

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 18, 1991,
at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: John Harp (R)

Staff Present: Valencia Lane (Legislative Council).

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

Announcements/Discussion: The hearings of HB 552 and HB 741 were combined.

HEARING ON HOUSE BILL 191

Presentation and Opening Statement by Sponsor:

Representative Bruce Measure, District 6, said the bill is an act adopting the uniform conflict of laws which provided for a method of determining the applicable statute of limitations when other state laws are involved in a civil proceeding in Montana; and amending Section 27-2-104, MCA. He said Senator Mazurek would carry HB 191.

Representative Measure said he believed HB 191 was quite straight forward, and asked that the Committee review it. He stated that he didn't believe there were any proponents or opponents of HB 191.

Proponents' Testimony:

John Alke, Helena attorney representing the Montana Defense Trial Lawyers Association, told the committee that the general purpose of HB 191 is to prevent parties from forum shopping in Montana simply to get a longer statute of limitations. He noted that the Montana Defense Trial Lawyers Association supports HB 191 and thinks that it is fair. Mr. Alke asked the Committee to support the bill.

Opponents' Testimony:

There were no opponents of HB 191.

Questions from Committee Members:

Senator Mazurek asked if the Montana Trial Lawyers Association supported HB 191. Representative Measure replied that they did.

Closing by Sponsor:

Representative Measure thanked the Committee, and asked them to pass HB 191.

EXECUTIVE ACTION ON HOUSE BILL 191

Motion:

Senator Halligan made a motion that HB 191 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

HEARING ON HOUSE BILL 471

Presentation and Opening Statement by Sponsor:

Representative Royal C. Johnson, District 88, stated that HB 471, an act to generally revise the law relating to trusts to clarify that a trust includes a trust created in connection with

certain bonds, and clarifying that the designation of a trust in a conveyance vests the estate in the trustee, would be explained in detail by Bruce MacKenzie.

Proponents' Testimony:

Bruce MacKenzie, attorney, Dorsey & Whitney (a Great Falls law firm representing DADCO Companies), read from a prepared statement in support of HB 471 (Exhibit #1). He said HB 471 has two amendments, which were approved by Professor Ed Eck, University of Montana Law School, who is also Chairman of the Trust Revision Committee of the State Bar of Montana. He said the amendments were also endorsed by the Trust Revision Committee of the State Bar of Montana, and asked that the Committee give HB 471 a favorable recommendation.

Opponents' Testimony:

There were no opponents of HB 471.

Questions from Committee Members:

Senator Crippen asked if the second amendment, dealing with irrevocable trusts, addressed some of the problems created by the expansion of this kind of document. He stated that it would be a way of avoiding probate, and could result in tax dollar savings. Senator Crippen commented that it could end up putting the state in greater jeopardy, and that he sees problems with the bill. Mr. MacKenzie replied that the bill only one of the problems arising from irrevocable trusts: that of conveyance of property in an improper manner, by using the trust name.

Mr. MacKenzie further stated that title companies have continually come to lawyers, who designate a trust name as a transmittal document, but this only cures that one small problem. He reported that members of the Trust Revision Committee wanted this changed, and said he saw some potential problems with the change. Mr. MacKenzie stated he is not sure if the property should remain in the name of the trustee.

Senator Crippen noted that an irrevocable trust is a problem, and said Professor Ed Eck and others have written some Law Review articles on this issue.

Closing by Sponsor:

Representative Johnson said he kept his introduction short as all the questions at the House Judiciary hearing were addressed to Mr. MacKenzie. He asked the Committee to concur in House Bill 471, and said the Trust Committee has worked diligently for a number of years to straighten out a lot of these things. Representative Johnson questioned whether Senator Crippen's concerns had been

addressed, and said this may be a problems for the next Legislative Session to address. He thanked for the hearing, and asked that Senator Halligan carry the bill.

HEARING ON HOUSE BILL 552

Presentation and Opening Statement by Sponsor:

Representative Brent R. Cromley, District 94, said HB 552 generally revises Montana business corporation law. He stated that the bill should not to be taken lightly, as it has been almost two years in the making. Representative Cromley explained that Gary Spaeth, former President of the State Bar of Montana, appointed a committee who worked hard on this issue, using current statutes and the Revised Model Business Corporation Act.

Proponents' Testimony:

Professor Steven Bahls, University of Montana School of Law, submitted a copy of the State Bar's Committee on Corporate Law Revision Suggested Revisions in the Montana Business Corporation Act (MCA, Title 35, Chapter One) and the Montana NonProfit Corporation Act (MCA, Title 35, Chapter Two) dated October 24, 1991 (Exhibit #2), and read from prepared testimony in support of HB 552 (Exhibit #3). He also submitted a copy of the Executive Summary, HB 552, State Bar of Montana, Corporate Law Revision Project (Exhibit #4).

Robert Michelotti, Jr., attorney, Crowley, Haughey, Hanson, Toole & Dietrich law firm, Billings, said he served on the Corporate Law Revision Committee, and also on the Trust Law Revision Committee, of the State Bar of Montana, but is not a regular participant in the legislative process. He noted that, as a practitioner, the trust law revisions are something that Montanans can all be proud of, as they provide clear and concise guidelines with respect to the operation of corporations.

Mr. Michelotti stressed that the new law does provide some clear guidance with respect to director's and officer's liability. He said the number of directors, can be changed up to 30 percent, and that the bill retains shareholder rights, thus, basically, retaining the number of directors. Mr. Michelotti stated that the law provides the procedure for resignation and removal of directors and officers, and for electronic (tele-conference) meetings. He further explained that it also provides for the use of committees which is common in this day and age, and gives clear guidance as to the standards of conduct governing the directors in conflicts of interests. He thanked the Committee, and urged them to act positively toward HB 552.

Robert Murdo, Vice Chairman, Corporate Law Revision Committee, State Bar of Montana, and attorney, Jackson, Murdo & Grant law firm, Helena, advised the Committee that, in 1982 he worked on this

committee, who made major revisions, and finally American Bar Association's recommendations. He advised the Committee that this law impacts small business corporations, especially businesses that are familiar in Montana. He stated that, under the present law, the usual way in which people obtain stock is by paying money, but that doesn't always happen (Section 38 of the bill).

Mr. Murdo told the Committee that HB 552 changes the law to allow consideration for stock, rather than money, and that it authorizes other consideration as being appropriate (future services, contracts for future services, or promissory notes). He explained that the directors then determine when the stock is to be delivered, and how it is to be restricted, providing added ability for corporations to work with people that have good ideas, but may not have any immediate money to put into the corporation.

Mr. Murdo reiterated the example provided by Professor Bahls. He stated that when shareholders are deadlocked, there is no way to resolve that deadlock, and the only thing existing law does is dissolve the corporation. Mr. Murdo advised committee members that the Montana Corporate Law Revision Committee decided to use South Carolina law, and reviewed other options that they could give to the court (see Options in Section 155).

Mr. Murdo further advised that the courts are still authorized to order dissolution when shareholders are in a deadlocked, but would also have other remedies under this bill, (such as changing provisions of the Articles of Incorporation, the By-Laws, prohibiting certain acts of shareholders or directors, and providing for the purchase of shares by the corporation). Mr. Murdo said the Corporate Law Revision Committee tried to build flexibility into HB 552, to keep corporations operating within the law, and to provide some flexibility for Montana businesses. He thanked the committee for their consideration, and urged them to pass HB 552.

Bruce MacKenzie, attorney, Dorsey & Whitney law firm, Great Falls, and member of the Corporate Law Revision Committee of the State Bar of Montana, said flexibility is one of the hallmarks that attempted in the revisions. He noted that the Committee did not make wholesale revision of the code, because it wanted to be sensitive to Montana's history with corporate law, and, simultaneously, provide that flexibility.

Mr. MacKenzie Cited retention of voting requirements, as an example. He said Montana has had cumulative voting since 1889 when the Constitution was adopted. He further stated that when the Constitution was revised in 1972, the voting requirement was deleted from the Constitution, but it continued to be a part of the fabric of corporate law in this state both under statute and in case law.

Mr. MacKenzie stated that cumulative voting is a protection from minority interests, and that those who would oppose cumulative

voting see it as an opportunity to remove management that is not responsive to minority interests. He commented that opponents of cumulative voting say that the minority is held under control, but the real problem exists in terms of large public corporations.

Mr. MacKenzie further stated that cumulative voting is a problem in that the process is complicated and costly. He said public companies felt that this was an opportune time to make revisions that would allow those corporations to opt out of cumulative voting. He explained that, thus, they could continue to protect the minority interests of Montana, yet provide purchasing power flexibility via alternative methods of buying stock. Mr. MacKenzie thanked the Committee, and urged the adoption of HB 552.

Garth Jacobson, Office of the Secretary of State, and member, Corporate Law Revision Committee, State Bar of Montana, said the bill impacts the way the Secretary of State's office interacts with businesses in the state. He assured the Committee that the focus of his participation was toward minimizing the red-tape that businesses experience in the state.

Mr. Jacobson told the Committee he believes that HB 552 makes it easier to do business in Montana, particularly filing of documents with the Secretary of State's office. He explained that the two-part process for dissolving a corporation would be eliminated, and that, but the fees remain, generally, the same, and are revenue neutral.

Mr. Jacobson further advised the Committee that the Corporate Law Revision Committee eliminated the convoluted language that makes it difficult to understand the fee structure. He explained that it is a system whereby one would pay "x" amount of fees according to the number of shares that will be issued, and is very simple. Mr. Jacobson further explained that it does not tie into the concept of par value where there is a formula analysis, and that people will know up front what the fees and license fee will be. He said a foreign corporation will simply pay a flat fee, as there seems to have been a lot of confusion with foreign corporations who want to receive a certificate of authority.

Mr. Jacobson further stated that the standard for filing a corporate name from "deceptively similar" will be changed to a system called "distinguishable on the records". He said that if the name on the record can be distinguished, then it can be filed. He said Section 181 addresses using a name for unfair advantage, and that the service of process is also addressed here.

Mr. Jacobson further advised the Committee that there is some ambiguity when a corporation is involved, or dissolved, as to who the service of process is to be made against, and that HB 552 specifically designates who the trustees of that dissolved corporation are for the purpose of service of process. He explained that it also gives the corporation that dissolves the opportunity to designate a person for process services. Mr.

Jacobson thanked the Committee, and recommended that HB 552 be concurred in.

Robert C. Pyfer, attorney, and member of the Corporate Law Revision Committee, State Bar of Montana, said that Committee went through a very deliberate, open process, and that HB 552 is a good product. He thanked the Committee, and urged their consideration of HB 552.

Allen Chronister, State Bar of Montana, said the State Bar was responsible for the initiation of this work. He thanked the Committee, and urged them to concur on HB 552.

Opponents' Testimony:

There were no opponents of HB 552.

HEARING ON HOUSE BILL 741

Representative Cromley advised that the HB 552 and HB 741 are very closely related with the same thought process and committee work involved.

Professor Steven C. Bahls, University of Montana School of Law, asked the Committee to support HB 741.

Robert C. Pyfer, attorney, and member of the Corporate Law Revision Committee, State Bar of Montana, alluded to the three kinds of non-profit organizations which are the issue of this legislation. He stated that for-profit business corporations, still have the same basis, and are owned and controlled by their investors for the purpose of returning a profit to those investors. Mr. Pyfer went on to state that non-profit organizations don't always have the exact common thread, as some are charitable organizations, or serve a public cause or good. He said these organization are not only tax exempt, but contributions to them are deductible on individual tax returns.

Mr. Pyfer told the Committee that religious corporations are very much like charitable organizations, except that they have separate constitutional status, because of the separation of church and state and the free exercise of religion clauses in our Constitution. He said the third is the mutual benefit organization which serves a limited membership, and is run by volunteers, as well as tax exempt. He explained that contributions to mutual benefit organizations are not deductible, and they may have equity memberships which can be transferred for consideration. Mr. Pyfer said they are also entitled to distribution on dissolutions.

Mr. Pyfer explained that there are some market differences from different types of organizations. Mr. Pyfer commented that it's absolutely impossible to have clarity in the law, and not

treat these organizations differently, in certain respects, in the statute, and that is a big part of what HB 741 is about. He stated that existing organizations which have already incorporated under current non-profit law must hold an election to designate themselves as either a charitable, mutual benefit, or religious organization, and that they must specify their designation on their 1995 Annual Report to the Secretary of State's office.

Mr. Pyfer told the Committee that newly organized non-profits would have to specify their classification in their Charter and Articles of Incorporation. He stated that existing non-profit corporations don't have to wait until 1995, and may elect to benefits of the proposed law, by filing that election with the Secretary of State's office by January 1, 1992. Mr. Pyfer thanked the Committee, and urged them to favorably consider HB 741.

Jock (Bob) Michelotti, State Bar Association, said many of the same provisions pertain: specifically electronic meetings by telephone, use of committees, and procedures for resignation and removal of directors. He stated that officers, who are not directors, are required, under this Act, to comply with the same standards of conduct as the directors. He further stated that many non-director officers in non-profit organizations have significant responsibilities, and that since many of them are also volunteers, it is very important that those non-director officers be subject to the same rule. Mr. Michelotti said he believes HB 741 is clear, concise, up-to-date, and he urged the Committee to pass HB 741.

Garth Jacobson, Office of the Secretary of State, said he would not repeat his testimony from HB 552. He did state that it would generally apply to HB 741 as far as simplifying procedures, and making it an easier process to deal with the Secretary of State's office.

Mr. Jacobson also addressed the question of designation of non-profit status. He said the ideal process would provide there cycles in which these organizations could make their election, beginning with the 1992 Annual Reports. Mr. Jacobson stated that the organizations will not be committed until 1995, and that the Secretary of State would provide proper education for this process.

Mr. Jacobson asked to incorporate into the hearing minutes the report of the Corporate Law Revision Committee (Exhibit #2), as it will be incorporated, by reference, into the annotations by the Code Commissioner. Mr. Jacobson thanked the committee, and urged that HB 741 be concurred in.

Allen Chronister, State Bar of Montana, stated his support of the bill, asked the Committee to give it favorable consideration.

Opponents' Testimony:

There were no opponents of HB 741.

Questions from Committee Members on House Bills 552 and 741:

Chairman Pinsoneault commented that there is real potential for fraud, and said he was involved in a situation where a member of a particular congregation, whom he knew, had the standing to go ask for an accounting from a pastor. He said there was great reluctance to make this matter public. Mr. Michelotti asked Professor Bahls to follow up. Professor Bahls stated that he came from a church in Wisconsin where there was a similar problem, and said there are real competing considerations in dealing with religious corporations.

Professor Bahls explained that the state grants them a charter as a non-profit corporation, and expects them to follow the rules (not to use personal phones to benefit employees, or a board of directors, or a governing body). He said they also have the constitutional consideration of avoiding excessive entanglement. He further stated that the problem could be addressed by clarifying the rights of the members, and giving them the authority to seek the assistance of the Attorney General with respect to fraud. He explained that the Attorney General must go into court, in such an instance, but cannot get involved in an intra-church dispute which is a policy disagreement.

Senator Pinsoneault commented that the bill makes it easier for corporations to bring family members in to become shareholders, asked if the sponsors might be creating a nepotism problem that could come back to haunt them. Professor Bahls replied he didn't think so, and said this issue has been debated in American corporate law over a period of time.

Professor Bahls further explained that if the shareholders and board of directors decide, in fact, to concur that to the power, shareholders conferring it on to the board, and the board deciding that it is in the best interest of the corporation to allow family members to enter without a financial contribution, it would be permitted. He commented that if the board of directors is giving away stock for services that will never be rendered, they may have some liability there.

Senator Halligan asked Professor Bahls to touch on Subchapter S corporations and all the general business corporations. Professor Bahls responded that the flexibility that corporations currently have with respect to making an S corporation exemption is unchanged.

Senator Halligan asked if the direction would lead to forms available to use from the Secretary of State's office. Professor Bahls said an attorney is still advisable for incorporation, but it is possible to incorporate without one. He advised the Committee that the American Bar Association, has model forms which non-attorneys can use to incorporate, but there is some risk that the appropriate modifications will not be made. He said incorporation on the non-profit side, makes it much more advisable to get an

attorney because of the tax considerations, but, again, it is impossible to incorporate without an attorney.

Closing by Sponsor:

Representative Cromley told the Committee that he felt it was difficult to consider two large bills, and to try to have a full understanding of them. He reminded the Committee of the amount of study that has gone into them, and thanked them for their consideration. He asked that Senator Mazurek carry the bills.

HEARING ON HOUSE BILL 272

Presentation and Opening Statement by Sponsor:

Representative Bradley, District 79, said HB 272 creates the Montana Community Corrections Act, authorizing local governments and private agencies to establish and operate community corrections facilities and programs, and providing for creation of community corrections boards. She stated that the bill allows sentencing courts to sentence non-violent felony offenders to a community corrections facility or program, and grants the Department of Institutions authority to adopt rules governing operation of community corrections facilities and programs. Representative Bradley further stated that the bill establishes penalties for offenders who escape from community corrections facilities, and authorizes placement of offenders in a community corrections facility or program as a condition of the deferred imposition or suspended execution of sentences.

Representative Bradley said the bill was endorsed by the Criminal Justice Corrections Advisory Council, and that she tried to pass a similar bill four years ago. She stated that the Legislature can't build itself out of the prison population crisis, and said the bill provides for correction services at the local level for both governmental or non-governmental agencies. She told the Committee that no violent crimes or sexual offenders could apply, and that local boards must be established to organize and overview the system. She stated the boards would include judges, county attorneys, and mental health, probation and parole professionals, and that the agencies would apply to the boards for approval.

Representative Bradley further advised the Committee that the second concept would allow judges to order placement of non-violent offenders into community corrections, but not for longer than one year. She said the Department of Institutions has rulemaking authority, and will evaluate the different proposals, as well as make reimbursement.

Representative Bradley said the fourth concept deals with defendants who actually contract with the agency, and work off specific obligations during their term, such as paying for part of

their costs, and/or restitution to victims. She stated they can also put some of their earnings toward supporting their families, and that they would be under strict obligation to find employment. Representative Bradley explained that the bill treats escape like any other escape.

Representative Bradley further commented that the House Judiciary Committee hearing went very well. She explained that there are many individuals who are interested in working on this kind of community-based, decentralized option, but were unable to be present because of weather conditions. She also advised the Committee of the Prison Fellowship chapters which are active in the state, and thanked the Committee for the hearing.

Proponents' Testimony:

Representative Thomas Lee, District 49, told the Committee he came across the term "community-based corrections" when he was reading some of Chuck Colson's material. He said Mr. Colson also founded a new organization, Justice Fellowship, to meet the express needs that Representative Bradley outlined to the committee. Representative Lee stated that Justice Fellowship is in full support of the community-based idea, simply because it works.

Representative Lee told the Committee that he has worked in law enforcement work at the federal level. He said people who are sent to the State Prison are given a thorough education in crime, and that the vast majority of them are simply residual, once they go. Representative Lee contended that, "the appropriate non-violent offender who is diverted before he ever has to go to the state house rarely is a repeat offender."

Representative Lee further advised the Committee that Justice Fellowship had targeted Montana for a task force in 1992, and is putting together a meeting at the Governor's office on April 12, 1991 to discuss these matters. He told the Committee this is being done in a number of states, thanked the them for the hearing.

Harley Warner, Montana Association of Churches and Montana Religious Legislative Coalition said he felt that no offender should be subjected to more custody and security than he or she needs. He agreed that the majority of offenders do not pose a substantial threat to society, and can be effectively dealt with in the community (Exhibit #7).

Mr. Warner pointed out that community correctional facilities or programs provide a better opportunity to focus on the individual's personal and social needs, thus raising the chances of successful rehabilitation. He said HB 272 addresses some of the concerns of the Montana Association of Churches, and that they support the bill.

Diane Sands, Montana Women's Lobby, said she supports HB 272, because it is a very important part of the overall concept

addressing women inmates in the state. She stated that this proposal allows flexibility by placing women back in communities where their needs are better served, rather than putting many of them in one centralized facility. Ms. Sands advised the Committee that the sentences of women offenders are about one-third the length of those of men (Exhibit #8).

Ms. Sands further stated that the bill would keep many women close to their families, may meet their employment needs more appropriately, and allows for development of specialized correction programs to address the needs of women, such as Native Americans. She commented that the Legislature is taking on gender balance and racial parity, and said those will be incorporated, so the needs and perspectives of the women and minorities could be fully addressed at the local level. Ms. Sands thanked the committee, and urged them to support HB 272.

Melinda Erickson, Prison Fellowship, Bozeman, said she has been a member of the Fellowship, which meets regularly at the Detention Centers in Bozeman and Warm Springs, for about two years. She stated she has become acutely aware of a lack of justice in the system, because of the practice of putting non-violent offenders with violent offenders.

Ms. Erickson told the Committee that she sat across the table from an eighteen year old girl who was serving a six month sentence in Warm Springs for writing bad checks, who was seated next to a woman that had been incarcerated for a one hundred-year term. She asked why the girl had to be incarcerated for that kind of crime, and said it is costing the State of Montana thousands of dollars per year to keep her there. Ms. Erickson further commented that national statistics show the girl has a 47 percent chance of being re-arrested. She said the current system doesn't work, and that it doesn't rehabilitate.

Ms. Erickson advised the Committee that Justice Fellowship is a national organization committed to alternative sentencing of non-violent offenders. She said the Fellowship provides assistance, at no cost, to help state and local jurisdictions set up community service programs. Ms. Erickson thanked the Committee for their time, and asked them to support HB 272.

Scott Crichton, American Civil Liberties Union of Montana (ACLU), said he thought the case had been well made. He thanked the Committee, and asked for their support of the bill.

Opponents' Testimony:

There were no opponents of HB 272.

Questions from Committee Members:

Chairman Pinsoneault advised Representative Bradley that HB 272 may be in conflict with the alternative drug sentencing bill.

Senator Pinsonneault commented that the bill addresses non-violent offenders only for this program, and asked if this was discussed. He stated that in dealing with people who are convicted of crimes, no matter what they crime, there is always the potential for someone to get hurt. Representative Bradley replied that she didn't believe this had been discussed. She said that risk is always run in this system, and that there have been situations where people have violated parole, and lawsuits were filed. Representative Bradley commented that the same kinds of court arguments are heard right now concerning escapees from Swan River or a pre-release center.

Representative Bradley further stated that there are so many safeguards, that there seems to be far more protection than in existing situations. She said this bill is a "best" effort, and that it presents good assurances.

Closing by Sponsor:

Representative Bradley made no closing comments.

Hearing on House Bill 303

Presentation and Opening Statement by Sponsor:

Representative Dorothy Bradley, District 79, said HB 303 provides that it is lawful for a telephone company or telecommunications provider to release, in good faith, to personnel of emergency communications systems, information not in the public record. She stated that this includes, but is not limited to unpublished or unlisted telephone numbers, and that the bill also provides immunity to entities with less than 15,000 subscribers that provide emergency communications systems and related services.

Representative Bradley advised the Committee that the purpose of HB 303 is to encourage the development of emergency telephone systems, and to provide some limited liability for those who may be involved in providing the services, unless there is gross negligence (page 3, line 13). She said this concept is pulled from the Good Samaritan statute, which encourages medical personnel and physicians to go ahead and provide services to someone in need in emergency situations.

Representative Bradley told the Committee that she support HB 303 for philosophical, technical, and legal reasons. She commented that this nation has developed incredible speed in delivery of emergency services, and that telephone and communications systems are the necessary intermediaries. Representative Bradley advised the Committee that this is presently by a 25 cent fee.

Representative Bradley provided an example of a house burning down in Lincoln, but the two 911 lines are busy, and a call can't

be made. She asked if that means there is negligence, and said it is a judgment call. She asked if two lines enough, and commented that there might be a defect where the cable is not properly connected to the 911 number. Representative Bradley further commented that no one knows until the emergency arises, but that there may be some kind of a routing error, and a call could be connected to the wrong city.

Representative Bradley continued in her example, and said a there is a three-day lag in changing numbers and addresses when someone moves across town. She explained that the Fire Department, could be sent to the old address instead of the new one. She stated that these are fairly straightforward examples of what could go wrong in an emergency.

Representative Bradley told the Committee that she has worked extensively on the compromise with the Montana Trial Lawyers Association, and said she it is acceptable to all parties. She stated it will help the small telephone companies who need an incentive to put this in place, and told the Committee that, in most cases, those small companies provide the service on a volunteer basis, and as a good-will gesture to the community. Representative Bradley further advised the Committee that these companies have very little protection, and that it is difficult for them to get insurance coverage to protect themselves from losses that can arise. She commented that, for these reasons, a slightly different standard is appropriate.

Proponents' Testimony:

Joan Mandeville, Montana Telephone Association, testified on behalf of the Montana Telephone Association's thirteen independent telephone systems, nine of which are cooperatives. She said the Montana Telephone Association membership serves about 41,000 Montana customers, covers more than one-half of the geographical area of the state, and serves the smaller rural communities.

Ms. Mandeville explained that the telephone system can look at emergency calls, and route them to correct centers, even if those centers are in different counties. She explained that when the dispatcher looks at the screen, he or she sees the caller's name, address, and telephone number on the screen, before talking to anyone. Ms. Mandeville further explained that this alleviates dispatcher error to a great extent, and also provides all information where as to where a house may be burning, if the phone line goes out or someone is too young, frightened, or injured to pass on information to dispatcher. She said these systems can save hundreds of lives, by speeding up response time with getting accurate information.

Ms. Mandeville told the Committee that the downside of the systems is that they create a very new environment for the telephone systems. She said telephone companies have been put in the middle of the old standard, where towns meant people were

responsible for emergency systems. She explained that the risks are large, and most have had problems obtaining insurance.

Ms. Mandeville reported that, in her research, she found that one company went out to its 8,000 customers in an effort to obtain waivers from each of them in order to give out their unlisted telephone numbers in an emergency. She explained that this is one of the hoops that some companies are starting to jump through, and said some of them are sitting around hoping an emergency situation will never happen.

Ms. Mandeville told the Committee that HB 303 will encourage limitations on liability for those new systems. She advised the Committee that U.S. West will be offering an amendment to clarify the unlisted number, and said the Trial Lawyers will also offer a small amendment. Ms. Mandeville stated she has reviewed the amendments, and has no problem with them.

Dan Walker, U.S. West, said U.S. West supports the objectives of HB 303, including those sections which do not apply to its operations. He further stated that U.S. West supports the release of certain information, but is concerned with protecting the privacy of customers with non-published numbers. Mr. Walker stated that the federal act, governs U.S. West Communications where it serves customers, and that one section forbids release of private customer information to any government agency without a lawful court order, or the customer's prior consent, and that this is the reason for the amendment (Exhibit #9). He advised the Committee that he did not realize the need for the amendment when the bill was in the House, and asked the Committee to support the bill.

Gene Phillips, Northwestern Telephone Systems, Inc., said he supported the bill and the amendments proposed by U.S. West. He said Western Telephone serves approximately 35,000 subscribers in Flathead and Lake Counties, and asked the Committee to note that page 3, line 4, exempts the Company from liability unless there is gross negligence in local exchange telephone companies, or other tele-communications entities with less than 15,000 subscribers. Mr. Phillips stated that, by setting the figure at 15,000, only Northwestern Telephone Systems and U.S. West would be subject to liability. He advised the Committee that the smaller companies being exempted, had asked that the number be raised to 50,000, as opposed to 15,000.

Michael Sherwood, Montana Trial Lawyers Association, said the Association, opposed HB 303 in the House Judiciary Committee, because it struck the section on immunity. He thanked Representative Bradley for taking the time to discuss the Association's concerns, and said the way the bill was initially drafted, the section provided immunity for people who are clearly in a position to obtain insurance, and are charging a fee for their services. Mr. Sherwood stated that it would have immunized national producers of telephonic equipment, as well as large tele-communication service providers.

Mr. Sherwood explained that he and Representative Bradley discussed the immunity issue, and the Association now supports the bill, as it grants immunity to those small companies providing free services in the state or those who are unable to obtain insurance. He stated that immunity should not apply to large companies, and that the Association resists Mr. Phillips' proposed amendment.

Mr. Sherwood proposed an amendment, and apologized for not having it in writing. He asked that "or other tele-communications entities", be stricken from page 3, line 3, and that the intent is to apply this only to local exchange telephone companies in the state. Mr. Sherwood advised the Committee he would prepare a written amendment and provide it to Staff Attorney Valencia Lane.

Opponents' Testimony:

There were no opponents of HB 303.

Questions From Committee Members:

Representative Towe asked Representative Bradley if she objected to the amendments proposed by Michael Sherwood. She replied that Ms. Mandeville reviewed the amendments and had no problem with them.

Senator Towe then asked Representative Bradley if she objected to the amendments proposed by U.S. West. She replied that she did not.

Senator Towe asked if the amendments mean that only local exchanges are exempt from immunity. Representative Bradley replied that was the purpose of the bill.

Senator Towe asked Representative Bradley if she were familiar with Senator Nathe's bill. Representative Bradley replied she was not, and that part of the compromise was to address a specific number of telephone subscribers, because it was not originally intended for larger tele-communication entities.

Senator Towe explained that Senator Nathe's bill, as amended by the Committee, provides a much broader 911 form of immunity.

Mr. Sherwood advised Senator Towe that a compromise was struck to provide immunity for local exchange telephone companies, period. He explained that they are not government entities, necessarily, and said that, as introduced, HB 303 would have included any telecommunications provider whether they were a manufacturer, or were local government. Mr. Sherwood further stated that has been changed, and that Senator Nathe's bill, as he understood it, would not provide immunity for GTE or AT&T, but would provide immunity for any tele-communications provider that was local government. He said those are the distinctions.

Senator Towe noted there are not any inconsistencies, and Mr. Sherwood confirmed that there are none. Representative Bradley commented that 911 is not specifically addressed in this bill, because some entities don't use that specific number. She stated that the bill is aimed only at 911 emergency services.

Senator Doherty asked Representative Bradley to comment on Gene Phillips' amendment. Representative Bradley replied that she felt somewhat neutral, and that she would leave the decision to the Committee. She stated that she also felt somewhat bound to stay with the compromise arrived at earlier.

Senator Crippen asked Mr. Phillips if he carried liability insurance, and noted that this is obviously a bill designed to handle insurance. Mr. Phillips replied he did.

Senator Crippen stated that it was his understanding that the smaller companies could not get the insurance. Gene Phillips replied that he didn't know whether the smaller companies did get insurance or not.

Senator Crippen asked Mr. Sherwood if that was, essentially, why he resisted Mr. Phillips' amendment. Mr. Sherwood replied that there was a lengthy discussion in the House Judiciary Committee on calibrating economics, sound economic policy, and public law. He said he didn't want to get into that, but that was why he opposed Mr. Phillips' amendment.

Senator Halligan asked Dan Walker what his practical understanding of page 2 was, when he spoke of providing unlisted numbers in good faith, and if there is an attempt to verify the unlisted number through law enforcement, or the emergency medical people involved, to see whether it is correct. He asked if there is a duty to verify the number. Dan Walker replied that if the caller advises that there is an emergency, the center will access the information. He said the amendment gets the companies down to a first call situation where there is an immediate threat, and that it would prevent the blanket search for non-published, private information.

Mr. Walker further stated that is what U.S. West wants to avoid. He said that the person making the call, is giving permission for the release of information, and that, otherwise, the information would only be released through court orders.

Senator Halligan asked what would happen if he made a call requesting an unlisted number of another family member or individual who may be able to help out during an emergency. Dan Walker replied that the 911 center would not provide that information to him in such a case.

Closing by Sponsor:

Representative Bradley requested that Senator Doherty carry HB 303, and that Senator Pinsoneault carry HB 272., and made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 741

Motion:

Senator Mazurek will carry the bill. Senator Crippen made a motion that HB 741 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Vote:s

There were no amendments.

Recommendation and Vote:

The motion made by Senator Crippen carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 552

Motion:

Senator Crippen made a motion that HB 552 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Crippen carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 471

Motion:

Senator Halligan made a motion that HB 471 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

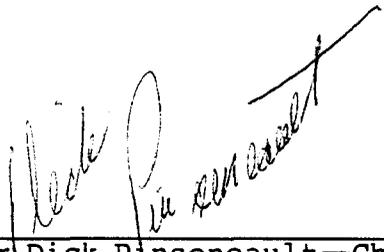
There were no amendments.

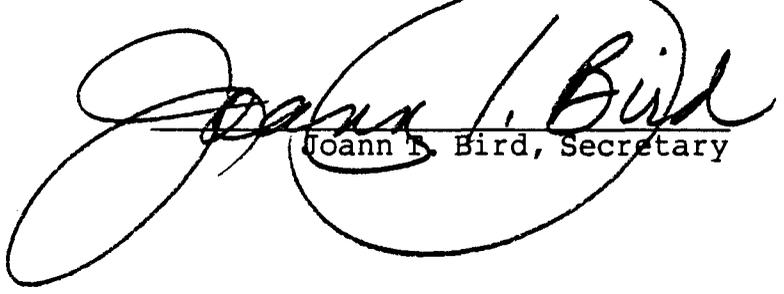
Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

ADJOURNMENT

Adjournment at: 12:10 P.M.


Senator Dick Pinsoneault, Chairman


Joann B. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991

Date 3-18-91
10:00am

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	/		
Sen. Yellowtail	/		
Sen. Brown	/		
Sen. Crippen	/		
Sen. Doherty	/		
Sen. Grosfield	/		
Sen. Halligan	/		
Sen. Harp			
Sen. Mazurek	/		
Sen. Rye	/		
Sen. Svrcek	/		
Sen. Towe	/		

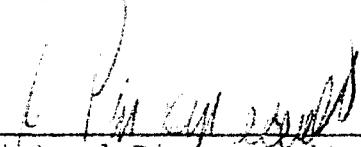
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 191 (third reading copy -- blue), respectfully report that House Bill No. 191 be concurred in.

Signed: 

Richard Pinsonneault, Chairman

LB 3/18/91
Amd. Coord.

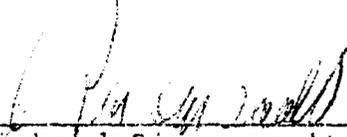
SB 3/18 12:30
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 741 (third reading copy -- blue), respectfully report that House Bill No. 741 be concurred in.

Signed: 
Richard Pinsoneault, Chairman

1991 3-18-91
Ad. Coord.

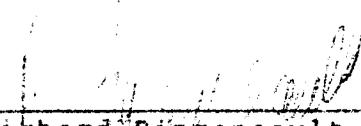
JPB 3/18 17:30
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 552 (third reading copy -- blue), respectfully report that House Bill No. 552 be concurred in.

Signed: 
Richard Pinsoneault, Chairman

191 3-18-91
Amd. Coord.

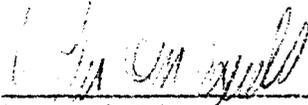
SB 3/18 12:30
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 471 (third reading copy -- blue), respectfully report that House Bill No. 471 be concurred in.

Signed: 

Richard Pinsoneault, Chairman

LB 3/18/91
And. Coord.

JAB 3/18 12:30
Sec. of Senate

Ch. 1 Wam
18 March 91
HB 471

MEMORANDUM

TO: Dick Pinsoneault, Chairman
Senate Judiciary Committee

FROM: Bruce MacKenzie

DATE: March 18, 1991

RE: House Bill 471 - Testimony of Bruce MacKenzie

House Bill 471 provides two amendments to the existing Trust Code of Montana (the "Code"). The first amendment expands the definition of "trusts" and makes the Code applicable to trust indentures created for the purposes of issuing industrial development, health facility, mining impact, renewable resource or conservation program bonds pursuant to Title 90, M.C.A. Bonds issued under these sections of the law require a trust indenture pursuant to which a trustee acts on behalf of all bondholders in enforcing the terms of the bonds and security agreements. There are times during the life of the bonds, either due to a default or as a result of change in circumstances, that modifications to the trust indenture or other security documents are necessary. Often, these modifications may not be permitted under the terms of the documents and the trustee would be exposed to breach of fiduciary duty if it consents to the modifications without the consent of all bondholders. Such consents are practically impossible. The trustee is then left with the Hobson's choice of going forward with the modification and being exposed to liability or refusing the modification and having the transaction fail completely.

By amending the definition of "trusts" to bring these trust indentures under the coverage of the Code, a trustee would then be allowed to seek judicial supervision of any modification. Judicial supervision would provide protection to the Trustee for going forward with a modification not presently permitted under the documents. [See provisions of Montana Code Annotated Section 72-33-413 (modification or termination) and 72-35-301 (proceedings concerning trusts)].

The second amendment deals with the increasing use of revocable trusts and the increased practice of designating a trust name and the document conveying ownership of property to the trust. Title companies have advised counsel that laymen who are making conveyances on their own, as well as some lawyers, are conveying property to a trust name rather than the name of a trustee. The amendment appearing in Section 2 cures this problem by stating that the designation of the name of the trust vests the estate in the name of the trustee of that trust.

Ex. 1 10 am
3-18-91
HB 471

Senate Judiciary Committee

-2-

March 18, 1991

Both amendments have the approval of the Montana Bar Association Trust Law Revision Committee.

If you have any questions or if I can provide any additional information, please do not hesitate to contact me.

BAM:dk-g

Ex. 2
18 Mar. 91
HB 552

CORPORATE LAW REVISION COMMITTEE

STATE BAR OF MONTANA



SUGGESTED REVISIONS

IN THE

MONTANA BUSINESS CORPORATION ACT

(MCA TITLE 35, CHAPTER ONE)

AND THE

MONTANA NONPROFIT CORPORATION ACT

(MCA TITLE 35, CHAPTER TWO)

* * * * *

October 24, 1990

Steven C. Bahls, Reporter

Exhibit 2 consists of a 268-page study. The original is available at the Montana Historical Society, 225 North Roberts, Helena, MT 59601. (Phone 406-444-4775)

**Exhibits 3 -9 for the March 18, 1991 morning meeting
were not transmitted with the minutes.**