

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 10, 1991,
at 9:00 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chairman (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Legislative Council Staff
Attorney
Jeanne Domme, Committee Secretary

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

HEARING ON HOUSE BILL #42 DISCRETIONARY STATEMENT OF INTENT FOR BILL GRANTING RULEMAKING AUTHORITY

Presentation and Opening Statement by Sponsor:

REP. COBB, HD 42, stated this bill is for an act changing
mandatory to discretionary statement of intent. The statement of
intent has no legal authority. There are approximately 400 bills

every session being written up as mandatory statements of intent that have no legal authority. Why put in the statements of intent when they aren't really needed. We want to use the word "may" instead of "shall" in the bill. To have the rule interpreted properly, put it right in the statute as you are writing the bill and clarify how the rule is interpreted. EXHIBIT 1 & 2

Proponents Testimony:

Roger Tippy, Helena, stated if a statement of intent were discretionary it would have more impact on the way the rule making is handled should the bill be signed into law.

Opponents Testimony: None

Closing by Sponsor:

REP. COBB stated that the Legislative Council has tried to write last minute statements of intent that have no legal authority. If a legal claim is filed against the state for doing wrong in the rule making, we can put it in the statute saying what can and cannot be done. This would give exact rules to be followed. Most look at the statute first then the statement of intent. As the bill is now, we are asking agencies to write their own statements of intent. By not mandating statements of intent for every bill, we save time.

Questions by Committee:

REP. MEASURE, asked REP. COBB what prevents the agencies from researching the legislature for the statement of intent? REP. COBB stated some agencies keep them forever but most do not pay any attention to them. The only place you can find a statement of intent is at an agency that kept a bill the session laws.

REP. WHALEN asked REP. COBB what is the purpose of making legislative intent permissive to all bills? Rep. Cobb stated to make room for delegation of authority for anyone from an agency that makes up their own rules unless something specific is put in the statute. REP. WHALEN then asked what happens to these statements of intent after they have been developed? REP. COBB said they are kept with the legislative history. You could get them if you were a lawyer looking for a statement of intent.

HEARING ON HOUSE BILL 43

AUTH. GRANDPARENT VISITATION RIGHTS FOR CHILDREN IN FOSTER CARE

Presentation and Opening Statement by Sponsor:

REP. COBB, HD 42, stated this bill would authorize the district court to grant visitation to grandparents of children in foster

care or when the Department of Family Services has custody of the children. This would allow grandparents to petition the court to allow them the right to visit their grandchild. Grandparents currently have the right to petition the court for visitation rights only in cases of dissolutions or divorces. We expanded it to include foster care. We took the same bill and put in the old grandparent visitation law and made it clear as to the expanded rights for grandparents wanting to visit their grandchildren in foster care. He gave the committee a copy of his proposed amendments. **EXHIBIT 3**

Proponents Testimony:

Jim Smith, Montana Residential Child Care Association, stated that child care agencies feel the removal of the child from the home is traumatic and part of the treatment designed for the children includes visits from members of the family. From the treatment standpoint, we would like to see the grandparents able to visit the children.

Opponents Testimony: None

Questions From Committee Members:

REP. BOHARSKI asked REP. COBB if it was his intent to eliminate these rights to the grandparents in the original bill? REP. COBB stated they didn't want to change the visitation rights if the Foster Care thought the child might later be adopted. It now clearly states, under foster care, the grandparent do have the same rights as they do under dissolution of marriage or divorce. The adoption will be left as is in the original bill.

Closing by Sponsor:

REP. COBB stated he did speak with the Department of Family Services and they support HB #43.

EXECUTIVE ACTION ON HOUSE BILL 42

Motion: REP. LEE MOVED HB 42 DO PASS.

Discussion:

REP. BROWN asked how we deal with agencies that don't listen and do what they want. He stated they should spend some time thinking about how we will deal with this.

REP. TOOLE stated it probably is a good idea to be discrete about how often statements of intent are used. We need to have statements of intent directed to these agencies.

REP. WHALEN, asked John MacMaster if there is a statement of intent on a bill, what is the delegation of authority to a state agency? How will the administrative code keep an eye on them? Mr. MacMaster stated the administrative code reviews every rule and check to see if there is a draft rule

in accordance. They then check each rule to be sure there is a statute to implement to the rule or if any provision of the rule conflicts with the statute itself. Usually the administrative code doesn't even look to see if there was a statement of intent. If we want to give some direction to the state agencies we put in statutes and to make sure they follow it we should definitely put in statutes.

REP. BROOKE, stated the committee is only looking at the practical nature when it's made and with consideration to the Legislative Staff the minutes are recorded and put into record. Statements of intent have some historic value for researchers to give us when we are all no longer here to explain those statements of intent. This will give them some explanation of what we are about. As one who values that perspective, I tend to vote against it.

REP. BOHARSKI stated REP. COBB is limiting statements of intent. We are actually going to clear up this process. Statements of intent don't do us any good and if we are to limit them it would save us time.

Votes: Motion carried.

EXECUTIVE ACTION ON HB #43

Motion/Vote: REP. TOOLE moved to amend HB 43. Motion carried.

Motion/Vote: REP. TOOLE MOVED HB 43 DO PASS AS AMENDED. Motion carried.

EXECUTIVE ACTION ON HB #36

Discussion: CHAIRMAN STRIZICH asked REP. BROWN if he wanted to hear the history report of HB #36 he requested from John MacMaster, at this time. REP. BROWN said he would.

JOHN MACMASTERS, stated he had a page of notes regarding the background of HB #36, EXHIBIT 4, which were reviewed by the committee.

Motion/Vote: REP. BOHARSKI MOVED TO RECONSIDER HB 36. Motion carried.

Discussion:

REP. BOHARSKI asked John MacMaster to hand out amendments he drafted for HB#36. EXHIBIT 5. Looking at the research John has done regarding the history of the bill, it appears there was a reason for enacting some of these statutes such as the licensing and bonding portion of the bill. What seems to be arbitrary is

the number 10 on the bill. Currently, it says anyone can serve process as long as they don't serve more than 10. What I am attempting to do with these amendments is to address the type of processing being served. I would like to have each amendment handled separately.

Motion/Vote: REP. BOHARSKI moved to amend HB 36 with amendment #1. Motion carried.

Motion: REP. BOHARSKI moved to amend HB 36 with amendment #2.

Discussion:

REP. RICE stated the law as it was when we came here, drew a line at 10 but if you did more than 10 you have to be registered and take a test. This bill we are looking at states they want to keep this law but exempt paralegals from having to be regulated by the state. Rep. Boharski wants to change the wording regarding the kind of process serving a person does. I am not comfortable with that. As long as we have the current system in the law to protect the public I am going to vote against the amendments.

REP. MEASURE stated they have taken this bill away from its intention. The best way to address the paralegals interest was to strike the entire section regarding regulation of process servers. If we left the statutes as they are anyone with no training, registration, licensing or bonding can serve up to 10 with no protection to the public. We have gone a step beyond that now and set a situation where we are serving other than subpoena, now the public is protected even more so.

REP. BROOKE asked REP. CODY, who sponsored the bill, if she would like to add anything to this discussion.

REP. CODY stated that if one is a registered processor you can be called anyone to serve process. What that means is that if you are a paralegal working for a law firm and are a certified process server, anyone can walk through the door and hire you to process papers for them. That is what we are trying to eliminate with this bill.

REP. BECKER asked if a process server has to accept any job asked of them? REP. BOHARSKI said a judge can order a process server to serve and if they refuse they shall be fined up to \$100.

REP. MEASURE stated he didn't think that was true.

Motion: REP. MEASURE moved HB 36 be amended by deleting all language in Section 25-1-1101 through 1112 Montana Annotated and enact a deposition of the levying officer in the rules of civil procedures in the Montana Code as well as the bonding requirement for a levying officer.

Discussion:

JOHN MACMASTER stated that the Montana Constitution gives authority to adopt rules to the Supreme Court and the Legislature the right to veto any rule in either of the next two sessions following the adoption of the rule by the supreme court. The court has addressed the rule and the legislature cannot do so. If we adopt the deposition of levying officer, there may be a rule already on that and therefore this probably cannot be done.

REP. MEASURE stated he found no definition of levying officer and said he wouldn't worry about that.

REP. RICE stated he thought Rep. Measure's motion was taking out the whole section of law that this section is a part of and asked Mr. MacMaster if he thought this was a flagrant violation of the original purpose rule and if we would be getting into trouble with that?

JOHN MACMASTER stated we might be.

REP. WHALEN stated he would like the Chairman to delegate a sub-committee to look at this area of the law and maybe come up with a committee bill.

CHAIRMAN STRIZICH stated if the motion was withdrawn, he would appoint a sub-committee. Rep. Measure will be the chair and Rep. Boharski and Rep. Toole to sit on the sub-committee. "Will you withdraw your motion Rep. Measure and Rep. Boharski?"

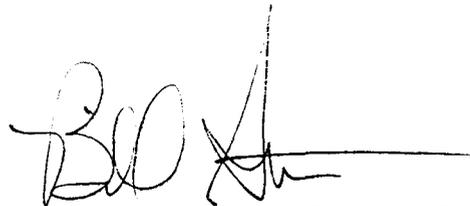
REP. MEASURE stated he would withdraw his motion.

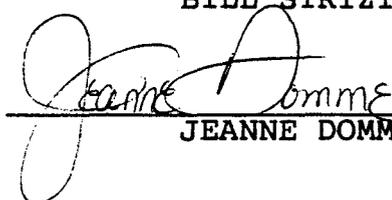
REP. BOHARSKI stated he would withdraw his motion.

CHAIRMAN STRIZICH stated he intended to send HB #36 to the sub-committee for work.

Motion: REP. GOULD MOVED HB 36 BE TABLED. Motion carried.

Adjournment At: 10:23 a.m.


BILL STRIZICH, Chairman


JEANNE DOMME, Secretary

BS/jmd

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HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 1-10-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

1-11-91
J.D.P.

STANDING COMMITTEE REPORT

January 10, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 42 (first reading copy -- white) do pass .

Signed: 

Bill Strizich, Chairman

STANDING COMMITTEE REPORT

January 11, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 43 (first reading copy -- white) do pass as amended.

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Title, lines 4 through 7.

Following: "AN ACT"

Strike: lines 4 through 7 in their entirety

Insert: "TO CLARIFY THE EXTENT OF A GRANDPARENT'S RIGHT TO VISIT GRANDCHILDREN; TO PROVIDE FOR JOINDER OF THE DEPARTMENT OF FAMILY SERVICES IN A PROCEEDING TO ESTABLISH VISITATION RIGHTS; AND AMENDING SECTION 40-9-102, MCA."

2. Pages 1 and 2.

Strike: everything following the enacting clause

Insert: "Section 1. Section 40-9-102, MCA, is amended to read:

"40-9-102. Grandparent visitation rights. (1) Except as provided in subsection ~~(5)~~ (6), the district court may grant to a grandparent of a child reasonable visitation rights, including but not limited to visitation rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) If the department of family services has become involved with the child under any law of this state, it must be joined as a party under Rule 19(a), Montana Rules of Civil Procedure.

~~(3)~~ (4) No person may petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of the child; the child's parent, guardian, or custodian; or the child's grandparent.

~~(4)~~ (5) The court may appoint an attorney to represent the interests of a child with respect to visitation when such interests are not adequately represented by the parties to the proceeding.

~~(5)~~ (6) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the

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adoption of the child by a person other than a stepparent or a
grandparent." "

Exclusion AB 47

rept - 1. state cost
2. fees

EXHIBIT 1
DATE 1-10-91
HB 42

3. revenues licensed is not

STATEMENTS OF INTENT: THEIR USE, VALUE, AND ALTERNATIVES

September 1990

Legal Memorandum

Prepared by



Montana Legislative Council

Montana Legislative Council
State Capitol, Room 138
Helena, Montana 59620
(406) 444-3064

STATEMENTS OF INTENT: -THEIR USE, VALUE,
AND ALTERNATIVES

By John MacMaster
Staff Attorney

Montana Legislative Council

September 1990

WHAT ARE THEY AND HOW DO THEY FIT
INTO THE LEGISLATIVE PROCESS ?

Statements of Intent are required by the "Legislative History Act", which was enacted by Chapter 560 of the Laws of 1977, and codified to Title 5, Chapter 4, part 4, of the MCA. Sections 5-4-402 and 5-4-404, MCA, provide:

5-4-402. Purpose. (1) The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies.

(2) The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to how such discretion is to be exercised and the legislature's purpose for delegating the authority.

5-4-404. Statement of intent. The legislature by its joint rules shall provide a procedure by which a statement of legislative intent shall be included with each bill containing a

delegation of authority and may be included with all bills. A statement of intent shall be placed before each component of the legislature which sequentially considers the subject bill and may be amended in the same manner as the bill."

During the 1989 Regular Session, Joint Rule of the Montana Legislature 70-30 was adopted making a Statement of Intent a part of the bill. It was printed after the title of the bill and just prior to the enacting clause. Prior to that, a Statement of Intent was attached to, but was not part of, the bill.

A Statement of Intent is supposed to state the Legislature's intent regarding the rules that may be adopted. It can include such things as guidelines, tests, standards, legislative intent, purpose, scope, analysis of problems the bill addresses, subject matter of the rules, and the approach the agency should take in adopting rules.

WHERE DO THEY COME FROM ?

Ideally, the Statement of Intent should be written by the person, group, or entity that requested the bill or knows the most about the subject matter of the bill, because they are usually in the best position to know what the rules should address. In practice, the Statement of Intent is, for various reasons, usually written by the Legislative Council bill drafter who works on the bill. Some of the reasons are that the Council drafter cannot get the proper person to draft the Statement of Intent, or that person or the legislator who requested the bill asks the Council drafter to write it. The Council drafters do their best, but they cannot read the minds of those who requested the bill and are not experts in every field relating to every bill. The end result is often an inadequate Statement of Intent. Even when the person, group, or entity best able to write it does so, they often spend too little time and energy on it, and again, an inadequate Statement of Intent is often the result.

EFFECTIVENESS

Statements of Intent do not adequately do what the Legislature originally envisioned for them. Very few of them receive, at any stage of the bill drafting and legislative process, the time and input originally intended for them. They are largely ignored as an annoying appendage to a bill.

A Statement of Intent is an inadequate substitute for clear standards in the bill that the agency must follow when adopting rules. A blanket grant of rulemaking authority with no, or an inadequate, indication to the agency that will adopt rules of the direction the agency should take is invalid. Legislative standards, guidelines, formulas, limits, etc., for the rulemaking agency to follow in adopting rules should be included in the bill, either in the section granting rulemaking authority, or the sections the rules will implement, or both. Often, this is not done, and in many cases it is because they are instead put in a Statement of Intent. If possible, the policy or reasons underlying the grant of rulemaking authority and underlying the code sections the rules will implement should be included. For discussions of this subject see: In re Gate City S & L Ass'n, 182 Mont. 361, 597 P.2d 84 (1979); and Bacus v. Lake County, 138 Mont. 69, 354 P.2d 1056 (1960).

IS THERE AN ALTERNATIVE ?

Yes. Make a Statement of Intent permissive, rather than mandatory, for a bill granting rulemaking authority. (Under present law, a Statement of Intent is permitted, but not mandated, for a bill not granting rulemaking authority.) What now usually goes into a Statement of Intent should be placed in the bill, so that it becomes law, and it should ideally be placed in the new bill section, or an amendment to the existing MCA section, that grants rulemaking authority. A Statement of Intent is not law, and might be ignored by the rulemaking agency. If the Legislature wishes to give direction to the rulemaking agency (and that was one of the reasons for requiring

Statements of Intent) and wishes its directions followed, the Legislature should usually make its directions part of the law. However, in fairly rare instances, the Legislature may wish to give a rulemaking agency directions of the type that do not belong in a statute; for example, expressing the Legislature's desire that the agency follow a program adopted in another state. A statement like that does not belong in a statute. In these cases, a permissive Statement of Intent would be available as a method by which the Legislature can express its desires and give direction to the rulemaking agency.

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Exhibit 9
HB 42

EXHIBIT 2
DATE 1-10-91
42
~~Ch. 409~~

942

MONTANA SESSION LAWS 1989

Section 9. Section 23-5-1028, MCA, is amended to read:

"23-5-1028. Annual audit. The legislative auditor shall conduct or have conducted an annual audit of the state lottery. The costs of the audit must be paid out of the state lottery fund. A copy of the audit report must be delivered to the commission, the director, the governor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house."

Section 10. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 11. Effective date. [This act] is effective on passage and approval.

Approved April 3, 1989.

CHAPTER NO. 409

[HB 289]

AN ACT ALLOWING THE DONATION OF PADDLEFISH ROE TO A NONPROFIT CORPORATION FOR USE IN CAVIAR PRODUCTION; DESIGNATING HOW PROFITS REALIZED FROM THE SALE OF CAVIAR ARE TO BE USED; INCREASING RESTITUTION ON ILLEGAL KILLING OR POSSESSION OF PADDLEFISH; AND AMENDING SECTIONS 87-1-111, 87-3-111, AND 87-4-601, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 87-4-601(3) grants rulemaking authority to the department of fish, wildlife, and parks to implement the paddlefish roe donation program. The legislature intends that the priority in implementing the provisions of this bill be on maintaining the paddlefish fishery. At a minimum, it is intended that the rules address the following:

- (1) a process for the selection of a Montana nonprofit corporation to accept roe donations and to process and market the paddlefish roe;
- (2) recordkeeping required of the selected corporation and commercial buyers to assure proper administration of the program;
- (3) a process for development of recommendations and review of projects in expending funds raised through the paddlefish roe program;
- (4) a provision that the total number of paddlefish taken in the Yellowstone River Basin may not exceed 3,500 in any year; and
- (5) any other topics necessary for administration of the program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-601, MCA, is amended to read:

"87-4-601. Sale of fish or spawn unlawful — exceptions. (1) Except as provided in subsections (2) and (3), a person may not, for speculative purposes, for market, or for sale, in any way, catch any of the fish

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which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn from any game fish.

(2) The restrictions of subsection (1) do not apply to:

- (a) the catching of fish in private ponds by the owners of private ponds;
- (b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for propagation purposes;
- (c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;
- (d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under rules and regulations as the fish and game commission may prescribe; or
- (e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) (a) A person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish at the Intake fishing access site north of Glendive during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection (3)(b) for processing and marketing as caviar.

(b) The department shall develop rules for selecting one Montana nonprofit organization to accept paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules for the marketing and sale of caviar under this section.

(c) The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection (3)(b) specifying times, sites, and other conditions under which paddlefish eggs may be collected. The agreement must require the organization to maintain records of revenue collected and related expenses incurred and to make the records available to the department and the legislative auditor upon request.

(d) (i) One-half of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, marketing, and administration must be deposited in a state special revenue fund established for the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery, including fishing access, improvements, habitat, and fisheries management, or to provide information to the public regarding fishing in eastern Montana, which could include the design and construction of interpretive displays.

(ii) The other half of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, marketing, and administration must be paid to the nonprofit organization that processes and markets the caviar. An advisory committee must be appointed by the

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commission and consist of one member from the organization selected pursuant to the rules provided for in subsection (3)(b), two area local government representatives, and two representatives of area sportsmen. The advisory committee shall solicit and review historical, cultural, recreational, and fish and wildlife proposals and fund projects. The committee shall notify the commission of its actions. Proceeds may be used as seed money for grants."

Section 2. Section 87-3-111, MCA, is amended to read:

"87-3-111. Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties. (1) It is unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110; or

(c) the donation and sale of paddlefish roe as caviar under the provisions of 87-4-601.

(3) Except as provided in subsection (4), any person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(4) Any person engaging in the activities prohibited in subsection (1) in furtherance of a scheme to traffic in the body parts of unlawfully taken species is guilty of a felony and shall be punished by a fine of \$10,000 or imprisonment in the state prison for a term of 1 year, or both."

Section 3. Section 87-1-111, MCA, is amended to read:

"87-1-111. Restitution for illegal killing or possession of certain wildlife. In addition to other penalties provided by law, a person convicted of the illegal killing or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each such bird, mammal, or fish according to the following schedule:

(1) bighorn sheep, mountain goat, caribou, buffalo, grizzly bear, moose, and endangered species, \$1,000;

(2) elk, mountain lion, black bear, lynx, and wolverine, \$500;

(3) deer, antelope, fisher, raptor, swan, bobcat, pallid and white sturgeon, and paddlefish, \$300;

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- (4) grayling and furbearers not listed in subsection (1), (2), or (3), \$100;
- (5) game bird (except swan), \$25;
- (6) game fish, \$10."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective date — termination.** [This act] is effective July 1, 1989, and terminates June 30, 1993.

Approved April 3, 1989.

CHAPTER NO. 410

[HB 340]

AN ACT CLARIFYING A CITY'S OR TOWN'S AUTHORITY TO BAN THE SALE OF FIREWORKS WITHIN ITS LIMITS; AMENDING SECTION 50-37-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-37-102, MCA, is amended to read:

"50-37-102. Where chapter not to apply. (1) Nothing in this chapter shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit issued under 50-37-107 at the display covered by such permits, the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans of the United States armed forces.

(2) This chapter does not apply to toy paper caps containing less than one-fourth of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events.

(3) *Nothing in this chapter authorizes the sale of fireworks in a city or town that has banned the sale of fireworks within the city or town as authorized in 7-33-4206.*"

EXHIBIT 3
DATE 1-10-91
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AMENDMENTS TO

HOUSE BILL NO. 43

Introduced by Cobb

1. Amend Title, page 1, line 4.

Following: " 'AN ACT"

Strike: the remainder of the Title.

Insert: "CLARIFYING VISITATION RIGHTS OF GRANDPARENTS;
REQUIRING NOTICE TO THE DEPARTMENT OF FAMILY SERVICES;
AND AMENDING SECTION 40-9-102, MCA.

2. Strike everything after the enacting clause and insert:

Section 1. Section 40-9-102, MCA, is amended to read:

"40-9-102. Grandparent visitation rights. (1)
Except as provided in subsection ~~(5)~~ (6), the district
court may grant to a grandparent of a child reasonable
visitation rights; including, but not limited to,
visitation rights regarding a child involved in, or as
to which a disposition has been made, during an
administrative or court proceeding under this title or
Title 41.

(2) Visitation rights granted under this section
may be granted only upon a finding by the court, after
a hearing, that the visitation would be in the best
interest of the child.

(3) If the department of family services has
become involved with the child under any law of this
state it must be joined as a party under Rule 19(a),
Montana Rules of Civil Procedure

~~(3)~~ (4) No person may petition the court under
this section more often than once every 2 years unless
there has been a significant change in the circumstances
of the child; the child's parent, guardian, or
custodian; or the child's grandparent.

~~(4)~~ (5) The court may appoint an attorney to
represent the interests of a child with respect to
visitation when such interests are not adequately
represented by the parties to the proceeding.

~~(5)~~ (6) This section does not apply if the child
has been adopted by a person other than a stepparent of
a grandparent. Visitation rights granted under this
section terminate upon the adoption of the child by a
person other than a stepparent or a grandparent.

#18
#36

EXHIBIT

4

DATE

1-10-91

HB

36

Title 25, Ch. 1, part II
Process Servers

- Drafted by Greg Patesch
- Enacted by Ch. 548, Laws of 1987, HB 639, sponsored by Rep. Corné.
- Heard in House Local Gov't. Comm. on Feb. 13, passed as amended on 14th.
- Heard in Sen. Local Gov't. Comm. and heard March 5 and concurred in as amended March 12. Heard again on March 24 and concurred as amended on March 25.
- House Hearing. Purposes to clarify private persons could serve process. This will speed up process serving as more people can serve process. Also, this would create jobs. Larry Sent, a Bozeman attorney, said that. No opponents. Unanimously passed as amended. Lee Heiman was comm. staff attorney.

On questions in Senate's 1st hearing the bonding provisions were said to protect against a server who ~~by~~ levies on and absconds with a thing of value. Passed as amended with 2 UNO votes. On 2nd Sen. hearing, concurred in as amended, 6-3.

1-10-91

EXHIBIT 5
DATE 1-10-91
HB 30

Amendments to House Bill No. 36
First Reading Copy

Requested by Rep. Boharski
For the Committee on the Judiciary

Prepared by John MacMaster
January 8, 1991

1. Title, lines 4 and 5.

Strike: "PARALEGALS AND LEGAL ASSISTANTS"

Insert: "A PERSON WHO SERVES ONLY NOTICES AND SUBPOENAS TO APPEAR
FOR DISCOVERY PURPOSES OR AS A WITNESS"

2. Title, line 6.

Following: "SERVER;"

Insert: "TO DELETE A REGISTRATION EXEMPTION FOR PERSONS WHO MAKE
10 OR FEWER SERVICES OF PROCESS IN A YEAR;"

3. Page 1, line 11.

Strike: "makes more than 10 services"

Insert: "serves any type"

4. Page 1, lines 12 and 13.

Strike: "during 1 calendar year"

5. Page 1, lines 22 and 23.

Strike: "paralegal" on line 22 through "37-60-101" on line 23

Insert: "person who serves only notices or subpoenas to appear
for discovery purposes or as a witness"

