE CHAIRMAN GROSFIELD assumed the Chair at this point.

{Tape: 1; Side: B; Approx. Time Count: #31.1; Comments: None.}

HEARING ON SB 383

Sponsor: **SEN. BRUCE CRIPPEN, SD 10, Billings**

Proponents: **David Ward, Chief of Police, Billings**
Sergeant Ken Dovo, Billings Police Department
John Conner, Department of Justice
Dennis Paxinos, Yellowstone County Attorney
Jeff Beecroft, Detective, Great Falls Police
Department
Chuck O'Reilly, Lewis and Clark County Sheriff
Guy Baker, Missoula Police Department
Tim Shanks, Montana Police Protective Association
and Great Falls Police Department
Bob Charles, Montana Chapter of the National
Association of Social Workers.

Opponents: **None**

Opening Statement by Sponsor: **SEN. BRUCE CRIPPEN, SD 10, Billings.** This is the Montana Terrorism Prevention and Enforcement Act, dealing with street gangs. Early last year, I received a call from Dave Ward, Billings Police Chief, concerning the trend in Billings and elsewhere in Montana of the surfacing of organized gangs, generally of a certain age. I also spoke with Mr. Watson, Billings City Administrator. We looked to California and other states for language to define terms from a legal and legislative perspective to help the judicial system deal with this problem. The 'whereases' define the problem; Section 2 is definitions; Section 3 defines use of threat to coerce, and the penalty; Section 4 deals with enhancement of current law; Section 5 is the real guts of the bill and defines patterns of street gang activity.

We want to ensure we are not infringing upon the rights of peaceful citizens to congregate. Section 6 deals with confiscation; Section 7 applies to supply of firearms; Section 8 provides exceptions; Section 9 pertains to local registration; Section 10 deals with transfer of prosecution to criminal court, and provides exceptions on page 7, line 20; Section 12 makes the bill effective upon passage and approval; Section 14 has retroactive applicability of Section 5 with regard to second or subsequent offenses.

{Tape: 2; Side: A; Approx. Time Count: #12.3; Comments: 10:27 a.m..}

Proponents' Testimony: Dave Ward, Chief of Police, Billings. We support this legislation, as we have gang problems in the entire state, and not just in Billings. In the Billings area, they're going out into the smaller communities. One year ago, we did a gang assessment in Billings, and the results were fairly alarming.

Sergeant Ken Dovo, Billings Police Department. The 1995 assessment identified 21 gangs from all over the U.S. So we believe it is important to get this legislation in place now. There has been an increase of intimidation of store clerks in the malls when these gangs commit theft.

John Conner, Department of Justice. This was well-drafted by **Valencia Lane** from the California law, and then restructured to be consistent with Montana statutes. It might be more efficient to take out the provision in Section 6 concerning confiscation of firearms. The police in Missoula and Billings are in agreement on this, as it is a fairly complicated and detailed process to go through.

If a weapon is used in an offense, it can be held as evidence. Also, in Section 7, we would strike (1)(b) and (1)(c), as, under current statute, "mental state" won't fly. The recent "purposefully and knowingly" interpretation requires more of the prosecutors. Otherwise, we strongly support the bill. **Mike Batista, Criminal Division, Department of Justice**, is present to answer questions.

Dennis Paxinos, Yellowstone County Attorney. We support John Conner's amendments so we can deal with the meat of this issue. There were few youth crimes in the late 1980s, but this activity has been growing more and more in the 1990s, as dollars can be made with small amounts of drugs in urban areas. These cases becomes automatically transferred to adult court, as this is adult-like activity.

Jeff Beecroft, Detective, Great Falls Police Department. We have documented eight gangs now in Great Falls. One year ago there were only three. The average age is 12-29. In April, 1995 a "Bloods" gang member from Sacramento was selling crack cocaine

here. He met with me with a loaded, sawed-off shotgun on his hip. We have many more stories like this, and it is getting to be a major problem.

Chuck O'Reilly, Lewis and Clark County Sheriff. Gangs are existing in communities because of lack of resources and laws.

Guy Baker, Missoula Police Department. We have a target program for these youth gangs which have been creating increasing problems the past three years with their predatory mentality, and they are very dangerous.

We are members of the Northwest Gang Investigation Association, along with Oregon, Idaho, and Washington. Once these gangs are established, no community in America has been able to get rid of them.

Tim Shanks, Montana Police Protective Association and Great Falls Police Department. We need this legislation.

Bob Charles, Montana Chapter of the National Association of Social Workers. This is an anti-social and family problem. I thank the Committee for the good hearing of this bill, and ask your support.

Opponents' Testimony: None

Questions From Committee Members and Responses: SEN. HALLIGAN.

Why did Scott Crichton with the ACLU not speak on this bill?

Scott Crichton. I will read a letter, speaking as an informational source. The information being gathered by the Billings Police Department in their study is not being deleted after a period of time. Thus, there is no guarantee against future problems.

{Tape: 2; Side: A; Approx. Time Count: #33.3; Comments: 10:48 a.m.}

In raising points with regard to constitutional protection, we must keep in mind the distinctions between illegal gang activity and other kids on the streets. We need rules for field interview and data storage and purging of records.

SEN. HALLIGAN. I don't see an exception in the bill. What about infiltrating gangs to stop them? **Dave Ward.** There is no way to infiltrate right now, at least not in Billings.

SEN. HALLIGAN. If one member of a family is involved, is the entire family targeted for intervention? **Dave Ward.** We have used FIR interrogative reports for 25 years. These are kept for a year and then can be purged. They don't drag in other family members, but are individual-specific. It's just part of the intelligence information gathered under federal guidelines.

SEN. DOHERTY. So you purge them after one year if there is no additional reason not to. **Dave Ward.** Yes, there is a policy in place to do this now. Information on juveniles is sealed once they reach the age of majority. I believe it is better dealt with at the local level, and that state statutes are sufficient now.

VICE CHAIRMAN GROSFIELD. Where and what kinds of activities are investigated? **Mike Batista.** There is an overflow factor from the larger cities - Great Falls, Billings and Missoula - to the smaller towns. We are seeing expansion of motorcycle gang activities and the KKK, which the bill would also address.

VICE CHAIRMAN GROSFIELD. What about intimidations of clerks in malls? **Sergeant Dovo.** Gangs intimidate kids to steal items, and this actually happened in a Billings mall. The kid purposefully got caught to get out of the situation.

SEN. ESTRADA. Are gang-related activities in one area of Billings or all over? **Dave Ward.** There is no one specific tie, other than two gangs on the East end which are filtering into Shepard. They are influencing local kids, and that situation will escalate. There was a knife fight in the mall just prior to the incident just mentioned by Sergeant Dovo.

SEN. DOHERTY. I work with people on Indian reservations. What is the level of gangs there, and the level of cooperation between the BIA (Bureau of Indian Affairs) and you? On one reservations, folks were extremely concerned about the rural areas. **Mike Batista.** I believe there is a very bad drug problem in Montana on Indian reservations. I believe it is growing and becoming more serious and alarming. There are some changes being made.

SEN. DOHERTY. Is the state doing anything to enter into cooperative agreements with the Tribes to not stymie these investigations? **Mike Batista.** There has been talk between the Tribes and the Montana Highway Patrol, but I'm not aware of any agreement, as this is handled by the Feds.

Closing by Sponsor: SEN. CRIPPEN. I appreciate Scott Crichton's comments and the guidelines he offered. This bill is more proactive than reactive, and the problem won't go away. It's a start, and is a good piece of legislation. I have no problem with the amendments offered by the proponents. (EXHIBIT #11, letter from Susan DeCamp, Billings)

{Tape: 2; Side: B; Approx. Time Count: #4.5; Comments: 11:04 a.m..}

EXECUTIVE ACTION ON SB 385

Motion: SEN. HALLIGAN MOVED TO TABLE SB 385.

Discussion: SEN. HOLDEN. I support the motion.

SEN. DOHERTY. I believe the Committee has a responsibility to table this bill.

Vote: SEN. HALLIGAN'S MOTION TO TABLE SB 385 CARRIED UNANIMOUSLY.

THE COMMITTEE RECESSED AT 10:00 A.M. AND RECONVENED AT 10:22 A.M. AND SEN. CRIPPEN ASSUMED THE CHAIR AT THIS POINT.

EXECUTIVE ACTION ON SB 383

Motion/Vote: VICE CHAIRMAN LORENTS GROSFIELD MOVED TO STRIKE SECTION 6, ON PAGE 5, AND LINES 11-13 ON PAGE 6 - SUBSECTIONS (b) AND (c) AND MAKE THE APPROPRIATE CLERICAL CORRECTION ON PAGE 2, LINES 9-10, AND CORRECT THE TITLE TO GET RID OF THE FORFEITURE ISSUE REGARDING WEAPONS. THE MOTION CARRIED UNANIMOUSLY.

Motion: SEN. ESTRADA MOVED SB 383 DO PASS AS AMENDED.

Discussion: SEN. DOHERTY. With the Billings Police internal policy for purging of records of juveniles and adults, what is the sense of the Committee to put this in statute to ensure that other police departments are doing the right thing now? CHAIRMAN CRIPPEN. Sheriff O'Reilly said the privacy act addresses this. We can note this for the House to address.

SEN. DOHERTY. I believe all police departments ought to follow the policy of the Billings Police Department.

Vote: SEN. ESTRADA'S MOTION THAT SB 383 DO PASS AS AMENDED CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 96

Motion: VICE CHAIRMAN GROSFIELD MOVED TO TAKE SB 96 OFF THE TABLE.

Discussion: VICE CHAIRMAN GROSFIELD. I have amendments and more details and will move to eliminate the amendments put on in committee as they are not part of the Attorney General's agreement with the industry, made in December (EXHIBIT #12, sb009610.avl). I will also move to make the system voluntary, and then will move a decal or seal on machines for the automated system. I will also make a motion for a dial-in or dial-out system. When the Department of Justice releases its request for proposals they are required to go with the better and most cost-effective of the two systems, preferably dial-in. This is a very important bill in this session, being voluntary versus mandatory.

SEN. HALLIGAN. So we are going from \$405 to \$300 per machine? VICE CHAIRMAN GROSFIELD. Yes.

SEN. HOLDEN. Would the amendment change who pays? VICE CHAIRMAN GROSFIELD. The hook-up to the dial-in is a tax credit against the gambling tax, at \$300 per machine maximum.

Vote: VICE CHAIRMAN GROSFIELD'S MOTION TO TAKE SB 96 OFF THE TABLE FAILED WITH ALL MEMBERS VOTING NO EXCEPT SENATORS MCNUTT, GROSFIELD, CRIPPEN AND BARTLETT WHO VOTED YES.

EXECUTIVE ACTION ON SB 382

Amendments: Valencia Lane. The Committee has amendments from Steve Browning and Janice Rehberg.

Discussion: CHAIRMAN CRIPPEN. Can the Browning amendment be done? Valencia Lane. I believe so. We would need the title to correspond though. CHAIRMAN CRIPPEN. There does not appear to be interest in these amendments among the Committee.

SEN. HALLIGAN. This is a classic case which a securities study commission should address. I would be happy to sign on a resolution for this.

Motion/Vote: SEN. HOLDEN MOVED TO ADOPT SEN. HARP'S AMENDMENTS, AS SUBMITTED BY JANICE REHBERG. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. DOHERTY WHO VOTED NO.

Discussion: Valencia Lane. I was handed a bill with a renumbering outline by Janice Rehberg. That outline didn't work, so I'm asking for authority to re-outline these subsections being renumbered by the adoption of these amendments. CHAIRMAN CRIPPEN. Okay.

Valencia Lane. Also, SEN. HARP has requested a severability clause for this bill. CHAIRMAN CRIPPEN. We will deal with that later.

Motion/Vote: VICE CHAIRMAN LORENTS GROSFIELD MOVED TO ADOPT SEN. HARPS STANDARD SEVERABILITY CLAUSE AMENDMENT. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. DOHERTY WHO VOTED NO.

SEN. HALLIGAN. I still believe this is a large subject.

Motion: SEN. HALLIGAN MOVED TO TABLE SB 382 AND TO CREATE A STUDY RESOLUTION TO "GET THIS DONE RIGHT."

Substitute Motion: SEN. AL BISHOP MADE A SUBSTITUTE MOTION THAT SB 382 DO PASS AS AMENDED.

Discussion: SEN. DOHERTY. This bill contains substantial changes to the standard of proof by which Montanans are protected against con-artists, and it puts Montana investors at risk. The securities industry didn't sit down with the Securities Commission, but is pushing this through on the last day of transmittal. This is a one-sided bill. It will harm local governments and Montanans.

SEN. HOLDEN. I commend **SEN. HARP** for his efforts. It is important to take action at the state level, so I support the bill.

SEN. BISHOP. I agree in part with **SEN. DOHERTY**, but this bill should go to the Senate floor for debate and must go through "never, never land" (the House).

SEN. DOHERTY. For the record, the diminishment of standards and the attempt to prove in pleadings the details required, impairs Montanans' abilities to bring these actions. The necessary requirements are already in the law. These fraud requirements are not required for any other area in Montana. I don't believe plaintiff's attorneys bring these cases lightly, and I believe it's going to be rolled through.

SEN. ESTRADA. I agree with **SEN. DOHERTY**, and am concerned by the Majority Leader telling us not to do complex bills at the last minute, and then doing so himself. I have concerns and questions to be answered.

SEN. BISHOP. Let's do this. We're being paid to study this matter now.

SEN. DOHERTY. The securities industry knew about this federal act for over a year, so I don't understand the lateness of the LC number and the bill request. **CHAIRMAN CRIPPEN.** Obviously this was bi-partisan at the federal level, as both Senators Baucus and Burns supported it, even after the President vetoed it.

SEN. BISHOP. If the same criteria holds for other complex bills presented at the 11th hour, let's kill SB 374, too. I believe this bill deserves to go to the Senate.

Vote: **SEN. BISHOP'S MOTION THAT SB 382 DO PASS AS AMENDED CARRIED IN A ROLL CALL VOTE (6-4).**

THE COMMITTEE RECESSED AT 12 NOON AND RECONVENED AT 12:15 P.M.

EXECUTIVE ACTION ON SB 374

Amendments: sb037402.av1 (EXHIBIT #13)

Motion: **SEN. HOLDEN MOVED TO AMEND SB 374 - sb37402.av1.**

Discussion: **SEN. HOLDEN.** There are getting to be more and more social security numbers than names on more and more documents. **CHAIRMAN CRIPPEN.** Some people don't have social security numbers, as they are not required by law, but they are required to have a TIF.

SEN. HALLIGAN. If several people have the same name, this will be a problem, so I oppose the motion.

CHAIRMAN CRIPPEN. The Department of Fish, Wildlife and Parks felt we would have a problem. The Chief of Enforcement said about 500 people were disqualified, and their privileges were suspended. He said the Department tried to match dates of birth with names, but if these are not identical, there won't be a match. He said they also had two people with the same name, and the same date of birth who were not included in the drawing, and were really angry.

Vote: SEN. HOLDEN'S MOTION TO ADOPT THE AMENDMENTS FAILED WITH ALL MEMBERS VOTING NO EXCEPT SENATORS HOLDEN AND ESTRADA WHO VOTED AYE.

Motion: SEN. ESTRADA MOVED AMENDMENTS sb037404.av1 BE ADOPTED (EXHIBIT #14).

Discussion: **Valencia Lane.** The Department had stricken the 30-day time-line in Sections 47 and 75, but they received a letter from Judge John Larson to reinsert the time-line. **Mary Ellen Wellbank.** This was stricken because of a January 2, 1997 decision of the Supreme Court. Federal audit standards require that we move cases within 45 days, and are not meant to be interpreted as a due process requirement, but the Supreme Court interpreted it as mandatory. Forty-five days, however, is too fast when we have motions and continuances. I am against even doing six months for good cause, as it puts the state at liability. In one case that is four years old, the custodial parent was barred from collecting \$75,000 in back child support from the non-custodial parent.

SEN. BARTLETT explained amendments sb037404.av1. **Valencia Lane.** This is addressed in Judge Larson's letter. **Mary Ellen Wellbank.** The twenty-days refers to amendments 2, 3 and 4. There are no federal standards for this.

SEN. HOLDEN. We are talking about due process, right? And the Department will be holding up people's lives while they consider what is to be done. **Mary Ellen Wellbank** read from the federal requirements.

SEN. HALLIGAN. No retroactivity is initiated in amendments 2, 3 and 4. Amendment 1 could possibly be retroactive. What if income withholding were delayed six months? Amendment 1 is establishment of an order; amendments 2, 3 and 4 are merely income withholding on existing debt.

Vote: SEN. ESTRADA'S MOTION THAT THESE AMENDMENTS BE ADOPTED CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS DOHERTY, BARTLETT, HALLIGAN, MCNUTT AND JABS.

Motion: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT sb0237401.asf.

Discussion: **VICE CHAIRMAN GROSFIELD.** Amendment 1 strikes "minimum"; amendment 2 corrects language that was too wide open;

amendment 3 deals with adoption of rules; amendment 4 gives guidance; amendment 5 gives the Department rule-making authority, Sections 1-15. For example, if one had a reasonably friendly settlement, why should it have to go through the Department?

Valencia Lane. On page 2, the two references to Sections 1-11 should be changed to Sections 1-015.

SEN. BARTLETT. What is the reason for extension of time for seasonal or temporary 'employers' or 'employees' in Subsection (c)? **VICE CHAIRMAN GROSFIELD.** Subsection (b) really goes with 6 through 9 and Subsection (3) goes with 10 and 11. **Mary Ann Wellbank.** 1 through 5(a), (b) are fine. 5(c) and 6 are a problem as the time-line is very strict and seasonal employees are very difficult to catch. 5(d) is confusing as it is in the 1991 law, and in subsequent withholding it is required to go through DPHHS unless the judge determines otherwise. So, I don't believe this amendment is necessary, and it's also confusing. 5(e) is your decision, and 5(f) is okay.

{Tape: 2; Side: B; Approx. Time Count: #36.6; Comments: 12:47 p.m..}

Motion/Vote: VICE CHAIRMAN GROSFIELD AMENDED HIS MOTION TO ELIMINATE 5(c), 5(d), AND 5(e). THE MOTION CARRIED UNANIMOUSLY.

Discussion: VICE CHAIRMAN GROSFIELD. I will not offer amendments on 6-9.

Motion: VICE CHAIRMAN GROSFIELD MOVED TO STRIKE THE ENTIRE SUBSECTION(6) ON PAGE 12, LINES 27-29.

{Tape: 3; Side: A; Approx. Time Count: #40.4; Comments: 12:52 p.m..}

Discussion: **Mary Ann Wellbank.** The current section, as written, is permissive.

CHAIRMAN CRIPPEN. I have a problem with striking this out in that the problem is the employer's, not the employee's

Vote: VICE CHAIRMAN GROSFIELD'S MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS CRIPPEN, JABS AND MCNUTT WHO VOTED NO.

Motion: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT 1, 2, AND 3 OF THE PROPOSED AMENDMENTS.

Discussion: **Mary Ann Wellbank.** Name, address, and social security number are required under federal law. Adding the date of birth is good, but I don't know if it is required. **VICE CHAIRMAN GROSFIELD.** I will forget about 1, 2 and 3. Amendments 4-10 go to the same issue. I don't want this information going to just any state or state agency without just as good a confidentiality measure. **CHAIRMAN CRIPPEN.** You don't find this

a safeguard? **Mary Ann Wellbank.** We could live with it, if you said U.S.C. 651 et seq, we would then be in compliance with federal regulation. We think the Department of Revenue would put this information under new hires, and use it for their own purposes, so you could add the Department of Revenue. How much someone owes and to whom is already public information. This case processing center only has information on support and not on case records, and no confidential information will be disclosed.

Motion/Vote: VICE CHAIRMAN GROSFIELD AMENDED HIS MOTION TO INCLUDE U.S.C. 651 ET SEQ AND KEEP THE CONFIDENTIALITY LINE, AND ADD TO SUBSECTION (4), "THE STATE DEPARTMENT OF REVENUE". THE MOTION CARRIED UNANIMOUSLY.

Motion: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENT 11.

Discussion: **Mary Ann Wellbank.** I think the banks are comfortable with the bill, and they didn't offer any amendments when it was drafted.

Vote: VICE CHAIRMAN GROSFIELD'S MOTION TO ADOPT AMENDMENT 11 CARRIED UNANIMOUSLY.

Motion: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENT 12.

Discussion: **Mary Ann Wellbank.** The Department is okay with this.

Vote: VICE CHAIRMAN GROSFIELD'S MOTION TO ADOPT AMENDMENT 12 CARRIED UNANIMOUSLY.

Discussion: **Mary Ann Wellbank.** The Department is okay with the intent of amendment 13, but you need to change "obligee" to "obligor".

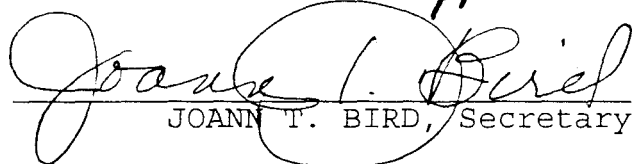
Motion/Vote: VICE CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENT 13 FOR PURPOSES OF CLARIFICATION AND TO CHANGE "OBLIGEE" TO "OBLIGOR." THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. MIKE HALLIGAN MOVED SB 374 DO PASS AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS GROSFIELD, BARTLETT, AND DOHERTY WHO VOTED NO.

ADJOURNMENT

Adjournment: 1:09 p.m.


SEN. BRUCE D. CRIPPEN, Chairman


JOANN T. BIRD, Secretary

BDC/JTB