

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 12, 1985

The forty-seventh meeting of the Senate Judiciary Committee was called to order at 10:12 a.m. on March 12, 1985, by Vice Chairman Kermit Daniels in Rooms 413-415 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 181: Representative Bob Ream, sponsor of HB 181, presented written testimony in support of the bill (Exhibit 1).

PROponents: Frank Crowley, Assistant Attorney General with the State Department of Health, testified in support of the bill (see witness sheet attached as Exhibit 2). He stated this bill deals with the state's analog to the Resource Conservation and Recovery Act (RCRA). In Montana we passed the Montana Hazardous Waste Act to allow the state of Montana to take over the RCRA program in Montana. In the course of obtaining authorization from the Environmental Protection Agency (EPA), the EPA raised objections to section 1 which set forth civil and criminal penalties as alternatives. They said our law must be equivalent to theirs. Neither the EPA nor Montana has ever collected both, but this will now be an option. We are doing this to conform our law to the federal law. George Ochenski, representing the Montana Environmental Information Center, testified they support the bill for the same reasons as those stated by Mr. Crowley.

OPponents: None.

QUESTIONS FROM THE COMMITTEE: Senator Shaw stated we have heard a lot this session about being blackmailed by the federal government. He asked Mr. Crowley if he felt this were another instance of such blackmail. Mr. Crowley did not think so. Senator Shaw then asked if he had a list of hazardous wastes from the federal government. Mr. Crowley stated he would get him one.

CLOSING STATEMENT: Representative Ream stated he thinks it will help the state to conform with the EPA.

Hearing on HB 181 was closed. Vice Chairman Daniels turned the gavel over to Chairman Mazurek.

CONSIDERATION OF HB 352: Representative Richard Nelson, sponsor of the bill, stated this will be a simple bill. It increases the efficiency in the courts. It allows the court to consider certain misdemeanors at the same time as related felonies.

PROPOSERS: None.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 352 was closed.

CONSIDERATION OF HB 341: Representative Ron Miller, sponsor of HB 341, testified this is a stop payment bill. There was no opposition from the banks at the House hearing. Texas has a law just like this after which this bill has been modeled. What is happening is a person takes a car into a dealer to get fixed, they get it fixed, pay them with a check, get the car back, and then stop payment on the check. This bill does nothing to the people who legitimately have money in their accounts and have a legitimate complaint with the merchandise. It affects the people who do not have the money in their accounts.

PROPOSERS: Tom Harrison, representing the Montana Automobile Dealers Association, testified the practical utilization of this bill is the defeat of a mechanic's lien that is asserted on the repair of a vehicle or added equipment or parts. The person may have a complaint, but he does not restore the merchandise. This is a civil, punitive attempt to resolve what probably is a criminal act. They are strong in support of this bill and hope it will reduce the number of times any dispute will have to be resolved under these circumstances. George Allen, representing the Montana Retail Association, went on record in support of the bill.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe questioned what the situation was where there are not goods delivered or services rendered, such as with payment of a debt. Representative Miller responded he thought that could be treated just like the normal bad check. Senator Towe saw some problems with the bill in that you might have a payment made conditioned on someone else's doing something else. Also, there is nothing about there being money or not being money in the account, so there is no limitation there. Representative Miller stated the bill is

totally addressing if there isn't sufficient money in the account and you can prove that. Senator Towe stated if the stop payment is issued only for the purpose of defeating the mechanic's lien, he thinks it is a good idea. Mr. Allen thought it should be narrowed down, but wanted to point out the intent to defraud was required under the bill.

CLOSING STATEMENT: None.

Hearing on HB 341 was closed.

CONSIDERATION OF HB 566: Representative Fred Thomas, sponsor of HB 566, testified this is an act to restrict installation and use of automatic dial-up security alarm systems. When such a system is triggered, it calls the local law enforcement agency. The law enforcement agency is may be responding but is unable to gain access to the system to turn it off, so the system continues to call the law enforcement office. That could be a real problem if not a headache. If you can't get into the residence to turn off the alarm, it will continue to call. Anyone wanting such a system would have to get permission from the law enforcement agency so they know what's happening.

PROPOSERS: Chuck O'Reilly, Lewis and Clark County Sheriff and President of the Montana Sheriffs' and Peace Officers' Association, spoke in support of the bill. He related an incident where during a power outage several alarms were triggered. Their continuous calling tied up all three emergency lines for 28 minutes. They are not trying to prohibit these systems, but they just want to control them. They will assign a certain number so it will not tie up their rotary system. John Scully, representing the Montana Sheriffs' and Peace Officers' Association, stated the telephone company worked out the proposed amendments before the committee, and he knows of no problems from the industry's standpoint.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 566 was closed.

ACTION ON HB 566: Senator Pineseault moved HB 566 be recommended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HB 286: Representative Les Kitselman, sponsor of HB 286, testified this bill takes care of a problem known as theft of utility services. The utilities have to go through the county attorney

to prosecute, and they seldom recover any money from those who steal. He would like page 3, lines 8-12, reinserted so the utility could recover the costs of its prosecution. This is outright theft and stealing, for which the consumers are paying.

PROPOSERS: John Alke testified on behalf of Montana-Dakota Utilities Company. He hoped the provisions would never have to be utilized, but they need a deterrent. They are not stealing from the utilities. They are stealing from the utilities' customers. The cost is passed on to the customers. They have found that as they go to the various county attorneys, they are unwilling to prosecute. People need to know if they steal utility services and are caught, they are subject to penalties. He thinks it is critical to put the attorneys' fees provision back in. Going to court is a very expensive process. You cannot get a civil suit filed, prosecuted, and to judgment and pay for that lawsuit for the treble damages. The customers will be paying more just for prosecuting, so the customers will be paying more. Mr. Alke read a letter from Alec Hansen, Executive Director of the Montana League of Cities and Towns, supporting HB 286. Mike Zimmerman, representing The Montana Power Company, stood in support of HB 286 and circulated photographs to the committee showing various ways in which customers had been found stealing utility services. He testified tampering and theft is a problem, and they think HB 286 is appropriate policy to solve that problem. Gene Phillips, representing Pacific Power and Light Company, supported the bill and Mr. Alke's comments regarding attorneys' fees. Jay Downen, representing Montana Electric Cooperatives, testified when you have a larger utility, the burden to the individual honest consumers is less than when you have a cooperative with fewer consumers. He has seen underground bypasses and bird droppings on the bottom of meters which have been turned upside down. He didn't think honest consumers needed to absorb these losses.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked if it were true under the bill you could collect six times the amount. He referred to the language in section 3. It appeared you could collect six times. Mr. Alke stated that is not what was intended. It is the standard rule you are entitled to only one judgment. You have the right to elect who you would sue and recover from. Senator Towe asked if their concern for reasonable attorneys' fees was more important than the treble damages. Mr. Alke responded realistically, yes. The real expense is the litigation. Except for publicizing the bill, the treble damages would be more effective than the legal fees unless you have been through the system. Senator Towe questioned if there might be a problem if the attorneys' fees were unreasonable, such as in the case of \$60 in stolen utilities and \$1,500 or \$2,000 in fees. Mr. Alke replied realistically,

that will not happen. They will not pursue in that fashion. If they are looking for a deterrent, he will select a person he can apply that bill to and get his judgment. Mr. Phillips felt Mr. Alke's example was very good. It would be a well-known person and not the little old lady down the street. Mr. Zimmerman stated the deterrent value is in the initial publicizing of the fact the legislature passed the law and also in the cases you bring and are successful prosecuting. In bringing any case, the attorney and the client can say this case is not worth the money to bring the suit. They will exercise discretion. Senator Blaylock asked if they felt most of the people who were cheating were people who could pay. Mr. Alke replied quite honestly, that is true. The people who are the most successful at meter tampering are very sophisticated and know how to tamper with high voltage. We are talking about something mitigated, planned, and which takes a fair amount of intelligence to do.

CLOSING STATEMENT: Representative Kitselman stated this is a very serious matter. It was the people who had the knowledge of the meters and how to bypass that are doing this. Those that were servicing the meters were some of those doing the bypassing. It is generally done with people within the service industry that handles this. The intention of this bill is not to seek the person that is poverty stricken--it is the person that outright steals utility services day in and day out.

Hearing on HB 286 was closed.

CONSIDERATION OF HB 476: Representative Gary Spaeth, sponsor of the bill, testified this bill is relatively simple, but it has more than a simple impact. It allows concurrent jurisdiction with the justices of the peace for all misdemeanors. This would allow an impact on those high misdemeanors that are now only handled in district court and they could now be handled in justice court. That would allow the county attorney discretion as to whether it should be filed in district court or in justice court. The reasoning arose out of a situation in Red Lodge. The major impact this bill would have would be on third offense DUIs. The philosophy behind that is the district court is a tougher court, so we need really clamp down on that person. The justice of the peace is working with the person through that system and sees the person. He is willing to work and help solve that problem. Justices of the peace can do that on that third DUI, but then you go into the district court. Instead of that being the most serious crime, that is the district judge's least serious crime to deal with. His whole process is to get it out of the system. It is easier to get a better sentence out of the third DUI charge in district court than it is to get one from the justice of the peace on the second DUI. It would reduce the load in district court and result in tougher sentences and a better working relationship with the defendant because the justice of the peace will come down hard on him.

PROPOSERS: None.

OPPOSERS: None.

ADDITIONAL TESTIMONY: Jim Jensen, representing the Montana Magistrates Association, spoke neither as a proponent nor as an opponent. He stated the justices are prepared and better trained to handle this than the district judges with the certification bill that came through this committee.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 476 was closed.

FURTHER CONSIDERATION OF HB 341: Senator Towe suggested amending the bill by using the language "with the intent to defeat a possessory lien or otherwise defraud the payee of the check." He stated a possessory lien you obtain because you hold possession of it. If you persuade that person to give up possession for a check and then you cancel the check, he agrees the bill would be proper. Senator Mazurek stated he may have a genuine dispute as to the value of the services rendered. He may stop payment on it, not because he wants to defeat the lien, but because he challenges the amount owing. Senator Daniels stated his opinion is you are having no faith in the criminal law and now you are having a civil penalty. He did not feel the proposed amendment was as good as the original language.

CONSIDERATION OF HB 323: Representative Jack Moore, sponsor of the bill, testified this bill is patterned after the state of Washington. It is a civil penalty for shoplifting.

PROPOSERS: George Allen, representing the Montana Retail Association, spoke in support of the bill. He stated he would like to change this from shoplifting to theft. The public pays for shoplifting because the merchandiser must build it into the cost of doing business, so the business is subsidizing what is going on. He believes this problem is costing megabucks.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked if we were talking about three different things: the retail value of the goods; if there has been damage, another \$100 for the damage; and a penalty of not less than \$25 to \$200. Representative Moore replied that is not what he

intended. He intended the retail value of the goods plus a penalty. Senator Towe stated this amount is in addition to actual damages. You intended he receive the full value of the item but no additional damages but an additional penalty. Senator Towe went on to ask how you determine if it were \$25 or \$200 or in between. Representative Moore responded that would be up to the judge. Senator Towe asked if there would be criteria to determine that. Representative Moore replied no. Senator Mazurek asked if there were any discussion about holding the parents responsible. Representative Moore replied people thought it was a good form of parental control. It has worked well in Washington.

CLOSING STATEMENT: None.

Hearing on HB 323 was closed.

CONSIDERATION OF HB 579: Curt Chisholm, Deputy Director of the Department of Institutions, introduced the bill on behalf of Representative Cal Winslow, chief sponsor of the bill. Mr. Chisholm stated this bill was introduced at the request of the Department of Institutions to clarify and solve some problems. Warm Springs gets 400 voluntary admissions annually. What they will be doing is contacting the mental health center to determine if there is no other facility available. To his recollection, the section that is being eliminated has never been used. The primary motivating force is to have a professional person coordinate the activities to determine whether or not there are adequate facilities to deal with the person.

PROPONENTS: Dick Hruska, Director, Regional Mental Health Center in Great Falls, stated he was present at the request of Harold Gehrke. He stated the state council in its meeting in Helena supported the bill. David Briggs, Executive Director, Region IV Mental Health Center, stated the concept of screening admissions is a concept he has supported over the years. The two mental health centers that would be most affected are IV (Butte-Anaconda) and V (Missoula). There are approximately 400 voluntary admissions to Warm Springs each year. One-half come from Region IV. Of that 200 voluntary admissions, they are admitted by people who are not staff members of his mental health center. His mental health center has never had contact with them, and this would make them do so. The screenings will be done properly, professionally, and ethically. It is time they do not have to spare. There is no money tied to this bill. To request additional funds for this screening would not be appropriate. Region IV in particular is operating with waiting lists from 2-6 weeks. Most of the people they are seeing already are people that are trying to keep out of the state hospital. Having to go through the mental health centers will be extremely abrasive. They are concerned about confidentiality. Kelly Morrison, Director, Mental Disabilities Board of Visitors, supported the bill in its present form.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked how they saw confirmations different from certifications. Mr. Chisholm replied it connotes better an approval process instead of a certification process. They haven't made any final decision as to exactly the process that will be used. He suggested simply a phone call without disclosure of the identity and a treatment proposal to determine if there is treatment that can be used. They do not intend it to become a papermill with respect to voluntary admissions. Senator Towe stated his concern is by changing from certification to confirmation, you take away the right of the mental health center to make the judgment. He asked if that were what they intended. Mr. Chisholm replied no. Confirmation was just their preference. In the first instance, they found out in attempting to do what they want to do, they put the burden on the applicant. Certification simply seems to imply a more formal process of deciding these matters. All they are attempting to do is channel some of these people to the mental health centers. Senator Towe questioned whether the decision should be channeled to the mental health center or the other people. Mr. Chisholm replied the mental health center.

CLOSING STATEMENT: Representative Winslow stated the purpose of this bill is to restrict inappropriate admissions to the Montana State Hospital. The mental health center usually has better information available as to what facilities might be available in their community. The intent of this bill is before making a voluntary admission to Warm Springs, there will be a check to see if there are local facilities available to take care of this person.

Hearing on HB 579 was closed.

ACTION ON HB 181: Senator Towe moved HB 181 be recommended BE CONCURRED IN. Senator Shaw commented we have a lot of bills coming in the natural resources program, and it was suggested in the Natural Resources Committee that used oil will be considered as a hazardous waste. Are we panicking with this hazardous waste? He commented \$200 for used oil is more than you pay for new oil. Senator Towe stated the testimony was that the federal government wanted us to strike this language so we could go with the civil and criminal penalties at the same time. They talked the federal government out of it, but they still thought it was a good idea. The motion carried with Senator Shaw voting in opposition.

ACTION ON HB 352: Senator Shaw moved HB 352 be recommended BE CONCURRED IN. The motion carried unanimously.

ACTION ON HB 323: Senator Pinsoneault suggested substituting value of the goods for actual damages. Senator Mazurek suggested striking "not to exceed \$1,000" and then adding "in addition to the retail value of the goods" below that. Senator Towe suggested leaving it alone and having three separate assessments or sue for the value of the goods and any actual damages plus an additional penalty to be measured by the value of the property not to exceed \$200. Senator Mazurek asked if the criminal law won't take care of it, will the civil law? Senator Pinsoneault commented as a practical matter, if he is subject to that much of a penalty, they are not imposing an additional \$25 or \$200 bucks. Senator Crippen moved the bill be amended as follows:

1. Page 1, line 16.
Following: "exceed"
Strike: "\$1,000"
Insert: "\$500"

2. Page 1, lines 17 and 18.
Following: "damages" on line 17
Strike: remainder of line 17 through "\$200" on line 18

3. Page 2, lines 3 and 4.
Following: "\$500" on line 3
Strike: remainder of line 3 through "\$200" on line 4

Senator Towe stated if the minor had funds of his own, you could sue the minor. You could also zap his parents for another \$500. Senator Yellowtail asked what the rationale was for the penalty for the parents. Senator Mazurek stated it relates to an emancipated minor versus an unemancipated minor. Senator Crippen asked why the minor's parents are responsible for the value of the goods. Senator Mazurek stated an existing statute applies to willful destruction of goods. Chairman Mazurek stated the effect of the amendment is an adult or an emancipated minor will be liable for a penalty of \$500 plus actual damages and a parent would be liable for the retail value not to exceed \$500. The motion carried unanimously. Senator Towe pointed out this is mandated, and there is no discretion. We are going to get this into a conference committee unless we add some language telling them what we are doing. Senator Towe moved HB 323 be amended as follows:

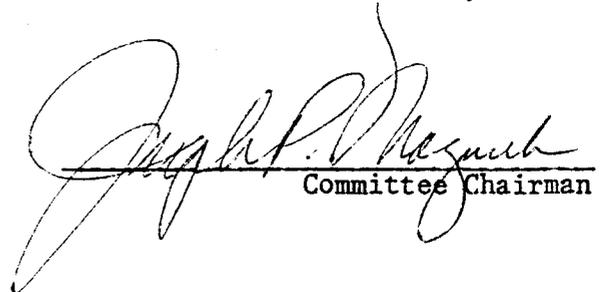
1. Page 1, line 15.
Following: "penalty,"
Insert: "whether or not the goods have been returned undamaged,"

2. Page 2, line 2.
Following: "penalty,"
Insert: ", whether or not the goods have been returned undamaged,"

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The motion carried unanimously. Senator Towe moved HB 323 be recommended BE CONCURRED IN AS AMENDED. He also pointed out one area the committee did not talk about was page 2, lines 10 and 11. The motion carried unanimously.

There being no further business to come before the committee, the meeting was adjourned at 12:07 p.m.


Committee Chairman

DATE March 12, 1985

COMMITTEE ON Judiciary

VISITORS' REGISTER

| NAME | REPRESENTING | BILL # | Check One | |
|------------------|--------------------------------------|--------|-------------------------------------|--------------------------|
| | | | Support | Oppose |
| Chuck Rully | Int. Sheriff's & Peace Officer Assn. | #B566 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Linda Spitzer | | | | |
| Julie Kuebler | | | | |
| William Cammack | | | | |
| Arthur Starks | | | | |
| Franklin Watson | | | | |
| Rabbi Amos | | | | |
| Mary Lawrence | | | | |
| James Mark | | | | |
| Paul Hansen | | | | |
| John Wilson | | | | |
| John Schindler | | | | |
| Colleen Minnehan | | | | |
| Wonne Cheer | | | | |
| Tom Elton | | | | |
| Deirdra Spitzer | | | | |
| Mike Lane | | | | |
| Lisa Diehl | | | | |
| Pat Harwood | | | | |
| Billy Kunkler | | | | |
| Mad Davidson | | | | |
| Kim Wilken | | | | |
| David Briggs | Mental Health | HB 579 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Jack Kuebler | Mental Health Reg'l | HB 579 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Mike Zimmerman | MPC | HB 286 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

(Please leave prepared statement with Secretary)

FACT SHEET FOR
House Bill 181

In the process of negotiating with the U.S. EPA for Authorization (primacy) of the Montana hazardous waste program, a provision of the Montana Hazardous Waste Act dealing with enforcement remedies was deemed unacceptable by the EPA. The EPA objected to the last sentence of Section 75-10-417 (2), MCA, which states that "Any civil penalty collected under this sections is in lieu of the criminal penalty provided for in 75-10-418". EPA insists that to demonstrate equivalency with RCRA an authorized state must have the ability to seek both criminal and civil remedies for the same offense, even if the likelihood of such an eventuality is remote.

The EPA later decided not to let this legal ambiguity stand in the way of authorization and granted Final Authorization to Montana on July 25, 1984. However, they still strongly object to this provision of state law. In order to forestall possible future problems in seeking to update and expand program authorization,* the Department of Health and Environmental Sciences is requesting that the "in lieu of" language be removed from the law. The Department envisions few if any circumstances under which both types of enforcement remedy would ever be sought for a single violation.

*The 1984 amendments to the Resource Conservation and Recovery Act of 1976 (RCRA) will result in major changes in the federal hazardous waste program. States will have to seek authorization from the EPA for these new aspects of their state programs.



Montana League of Cities and Towns

P.O. BOX 1704

HELENA, MONTANA 59624

PHONE (406) 442-8768

Gene Pigeon
Montana Dakota Utilities
Helena, MT 59620

Dear Mr. Pigeon:

As I indicated, Montana cities and towns support HB286, the measure to impose civil penalties for tampering with or bypassing utility meters.

Municipal governments operate most of the water and sewer systems in the state of Montana, and metered service is becoming more prevalent. The problem of tampering with or bypassing meters is as serious for municipal systems as the public or cooperative utilities.

State law requires payment by any person or organization on municipal water or sewer service. Delinquent payments are a continuing problem, but HB 286 does offer a remedy for those who would deliberately avoid their fair share of the cost of service by tampering with or by passing meters.

This bill is a a guarantee of fairness in utility operation. All people who use water and sewer service are obligated to pay a share of the costs. The penalties provided for in this bill should provide some assurance that a few customers will not take a free ride at the expense of the others on the system.

I intend to testify at the Senate hearing on HB 286, if this is not possible because of a time conflict, please have this letter entered into the record.

Sincerely,

Alec N. Hansen
Executive Director

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 03/28/85

BILL NO. HB 286

STANDING COMMITTEE REPORT

March 12 19 35

MR. PRESIDENT

We, your committee on..... **JUDICIARY**

having had under consideration..... **HOUSE BILL** No. **131**

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(Senator Hager)

COLLECTION OF CIVIL AND CRIMINAL PENALTY FOR HAZARDOUS WASTE VIOLATION

Respectfully report as follows: That..... **HOUSE BILL** No. **131**

BE CONCURRED IN

~~XXXXXX~~
DO PASS

~~XXXXXXXXXX~~
DO NOT PASS

.....
Senator Joe Mazurek

.....
Chairman.

STANDING COMMITTEE REPORT

March 12

1985

MR. PRESIDENT

JUDICIARY

We, your committee on.....

HOUSE BILL

having had under consideration.....

No. 323

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color

(Senator Towe)

CIVIL PENALTY FOR SHOPLIFTING

HOUSE BILL

Respectfully report as follows: That.....

No. 323

be amended as follows:

1. Page 1, line 15.

Following: "penalty,"

Insert: "whether or not the goods have been returned undamaged,"

2. Page 1, line 16.

Following: "exceed"

Strike: "\$1,000"

Insert: "\$500"

3. Page 1, lines 17 and 18.

Following: "damages" on line 17

Strike: remainder of line 17 through "\$200" on line 18

4. Page 2, line 2.

Following: "penalty"

Insert: ", whether or not the goods have been returned undamaged,"

5. Page 2, lines 3 and 4.

Following: "\$500" on line 3

Strike: remainder of line 3 through "\$200" on line 4

AND AS AMENDED

BE CONCURRED IN

~~XXXXXXXX~~

~~XXXXXXXX~~

.....
Senator Joe Mazurek

.....
Chairman.

STANDING COMMITTEE REPORT

March 12

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on.....

HOUSE BILL

No. 352

having had under consideration.....

third

reading copy (

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color

(Senator Brown)

GIVING DIST. CRTS. JURISDICTION WITH JUSTICES' CRTS IN CERTAIN MISDEMEANORS

Respectfully report as follows: That.....

HOUSE BILL

No. 352

BE CONCURRED IN

~~XXXX~~

~~XXXXXX~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 12

19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 566

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(Senator Mazurek)

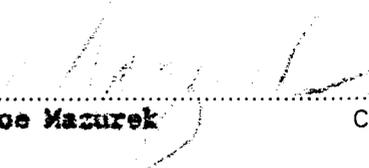
PROHIBIT INSTALLATION AND USE OF DIAL-UP SECURITY ALARM SYSTEMS

Respectfully report as follows: That HOUSE BILL No. 566

BE CONCURRED IN

UNLESS

UNANIMOUSLY


.....
Senator Joe Mazurek

Chairman.