

HOUSE BILL 338

IN THE HOUSE

January 23, 1979	Introduced and referred to Committee on Judiciary.
January 26, 1979	Committee recommend bill, do pass.
January 27, 1979	Printed and placed on members' desks.
January 29, 1979	Second reading, do pass.
January 30, 1979	Considered correctly engrossed.
January 31, 1979	Third reading, passed.

IN THE SENATE

February 1, 1979	Introduced and referred to Committee on judiciary.
March 22, 1979	Committee recommend bill, not concurred.

IN THE HOUSE

March 23, 1979	Returned from Senate, not concurred.
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1 HOUSE BILL NO. 338
 2 INTRODUCED BY Hamma
 3 BY REQUEST OF THE ATTORNEY GENERAL

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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE STANDARDS
 6 FOR INSPECTIONS BY GOVERNMENT OFFICIALS AND A PROCEDURE FOR
 7 THE PROCUREMENT OF INSPECTION WARRANTS; TO RESTRICT THE
 8 ADMISSIBILITY OF EVIDENCE OBTAINED BY UNLAWFUL INSPECTIONS;
 9 AMENDING SECTION 46-5-101, MCA."

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 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Nonapplicability of rules of
 13 criminal procedure. The provisions of [Title 46 other than
 14 46-5-101 and sections 1 through 13 of this act] are not
 15 applicable to inspections authorized by [sections 1 through
 16 13].

17 NEW SECTION. Section 2. Inspection warrant defined.
 18 As used in [sections 1 through 13], "inspection warrant"
 19 means an order in writing, in the name of the state of
 20 Montana or a county or municipality of this state, signed by
 21 a judge authorized to issue search warrants, and directed to
 22 a state or local official commanding him to conduct an
 23 inspection required or authorized by a state or local
 24 building, fire, safety, plumbing, electrical, health, or
 25 zoning law, ordinance, or regulation.

1 NEW SECTION. Section 3. When inspections authorized.
 2 (1) No state or local official may conduct an inspection
 3 required or authorized by a state or local building, fire,
 4 safety, plumbing, electrical, health, or zoning law,
 5 ordinance, or regulation unless:

- 6 (a) prior consent is given by the owner or lawful
- 7 occupant of the place or vehicle to be inspected; or
- 8 (b) an inspection warrant is procured and executed
- 9 under the provisions of [sections 1 through 13].

10 (2) This section does not apply to inspections
 11 conducted:

- 12 (a) on the premises of a business or industry so
- 13 pervasively regulated that it retains no reasonable
- 14 expectation of privacy in the area to be inspected;
- 15 (b) in areas open to the general public; or
- 16 (c) by firefighters, fire marshals, or any other
- 17 officials authorized to investigate fires, who remain for a
- 18 reasonable period of time in a place after the
- 19 extinguishment of a fire therein in order to determine the
- 20 cause of the fire.

21 NEW SECTION. Section 4. Application for issuance of
 22 inspection warrant. (1) An inspection warrant may be issued
 23 only for cause, supported by an affidavit describing the
 24 particular place or vehicle to be inspected and the purpose
 25 for which the inspection is to be made.

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(2) The affidavit shall also state:

(a) that consent to inspect has been sought and refused; or

(b) facts and circumstances which reasonably justify the failure to seek such consent.

NEW SECTION. Section 5. Cause for issuance. Cause for issuance of an inspection warrant exists if:

(1) reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place or vehicle identified in the application for the warrant; or

(2) there is reason to believe that a condition exists with respect to the particular place or vehicle identified in the application for the warrant which:

(a) is in violation of a state or local building, fire, safety, plumbing, electrical, health, or zoning law, ordinance, or regulation; or

(b) poses a threat to health or safety.

NEW SECTION. Section 6. Examination of witnesses by judge. Before issuing an inspection warrant, the judge may examine any witness upon oath and shall satisfy himself of the existence of cause for granting the application.

NEW SECTION. Section 7. When warrant issued -- contents. If the judge is satisfied that cause for inspection exists, he shall issue an inspection warrant

describing the particular place or vehicle to be inspected and designating the purpose and limitations of the inspection, including the limitations required by [sections 1 through 13].

NEW SECTION. Section 8. Expiration of warrant. (1) An inspection warrant is effective for the time specified therein, which may not exceed 14 days. The judge who issued the original warrant may extend the time or renew the warrant upon a finding that such extension or renewal is necessary to avert a threat to health or safety.

(2) An inspection warrant not executed, extended, or renewed within the time specified therein is void.

NEW SECTION. Section 9. Execution of warrant. (1) An inspection warrant may not be executed after 6 p.m. or before 8 a.m. on any day.

(2) An inspection warrant may be executed only in the presence of the owner or lawful occupant of the particular place or vehicle to be inspected.

(3) The requirements of subsections (1) and (2) do not apply if:

(a) the owner or lawful occupant consents to a waiver of the requirements prior to the inspection; or

(b) the judge issuing the warrant, upon a showing of reasonable necessity in order to effectuate the purpose of the law, regulation, or ordinance being enforced, authorizes

1 the official to inspect in the absence of the owner or
2 lawful occupant or at a time other than that authorized in
3 subsection (1).

4 (4) (a) The official conducting the inspection shall
5 leave a copy of the inspection warrant with the owner or
6 lawful occupant of the place or vehicle inspected.

7 (b) If an inspection is conducted in the absence of
8 the owner or lawful occupant under subsection (3), the
9 official conducting the inspection shall leave a copy of the
10 inspection warrant at the place or in the vehicle inspected.

11 NEW SECTION. Section 10. When forcible entry
12 authorized. (1) An inspection may not be accomplished by
13 means of forcible entry unless:

14 (a) the judge endorses upon the warrant prior to the
15 inspection the authority to make a forcible entry; or

16 (b) the official, upon arrival at the place or vehicle
17 to be inspected, is unable to secure consent to enter and
18 discovers facts prior to entry giving him reason to believe
19 that a condition exists which poses an immediate threat to
20 health or safety.

21 (2) The judge may authorize a forcible entry only
22 upon:

23 (a) a finding of facts giving him reasonable cause to
24 believe that a condition exists in the place or vehicle
25 identified in the warrant which poses an immediate threat to

1 health or safety; or

2 (b) a finding that reasonable attempts to execute a
3 previous warrant have been unsuccessful.

4 NEW SECTION. Section 11. Return of warrant. (1) The
5 official who executes the warrant shall make a return
6 thereof before the judge who issued the warrant.

7 (2) The return shall consist of a document verified by
8 the official which shall state:

9 (a) the date and time at which the warrant was
10 executed; and

11 (b) a short description of the conduct, scope, and
12 result of the inspection.

13 NEW SECTION. Section 12. Admissibility of evidence
14 obtained by unlawful inspection. Any information or evidence
15 gained as a result of an inspection unlawful under the
16 provisions of [sections 1 through 13] is inadmissible as
17 evidence in any proceeding to enforce a state or local
18 building, fire, safety, plumbing, electrical, health, or
19 zoning law, ordinance, or regulation.

20 NEW SECTION. Section 13. Criminal penalty for
21 obstructing inspection. A person who purposely or knowingly
22 obstructs an inspection lawfully authorized by an inspection
23 warrant pursuant to [sections 1 through 13] is guilty of a
24 misdemeanor.

25 Section 14. Section 46-5-101, MCA, is amended to read:

1 "46-5-101. Searches and seizures -- when authorized.

2 A search of a person, object, or place may be made and
3 instruments, articles, or things may be seized in accordance
4 with the provisions of this chapter when the search is made:

5 (1) as an incident to a lawful arrest;

6 (2) with the consent of the accused or of any other
7 person who is lawfully in possession of the object or place
8 to be searched or who is believed upon reasonable cause to
9 be in such lawful possession by the person making the
10 search;

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12 ~~(4) under the authority and within the scope of a~~
13 ~~valid inspection warrant procured under the provisions of~~
14 ~~[sections 1 through 13];~~

15 ~~†4)5) under the authority and within the scope of a~~
16 right of lawful inspection otherwise granted by law."

-End-

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