

MINUTES FOR THE MEETING  
JUDICIARY COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

March 13, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Wednesday, March 13, 1985 at 8:30 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 105: Senator Pat Regan, District #47, chief sponsor of the bill, testified in support of it. This is an act to require child support orders to include a provision covering health care costs. She pointed out that there is a provision in this bill that allows that if a person loses his/her health coverage, the parties may agree which spouse will carry the health insurance. It is an attempt to insure that when divorce decrees are issued, that this matter be taken under consideration. She said the bill has flexible and loose provisions.

Anne Brodsky, representing the Women's Lobbyist Fund, testified as a proponent to SB 105. A copy of her written testimony was marked Exhibit A and attached hereto.

There were no further proponents or opponents, and Senator Regan closed.

The floor was opened for questioning.

Rep. Gould asked if there is something in the bill that states the insurance company will have to send out notification if coverage is withdrawn. If it is withdrawn, what will the penalty be? Senator Regan said it is the parent's responsibility to carry insurance. The insurance company does not have to send out anything. In the event the insurance becomes unavailable, the responsible parent must try to obtain comparable insurance or he/she can move for a modification of a court order.

In response to a question of Rep. Eudaily with regards to the language on page 3, lines 1 through 4 of the bill, Senator Regan said this is just an attempt to address the definition of what health care costs are to be covered by the bill.

Rep. Miles asked if there is anything in the temporary order that covers all those additional health care costs set forth on page 3, lines 1 through 4. Senator Regan said that the parties can decide between themselves on the coverage of temporary orders.

There being no further questions, hearing closed on SB 105.

CONSIDERATION OF SENATE BILL NO. 110: Senator Joe Mazurek, District #23, principle sponsor of SB 110, testified on its behalf. This bill will adopt the Uniform Arbitration Act in Montana which is in existence in 42 other states. The bill sets forth the procedure of going through the arbitration process. He said this bill is especially valuable in construction and commercial settings. It is used frequently to resolve disputes. He further pointed out that the bill makes a very significant change in Montana law. It allows parties to enter into an agreement today to arbitrate a dispute which arises in the future. That is currently prohibited by Montana law. He said the bill is permissive -- it only allows arbitration when parties agree to it. It is a very valuable dispute resolution tool. He informed the committee that states are adopting this even in the areas of personal injury cases because of court scheduling problems. He also said that lawyers will continue to be involved in this process.

Steve Brown, representing the Blue Cross of Montana, testified as a proponent to this bill. He did say that they were uncertain with regards to the amendments made in section (2) of the bill. Overall, they feel this bill contains significant compromises, and it is a good alternative for dispute resolutions.

Karl Englund, representing the Montana Trial Lawyers Association, pointed out some of the provisions in this bill which were amended into the bill in the Senate Judiciary Committee upon his suggestion. He feels that it is clear that there needs to be some option available to people to resolve disputes through an alternative. This bill provides that mechanism.

LeRoy Schramm, chief legal counsel for the Montana University System, submitted an amendment which was marked Exhibit B and attached hereto. He feels SB 110 is a good bill with the inclusion of the proposed amendment. He said that there is nothing in this act right now that excludes public employment contracts, and presumably, our contracts and contracts of all public employers around the state would be covered by this, and that necessitates the amendment. He said his amendment would reverse the presumption in section 3. It would basically say that labor agreements are out unless they want to come in -- in which case the labor agreement has to specify this.

Terry Carmody, representing the Montana Association of Realtors, wished to go on record as supporting this legislation.

Riley Johnson, representing the Montana Homebuilders Association, stated that they support SB 110 for two basic reasons. He said any way to ease the burden on builders

involving labor disputes is acceptable. By going through the arbitration system, it would help facilitate their jobs of building homes. It would also give them the opportunity in cases where litigation is involved to be able to settle these cases quickly and at a lesser cost. He does, however, object to the amendments which were proposed by Mr. Schramm.

There being no further proponents or opponents, Senator Mazurek closed. He encouraged the committee to adopt the proposed amendments submitted by Mr. Schramm.

The floor was opened to questions.

Rep. Keyser stated that the proposed amendment does take care of a very definite problem that he had originally with this legislation.

Rep. Rapp-Svrcek said he has a problem with subsection (C) of the bill. He doesn't see why parties are required to obtain the services of an attorney especially when they understand the agreement. Senator Mazurek stated that it provides one more step to try to insure that people really understand when they sign an agreement to arbitrate future disputes, they are giving up their rights to go to court.

Mr. England responded to Rep. Rapp-Svrcek's question by saying that an individual is giving up his fundamental right if he signs the agreement to arbitrate under the Montana Constitution Article II, Section 16.

There being no further questions, hearing closed on SB 110.

CONSIDERATION OF SENATE BILL NO. 119: Senator Dorothy Eck, District #40, chief sponsor of SB 119, said this bill addresses the problem of enforcement of child support payments by providing that applicants for the Revenue Department's Child Support Enforcement Services, may not be charged for those services. Rather, the person who is obligated to pay the support (but is not doing so) must pay any administrative costs. She said that many ex-spouses go to great lengths of trying to get out of making child support payments. She said that when this bill was considered in the Senate Judiciary Committee, women testified as to how tight their budgets were, and how it really does make a difference when a part of the money they are supposed to receive is not received. She submitted a copy of a news article she clipped having to do with the Senate Judiciary Committee meeting on this bill. (See Exhibit C.)

Lynn Roberts testified as a proponent to this bill. She said that since the parent who has custody of the child has to provide most of the maintenance for that child, that parent should not have to be required to pay the state's costs of tracking delinquent parents down.

Anne Brodsky, representing the Women's Lobbyist Fund, testified in support of SB 119. A copy of her written testimony was marked Exhibit D and attached hereto.

There were no further proponents or opponents, and Senator Eck closed.

The floor was opened for questioning.

Rep. Gould asked Senator Eck if this area wasn't covered with one of the dozen bills that Rep. Jan Brown introduced. Senator Eck stated that she is quite sure there is no overlap involved. Rep. Brown's bills were to insure that Montana would be in compliance with federal regulations. Senate Bill No. 119 addresses the peculiar issue with regards to the Department of Revenue. This bill increases the amount of the sum to provide enough to pay for the department's services.

(Rep. Brown assumed the chairmanship.)

Rep. Mercer stated that he is concerned with the way the bill is written because it says that a person that is not on public assistance can ask the department for assistance in collecting the child support, but they don't have to pay for it. Wouldn't it be better to say that the applicant can be charged, but when the department goes after the delinquent spouse, the department can recover the child support from them and also try to recover the fee from them at that time. Dennis Shoher, from the Department of Revenue stated that federal regulations do require mandatory applications. Rep. Mercer wanted to know if Mr. Shoher thought the \$16,000 figure on the fiscal note is accurate. Mr. Shoher stated that \$16,000 last year was the application fee and incentive fee back to the state for the money we collected on behalf of the people that are non-recipients of public assistance. There is also \$54,000 which belongs to the federal government which he doesn't think the fiscal note addresses. If we are not allowed to charge the applicant those fees, potentially, there would be an immediate loss to the state of \$16,000 and \$54,000 from the federal government.

Rep. Brown referred to the fiscal note and said that the fiscal note assumes that the department won't recover any fees from the obligor. Mr. Shoher said that his interpretation of the bill as drafted is that the department can collect a fee, but not until the obligation is paid in full. The Senate Judiciary Committee amended the bill to address this problem.

Rep. Brown said that essentially the language in this bill now says that when the payments are scheduled to be paid on an installment basis, that the department can collect part of the fees in the process of each of those installment payments. What percentage of the child support is on

an installment basis? Mr. Shober said it is close to 100%. Rep. Brown doesn't see how this fiscal note could be correct.

Following a few more general questions, hearing closed on SB 119.

Senator Eck did point out that the committee might want to request an up-dated fiscal note as the present one doesn't apply to the bill anymore.

#### EXECUTIVE SESSION

Chairman Hannah called an executive session to act on the bills in committee.

ACTION ON SENATE BILL NO. 105: Rep. Brown moved that SB 105 BE CONCURRED IN. The motion was seconded by Rep. Montayne and discussed.

Rep. Mercer feels that although the bill is an excellent idea, there are some areas in the bill that are confusing. He feels that by limiting this act to health insurance, the bill doesn't accomplish what it is supposed to do if it is passed out as is.

Rep. Brown feels that the points raised by Rep. Mercer are along the lines of getting too nit-picky, and therefore, he feels the language should be left as is. Rep. Mercer argued that the bill doesn't provide the court with the flexibility it should have.

Rep. Addy moved on page 1, line 25 following "PARTIES." strike beginning with "IF" through "OBTAINED" on line 5 of page 2. The motion was seconded by Rep. Mercer and further discussed.

Rep. Addy explained why he made the motion to strike by saying he feels that the policy statement has been addressed in the rest of the bill. He said the merits of each case that arises in the next two years cannot be decided. He said that we should merely tell the court to use his or her common sense in arriving at the terms of a decree.

Rep. Rapp-Svrcek stated that he doesn't understand why the committee shouldn't provide that if a person who is divorced and has medical insurance, why that person shouldn't be required to retain coverage on the children. Rep. Addy stated that what would be provided in the decree would be the responsibility for health care costs to be specifically assigned to a party.

Rep. Keyser feels that by deleting this material, nothing is being taken out of the bill that the title doesn't already provide for.

Rep. Miles was concerned that if this language is deleted, this area would be left open, and people wouldn't be encouraged to carry health insurance.

Following further discussion, Rep. Mercer made a substitute motion to amend page 2, line 4 by striking "MUST" and inserting "MAY". The motion was seconded by Rep. Addy. The question was called, and the motion carried with Rep. Keyser dissenting.

Rep. Krueger moved on page 2, line 10 following "INSURANCE" insert ", assume financial responsibility". The motion was seconded by Rep. Miles. Rep. Krueger wants to make it clear that parents must assume financial responsibility for their children's health care.

Rep. Addy questioned whether or not this additional language would be placing a big loophole in the bill.

The question was called, and the motion failed on a voice vote.

Rep. Brown further moved that SB 105 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara and carried with Rep. O'Hara dissenting. Rep. Miles offered to carry the bill on the floor.

ACTION ON SENATE BILL NO. 110: Rep. Addy moved that SB 110 BE CONCURRED IN. The motion was seconded by Rep. O'Hara and discussed. Rep. Keyser moved to adopt the amendments proposed by Mr. Schramm at the hearing. The motion was seconded by Rep. O'Hara and carried unanimously.

Rep. Krueger moved to strike section 4, subsection (2) and (3) in their entirety. The motion was seconded by Rep. Brown. Rep. Krueger feels that the other provisions of the insurance contract law should apply. It was Rep. Keyser's opinion if this subsection is deleted, it will decrease the effectiveness of the arbitration panel.

Rep. Hannah spoke against the motion to amend by saying that there needs to be some sort of basis provided for people who wish to arbitrate. He feels this is an appropriate way to handle it.

Rep. Mercer spoke in favor of the amendment. He says the part of the bill that scares him is section 4 subsection (2) providing that a party may agree to arbitrate future disputes before they arise, before the substance of the controversy is known. Thus, an individual is waiving his right to go to court before he knows what the controversy will be. He said that an individual could still agree to arbitrate an existing dispute in these subject areas if these subsections were deleted.

The question was called on Rep. Krueger's amendment, and the motion carried with Rep. Hannah dissenting.

Because Rep. Addy was absent at this time, Rep. Brown moved on his behalf to amend page 2, line 13, following "INJURY" by inserting "whether". Furthermore, on page 2, line 14, following "CONTRACT" strike ", ". The motion was seconded by Rep. Mercer and carried unanimously.

Rep. Hannah moved to strike subsection (C) on page 2 in its entirety. He feels that it is unnecessary to require that both attorneys must sign contracts upon its conclusion. He feels that it is a hindrance to the arbitration process. The motion was seconded by Rep. Rapp-Svrcek, and the motion carried with Rep. Montayne and Rep. Brown dissenting.

Rep. Brown moved that SB 110 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara and carried unanimously. Rep. Addy will carry the bill.

ACTION ON SENATE BILL NO. 119: Rep. Darko moved that SB 119 BE CONCURRED IN. The motion was seconded by Rep. Brown and discussed.

Mr. Shober said that he gave a wrong figure previously. He said \$16,000 was the net return to the state for application fees and collection fees; \$54,000 was the total, so the difference between \$16,000 and \$54,000 would have gone to the federal government which would be approximately \$38,000. If the bill is passed in its present form, it would constitute free services to anybody who would like to come in and apply for the department's service. If that happens, their caseload will double or triple, which will increase their costs.

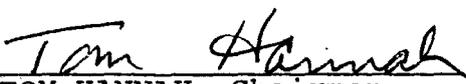
Rep. Hannah asked if the fees are currently being collected by the department. Mr. Shober said some are being collected and some are not being collected. At the present time, the department doesn't have the capability to compute some of them.

Rep. Brown asked if the question really boils down to whether we worry more about paying the department's bills or seeing that the child support be paid. Mr. Shober said that could be an interpretation. Rep. Brown said he is sure the department isn't in a position to say that the person to whom the child support is due should not receive as much or all of it as is possible. He asked if there was any way to amend this bill that would solve that problem. Mr. Shober said he is not sure. He stated that their proposal would be that before giving the obligor credit for 100% of the payment even though the department was getting 10%, the obligor would be charged to give him credit for the next payment.

Rep. Keyser said without an amendment to this bill, the bill does not do what he feels that Senator Eck wants the bill to do. He feels the way to make this work is to allow people who have filed for the department's services to pay for the services right then and there. But when the money is paid to the department from the person who owes it, that money should be paid back to the person who requested the department's services.

Rep. Brown agrees with the concept of the bill, but he doesn't feel that the bill is workable. He further moved to delay action on SB 119 until he can sit down with Brenda and the Department of Revenue to work out some acceptable language. The motion was seconded by Rep. Keyser and carried without objection.

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

  
TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/13/85

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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

March 13 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senata Bill No. 105

THIRD reading copy ( BLUE )  
color

## HEALTH INSURANCE COVERAGE IN CHILD SUPPORT ORDERS

Respectfully report as follows: That Senata Bill No. 105

be amended as follows:

- 1. Page 2, line 4.
- Strike: "MUST"
- Insert: "MAY"

AND AS AMENDED,  
BE CONCURRED IN  
~~TO PASS~~

# STANDING COMMITTEE REPORT

March 13

19 85

page 1 of 2

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 110

Third reading copy ( Blue )  
color

## ADOPT UNIFORM ARBITRATION ACT

Respectfully report as follows: That Senate Bill No. 110

be amended as follows:

1. Page 1, line 29.

Following: "agreements."

Strike remainder of section 3 in its entirety.

Insert: "Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of [section 1 through 21] if the agreement so specifies, except [section 15(1), (3), (4), and (5) and section 16] apply in every case."

2. Page 2, line 7.

Following: "(2)"

Strike: "EXCEPT" through "(3)."

3. Page 2, line 13.

Following: "INJURY,"

Insert: "whether"

DORASSK

(continued)

4. Page 2, line 14.

Following: "CONTRACT"

Strike: "1"

5. Page 2, line 17.

Following: "COMPANIES,"

Strike: subsection (C) in its entirety.

Insert: "and"

Renumber subsequent subsection

6. Page 2, line 21.

Following: "COMPENSATION"

Strike: "AND" through "APPLIES" on line 24.

7. Page 2, following line 24.

Strike: subsection (3) in its entirety.

Renumber subsequent subsections.

AND AS AMENDED,  
BE CONCURRED IN



WITNESS STATEMENT

NAME Lynn Roberts BILL NO. SB119  
ADDRESS P.O. Box 419 Helena DATE 3-13-85  
WHOM DO YOU REPRESENT? myself  
SUPPORT  OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WOMEN'S LOBBYIST  
FUND

Box 1009  
Helena, MT 59624  
409-7917

March 13, 1985

TESTIMONY IN SUPPORT OF SB 105

Mr. Chairman and members of the House Judiciary Committee:

My name is Anne Brodsky and I am here today on behalf of the Women's Lobbyist Fund (WLF) to speak in support of SB 105. This bill addresses a serious problem faced by children of parents who are divorced: adequate health care coverage. With today's burgeoning health care costs, everyone needs health insurance to guarantee that these costs, if needed to be met, can be. SB 105 provides an attentive and equitable means of addressing this big part of a child's expenses.

On behalf of the WLF, I urge you to pass SB 105.

Amend S.B. 110 to read as follows:

Page 1, lines 19 to 23, amend Section 3 to read as follows:

NEW SECTION. Section 3. Application to labor agreements. Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of [Section 1 through 21] if the agreement so specifies, except [Section 15, Subsections 1, 3, 4 and 5 and Section 16] which shall apply in every case.

Page 2, delete lines 22 through 24.

# Bill addresses child support enforcement

By DENNIS SWIBOLD  
Chronicle Legislative Writer

HELENA — Delinquent parents, not responsible ones, should pay the state's costs of tracking them down for failure to pay child support, single parents told legislators Thursday.

The testimony came during a Senate Judiciary Committee hearing on Senate Bill 119 introduced by Sen. Dorothy Eck, D-Bozeman.

Parents whose ex-spouses refuse to pay court-ordered child support can ask the Department of Revenue to track down the delinquent person, but at a cost to the applicant.

Applicants for the service, usually low-income women, must pay a \$20 filing fee and 10 percent of the money collected from the fathers goes to the state to cover administrative costs.

Eck's bill would require the

delinquent parent to pay those costs.

Carol Kimble, a divorced mother of two, told the committee she can't afford to take her delinquent husband to court and can't afford DOR's collection fees.

"It isn't right to use that money that should go to my child to pay to track my husband down," Kimble said.

Another single mother said it wasn't fair for her ex-husband to pay only the what the court had ordered anyway, without paying the costs of enforcement.

That money, she said, comes out of funds that should go for the child's support.

"Why should our child suffer because of the nonsupport of the father?" Nancy McNutt asked.

The fees, in effect, may be keeping many women from taking their delinquent husbands to task, Eck said in support of her bill.

Anne Brodsky, a lobbyist for the Women's Lobbyist Fund, supported the bill, saying 28 percent of the state's parents who should be receiving child support are not getting it.

The DOR is tracking down some 36,000 delinquent spouses and Eck's bill was only fair, she added. The committee also heard a bill introduced by Sen. Pat Regan, D-Billings that would require court-ordered child support agreements to include provisions for health insurance for children.

Judiciary committee members grilled Dennis Shober, chief of the Revenue Department's Child Support Enforcement Bureau, following testimony on Eck's bill.

Shober came under fire from senators when he said his agency seldom asks a court to demand collection fees from the person failing to make support payments.

When asked why, Shober was only able to say such a request has "never been a practice of the program."

Under more questioning, Shober acknowledged his office takes the same percentage of payments in all collection cases, regardless of the expense involved.

He said department attorneys have suggested that assessing fees against parents failing to pay support, when no service has been performed for them, may violate due process rights.

"Well, we can take care of that, easy enough in a statute," said Sen. Thomas Towle, D-Billings.

Committee members, obviously favoring SB119 and upset with the state's handling of child support collections, told Shober to provide them with a better explanation of his program's policies and suggest any specific amendments to the bill.

# WOMEN'S LOBBYIST FUND

Box 1099  
Helena, MT 59624  
449-7917



EXHIBIT D  
3/13/85  
SB 119

March 13, 1985

## TESTIMONY IN SUPPORT OF SB 119

Mr. Chairman and Members of the House Judiciary Committee:

My name is Anne Brodsky and I am here today on behalf of the Women's Lobbyist Fund (WLF) to speak in support of SB 119. The WLF, and this Legislature as well, has recognized that the problem of non-payment of child support orders is a very serious one, the onus of which, for many reasons, most often falls on women. The 1980 Census reported that less than one half of those known to have been owed child support in 1978 were actually receiving the full amount; 23% received partial payment; and 28% received no payment at all. Here in Montana, the Department of Revenue reports a caseload of over 36,000 for child support enforcement services.

Rather than going away, the problem is increasing. It was predicted in an article by the National Conference of State Legislatures in July, 1983, that by the 1990's, less than 50% of children will spend their entire childhood with both parents and over 95% of the children with single parents will live with their mothers.

The problem of collecting child support obligations -- which becomes a societal problem -- is based on many factors. One of these factors is that the burden already born by the person attempting to obtain what is owed the child is continually frustrated by the cost the person must incur to collect what is rightfully owed.

SB 119 attempts to address part of this problem. The bill requires the person who is responsible for the state's enforcement of owed child support payments to pay for the enforcement done by the state. It takes the burden off the person who is the victim of the problem and places the burden on the person responsible for the problem.

The WLF urges you to pass SB 119.