

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 18, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Monday, February 18, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 329: Rep. Tom Hannah, House District #82, chief sponsor of H.B. 329, testified in its support. Rep. Hannah said that H.B. 329 is an ongoing attempt to define lien laws. Rep. Hannah informed the committee that a comprehensive bill which would revise all of the lien laws was introduced in the Senate. It was tabled with the idea that other compromising legislation would be worked out. Rep. Hannah submitted materials which were marked Exhibit A and hereto attached.

Rep. Gary Spaeth also testified as a proponent to H.B. 329. He stated that there are problems with the present lien laws, and something still has to be done in this area.

Larry Huss, attorney for Mountain Bell Telephone, testified in support of H.B. 329. He stated that the problem in dealing with liens is that an individual is always subject to the good faith of his contractor. If the contractor has financial problems, he may deal with the person with less than full disclosure. That person has no way, short of asking the contractor, of knowing who all the suppliers are and whether or not they are being paid. He believes the bill creates a climate that goes from one extreme to the other which would place a burden on the supplier. Mr. Huss suggested a provision be made for some sort of notice from the supplier to the homeowner or to the owner of the project in order that there be actual knowledge by both parties pointing out who is involved in the contract; thus, each side is able to protect himself by giving notice and communicating as to what the bill will be in order to insure that the payment is made before the final disbursement of the loan contract is announced. Mr. Huss submitted an amendment to H.B. 329 which deals with actual notice. The amendment was marked as Exhibit B and attached.

There being no further proponents, Vice-Chairman Dave Brown asked the opponents to testify.

Irvin E. Dellinger, executive secretary of the Montana Building Materials Dealer's Association, appeared and urged the committee to either kill or table this bill.

He submitted some material concerning lien laws which was marked as Exhibit C and attached hereto.

Riley Johnson, representing the Montana Homebuilders, stated that he realizes as well as anyone that there are problems with the lien law. He believes that the law which was written in 1872 has existed over 116 years and has worked well. Even though there are problems with it, he doesn't feel it would be the right approach to jump in and start placing bandaids on it at this point. He informed the committee further that this was the reason why the bill introduced in the Senate this session was tabled. The Senators felt the issue should be further studied to see to what extent it may be changed and to discover the ramifications caused by the change. This bill really creates the protected third party, and it is being done without much thought. This was one of the key issues discussed in the Senate regarding this issue which he felt could not be taken lightly for the very reason of a quick sale. Again, he stated that they would like the opportunity to take the lien laws of Montana, completely rewrite them, look at the uniform codes that now exist, and possibly work them into that.

Blake Wordal, representing the Montana Hardware and Implement Dealer's Association, stated that the association has also agreed to get together and present legislation in two years dealing with this subject. The lien law is a very complex law and needs to be further studied.

Russ Lekland, president of the Montana Homebuilder's Association, testified as a proponent. He said the protected third party which is screened in this bill is going to present some problems. He feels that so many things can be read into these bills that he is afraid of winding up in court for two years trying to get the problems ironed out. He urged the committee to table the bill or kill it for now.

There being no further proponents or opponents, Rep. Hannah closed.

The floor was opened up for questioning.

Rep. Addy asked Rep. Hannah if any consideration had been given while drafting and researching this bill as to bonding the contractor. Rep. Hannah answered with a no. Fred Robinson, Manager of Peterson Lumber Company in Helena, addressed Rep. Addy's question. He said everyone has to start some place, and contractors are no different from anybody else. Suppliers have to determine whether or

not to give contractors credit. Mr. Robinson continued by saying that if they strictly base it on contractor's assets - especially those who are just starting a building business - the supplier probably couldn't provide credit for them, and these contractors probably couldn't obtain a bond either.

In response to another question asked by Rep. Addy, Mr. Robinson pointed out that the supplier's credit is not based strictly on a particular job that is done for one particular person. Credit is established for a contractor based on what the supplier thinks is his ability to pay.

Rep. Eudaily inquired as to what group is going to take the lead in studying this issue in the next two years so that the legislature has something to go on. Mr. Dellinger said that the Montana Building Materials Dealer's Association will be responsible for seeing to it that a bill is introduced.

Hearing closed on H.B. 329.

CONSIDERATION OF HOUSE BILL NO 712: Hearing commenced on H.B. 712 with Rep. Ron Miller, House District #34, sponsor of this bill, testifying. He said that H.B. 712 is another lien bill which is fairly clear and concise. Rep. Miller asked the committee to look this bill over thoroughly and to think about it in regard to fairness. He said that presently, hail insurance, crop dusting, farm laborers, etc. have the ability to put their liens in front of the banks or PCA. Fertilizing is an extremely large business in the United States. He pointed out another aspect to be looked at when operating a farm. Fertilizing is one of the largest, if not the largest, operating expenses a farmer will have. It accounts for approximately 35% of his operating costs. Even though seed is important for farming, without fertilizer there is no crop. He feels the small fertilizer dealer should be protected as provided in H.B. 712. Rep. Miller further informed the committee that there are 19 states that do have lien laws.

PROPOSERS: Larry Johnson, a farmer from Kremlin, Montana, and part owner of a fertilizer business, testified as a proponent to H.B. 712.

John Lammers, owner of a fertilizer business in Harlowton, testified as a proponent to H.B. 712. He stated that he really tries to work something out with his customer before getting into a lien situation.

Dan Place, co-owner of Broadwater Grain and Supply in Townsend, stated that with the agriculture credit up in the air the last few months, he feels that they have to support H.B. 712.

He said the situation they face is that they may get more exposure this year than in previous years because of the farmer not being re-financed. If customers are unable to pay their bills, he feels the fertilizer dealer needs some security in the form of this lien to make sure the bills are paid.

Gary Goodroad, representing the Harvest State Cooperative, stated his support for the bill. He stated that they have absolutely no recourse if the farmer who was sold fertilizer cannot repay the loan. He pointed out also that one of the main things that has come out of this bill is cooperation between bankers and dealers. He feels that every dealer in the fertilizer business has run into problems with not getting cooperation from a particular bank. He submitted a letter written to the Harvest States Cooperative from Pat Doney, credit department of the First Bank Lewistown. The letter was marked as Exhibit D and attached hereto.

Leanne Schraudner representing the Montana Agri-Business Association and the Montana Grain Elevator's Association, testified in support of this bill. She said that Montana Agri-Business Association has worked for a long time to propose a lien law to this committee. She said that equity and fairness warrant that there be a lien law for fertilizer dealers. She pointed out that this bill follows the same format of other lien laws. She further submitted some material pointing out why H.B. 712 as drafted is better than the proposed amendments or the Minnesota version. The material was marked as Exhibit E and attached hereto.

Allen Broyles, representing the J.R. Simplot Company in Billings, testified as a proponent.

Jerry Sullivan, representing the Agri-Basic Company from Great Falls, stated that they don't intend to use this bill as a tool to sell fertilizer. He said customers fall into three basic categories -- customers who always pay their bills on time, customers who are a little slow from time to time in paying bills, and customers who have no intention of paying their bills on time when they purchase the product. He stated that their credit policy calls for eliminating that third group of customers altogether.

Due to the press of time, Chairman Hannah advised the remaining proponents to state their names and who they represent.

Those who wished to go on record as supporting H.B. 712 were: Russ Miner, Great Falls; Jim Johnson, Belgrade; Marcie Quist, Manhattan; Jim Toth, Clinton; Tommy Wood, Joplin. A few of their written testimonies were submitted and marked as a packet. (Exhibit E-1)

The floor was opened for a questioning period.

Rep. Keyser wanted to know, because the bill is retroactive, how many cases are we talking about that the Department of Administration has had before the courts from July 1, 1977 to present. Mr. Young responded by saying the reason that this goes back to 1977 is because that's when the first limitation of liability was enacted by the legislature, this was then declared unconstitutional in the Karla White case because of the economic, non-economic damage extension. He said that the department has had approximately 910 claims in this time period of which 150 are currently in court. Out of that 910, approximately 300 of those are still claims that could be filed in district court. We have roughly 500 accident incidents or potential claims every year. He further stated that this also covers local government.

There being no additional questions, hearing closed on H.B. 714.

CONSIDERATION OF HOUSE BILL NO. 700: Rep. John A. Mercer, House District #50, sponsor of H.B. 700, testified. He stated that H.B. 700 is a plea bargain bill. He informed the committee that there is nothing in the present code books dealing with plea bargains at all. Rep. Mercer referred to a supreme court case (State vs. Cavanaugh) in 1982 which established a rule of criminal procedure that section 1 of this bill is attempting to overturn. Rep. Mercer feels the bench should be independent and separate from a plea bargain. A plea bargain doesn't involve the judge -- it is an agreement between the prosecutor and the defense which in turn take their chances before the court.

Mike McGrath, Lewis and Clark County Attorney, stated that the mood of the county attorney's association is to support this bill. He pointed out that 96% of the cases filed are settled through the plea bargaining process. Because of the numerous criminal cases which are filed, plea bargaining is very necessary. Mr. McGrath did point out that he had a problem with the language on page 2, lines 17 and 18. He recommended that the sentence "A plea bargain agreement is not by itself good cause for a dismissal." be stricken from the bill.

Marc Racicot, representing the attorney general's office, testified as a proponent. He stated that the "Cavanaugh" case is not being uniformly applied.

Karl Englund, representing the Montana Trial Lawyer's Association, testified as an opponent and feels that we need to understand exactly what a plea bargain is. He pointed out why plea bargaining is so necessary. If we didn't have this

particular process, thousands and thousands of more judges and courtrooms would be needed. The major reason for the process is to determine what needs to be done with the person charged with a particular offense for his own benefit and for the benefit of society. The plea bargaining process is simply the working out of a plan for how the person is going to be dealt with.

Mr. Englund further addressed the Cavanaugh case. The supreme court, in addressing this issue, put Montana in line with the federal rules of civil procedure with the recommendations of the American Law Institute and with the recommendations of the American Bar Association. In summary, Mr. Englund stated that he doesn't feel that passage of this bill would necessarily relieve the court's workload. He feels this bill is addressing something that is not necessarily a problem.

There being no further proponents or opponents, Rep. Mercer closed. Rep. Mercer pointed out that judges are primarily in support of this bill. He further stated that he would not be opposed to deleting the sentence on page 2, lines 17 and 18 as requested by Mr. McGrath.

In response to a question, Mr. Englund said in most of these cases, we are not dealing with the issue of guilt or innocence. The defendant's right to withdraw his plea and go to trial is not necessarily a great right. This bill discourages plea bargaining agreements, and we need them for the order of the administration for our court systems and the criminal justice system.

Rep. Addy asked Mr. McGrath if this bill will increase the number of plea bargains. Mr. McGrath doesn't feel it will have any impact in that particular area. He did, however, state that this bill will make it more likely for a defendant to know what his sentence is going to be.

There being no further questions, hearing closed on H.B. 700.

CONSIDERATION OF HOUSE BILL NO. 706: Rep. John A. Mercer, House District #50, chief sponsor of H.B. 706, testified. He said this bill is an act to clarify the arson law. The bill expands the terms "another person" and clarifies it to include a firefighter responding to or at the scene of a fire or explosion. On page 2, lines 4 and 5 it expands the definition of "beyond structures".

Bruce Suenram, representing the Career Fire Chiefs from Missoula Rural Fire Districts, testified as a proponent to H.B. 706. He said that this bill clarifies the attorney general's opinion #10, Volume 3G of the law. Firefighters are routinely placed in danger of death or bodily injury

OPPONENTS: Elroy Letcher, executive secretary of the Montana Council of Cooperatives, testified as an opponent to H.B. 712. A copy of his written testimony was marked Exhibit F and attached.

George Bennett, representing the Montana Bankers Association, appeared and testified in opposition to this bill. He said that by passing this bill, another secret lien for the fertilizer dealer will be created. He feels that a bad lien situation would be perpetuated in passing this bill. He said that the Montana Banker's Association had drafted and introduced S.B. 128 which would have comprehensively addressed that lien situation. The bill was tabled because of the people who wanted to have these secret un-recorded liens that surface somewhere down the line.

Roger McGlenn, executive director of the Independent Insurance Agent's Association for the State of Montana, stated that they are concerned with the repealing of the crop lien in H.B. 712. At the current status, crop hail insurance is listed on the current lien priority list. The reasons for that is because crop hail insurance in many cases protects the servicing parties that are in the discussion here today.

There being no further opponents, Rep. Miller closed. Rep. Miller asked the committee to look at some of the additional sponsors of this bill. He pointed out that most of them are farmers and ranchers who feel this bill is, in fact, necessary.

In response to a question of Rep. Keyser, Leanne Schraudner stated that the last section of the bill was in conflict with the intent of the bill which was to continue the present law on priority of farm laborer liens and to maintain the priority of the farm laborer liens above the fertilizer suppliers' liens.

Rep. Keyser wanted to know why they haven't repealed crop dusting entirely as far as weeds. Leanne said that they repealed crop dusting just to clean up the statute in the sense that this lien provides for fertilizer and chemical dealers. The crop dusters are really chemical people.

In response to another question asked by Rep. Keyser, Ms. Schraudner said that there is no provision that specifically says that crop dusters are now considered chemical people.

There were more general questions asked and hearing closed on H.B. 712.

CONSIDERATION OF HOUSE BILL NO. 714: Rep. Gary Spaeth, House District #84 and co-sponsor of this bill, testified in support of H.B. 714. He informed the committee that this bill was introduced at the request of the Department of Administration. He said this bill deals with the question of sovereign immunity and the limits under state law as to the plaintiff and the defendant when the state is essentially the defendant. He said the main controversy of the bill is exhibited on page 3, lines 13 through 15. He said this bill returns the limitation on governmental liability for damages in tort to what he feels the legislature meant to pass in the original stage.

J. Michael Young, chief trial counsel for the Department of Administration, testified as a proponent to this bill. He said this bill is trying to close a potential loophole which was raised last session when the supreme court declared the existing limits of liability unconstitutional and a bill was brought in the last week of the session which quickly passed through both Houses to reinstate the limit of \$300,000 per person, \$1 million per occurrence. We have a number of cases that are starting to raise the issue that each person making a claim is a separate claimant entitled to the \$300,000 per person.

Karl Englund, representing the Montana Trial Lawyers Association, testified as an opponent to H.B. 714. This issue says that if a person is injured irrespective of how many people he may be supporting or what the total amount of the damages are to all of his relatives, the claim is for only \$300,000. There are no such limits applied in private litigation. Under this bill, they would apply in the litigation involving state and local entities. Mr. Englund stated that there may be a constitutional problem with this bill as it exists. The more you restrict the amounts of judgments against the State of Montana, the greater the class of people who may be harmed by this, the greater the opportunity that someone is going to bring a suit and potentially throw out the limits and therefore create the problem that was created at the end of the last legislature which would leave this thing wide open. The fact of the matter is that in some unusual and particularly grievous situation, there may be more than one family member to have more than a claim of \$300,000 based upon the support and care that has been given to them by the injured person. This bill would cut those additional family members out of any potential judgments, and therefore the association thinks H.B. 714 is unwise.

There being no further proponents or opponents, Rep. Spaeth closed.

The floor was opened for a questioning period.

Rep. Keyser wanted to know, because the bill is retroactive, how many cases are we talking about that the Department of Administration has had before the courts from July 1, 1977 to present. Mr. Young responded by saying the reason that this goes back to 1977 is because that's when the first limitation of liability was enacted by the legislature, this was then declared unconstitutional in the Karla White case because of the economic, non-economic damage extension. He said that the department has had approximately 910 claims in this time period of which 150 are currently in court. Out of that 910, approximately 300 of those are still claims that could be filed in district court. We have roughly 500 accident incidents or potential claims every year. He further stated that this also covers local government.

There being no additional questions, hearing closed on H.B. 714.

CONSIDERATION OF HOUSE BILL NO. 700: Rep. John A. Mercer, House District #50, sponsor of H.B. 700, testified. He stated that H.B. 700 is a plea bargain bill. He informed the committee that there is nothing in the present code books dealing with plea bargains at all. Rep. Mercer referred to a supreme court case (State vs. Cavanaugh) in 1982 which established a rule of criminal procedure that section 1 of this bill is attempting to overturn. Rep. Mercer feels the bench should be independent and separate from a plea bargain. A plea bargain doesn't involve the judge -- it is an agreement between the prosecutor and the defense which in turn take their chances before the court.

Mike McGrath, Lewis and Clark County Attorney, stated that the mood of the county attorney's association is to support this bill. He pointed out that 96% of the cases filed are settled through the plea bargaining process. Because of the numerous criminal cases which are filed, plea bargaining is very necessary. Mr. McGrath did point out that he had a problem with the language on page 2, lines 17 and 18. He recommended that the sentence "A plea bargain agreement is not by itself good cause for a dismissal." be stricken from the bill.

Marc Racicot, representing the attorney general's office, testified as a proponent. He stated that the "Cavanaugh" case is not being uniformly applied.

Karl Englund, representing the Montana Trial Lawyer's Association, testified as an opponent and feels that we need to understand exactly what a plea bargain is. He pointed out why plea bargaining is so necessary. If we didn't have this

particular process, thousands and thousands of more judges and courtrooms would be needed. The major reason for the process is to determine what needs to be done with the person charged with a particular offense for his own benefit and for the benefit of society. The plea bargaining process is simply the working out of a plan for how the person is going to be dealt with.

Mr. Englund further addressed the Cavanaugh case. The supreme court, in addressing this issue, put Montana in line with the federal rules of civil procedure with the recommendations of the American Law Institute and with the recommendations of the American Bar Association. In summary, Mr. Englund stated that he doesn't feel that passage of this bill would necessarily relieve the court's workload. He feels this bill is addressing something that is not necessarily a problem.

There being no further proponents or opponents, Rep. Mercer closed. Rep. Mercer pointed out that judges are primarily in support of this bill. He further stated that he would not be opposed to deleting the sentence on page 2, lines 17 and 18 as requested by Mr. McGrath.

In response to a question, Mr. Englund said in most of these cases, we are not dealing with the issue of guilt or innocence. The defendant's right to withdraw his plea and go to trial is not necessarily a great right. This bill discourages plea bargaining agreements, and we need them for the order of the administration for our court systems and the criminal justice system.

Rep. Addy asked Mr. McGrath if this bill will increase the number of plea bargains. Mr. McGrath doesn't feel it will have any impact in that particular area. He did, however, state that this bill will make it more likely for a defendant to know what his sentence is going to be.

There being no further questions, hearing closed on H.B. 700.

CONSIDERATION OF HOUSE BILL NO. 706: Rep. John A. Mercer, House District #50, chief sponsor of H.B. 706, testified. He said this bill is an act to clarify the arson law. The bill expands the terms "another person" and clarifies it to include a firefighter responding to or at the scene of a fire or explosion. On page 2, lines 4 and 5 it expands the definition of "beyond structures".

Bruce Suenram, representing the Career Fire Chiefs from Missoula Rural Fire Districts, testified as a proponent to H.B. 706. He said that this bill clarifies the attorney general's opinion #10, Volume 3G of the law. Firefighters are routinely placed in danger of death or bodily injury

when suppressing arson-caused fires. County attorneys view fighting arson fires as part of a firefighter's job, thus, they are reluctant to prosecute under arson statutes.

Mike Walker, representing the Montana State Fire Marshall's Advisory Board, stated that arson is running rampant throughout this country.

Tom O'Hara, representing the Cascade County Rural Fire District, testified in support of H.B. 706. He said that if something could be done to cut arson caused fires, it would save the state substantial money.

Gordon Jollife, fire investigator from Great Falls, wished to go on record as supporting this legislation.

Creighton Sayles, representing the Missoula Rural Fire District, also stated his support for H.B. 706.

Bob Kelly, State Fire Marshall, Department of Justice, stated that the passage of H.B. 706 may increase the hours spent in prosecuting arson cases.

Lyle Nagel, representing the Montana State Voluntary Fireman's Association, wished to go on record as supporting this bill.

There being no further proponents or opponents, Rep. Mercer closed.

There being no questions, the hearing closed on H.B. 706.

At this time, Chairman Hannah called a brief executive session to order.

ACTION ON HOUSE BILL 706: Rep. Keyser moved that H.B. 706 DO PASS. The motion was seconded by Rep. Hammond. The question was called, and the motion carried unanimously. (No vote from Rep. Brown)

CONSIDERATION OF HOUSE BILL NO. 710: Hearing commenced on H.B. 710. Rep. Mike Kadas, House District #55, testified in support of H.B. 710. This bill would allow the Department of Motor Vehicles to issue an identification card for someone whose driver's license had been suspended. When a person's driver's license has been suspended, his license is taken thus leaving that person without any identification. Amendments to H.B. 710 were submitted by the Department of Motor Vehicles which were marked Exhibit G and attached hereto.

There being no further proponents or opponents, Rep. Kadas closed.

The floor was opened for questions from the committee.

Rep. Hannah challenged the reason why this particular bill is needed. He questioned whether the state would be required to give out identification cards.

There being no further questions, hearing closed on H.B. 710.

CONSIDERATION OF HOUSE BILL NO. 831: Rep. John A. Mercer, House District #50, chief sponsor of H.B. 831, testified in its support. This bill takes the current intimidation law that has been held unconstitutional and makes it constitutional. Rep. Mercer stated that it arose out of a case (Larry Wurtz vs. Hank Risley, 719 F2D 1438 (9th Circ. 1983)).

Also testifying as a proponent to H.B. 831 was Karl Englund, representing the Montana Trial Lawyer's Association. He stated that this bill clears up the ambiguity in the present statutes.

There being no further proponents or opponents, Rep. Mercer closed.

The floor was opened for questions. It was at this time that Joe Roberts from the attorney general's office stated that they requested this bill to clarify the statutes. The bill will clean up the statutes and make the current intimidation law constitutional.

Hearing closed on H.B. 831.

Chairman Tom Hannah called an executive session at 9:45 a.m.

ACTION ON HOUSE BILL 831: Rep. O'Hara moved that H.B. 831 DO PASS. The motion was seconded by Rep. Addy. The question was called, and the DO PASS motion carried unanimously. (Rep. Brown wasn't present to vote)

ACTION ON HOUSE BILL NO. 329: Rep. Addy moved that H.B. 329 DO PASS. The motion was seconded by Rep. Hammond and further discussed.

Rep. Eudaily brought out the point that there hasn't been any good faith effort on the part of the opponents of the bill to resolve this issue.

Rep. Addy stated that the risk of non-payment is going to be placed on someone. Usually, the homeowner is the one who gets stuck with paying the bill. Until this issue is addressed, he feels that the burden should be taken off

the homeowner who isn't aware of the credit arrangement between the builder and the contractor.

Rep. Hannah moved to amend the bill by striking subsection (2) in its entirety. A notice provision would be inserted in lieu thereof. Rep. Hannah pointed out that this language was adopted from the Oregon statutes. The question was called on the motion to amend, and it carried unanimously. (See copy of standing committee report for appropriate language.) The title of the bill would be conformed accordingly.

Rep. Miles moved to amend on page 2 following line 19 by inserting a new section: "Section 3. Effective date. This act is effective July 1, 1987." The motion was seconded by Rep. Addy. The question was called, and the motion to amend carried with Rep. Mercer and Rep. Rapp-Svrcek dissenting. The title of the bill would be conformed accordingly.

Rep. Brown moved that H.B. 329 DO PASS AS AMENDED. The motion was seconded by Rep. Hannah and carried unanimously.

ACTION ON HOUSE BILL NO 710: Rep. Addy moved that H.B. 710 DO PASS. The motion was seconded by Rep. Montayne.

Rep. O'Hara made a substitute motion that H.B. 710 DO NOT PASS. The motion was seconded by Rep. Gould. Rep. O'Hara feels that this bill is unnecessary. Rep. Gould also feels the bill is unnecessary because anyone can get an identification at request.

Rep. Rapp-Svrcek stated that this type of problem does exist, and he feels that passing the bill wouldn't create any unnecessary burden on the bureaucracy.

Rep. Miles pointed out that the bill would just authorize the department to issue identification cards.

Rep. Rapp-Svrcek, at the request of the sponsor, moved to amend page 1, lines 16 through 17 by striking "pursuant to 61-5-206". The motion was seconded by Rep. Addy and carried unanimously.

Rep. Keyser stated his support for the DO NOT PASS motion. He feels that passage of this bill will cost the state, and he feels it is unnecessary.

Following more discussion, the question was called on the do not pass motion, and it failed on a voice vote.

A DO PASS AS AMENDED motion having been made, the question was called, and the motion carried with Reps. Eudaily, Gould, Keyser, O'Hara, and Hannah dissenting.

ACTION ON HOUSE BILL NO. 700: Rep. Hammond moved that H.B. 700 DO PASS. The motion was seconded by Rep. O'Hara.

Rep. Hammond further moved to amend on page 2, line 17 following "minutes." strike "A" through "dismissal." on line 18. The motion was seconded by Rep. O'Hara and carried unanimously.

Rep. Keyser moved that H.B. 700 DO PASS AS AMENDED. The motion was seconded by Rep. Hammond.

Rep. Addy feels this bill will present a constitutional problem. Rep. Mercer argued stating that the constitutional problem would be a due process question. He feels the bill eliminates the due process problem.

Rep. Krueger spoke in favor of the bill. He said it allows the court as an unbiased party to determine as he sees fit as to what type of sentencing a defendant should be given.

In response to a question asked by Rep. Addy, Rep. Krueger stated that he feels there will be no change in the number of people who plea. He doesn't see where it will change the plea bargaining system at all -- he feels it rather clarifies the process.

Rep. Mercer moved to amend on page 1, line 20 following "agreement" by inserting "is an agreement". Furthermore, on page 1, line 21, following "prosecutor" strike "is an agreement". The motion was seconded by Rep. Brown, and the motion carried unanimously.

Rep. Hammond moved that H.B. 700 DO PASS AS AMENDED. The motion was seconded by Rep. Keyser. The question was called, and the motion carried with Rep. Brown and Rapp-Svrcek dissenting.

ACTION ON HOUSE BILL NO. 714: Rep. O'Hara moved that H.B. 714 DO PASS. The motion was seconded by Rep. Keyser. At the request of Rep. Addy, action on H.B. 714 will be further delayed.

ACTION ON HOUSE BILL NO. 712: Rep. Grady moved that H.B. 712 DO PASS. The motion was seconded by Rep. Brown.

Rep. Addy moved to strike section 7 of the bill in its entirety. The motion was seconded by Rep. Brown. The question was called, and the motion to strike carried unanimously.

Rep. Addy further moved to amend on page 2, line 6 following "applied" by striking "or" through "later" on line 7. He

has a problem with giving people 10 days to file a lien. The motion was seconded by Rep. Hannah and carried unanimously.

Rep. Addy moved that H.B. 712 DO PASS AS AMENDED. The motion was seconded by Rep. Grady.

Rep. Keyser moved to amend page 3, line 1 of the bill by reversing the order of seed and farm laborers' liens. Since some existing statutes would have to be inserted in the bill and amended to conform with this amendment, Rep. Keyser withdrew his motion to amend.

Rep. Cobb pointed out the necessity of amending the title of the bill to conform with the amendments.

The question having been called on the DO PASS AS AMENDED motion, the motion carried unanimously.

ACTION ON HOUSE BILL NO. 473: Rep. Brown moved that H.B. 473 DO PASS. The motion was seconded by Rep. Keyser.

Rep. Keyser moved to amend the bill on page 4, line 1, by striking "postsecondary vocational-technical center or program,". Furthermore, on page 4, line 5, following "include" insert "a school district, a postsecondary vocational-technical center or program, or". The motion was seconded by Rep. Hannah. The question was called, and the motion to amend carried with Rep. Montayne and Rapp-Svrcek dissenting.

Rep. Brown moved that H.B. 473 DO PASS AS AMENDED. The motion was seconded by Rep. Keyser and further discussed.

Rep. Addy spoke against the bill stating that by passing this bill, we are repealing what the special session did.

Rep. Hannah stated that he had served on the interim committee which studied veteran's preference. He said there are basically two questions that need to be addressed: Do you want to have a scored procedure? Do you want to give the veteran more preference?

Rep. Miles pointed out the fiscal note, and further stated that we are not letting the present law have effect before changing it. She feels the committee should support the decision made by the special session by allowing it to work first.

Following further general discussion, the question was called on the DO PASS AS AMENDED motion, and the motion failed 12-6. (See roll call vote). Rep. Brown moved to reverse the vote on the do pass as amended vote. Without objection, the vote was

reversed, and H.B. 473 was reported out of committee with a DO NOT PASS AS AMENDED recommendation.

ACTION ON HOUSE BILL NO. 477: (This bill was re-referred back to committee.) Rep. Addy moved to amend the second reading copy of H.B. 447 as follows:

1. Title, line 6.

Following "OF"

Insert: "NO MORE THAN 50% OF"

2. Page 1, line 17.

Following: "(b)"

Insert: "to the extent of 50% of any payment under this chapter"

The motion was seconded by Rep. Hammond, and a roll call vote was taken. The motion to amend carried 10-7.

Rep. Rapp-Svrcek moved that H.B. 447 DO PASS AS AMENDED.

The motion was seconded by Rep. Miles and carried with Rep. Brown, Montayne, Cobb, and Eudaily dissenting.

ACTION ON HOUSE BILL NO. 210: Rep. O'Hara moved that H.B. 210 DO PASS. The motion was seconded by Rep. Keyser and discussed.

Rep. O'Hara stated that in talking with Curt Chisholm, Department of Institutions, H.B. 210 will have very little impact.

Rep. O'Hara further moved to amend the bill by striking sections 2 and 3 in their entirety. The motion was seconded by Rep. Brown and carried unanimously.

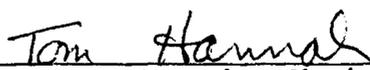
Rep. O'Hara further moved that H.B. 210 DO PASS AS AMENDED. The motion was seconded by Rep. Rapp-Svrcek.

The other amendments to H.B. 210 were adopted by the committee during the January 25, 1985 meeting. (See standing committee report and the 1/25/85 minutes)

Rep. Brown stated that he still has a problem with the bill, and he referred to committee the H.B. 210 redux. He made a substitute motion to kill the bill. The motion was seconded by Rep. Montayne. Following further discussion, the question was called on the DO NOT PASS AS AMENDED motion, and the motion failed with Reps. Brown, Montayne, Grady and Bergene voting in favor of the motion.

Without objection, the vote was reversed, and H.B. 210 left the committee with a DO PASS AS AMENDED recommendation.

ADJOURN: A motion having been made and seconded, the meeting adjourned at 11:05 a.m.



Rep. Tom Hannah, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/18/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

February 13 1935

page 1 of 2

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 210

FIRST reading copy (WHITE color)

GENERALLY STRENGTHENING DRUNK DRIVING LAWS

Respectfully report as follows: That HOUSE Bill No. 210

be amended as follows:

1. Title, line 6.
Following: "ALCOHOL"
Strike: "; ESTABLISHING" through "61-9-722, MCA" on line 13.

2. Page 1, line 15.
Strike: "because"
Insert: "and"

3. Page 1, line 20.
Following: "shall be"
Insert: "fined an amount not to exceed \$1,000 or"

Following: "the"
Strike: "state prison"
Insert: "county jail"

KDD:PASSX

(continued)

4. Page 1, line 21.

Strike: "3 years" through "\$20,000" on line 22.

Insert: "1 year"

5. Page 1, following line 22.

Strike: Sections 2 through 5 in their entirety.

renumber subsequent section

6. Page 7, line 25.

Strike: "(1)"

7. Page 9, following line 2.

Strike: subsection (2) in its entirety.

AND AS AMENDED,
DO PASS

STANDING COMMITTEE REPORT Page 1 of 2

February 19 19 85

SPEAKER:
MR.

JUDICIARY

We, your committee on

having had under consideration HOUSE Bill No. 129

FIRST WHITE
..... reading copy (.....)
color

REVISION OF MECHANICS' LIEN LAW RELATING TO
SUPPLIERS AND SUBCONTRACTORS

Respectfully report as follows: That HOUSE Bill No. 329

BE AMENDED AS FOLLOWS:

1. Title, line 6.
Following: "UNLESS"
Insert: "HE GIVE NOTICE ON THE BASIS FOR FILING A MECHANICS' LIEN TO"

Following: "OWNER"
Strike: "IS" through "OWNER" on line 7.

2. Title, line 10.
Strike: "AND"
Following: "NCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"

1. Page 2, following line 1.
Strike: Subsection (b) in its entirety.
Insert: "(b)(a) Except when materials are delivered at the request of
the owner, any person supplying materials for use in constructing

DO PASS

CONTINUED

February 19 19 35

an improvement to property unless he is also performing labor on the improvement must, within 10 days after the first date of delivery of materials, give the owner of the property written notice of potential lien liability. No mechanics' lien for material furnished may be enforced unless such notice is given. Notice is not required for subsequent deliveries.

(b) The notice shall state, in substance:

(i) that the supplier has commenced to deliver such materials for use of the property;

(ii) the name of the person ordering such materials;

(iii) that a lien may be claimed for all materials furnished after the first date of delivery of materials referred to in subsection (2)(a);

(iv) that payment by the owner or his lender to the contractor does not remove the right of the person furnishing materials to claim a lien unless the person giving the notice is, in fact, paid; and

(v) that further notice to the owner of this or any subsequent delivery is necessary."

4. Page X² following line 19.

Insert: "NEW SECTION. Section 3. Effective date. This act is effective July 1, 1987."

hb329.txt
pc2/kip

AND AS AMENDED,
DO PASS

STANDING COMMITTEE REPORT

February 13 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 447

SECOND reading copy (YELLOW color)

GARNISH WORKERS' COMPENSATION BENEFITS FOR CHILD SUPPORT DEBTS

Respectfully report as follows: That HOUSE Bill No. 447

be amended as follows:

1. Title, line 6.

Following: "OF"

Insert: "NO MORE THAN 50% OF"

2. Page 1, line 17.

Following: "(b)"

Insert: "to the extent of 50% of any payment under this chapter,"

AND AS AMENDED,

DO-PASS-

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE February 18, 1985 BILL NO. HB 447 TIME 11:50

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene		✓
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Addy moved to amend the second reading copy of HB 447.

(See copy of standing committee report for amendments.) The
motion was seconded by Rep. Hammond and carried 10-7.

STANDING COMMITTEE REPORT

February 18 19 35

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 448

FIRST reading copy (WHITE)
color

PRESUMPTION OF PARENTAGE WHEN BLOOD TEST RESULTS SHOW HIGH PROBABILITY

Respectfully report as follows: That HOUSE Bill No. 448

~~DO NOT PASS~~
~~DO PASS~~

STANDING COMMITTEE REPORT

February 18 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 456

FIRST reading copy (WHITE)
color

**SUPPORT FOR CHILDREN ON PUBLIC ASSISTANCE DURING PENDING;
DOM. REL. ACTION**

Respectfully report as follows: That HOUSE Bill No. 456

~~DO NOT PASS~~
~~DO PASS~~

STANDING COMMITTEE REPORT

February 19

19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 473

FIRST reading copy (WHITE color)

GRANTING PREFERENCE TO VETERANS IN CERTAIN EMPLOYMENT SITUATIONS

Respectfully report as follows: That HOUSE Bill No. 473

be amended as follows:

1. Page 4, line 1.

Strike: "postsecondary vocational-technical center or program,"

2. Page 4, line 4.

Following: "city,"

Insert: "or"

Following: "town"

Strike: ", or school district"

3. Page 4, line 5.

Following: "include"

Insert: "a school district, a postsecondary vocational-technical center or program, or"

AND AS AMENDED,

DO NOT PASS

~~DO NOT PASS~~
DO PASS

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 2/18/85 BILL NO. 473 TIME 11:45

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb		✓
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould		✓
Edward Grady		✓
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger		✓
John Mercer	✓	
Joan Miles		✓
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Brown moved that HB 473 do pass as amended. The
motion was seconded by Rep. Keyser and failed 12-6. Without
objection, the vote was reversed, and HB 473 was reported out of
committee with a DO NOT PASS AS AMENDED recommendation.

STANDING COMMITTEE REPORT

February 19 19 85

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **700**

FIRST reading copy (**WHITE**)
color

REGULATE PLEA BARGAINS; REQUIRE GOOD CAUSE BE SHOWN FOR DISMISSAL

Respectfully report as follows: That **HOUSE** Bill No. **700**

be amended as follows:

1. Page 1, line 20.
Following: "agreement"
Insert: "is an agreement"
2. Page 1, line 21.
Following: "prosecutor"
Strike: "is an agreement"
3. Page 2, line 17.
Following: "minutes."
Strike: "A" through "dismissal." on line 18.

**AND AS AMENDED,
DO PASS**

STANDING COMMITTEE REPORT

February 18

19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 706

FIRST reading copy (WHITE)
color

CLARIFY THE ARSON LAW

Respectfully report as follows: That HOUSE Bill No. 706

DO PASS

STATE PUB. CO.
Helena, Mont.

REP. TOM HANNAH

Chairman.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

February 13 19 35

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 710

FIRST reading copy (WHITE)
color

IDENTIFICATION CARD FOR PERSON WHOSE DRIVER'S LICENSE IS SUSPENDED

Respectfully report as follows: That HOUSE Bill No. 710

be amended as follows:

1. Page 1, lines 16 through 17.
Strike: "pursuant to 61-5-206"

AND AS AMENDED,
DO PASS

STANDING COMMITTEE REPORT

February 18 19 35

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 712

FIRST reading copy (WHITE)
color

CREATING LIEN FOR FERTILIZER AND CHEMICAL APPLICATORS

Respectfully report as follows: That HOUSE Bill No. 712

be amended as follows:

1. Title, line 3.
Strike: "SECTIONS"
Insert: "SECTION"

Following: "71-3-711"
Strike: "AND 71-3-304"

2. Page 2, line 6.
Following: "applied"
Strike: "or" through "later" on line 7.

3. Page 4, following line 14.
Strike: Section 7 in its entirety.

Renumber subsequent sections.

AND AS AMENDED,

DO PASS

STANDING COMMITTEE REPORT

February 18 19 85

SPEAKER:
MR.

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **331**

FIRST reading copy (**WHITE**)
color

**REDEFINES THE OFFENSE OF INTIMIDATION TO CONFORM WITH WURTE
V. RISLEY**

Respectfully report as follows: That **HOUSE** Bill No. **331**

DO PASS

DON'T PAY TWICE

FOR LABOR AND MATERIALS

When You . . .

- REMODEL
- BUILD
- REPAIR

for Your PROTECTION

READ FURTHER *1A*

o tropics



in laboratory

Staff photo

DON'T PAY . . . TWICE!

WHEN YOU REMODEL, BUILD, REPAIR YOU COULD . . . BECAUSE
"IT'S THE LAW"

- When you **BUILD - REPAIR - REMODEL** - you are obligated to pay your contractor the amount set forth in your contract with him.
- The contractor assumes an equal obligation - to pay for all materials and labor used.
- It's the law which sets up a legal claim against your property - if materials furnished and labor provided are not paid for by your contractor - or by you - if you are doing it yourself.
- In other words, if the contractor does not pay the material supplier for materials bought for use on your property, the supplier can file a lien against your property **EVEN THOUGH YOU MAY HAVE ALREADY PAID THE CONTRACTOR FOR THEM.**

**REMEMBER, ALMOST ALL CONTRACTORS ARE RELIABLE AND RESPONSIBLE AND PAY THEIR BILLS AS AGREED!
PROTECT YOURSELF . . .**

against the occasional contractor who doesn't pay his bills or whose credit is "shaky";

- Before paying out any monies to the contractor, require of him a sworn statement of all the persons furnishing material or labor for your job and the amount of money due each.
- Before making any payments to any contractor, require **WAIVERS OF LIEN** from him and have him give you a waiver of lien signed by **EVERY** person who furnished labor or material covered by your payment.
- Make sure you have a waiver of lien from each person listed on the sworn statement referred to in No. 1 above.

If you do these three things, your construction job should end with no regrets - **AND NO DOUBLE PAYMENTS FOR EITHER MATERIAL OR LABOR.**

THIS INFORMATION SUPPLIED AS A PUBLIC SERVICE BY THE FOLLOWING LOCAL BUILDING SUPPLIES DEALERS:

UBC

2805 Kaw

(Corner Dewey & Rowe Road)

**WESTERN
DIMENSION**

1325 Kaw

**PIONEER
LUMBER**

216 E. Front

Dear Property Owner — Please take time to read about liens. We want to protect our good contractors and you. Good contractors shouldn't have to compete with the few who do not pay material and/or labor bills and could cause you to pay twice. Choose a professional — it's your money!

Thanks
Aldrich's

DON'T PAY TWICE

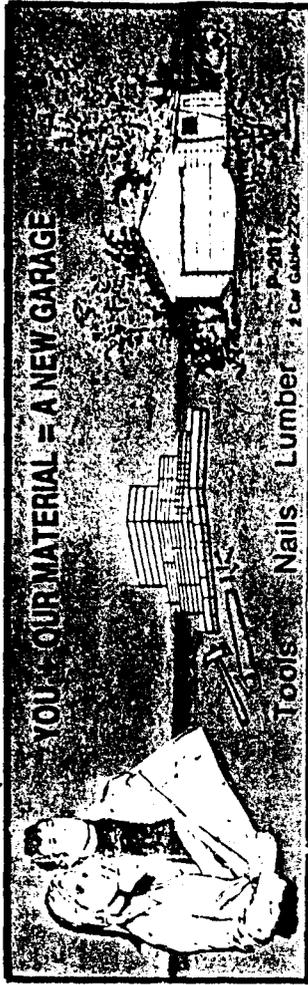
FOR LABOR AND MATERIALS

When You...

- REMODEL
- BUILD
- REPAIR

for Your PROTECTION

READ FURTHER



"IT'S THE LAW"

When you BUILD-REPAIR-REMODEL-you are obligated to pay your contractor the amount set forth in your contract with him.

The contractor assumes an equal obligation — to pay for all materials and labor used.

It's the law which sets up a legal claim against your property — if your materials furnished and labor provided are not paid for by your contractor — or by you — if you are doing it yourself.

In other words, if the contractor does not pay the material supplier for materials bought for use on your property, the supplier can file a lien against your property EVEN THOUGH YOU MAY HAVE ALREADY PAID THE CONTRACTOR FOR THEM.

REMEMBER, ALMOST ALL CONTRACTORS ARE RELIABLE AND RESPONSIBLE AND PAY THEIR BILLS AS AGREED!

HERE'S HOW TO PROTECT YOURSELF...

To protect yourself against the occasional contractor who doesn't pay his bills or whose credit is "shaky":

1. Before paying out any monies to the contractor, require of him a sworn statement of all the persons furnishing material or labor for your job and the amount of money due each.
2. Before making any payments to any contractor, require WAIVERS OF LIEN from him and have him give you a waiver of lien signed by EVERY person who furnished labor for material covered by your payment.
3. Make sure you have a waiver of lien from each person listed on the sworn statement referred to in No. 1 above.

If you do these three things, your construction job should end with no regrets — AND NO DOUBLE PAYMENTS FOR EITHER MATERIAL OR LABOR.

PROPOSED AMENDMENTS TO HOUSE BILL 329Notice Requirements

(1) Except where materials or supplies are delivered at the request of the owner, any person delivering material or supplies for use in constructing an improvement (unless he also is performing labor on the improvement) must, within ten days after the date of delivery of material, give the owner or reputed owner of the site written notice. Notice is not required for subsequent deliveries. The notice shall state, in substance:

- (a) That he has commenced to deliver such materials or supplies for use of the property;
- (b) The name of the person ordering such materials and supplies;
- (c) That a lien may be claimed for all materials and supplies delivered after a date which is 10 days before the notice was delivered or mailed;
- (d) That payment by the owner or lender to the contractor does not remove the right of the person furnishing materials or supplies to claim a lien unless the person giving the notice is, in fact, paid; and
- (e) No further notice to the owner of this or any subsequent delivery is necessary.

(2) This notice is required by statute and no materialmen's lien for material or supplies furnished will be enforced unless such notice is given.

(3) Your lien will not take priority over a previously recorded mortgage or deed of trust unless the mortgage or deed of trust was given to secure a loan made to finance the alteration or repair for which you are seeking a lien, and, further, unless you do the following two things:

- (a) Provide a 10-day notice, similar to the one you gave the owner, to the mortgagee, and
- (b) If the mortgagee demands a list of the materials or supplies and a statement of the amount due, you must provide same within 15 days of receipt of the mortgagee's demand.

HOUSE BILL NO. 329

1. Page 1, Line 5
Following: "Supplier"
Insert: "Or Subcontractor"

2. Page 1, Line 7
Following: "Contract"
Insert: "Or Has Actual Notice"

3. Page 2, Line 3
Following: "Material"
Insert: "Or A Subcontractor"

4. Page 2, Line 9
Following: "Contractor"
Insert: "or has actual notice of the materials supplied or the
improvements performed under a subcontract"

LIEN LAWS

Lien right laws, like water right laws, have their very beginnings with the foundation and the building of this country when our forefathers were faced with the orderly and stable development of new land with homes, farms and commercial structures.

In fact, it was when our forefathers were first considering the construction of our nation's Capitol. The laborers, contractors and suppliers were concerned whether they were going to be paid by this new government once their efforts and materials went into this new capitol and could not be recovered if they weren't paid. It was Thomas Jefferson who drafted the first lien right law giving those who supplied labor and material some assurance that they were going to be paid.

The **only** justification for a construction lien law is that it serve the construction process. Thus, it follows that those who write the law, in order to perform with responsibility, must fully understand the problems, the priorities and the practical workings of the industry.

When a property owner wants to build a building, whether a simple residence or a skyscraper, he first of all must have a plan which may or may not involve the services of engineers and architects. Before actual construction begins, he engages a general contractor, usually through a process of bidding and discussion involving several competitors.

His chosen contractor takes care of coordinating all sub-contractors and materialmen and sees to compliance with local codes and building regulations.

The **property owner** expects the project to start on time, continue at a practical pace, and be completed on a certain predetermined date. He expects to pay for the project from his own resources or those of a mortgage holder. He doesn't want to have to pay for anything twice and when the job is completed and paid for, he wants a clear title to his property.

The **contractor** wants to choose his own sub-contractors and material suppliers -- generally through competitive bidding -- and he wants goods delivered or services performed when called for. He needs credit, from sub-contractors and materialmen with whom he deals.

He wants them to "carry" him until the project has progressed to a point where the mortgage holder or owner feels justified in advancing him some money. He intends to satisfy his sub-contractors and materialmen with payouts for goods and services performed up to that date. He then expects the project to continue until it has again progressed to a stage where more money is forthcoming from the mortgage lender or property owner. He again wishes his sub-contractors and materialmen to "carry" him through the second and subsequent interim periods.

Ideally, when the project is finished, the key is turned over to the property owner, the final payment is made by the mortgage lender or the owner, and the contractor pays off his sub-contractors and material suppliers.

During this whole process, the **property owner** has his land, which is being **enriched**. The mortgage lender has a security interest in that land, which is usually prior to any security interest of the contractor or his sub-contractors and materialmen. The contractor has his contract with the owner, access to the mortgage lender and usually a privileged position for perfecting a construction lien.

What about the materialmen and sub-contractors?

They provide the technical know-how and materials that go into the job. They maintain crews, equipment and large inventories of supplies. They are willing and accustomed to bidding in order to get the business. They are expected to perform or deliver on reasonable notice. They are expected to get the job started and invest large sums without payment until the job has reached the stage where the mortgage lender or owner is agreeable to payout.

Sub-contractors and materialmen are willing and able to provide interim financing for construction - but only if they have reasonable security. Only then can they feel free to quote a competitive price.

Good security guarantees competition and gives the property owner assurance that the price is right and interim financing is assured.

Lien rights, of course, are no substitute for good credit management.

It is a fact of life that even the highly successful contractor is in no position to pay, **on demand**, all the bills charged in his name for all the work and material provided by sub-contractors and materialmen on his jobs.

The last three years have proved that even the best of them can get in trouble because of underbidding and high interest rates.

The sub-contractors and materialmen must look to **security in the project**.

With inadequate or elusive security in the project, he must seek some other assurance of payment. One route is to arrange direct payment from the owner or his lender. This is fine for the claimant but usually quite unsatisfactory to the owner or lender and absolutely unpalatable to the general contractor.

In the absence of a good lien law or some suitable option, sub-contractors and materialmen are forced to do business with only those with proven reliability and on a basis of **unsecured credit**.

Sub-contractors and materialmen do not want anybody to pay twice. They only want to be paid themselves. A provision that all monies received for a construction project must be held in trust until the sub-contractors and materialmen are paid becomes an essential ingredient for the protection of the property owner.

The back bone of construction financing in this country is the availability of a lien law which allows the builder, supplier and sub-contractor to receive payment in the event of non-payment by the owner or contractor.

Really, what difference is there between a lien on a piece of property and a chattel mortgage on a car or refrigerator. Certainly if a person can't pay for a car, it is repossessed. The only difference in the case of a material-man's or mechanic's lien is the product can't be removed from the premise so the premise becomes the chattel.

The National Conference of Commission on Uniform State Laws was formed in 1890 by the American Bar Association to establish unity in State Laws. A few years ago they were studying a Uniform Simplification of Land Transfers Act which included lien laws. Some of the suggested provisions are:

1. Timely notice to the property owner so he understands what the lien is about and he understands his obligations under the law.
2. Information as to the existence of potential lien claimants.
3. A trust provision for all monies paid out on a job until lower-tier sub-contractors and materialmen are paid.
4. A criminal penalty for a recipient of construction payouts who abuse the trust.
5. Recognition that improvements to land attach to the land and enrich it; therefore, a security interest in the land is given to improve it, measured by the value of the services performed or materials delivered and not by monies yet unpaid the contractor.
6. An instrument to waive lien rights of those who have been paid.
7. A notice to the owner prior to the filing of a lien . . . providing time to react.
8. A means for late establishment of lien rights on materials yet to be delivered or services yet to be performed.
9. Clear and simple definitions of owner, contractor, time periods, commencing dates, filing dates, etc. for the benefit of both the owner and claimant.

Montana has a good lien law. It embodies most of the essential ingredients that give reasonable protection to everyone involved.

Of course, you can't write enough laws to give protection to everybody for every situation.

As previously stated, from a materialman's standpoint, it is no substitute for good credit management.

It is a fact that very, very few liens are ever perfected and carried through to foreclosure.

Even when the final step is made, the claimant never recovers all his investment. No one likes to take this recourse. It is a course of last resort and self defense.

We are very well aware that the term "lien" is enough to frighten most people.

A fair lien law need not be repressive to anyone, but promotes for protecting the interests of all those engaged in construction and must be based on what is best for the construction process.

Montana has a **good lien law** that protects all parties.



First Bank Lewistown

EXHIBIT D
2/18/85
HB 712

First National Bank of Lewistown
224 West Main
Box 540
Lewistown, MT 59457
(406) 538-7471

September 24, 1984

Harvest States Cooperative
L.L. Olson, Credit Manager
1667 North Snelling Avenue
P.O. Box 43594
St. Paul, MN. 55164

Dear Mr. Olson:

We received several copies of an Application For Credit from your patrons, authorizing us to forward to you his current financial statement, along with any loan and checking account experience we have had.

Releasing customers' confidential financial statements and information regarding customers' ability to pay his obligations, unless specifically requested by the customer to do so, would be in violation of First Bank Systems Code of Ethics regarding customer confidentiality.

Unless our customer, presents in person a request for specific items that he can forward to you personally, we will be unable to furnish the requested information.

Sincerely,

Pat Doney
Pat Doney
Credit Department



WHY HOUSE BILL 712 AS DRAFTED IS BETTER THAN THE PROPOSED
AMENDMENTS OR MINNESOTA VERSION

The proposal by the lending institutions to follow the format of the Minnesota or Iowa versions of the lien law require a lien notification statement to the growers bank listing the products requested and the total dollar amount. The Bank has 10 calendar days to respond in one of four ways:

1. A letter of commitment for all of the amount of the lien notification statement.
2. A letter of commitment for part of the amount of the lien notification statement.
3. A written refusal by the bank to give a letter of credit.
4. Failure to respond.

If the lending institution responds with a letter of commitment the supplier can invoice the bank for payment. If the bank responds with a refusal to issue a letter of credit, the bank maintains a superior lien or security interest. If the bank fails to respond the dealer may take a prior lien if necessary.

THE PROBLEM-FROM A DEALERS PERSPECTIVE

BY RESPONDING WITH A WRITTEN REFUSAL TO ISSUE A LETTER OF CREDIT THE BANK MAINTAINS A SECURITY INTEREST IN COLLATERAL THAT HAS INCREASED IN VALUE (INCREASED YIELD ON CROP) AT THE EXPENSE OF THE FERTILIZER DEALER.

This version creates a mound of paper work that creates only an illusion of protection for the fertilizer supplier. In addition because the dealer must wait 10 days for response from the bank, the dealer will be forced to withhold fertilizer from the farmer for 10 days--some farmers will not be able to wait--thus loss of sales will result.

THE PROBLEM-FROM A FARMERS PERSPECTIVE

Because most dealers will not furnish the product until after they have heard from the bank, fertilizer may be withheld for that period of time. Those 10 days can be critical in terms of applying fertilizer. The farmer may not be able to wait--it works to the farmers disadvantage.

To insure protection for the dealer, lien notifications will be sent to banks for all farmers. Those with a record of past prompt payment will now be subject to the same red tape and scrutiny of their finances, or be forced to pay cash.

At present one can buy fertilizer from most dealers on credit with no interest charge for a period ranging from 30 to 59 days depending on the date of purchase and the company's billing period. With H.B. 712 as written that option and advantage still remains open. Without a lien law that line of credit will be lost and some operators will be forced to use operating loans earlier with interest payments beginning immediately. For those who can not get adequate financing from the bank without H.B. 712 their avenue of credit with the fertilizer dealer may now be closed.

FROM THE BANKS PERSPECTIVE WHAT APPEARS TO BE A COMPROMISE HAS IN MINNESOTA TURNED OUT TO BE THE BANKS RECOGNITION THAT BY REFUSING TO ISSUE A LETTER OF CREDIT THE DEALERS IN EFFECT HAVE NO PROTECTION, THE BANK REAPS THE BENEFIT OF THE INCREASED YIELD OF THE CROP WITHOUT ADDED COST---AT THE EXPENSE OF THE DEALER. THE BANKS SUPPORT THE MINNESOTA VERSION BECAUSE THEY KNOW IT IS A MERE ILLUSION OF A LIEN FOR THE FERTILIZER DEALER.

H.B. 712 AS WRITTEN CONFORMS TO EXISTING STATUTES AND IS SIMPLISTIC IN NATURE AND HAS MET THE TEST OF TIME.

H.B. 712 follows the format of all other lien statutes in this state. Those lien laws do not have a complicated lien notification provision. They have worked well. They were enacted years ago. The mechanics lien was enacted in 1871, seed supplier liens in 1915, harvestor liens in 1915, hail insurance liens in 1921, farm labor lien in 1935--the list is endless. They have met the test of time. There is no need for this elaborate lien provision. It is disguised to do one thing, give an illusion that the fertilizer dealer has protection, and keep the banks satisfied.

We urge your support of H.B. 712 as it is fair and equitable and the statutory provision as drafted has met the test of time.

WITNESS STATEMENT

NAME RUSSEL MINER HB 712
BILL NO. 712
ADDRESS PO BOX 2548 GTFALLS MT 59403 DATE 2-18-85
WHOM DO YOU REPRESENT? AGRIBASICS Co. & ^{all} independent
SUPPORT X OPPOSE AMEND
agriculture Dealers

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I support HB 712 to protect independent dealers. This (HB 712) would allow us to file a lien so we would get paid for services + product. This lien would not be filed on every account but, in limited cases where this would be used as a last ~~step~~ resort (before ~~going~~ going to court) to get payment for our products.

HB 819 will be proposed as an alternative to HB 712. ~~After~~ After you read both bills you will see the apparent short comings of HB 819. I oppose HB 819.

WITNESS STATEMENT

NAME Tommy Wood BILL NO. 712
ADDRESS Poplar Montana 59531 DATE 2-18-85
WHOM DO YOU REPRESENT? Bot 22 - Cargill Inc - MABA
SUPPORT yes OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Farming has changed drastically in the last 40 years
Farmers now use large amounts of fertilizer and chemicals.
It is not unusual for a farmer to get \$10,000⁰⁰ in chemical purchases in a pickup truck.
we had one customer get \$99000⁰⁰ worth of fertilizer & chemicals in 30 days
I don't think the Banks enter this sort of credit without security

WITNESS STATEMENT

NAME J. Ross Quinlan BILL NO. 712
ADDRESS 2000 Cairns Ave, Free, Maryland 21754 DATE 2-10-05
WHOM DO YOU REPRESENT? Western Agric. Business Assoc. - Woodbury Springs, Md
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This bill is a very fair bill to allow fertilizer and chemical dealers (to include "crop dealers") to place a lien on the crop for payment. Currently, the conventional non-crop dealers combine harvesters + warehousemen all have first liens above the banks.

If a farmer doesn't pay his bill and the dealer has no lien it is the small independent dealer who is destroyed by this practice rather than the larger corporate dealer, or the bank. The bill will help the eq dealer stay in business.

The banks are not in favor of this bill because as banks they do not wish to have any other dealers secured as they are. They also want to propose a amendment to provide as the Illinois and Iowa bills do for the bank to go at the right of the dealer to place his lien first. Why would ~~any~~ any bank allow a dealer in first place above them selfs even if it's fair?

"Crop Dealers" are chemical dealers.

WITNESS STATEMENT

NAME JAMES TOTH BILL NO. 712
ADDRESS STAR ROUTE BOX 1500 CLINTON, MT DATE 2-18-85
WHOM DO YOU REPRESENT? MONTANA AG-BUSINESS ASSOC.
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITH THE FARM ECONOMY THE WAY IT IS IN THE STATE, IT WOULD TAKE ONLY 2 OR 3 BAD ~~FARM~~ FERTILIZER OR CHEMICAL DEBTS OWED BY FARMERS TO PUT THE AVERAGE LOCAL RETAILER OUT OF BUSINESS. THE LOSS OF THIS LOCAL, CONVENIENT SUPPLIER WOULD BE BURDEN TO THE FARMERS IN THAT AREA.

FROM A RETAILER STAND POINT, BUYING FERTILIZER OR CHEMICALS IS NO DIFFERENT THAN BUYING AN APPLIANCE. IF YOU BUY SOMETHING, YOU SHOULD PAY FOR IT.

Montana Council of Cooperatives
P.O.Box 367
Helena, Montana 59624

EXHIBIT F
2/18/85
HB 712
406-442-2120

For the Record I am Elroy Letcher, Executive Secretary of the Montana Council of Cooperatives.

Our Organization represents the Farmer Owned Cooperative Fertilizer and Chemical Dealers operating in Montana, as well as the cooperatively owned grain marketing Cooperatives. We also represent the Cooperative Farm Credit System Lenders.

We Appear today as Opponents to HB712 because we feel the bill as drafted does not solve the problem. We would propose that the bill be amended, and in doing so we feel all parties involved would benefit.

In our discussions of the problems being experienced by dealers in agricultural inputs we feel they are only in the area of "Inability to be able to determine if the producer has arranged for credit to put his crop in the ground and just how much". we do not feel it was ever the desire of our dealers at least to want a lien that would have priority over the Agricultural Lenders.

Our Dealers do not wish to become agricultural Lenders, which as we read the bill they could be forced into.

We feel thr present problem that exists between the Ag. Input Dealers and the Producers and the Ag Lenders is one of a lack of communication, or failure to communicate, barriers to communication created by some prior legislative actions.

We would propose that HB 712 be amended to include those features that presently exist in the Laws of Minnesota. I have attached a copy of the bill adopted by the Minnesota Legislature in 1983 that went into effect on Jan1, 1984.

This law placed all ag inputs, Fertilizer, Chemicals, Seed, Fuel and other needs under the same act. It does not give anyone a priority over anyone else.

But it does set up a system of communication between the producer, Dealer and Lender.

Producer gives dealer dollar amount of each input item he plans to purchase that year, also supplies dealer with name and address of Lender. Dealer sends info to Lender, who has ten days to respond, that

1. Yes producer has arranged for this amount of credit, or
2. Yes producer has arranged for credit but in a lesser amount,
3. No producer does not have any credit arrangements.

When letter has been returned by lender to dealer this becomes a "Letter of

Dealer can then make delivery to producer, and send invoices to Lender.
Lender is then entitled to and receives first lien.
If lender does not respond in time limit or says no CREDIT, Dealer can
decide to delivery and he then is entitled to and receives a crop Lien.

If HB712 were amended to include the Minnesota Provisions, the Dealers
would be able to receive information they need, lenders could legally
release the information to them. And Producers would be free to arrange
for credit from Lender of His choice, and obtain Product from dealer of his
choice.

We therefore urge our committee give serious consideration to Amending
HB-712 to include the Provisions of the Minnesota Law, Or we understand
Rep. Krueger has introduced HB-819 similiar to this bill as it relates to
Fuel.

This bill containing the provisions of the Iowa Law. If that bill could be
amended to include all Ag. Inputs it we would ask that you vote to Kill HB
712 and support HB-819.

Thank You.


Elroy Letcher
Executive Secretary
Montana Council Of Cooperatives
442-2120 or 443-3497

Montana Council of Cooperatives

P.O.Box 367

Helena, Montana 59624

406-442-2120

February 7, 1985

Representative Miller

Enclosed is a copy of the bill as adopted by the Minnesota Legislature, and now law in that State regarding Agricultural Supplier Liens. I am also enclosing a copy of the form letter being used in Minnesota for the exchange of the information.

As I told you during our telephone conversation of Tuesday evening. The cooperative fertilizer and chemical dealers whom we represent feel something needs to be done regarding this issue, but they do not wish to become a lender or have to handle all the extra paperwork and other tasks that would be associated with the system proposed in your bill. Since talking with you on Tuesday evening I have talked with 15 of our members and all agree they would prefer the Minnesota Law. They feel this is what they were asking for in the very beginning of all the discussions regarding this issue.

We feel the Minnesota law has many advantages.

1. It would place all suppliers (even those who now have priority status in our existing laws) on an even playing field. Because it would include liens for Seed, Feed, Fertilizer, Chemicals, Fuel, The custom application of any of these as well as other custom work a producer may hire, it may even cover farm labor.

2. We feel it would be more advantages for the small dealer to have this system, because he would not have to tie his money up in accounts receivable, and than have the additional tasks of arranging for financing of his operations from an outside source just to be able to carry the receivables and restock his inventory. He would not have the extra work of collections of the receivables. He would not have the extra work of perfecting his liens. He would not have the very time consuming tasks of foreclosure should it come to that point, because with the letter of commitment he would have his money shortly after delivery.

We feel this would allow the small dealer to compete more equitable with the larger. Because we all know the small dealer does not have the benefit of a large staff with expertise in these various areas.

3. We feel the Minnesota Law would improve communications between the Dealers and the Lenders, which from our impressions was all the Suppliers were asking for in the beginning.

I will keep you informed of my conversations with the balance of our members who are dealers, as well as the discussions I will be having with our members from the Lenders side.

If you should have any questions I can be reached at the number shown above or at 443-3497.

Sincerely,


Elroy Ketcher

Introduced by DeCramer, Weyscheid, Peterson, R. W. and Isackson.
Read First Time Mar. 6, 1984, and Referred to the Committee
on Agriculture and Natural Resources.
Committee Recommendation. To Pass as Amended and Re-referred to
the Committee on Judiciary.
Committee Report Adopted Mar. 28, 1984.
Committee Recommendation. To Pass as Amended.
Committee Report Adopted Apr. 10, 1984.
Read Second Time Apr. 10, 1984.
Pursuant to Rule 10, Made a Special Order, Amended Apr. 16, 1984.
Read Third Time as Amended Apr. 16, 1984.
Passed by the Senate as Amended Apr. 16, 1984.
Transmitted to the House Apr. 16, 1984.

1 A bill for an act

2 relating to commerce; including all liens on file in
3 abstract by the county recorder; providing a lien for
4 agricultural production inputs; establishing a
5 procedure for priority and foreclosure requirements;
6 amending Minnesota Statutes 1982, section 386.42;
7 proposing new law coded in Minnesota Statutes, chapter
8 514.

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

11 Section 1. Minnesota Statutes 1982, section 386.42, is
12 amended to read:

13 386.42 [ABSTRACT OF MORTGAGES AND LIENS ON GRAIN CROPS FOR
14 ELEVATOR COMPANIES.]

15 Any elevator company or grain buyer doing business in this
16 state may annually make written application to the county
17 recorder for an abstract of all designated mortgages and liens
18 upon grains grown during the year within the filed with the
19 county recorder. The application shall state the name and the
20 post office address of the company and be accompanied by a fee.
21 The fee shall be determined by resolution of the county board
22 upon the recommendation of the county recorder based upon the
23 estimated cost of providing the service.

24 Sec. 2. [514.950] [DEFINITIONS.]

25 Subdivision 1. [APPLICABILITY.] The definitions in this

26 section apply to sections 2 to 7.

27 Subd. 2. [AGRICULTURAL CHEMICAL.] "Agricultural chemical."

1 means fertilizers, agricultural chemicals, and animal health products that are applied to
2 crops or to land that is used for raising crops, including
3 fertilizer material, plant amendment, plant food, and soil
4 amendment as defined in section 17.713, and pesticide and plant
5 regulator as defined in section 18A.21.
6 Subd. 3. (AGRICULTURAL PRODUCTION INPUT.) "Agricultural
7 production input" means crop production inputs and livestock
8 production inputs.
9 Subd. 4. (CROP PRODUCTION INPUT.) "Crop production input"
10 means agricultural chemicals, seeds, petroleum products, the
11 custom application of agricultural chemicals and seeds, and
12 labor used in preparing the land for planting, cultivating,
13 growing, producing, harvesting, drying, and storing crops or
14 crop products.
15 Subd. 5. (FEED.) "Feed" means commercial feeds, feed
16 ingredients, mineral feeds, drugs, animal health products, or
17 customer-formula feeds that are used for feeding livestock,
18 including commercial feed as defined in section 25.33.
19 Subd. 6. (LENDER.) "Lender" means a person in the business
20 of lending money identified in a lien-notification statement.
21 Subd. 7. (LETTER OF COMMITMENT.) "Letter of commitment"
22 means a binding, irrevocable and unconditional agreement by a
23 lender to honor drafts or other demands for payment upon the
24 supplier presenting invoices signed by the purchaser or other
25 proof of delivery.
26 Subd. 8. (LIVESTOCK PRODUCTION INPUT.) "Livestock
27 production input" means feed and labor used in raising livestock.
28 Subd. 9. (PERSON.) "Person" means an individual or an
29 organization as defined in section 336.1-201, paragraph (30).
30 Subd. 10. (PETROLEUM PRODUCT.) "Petroleum product" means
31 motor fuels and special fuels that are used in the production of
32 crops and livestock, including petroleum products as defined in
33 section 296.01, alcohol fuels, propane, lubes, and oils.
34 Subd. 11. (PROCEEDS.) "Proceeds" means proceeds as defined
35 in section 336.9-306 except that if rights or duties are
36 contingent upon express language in a financing statement, the

1 proceeds language may exist in a lien-notification statement
2 under section 3, and includes farm products inventory.
3 warehouse receipts, and documents of title.
4 Subd. 12. (SEED.) "Seed" means agricultural seeds that are
5 used to produce crops, including agricultural seed as defined in
6 section 21.47.
7 Subd. 13. (SUPPLIER.) "Supplier" means a person who
8 furnishes agricultural production inputs.
9 Sec. 3. (514.952) (NOTIFICATION; LIEN-NOTIFICATION
10 STATEMENT; EFFECT OF NOTIFICATION.)
11 Subdivision 1. (NOTIFICATION TO LENDER.) A supplier may
12 notify a lender of an agricultural production input lien by
13 providing a lien-notification statement to the lender in an
14 envelope marked "IMPORTANT-LEGAL NOTICE". Delivery of the
15 notice must be made by certified mail or another verifiable
16 method.
17 Subd. 2. (LIEN-NOTIFICATION STATEMENT.) The
18 lien-notification statement must be in a form approved by the
19 secretary of state and disclose the following:
20 (1) the name and business address of any lender;
21 (2) the name and address of the supplier claiming the lien;
22 (3) a description and the date or anticipated date or dates
23 of the transaction and the retail cost or anticipated costs of
24 the agricultural production input;
25 (4) the name, residential address, and signature of the
26 person to whom the agricultural production input was furnished;
27 (5) the name and residential address of the owner and a
28 description of the real estate where the crops to which the lien
29 attaches are growing or are to be grown; or for a lien attaching
30 to livestock, the name and residential address of the owner of
31 the livestock, the location where the livestock will be raised,
32 and a description of the livestock; and
33 (6) a statement that products and proceeds of the crops or
34 livestock are covered by the agricultural input lien.
35 Subd. 3. (RESPONSE OF LENDER TO NOTIFICATION.) Within ten
36 calendar days after receiving a lien-notification statement, the

1 Lender must respond to the supplier with either:

2 (1) a letter of commitment for part of all of the amount in

3 the lien-notification statement; or

4 (2) a written refusal to issue a letter of commitment.

5 Subd. 4. [EFFECT OF RESPONSE.] (a) If a lender responds

6 with a letter of commitment for part or all of the amount in the

7 lien-notification statement, the supplier may not obtain a lien

8 for the amount stated in the letter of credit.

9 (b) If a lender responds with a refusal to provide a letter

10 of credit the rights of the lender and the supplier are not

11 affected.

12 Subd. 5. [EFFECT OF NO RESPONSE.] If a lender does not

13 respond to the supplier within ten calendar days after receiving

14 the lien-notification statement, an agricultural production

15 input lien corresponding to the lien-notification statement has

16 priority over any security interest of the lender in the same

17 crops or livestock or their proceeds for the lesser of:

18 (1) the amount stated in the lien-notification statement;

19 (2) the unpaid retail cost of the agricultural production

20 input identified in the lien-notification statement; or

21 (3) for livestock any limitation in section 4, subdivision

22 2.

23 Subd. 6. [LIEN PRIORITY.] An agricultural production input

24 lien does not have priority over liens that arise under chapter

25 395 or 514, or over perfected security interests for unpaid rent

26 for the land where the crops were grown. Agricultural

27 production input liens are a security interest and have priority

28 according to chapter 336, the uniform commercial code, except as

29 provided in subdivision 5.

30 Sec. 4. [514.954] [LIEN ATTACHMENT.]

31 Subdivision 1. [LIEN ON CROPS.] A supplier who furnishes

32 crop production inputs has an agricultural input lien for the

33 unpaid retail cost of the crop production inputs. The lien

34 attaches to: (1) the existing crops upon the land where a

35 furnished agricultural chemical was applied, or if crops are not

36 planted, to the next production crop within 16 months following

1 the last date of planting the agricultural production inputs.

2 (2) the crops produced from furnished seed; or (3) the crops

3 produced, harvested, or processed using a furnished petroleum

4 product. If the crops are grown on leased land and the lease

5 provides for payment in crops, the lien does not attach to the

6 lessor's portion of the crops. The lien continues in crop

7 products and proceeds, except that the lien does not continue in

8 grain after a cash sale under section 223.16.

9 Subd. 2. [LIEN ON LIVESTOCK.] A supplier who furnishes

10 livestock production inputs has an agricultural production input

11 lien for the unpaid retail cost of the livestock production

12 input. The lien attaches to all livestock consuming the feed

13 and continues in livestock products and proceeds. A perfected

14 agricultural production input lien that attaches to livestock

15 may not exceed the amount, if any, that the sales price of the

16 livestock exceeds the greater of the fair market value of the

17 livestock at the time the lien attaches or the acquisition price

18 of the livestock.

19 Subd. 3. [TIME OF ATTACHMENT.] An agricultural input lien

20 attaches when the agricultural production inputs are furnished

21 by the supplier to the purchaser.

22 Sec. 5. [514.956] [PERFECTION OF LIEN; FILING.]

23 Subdivision 1. [PERFECTION.] To perfect an agricultural

24 production input lien, the lien must attach and the supplier

25 entitled to the lien must file a lien-notification statement

26 with the appropriate filing office under section 336.9-401 by

27 six months after the last date that the agricultural production

28 input was furnished.

29 Subd. 2. [FAILURE TO PERFECT.] An agricultural production

30 input lien that is not perfected has the priority of an

31 unperfected security interest under section 336.9-312.

32 Subd. 3. [DUTIES OF FILING OFFICER.] The filing officer

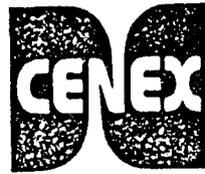
33 shall enter on the lien-notification statement the time of day

34 and date of filing. The filing officer shall file and note the

35 filing of a lien-notification statement under this section in

36 the manner provided by section 336.9-403 for a financing

FARMERS UNION COOPERATIVE OIL ASS'N.
1180 No. Concord, South St. Paul, Minn. 55075



Where the customer is the company

Telephone 451-6200

Date _____

I intend to purchase the following products from Farmers Union Cooperative for my 1985 Spring production needs:

Fertilizer: _____ \$ _____
Chemicals: _____ \$ _____
Seed: _____ \$ _____
Fuel: _____ \$ _____
Other Needs: _____ \$ _____

I intend to have made financial arrangements with _____

_____ to pay for the above purchases and authorize verification of the above arrangement.

By _____
Farmers Union Co-op Oil Patron

To: Farmers Union Co-operative Oil Assn

This is a letter of commitment that _____ has an operating credit line to finance the above purchases.

Lendor

By

Title

Date: _____

GARY DeCRAMER

Senator 27th District

R.R. Box 40

Ghent, Minnesota 56239

Phone: (507) 428-3578

and

Room 303 State Capitol

St. Paul, Minnesota 55155

Phone: (612) 296-6820

Senate

State of Minnesota

February 15, 1985

Representative John Cobb
House of Representatives
Helena, Montana 59601

Dear Representative Cobb:

It is my understanding that the Montana Legislature is considering legislation that would provide an opportunity for greater security interest for the suppliers of agricultural inputs. In 1984, I authored S.F. 1451 for the Minnesota Legislature. S. F. 1451, Minnesota's Agriculture Production Input Lien bill, was passed into law last spring.

I asked Minnesota Agricultural input suppliers to keep track of how the bill was working. When I spoke to a convention of 400 Minnesota elevator operators and their boards recently, and asked if any of them were experiencing cooperation from their local lenders, only one supplier came forward to say yes. The law isn't working. If it were working as it was designed, it would be a good vehicle for determining credit. Minnesota lenders are refusing to cooperate.

I have prepared an amendment to S.F. 1451 which would bring the bill into its original form; suppliers should have a priority position for the value of the inputs they have provided.

Truly,



Gary DeCramer
State Senator

GDC:ams

AMENDMENT TO HOUSE BILL 710

AMEND HOUSE BILL 710 AS FOLLOWS:

Line 16, following "suspended":

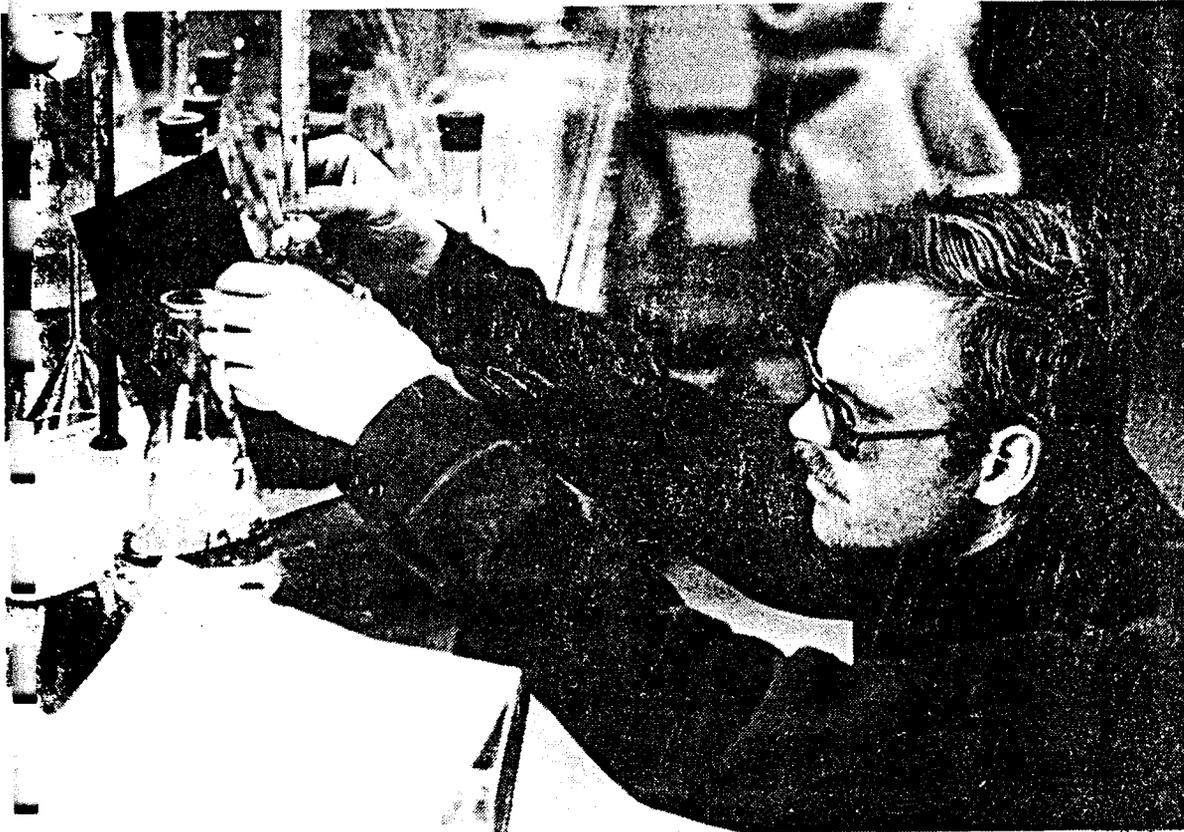
Insert: "."

Strike: "pursuant to"

Line 17:

Strike entire line

Arctic Circle to tropics



Larry Hoffman runs test in laboratory

Staff photo

DON'T PAY... **TWICE!**

WHEN YOU REMODEL, BUILD, REPAIR YOU COULD... BECAUSE
"IT'S THE LAW"

- ▶ When you **BUILD - REPAIR - REMODEL** - you are obligated to pay your contractor the amount set forth in your contract with him.
- The contractor assumes an equal obligation - to pay for all materials and labor used.
- ▶ It's the law which sets up a legal claim against your property - if materials furnished and labor provided are not paid for by your contractor - or by you - if you are doing it yourself.
- In other words, if the contractor does not pay the material supplier for materials bought for use on your property, the supplier can file a lien against your property **EVEN THOUGH YOU MAY HAVE ALREADY PAID THE CONTRACTOR FOR THEM.**

REMEMBER, ALMOST ALL CONTRACTORS ARE RELIABLE AND RESPONSIBLE AND PAY THEIR BILLS AS AGREED!
PROTECT YOURSELF . . .

against the occasional contractor who doesn't pay his bills or whose credit is "shaky";

- ▶ Before paying out any monies to the contractor, require of him a sworn statement of all the persons furnishing material or labor for your job and the amount of money due each.
- ▶ Before making any payments to any contractor, require **WAIVERS OF LIEN** from him and have him give you a waiver of lien signed by **EVERY** person who furnished labor or material covered by your payment.
- ▶ Make sure you have a waiver of lien from each person listed on the sworn statement referred to in No. 1 above.

If you do these three things, your construction job should end with no regrets - **AND NO DOUBLE PAYMENTS FOR EITHER MATERIAL OR LABOR.**

THIS INFORMATION SUPPLIED AS A PUBLIC SERVICE BY THE FOLLOWING LOCAL BUILDING SUPPLIES DEALERS:

UBC

2805 Kaw

(Corner Dewey & Rowe Road)

**WESTERN
DIMENSION**

1325 Kaw

**PIONEER
LUMBER**

216 E. Front

WITNESS STATEMENT

NAME GEORGE T. BENNETT BILL NO. 712
ADDRESS POB 1705 HELENA 59624 DATE 2/18/85
WHOM DO YOU REPRESENT? MONT. BEARS ASSN
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. 329; 700; 706; 710;
712; 714; 831

DATE February 18, 1985

SPONSOR _____

STATE WHICH BILL

NAME (please print)	RESIDENCE REPRESENTING	SUPPORT	OPPOSE
EROY LETCHER	MT COUNCIL OF COOPS		HB 712
GEORGE BENNETT	MT. BIRDS ASSN		H.B. 712
REIGNTON SAYLES	MSLA. Rural Fire Dist.	HB 706	
Don G Dellinger	mt. Building Material Dealers Assn		HB 329
Harold Poulson	Poulson's Inc		HB 329
W. P. Day	mt. St. Val. Firemen's Assn	HB 706	
Blake Woodal	MT. HARDWARE & IMP. ASSN		HB 329
Riley Johnson	mt. Homebuilders		HB 329
Tom O'Hara	Dept of Health	HB 714	
Arne Sand	Cascade Co. Sheriff's Dept	HB 706	
Lawrence D. Huss	Mountain Bell	HB 329 Amend.	
Jake Tuck	Poulson's	HB	HB 329
Ed Harvey	Cooper's		HB 329
Walter Lichten	C.R.C.		HB 712
Paul F Lund	(United) Bldg. Mtr.		HB 329
Hal Hay	INDEPENDENT MOUNTAIN LUMBER		HB 329
RUSS MINNER	AGRI BASICS	HB 712	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Judging COMMITTEE

BILL NO. 339, 700, 706, 712, 712
714, 331

DATE Feb 18, 1925

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Jerry Sullivan	Agri Busic - GREAT FALLS	712	
Larry Topstead	Great Falls Harvest Stables	712	
Jim Johnson	Belgrade Mt. Agri. Chem	712	
Paul Vasavage	Great Falls Mt. Ag. Business Assoc	712	
Tommy Wood	Top Hill Belgrade	712	
Dan Place	Townsend Goodwater Grain	712	
Jim Zuer	Helena Agri Busic	712	
Joe Wickham	Power. Power farmers Elevator	712	
Fred Robinson	Helena	712	HB 329
Trug Johnson	Fort Benton Cargill Inc	712	
Ken Neill	Gt. Falls Mt. Agri Business Assoc	712	
EGER McLEWIN	INVEST. INS. AGENTS of MT.		712
Allen Broyles	Bellevue IR Simplot	712	
MIKE McGRATH	Helena	700	
Mike Walker	Great Falls	706	
Larry Johnson	Kronline, MT Non-wise	712	
Leann Schuman	MT Agri Business Ass	712	
Leann Schuman	MT GRAIN Elevators		
Refined Orent	Woodcutters - Plumber	712	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

John PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY. 712

Jim Toth (JIM TOTH) CLINTON, MT Missouri Mt. Ag. Buss Assn 712

CS-130 Kelly, Stacy Van Winkle 706