

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 10, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 10, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Grady who was absent.

EXECUTIVE SESSION:

SENATE BILL NO. 24: Rep. Brown moved that SB 24, BE NOT CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED 10-5. SB 25, BE NOT CONCURRED IN.

SENATE BILL NO. 25: Rep. Brown moved to reconsider action on SB 25. Rep. Gould stated certain people he has spoken to feel this is a good bill. Rep. Brown pointed out that his problem with the bill is that we have always maintained the distinction between what is done within the family and what is done outside the family. This is a protection for the bartender but he said that he just does not see the need for passing this bill. Rep. Keller stated that children start drinking too young and this is just another way to start children off drinking. This bill might discourage parents from encouraging drinking at a young age. Rep. Bulger agreed with Rep. Brown. He said there was not any testimony insisting there was an active problem. Rep. Daily acknowledged there is just too much legislation and here is a case where a problem has been created by such a bill. Question was called and a voice vote was taken on the motion to reconsider. The motion CARRIED 10-7. Rep. Brown moved that SB 25, BE NOT CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED 9-7. SB 25, BE NOT CONCURRED IN.

SENATE BILL NO. 119: Rep. Brown moved that SB 119 BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 119, BE CONCURRED IN.

SENATE BILL NO. 190: Rep. Mercer stated there are serious concerns regarding this bill and it needs a new approach. Rep. Addy moved to TABLE the bill. Question was called and a voice vote was taken. The motion CARRIED 16-1, with Rep. Miles dissenting. SB 190, TABLED.

SENATE BILL NO. 195: Rep. Bulger moved that SB 195, BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 195, BE CONCURRED IN.

SENATE BILL NO. 225: Rep. Addy moved BE CONCURRED IN. Rep. Gould asked Rep. Addy if this bill will make it so that prenuptial agreements will mean something. Rep. Addy pointed out that it will give them greater weight in divorce proceedings. Rep. Keller questioned section 8 in regard to a prenuptial agreement not being enforceable if a party does not disclose all financial property. Rep. Addy stated he feels it will be covered. Question was called and a voice vote was taken. The motion CARRIED 14-2 with Reps. Cobb and Brown dissenting. SB 225, BE CONCURRED IN.

SENATE BILL NO. 51: Senator Brown, District No. 2, sponsor, stated this bill deals with a subject area that is not new. It revises the laws relating to liability in certain cases. It also eliminates joint liability. He pointed out that section 1 of the bill clarifies that negligence would be compared to all of the parties that have contributed to the injury. Section 2 on page 4 contains the real change in the law. The bill eliminates the concept of joint liability for a person 25% or less negligent. The bill also clarifies that total damages are based on the negligence of all persons involved in determining individual liability.

PROPONENTS: JIM ROBISCHON, Montana Liability Coalition, stated the cornerstone to legislative tort reform in Montana has to involve a law that matches liability for the payment of damages in tort to the degree of fault for the party to pay the damages. SB 51 is a step in the right direction but falls short of the goals of the Liability Coalition in this the most important of matters to be presented to this session.

H.S. HANSON, Montana Technical Council, acknowledged that any bill on tort reform is better than what Montana has had in the past. Joint and several liability leads to a search for a "deep pocket" and has made governments, large corporations and other insured entities bear the greatest burdens of liability when their involvement in an injury is minimal. The only exception where joint liability should be retained shall be where the defendants acted in concert. Joint liability shall be imposed on all who pursue a common plan or design to commit a tortuous act or actively take part in it. He submitted written testimony as Exhibit A. He also submitted an Application of the Doctrine of Joint and Several Liability. (Exhibit B).

GERALD J. NEELY, Montana Medical Association, believes there is a difficulty with the circumstance where an injured party being negligent can bring an action against more than one individual and recover the entire judgement from an individual that is not only less negligent than all of the other defendants but can also be less negligent than the plaintiff. He stated there is a connection between the passage of the legislation and the downward impact of the cost of insurance.

DAN HOVEN, Attorney, Helena, representing Montana Municipal Insurance Authority, explained this bill gives us tools to work with and he supports this legislation because it retains the right of the jury.

ALEX HANSON, Montana League of Cities and the Montana Municipal Insurance Authority, pointed out it is very important to the cities of Montana to have protection as provided by this bill. This program must work or so many of the Montana cities will not have insurance, he said. The limit provided for in SB 51 is reasonable.

KAY FOSTER, Chamber of Commerce of Billings, and is appearing on behalf of the Governors Council of Economic Development stated she chaired the insurance subcommittee for the Governor's Council. Of the six legislative recommendations that the subcommittee made was "that Montana's doctrine of joint and several liability be changed so that defendants are responsible only to the degree that they are found to be negligent". The present bill does not go that far but is moving in the right direction. She requested the amendments be considered.

KATHY IRIGOIN, State Auditor's Office and Commissioner of Insurance, supported this legislation. SB 51 clarifies the instances in which the amounts for which insurance companies may potentially be libel.

JOHN MAYNARD, Tort Claims Division for the State of Montana, stated he supports the fair compromise of this bill.

LORNA FRANK, Montana Farm Bureau, stated she supports legislation that forbids joint and several liability judgements that forces a marginally responsible defendant to pay the entire amount of the claim. The Bureau supports the amendments.

BRUCE W. MOERER, Montana School Board Association, pointed out this is a fair bill that makes defendants responsible only for their own negligence.

BILL LEARY, Montana Hospital Association, supports the bill and amendments.

CHIP ERDMAN, Montana Savings and Loan Association, stated they support this bill but it probably does not go far enough. They are in support of the amendments.

ROGER TIPPY, Beer and Wine Wholesales Association, supports the introduced bill and the amendments.

(See attached Visitor's Register for further listed proponents.)

OPPONENTS: KARL ENGLAND, Montana Trial Lawyers Association, pointed out that joint and several liability is a simple concept based upon a relative and simple principal. It is only when you have to apply this simple concept to a complicated fact situation or when you have to apply it to the hundreds of different kinds of ways that people are hurt, each one different, that the simple concept gets complicated. He stated that joint and several liability shifts the burden of collecting from any other wrongdoers from the injured to the defendant. If one defendant cannot pay the judgement, the burden falls upon the other wrongdoers, rather than the injured. The problem should fall upon those who caused the injury and not upon those who are injured.

JOHN C. HOYT, Attorney, Great Falls, pointed out that during the special session, the insurance industry brought in a man from San Francisco who spoke on this subject and eluded to a case where the city was found libel and paid a judgement where its' responsibility was only 1%. Mr. Hoyt explained that he agreed that it is wrong. A 1% fault should not be responsible for all the damages an injured person sustains. In principal, where there is a wrong, he feels there should be a remedy. If the threshold was 15%, it will only effect 2% of the people, he said. Since less than 2% will be effected, it is not attorney's greed that would be affected in SB 51, because that impact is minimal to their incomes. The word "person" rather than the word "party" has been used in this bill and that involves the empty seat situation and this is not fair to the injured person and it does not serve a fair purpose for anyone, Mr. Hoyt explained. He strongly urged that this change be made in the bill in the interest of a workable and fair compromise.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 51: Rep. Addy asked Mr. Robischon if the defendants liability is limited to their percentage of fault, should we take the limitation off if the plaintiff is 50% or greater negligent or responsible for his own injuries. Mr. Robischon stated that,

"yes" that would be a version of pure comparative fault. Rep. Addy asked him if we should go to a pure fault concept and Mr. Robischon stated that he personally favors that. Rep. Miles asked Mr. Robischon if the amendments will return it to the original language of the bill. He stated, "yes, with the exception that we are going to eliminate from the amendments the concepts and references to fault and products liability matters that were carried in the bill, that was in the interim committee and that was originally in Senate Bill 51". Rep. Miles asked him if the amendments were proposed in the Senate and he stated that the bill that was written in the Senate was what was proposed.

Senator Brown closed the hearing on SB 51 by stating that this is an intriguing subject. The reason the Senate arrived at the 25% is to eliminate the problem of the defendant, the person who is 1% or 5% at fault. He stated that the committee may want to change the 25%, if they can find other solutions. He pointed out that the suggested change of language that Mr. Hoyt discussed can be looked at like a pie. The Senate felt that the person concept can not be ignored, if the person is partly responsible or partly negligent.

SENATE BILL NO. 58: Senator Pineseault, District No. 27, stated this bill allows the plaintiff and defendant in a civil action, after liability has been determined, to each, provide the jury with a proposed damage award amount from which the jury shall choose one as the damage award. He pointed out that this does not take away the plaintiff's rights to have his damages determined by a jury.

PROPOSERS: GLENN DRAKE, Attorney, Helena, stated he supports SB 58 because it can do no harm since it is not mandatory. It has a good potential for doing good in the settlement of cases prior to being submitted to juries.

OPPOSERS: None

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 58: Rep. Meyers asked if someplace in the bill it provides for the judge to determine the size of an award and he asked Senator Pineseault to comment. He stated he felt Senator Pineseault was talking about punitive damages and it would not apply because it would be treated separately.

Rep. Lory stated it sounds like we have taken collective bargaining's final offer and Senator Pineseault stated this is baseball arbitration.

Senator Pineseault pointed out this bill adds an element of gamemanship and on a serious note, knowing that this is a

possibility, to compel reasonable men to sit down and settle their disputes without leaving it to the wide and varied jury awards. He closed the hearing on SB 58.

SENATE BILL NO. 254: Senator Walker, District No. 20, stated SB 254 is an act that provides that the offices of the Security Commissioner is a criminal justice agency. The reason for this legislation is that the State Auditor's office currently uses subpoenas for security fraud and investigation and in order for them to set aside those records and put them under lock and key to keep them private in nature, they must be declared a criminal justice agency. The Governor considers them a criminal justice agency but in order to fund their office more sufficiently, they would like to have this put into statute.

PROPOSERS: KIM SCHULKE, State Auditor's Office, stated the Department does not wish to continue to seek an executive order at the beginning of each gubernatorial term. Instead, the Department would like the certainty that it may continue to 1) keep criminal investigation files confidential and 2) share criminal investigative information with other criminal justice agencies only. Without these confidentiality and dissemination restrictions, the Department would be unable to effectively investigate criminal violations of the Securities Act. Statutory authority to operate as a criminal justice agency will help to accomplish that goal. She submitted written testimony. (Exhibit A). She also submitted letters from three County Attorney's that are in support of SB 254. (Exhibits B-D).

OPPOSERS: None

QUESTIONS (OR DISCUSSION) ON SENATE BILL 254: Rep. Hannah asked Ms. Schulke why they do not want to be under the executive order and she stated that when a new Governor comes into office, there is a lag between the effectiveness of the current executive orders and those that the new Governor would have. The lag causes problems in obtaining information.

Senator Walker closed the hearing on SB 254.

SENATE BILL NO. 249: Senator Blaylock, District No. 43, acknowledged this bill extends the time for the limitation for state liability, county, school district and city. Since the passage of SB 184 in the 1985 session, insurance problems for local government have continued. The cities of Montana have had to form their own insurance companies, in effect, and have gone under that in providing an insurance alternative. The time limit has expired and this bill extends it for four years.

PROPOSERS: JOHN MAYNARD, Tort Reform Division of the State of Montana, stated this bill is very fair and rational and he urged support of the bill.

GORDON MORRIS, Montana Association of Counties, explained the local elected officials serve with the ever present fear of tort actions against them both personally and professionally. The overall climate is changing, but the failure to remove the "sunset provision" would send the wrong message to the public, the elected officials, and the insurance industry. He urged a favorable consideration on SB 249 in the interest of local government in Montana. He submitted written testimony. (Exhibit A).

ALEX HANSON, Montana League of Cities and Towns, stated that this bill is absolutely necessary to the continued functioning of our liability self-insurance pool.

JIM VAN ARSDALE, Mayor of the City of Billings, stated this bill helps and fills a void in the City of Billings to have this limit of liability. It is a security blanket and please pass this bill.

BRUCE W. MOERER, Montana School Board Association, acknowledged this is a fair and reasonable bill. He urged support for this legislation.

OPPOSERS: KARL ENGLAND, Montana Trial Lawyers Association, stated he rises as an opponent basically because any limits create a class of people who are going to be hurt at the hands of the state or local government and who are not going to be compensated fully. The injuries that the limits do not take care of, will cause some hurt people to suffer. Mr. England pointed out that in the Senate, the Association asked for, and was successful in getting, the sunset for four years. He stated the purpose of this was to allow the legislature to continue to look at this to be sure that the class of persons are indeed small or maybe nonexistent. Also, as a justification, so that the limits are supportable in court by the state.

QUESTIONS (OR DISCUSSION) ON SENATE BILL 249: Rep. Eudaily questioned Senator Blaylock in regard to a technical problem on page 1 of line 20. He asked about the termination date being June 30, 1991, and wondered if line 19, made it a reinstatement as of July 1, 1991. Senator Blaylock stated this stays in effect until June 1, and then reverts to the previous wording. Rep. Eudaily also asked about the language used in page 2, line 1, using the word "may" in requiring a two-thirds vote. Senator Blaylock stated he assumed the drafter figured this may be considered as an amendment. Chairman Lory asked Mr. MacMaster to answer Rep.

Eudaily's question. He pointed out that in Chapter 22 of the special session, that is being amended, where the limits were set; the two-thirds vote provision said, "that since this act imposes limited immunity on governmental entities, Article 2, section 18, of the Montana Constitution requires a vote of two-thirds from the members of each House." The drafter may have decided that it is not clear whether this bill amends Chapter 22 and it is not clear if it requires a two-thirds vote. Mr. MacMaster stated he thinks it does require a two-thirds vote. Senator Blaylock closed the hearing on SB 249.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 11:28 a.m.



EARL LORY, Chairman

DAILY ROLL CALL
 JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 10, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)		✓	
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

MARCH 10,

19 87

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 25

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Chairman

THIRD

reading copy (**BLUE**)

color

STANDING COMMITTEE REPORT

MARCH 13,

97

19

JUDICIARY

Mr. Speaker: We, the committee on _____

SENATE BILL NO. 24

report _____

- do pass
- do not pass

- be concurred in
- be not concurred in

- as amended
- statement of intent attached

Chairman

STANDING COMMITTEE REPORT

MARCH 10,

19 87

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 195

- do pass
- do not pass

- be concurred in
- be not concurred in

- as amended
- statement of intent attached

Chairman

THIRD

reading copy (BLUE)
color

REP. MILES WILL CARRY THE BILL!
XXXXXXXXXXXXXXXXXXXX

STANDING COMMITTEE REPORT

MARCH 10, 19 97

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 119

- do pass
- do not pass

- be concurred in
- be not concurred in

- as amended
- statement of intent attached

Chairman

THIRD

reading copy (BLUE)
color

REP. BROWN WILL CARRY THE BILL!

STANDING COMMITTEE REPORT

MARCE 10, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 225

- | | | |
|--------------------------------------|---|---|
| <input type="checkbox"/> do pass | <input checked="" type="checkbox"/> be concurred in | <input type="checkbox"/> as amended |
| <input type="checkbox"/> do not pass | <input type="checkbox"/> be not concurred in | <input type="checkbox"/> statement of intent attached |

Chairman

THIRD

reading copy (BLUE)
color

REP. ADDY WILL CARRY THE BILL!



American Consulting Engineers Council

1015 Fifteenth Street, N.W., Washington, D.C. 20005

202-347-7474

File #210.15
January 30, 1987

A
3-15-87
SB # 51

RECEIVED

FEB - 2 1987

MORRISON—MAIERLE

Mr. John H. Morrison, Jr.
President
Consulting Engineers Council
of Montana
P.O. Box 2128
Great Falls, Montana 59403

Dear Mr. Morrison:

In response to your January 19th letter, I have attempted to answer your questions in this correspondence and have enclosed several documents which may be helpful.

First of all, I have reviewed Montana Senate Bill No. 51 and congratulate the drafters of the bill on a fine job. I'm not surprised that the legislation is opposed by the trial lawyers because of the good job you've done.

Montana is not alone in having trial lawyers and other parties attempting to set percentage of fault thresholds on joint and several liability legislation. I have reviewed numerous pieces of pending legislation and draft legislation which repeal joint and several liability for only those defendants below a certain percentage of fault. Of course, the best piece of legislation is one that repeals joint and several liability across the board, similar to SB 51. If it is necessary to compromise, however, it goes without saying that we suggest the highest percentage of fault as possible.

While I have in my possession several pending bills, I am not forwarding any to you with this correspondence. I assume that unpassed legislation does not nearly have the impact on your legislators as bills which have been enacted and signed into law. Consequently, I am enclosing seven joint and several modification laws, most of which were enacted just last year.

The laws in Colorado and Vermont are two of the best as they abolish the concept of joint and several liability. The Iowa law might be of most interest to you because it repeals joint and several liability for defendants who are less than 50% negligent. The Alaska law does not repeal joint and several liability, but it gives some protection to defendants who are less than 50% at fault. The law states that those defendants may not be jointly liable for more than twice their percentage of fault. The Washington and Hawaii laws also repeal joint and several liability with certain exceptions. The exception in the Washington law is that joint and several liability will apply only if the plaintiff has no fault at all. Finally, the Florida law repeals joint and several liability for non-economic damages, and applies the doctrine of joint and several liability for economic damages only if the defendant's fault equals or exceeds that of a plaintiff's.

Mr. Morrison
Page 2

A
3-10-87
SB # 51

I hope that these existing laws will give you an idea of what other state legislatures have done. If your political experts advise you that legislation similar to SB 51 or the Vermont and Colorado laws is impossible to pass, you might consider something similar to the Iowa law.

In your correspondence you also asked if I had any arguments against the setting of a percentage or any other information which may help you in your endeavor. The best thing I've found is the enclosed short white paper on joint and several liability written and produced by the American Tort Reform Association. I have also enclosed, just in case you haven't seen it, a copy of the ACEC model legislation on joint and several liability.

I hope that this information will be of some help to you. We would be happy to provide you with any other materials, resources and services as you work with your legislature. Please call on me if you feel that we can be of further assistance. Best wishes for a successful outcome.

Sincerely yours,



Robert L. Fogle
Director, Liability Legislation

RLF:el
enclosures
cc: Holly Tucker

JOINT AND SEVERAL LIABILITY

3-11-87
51

Originally, joint and several liability meant that people who act with a common purpose, in concert, to commit an unlawful action against one party should have the actions of one considered as the actions of all. Juries were not allowed to apportion fault between tortfeasors, because it was considered impossible to divide what was seen as an indivisible wrong. Each was therefore liable for the entire damage, although one person may have contributed more or less than the other.

Today joint and several liability has been greatly expanded. Joint and several liability has been applied in the absence of concerted action to make all defendants who have had any part in an action -- jointly and severally liable. All that is required is that there be a tacit understanding that the action is or will be occurring. In some instances, statements of mere knowledge by each party of what the other is doing is sufficient "concert" to make each liable for the acts of the other.

Modern joint and several liability can be inequitable because a defendant with only a small or de minimus percentage of fault can become liable for 100% of the plaintiff's damages. Joint and several liability leads to a search for a "deep pocket" and has made governments, large corporations, and other insured entities bear the greatest burdens of liability when their involvement in an injury is minimal.

REFORM PROPOSAL

States should adopt pure several liability. Under pure several liability in any case involving unintentional torts, the trier of fact must apportion to each person or entity, whether or not a party to the action, the percentage for which he/she is responsible for the damages awarded. Each party to the suit will be liable only for the portion of damages assessed to them.

The only exception where joint liability should be retained shall be where the defendants acted in concert. Joint liability shall be imposed on all who pursue a common plan or design to commit a tortious act or actively take part in it. Any person held jointly liable for actions in concert shall have a right of contribution from his fellow defendants acting in concert. A defendant shall be held responsible only for the portion of fault assessed to those with whom he acted in concert.

APPLICATION OF THE DOCTRINE OF JOINT AND SEVERAL LIABILITY

I. \$100,000 judgment -- Current law

P	0%	D (1)	10%
		D (2)	40%
		D (3)	50%

SENT B
3-12-87
SB # 51

P can collect \$100,000 from D (1), D (2), or D (3) or P can collect from all three D, but P can only collect once. If P collects \$100,000 from D (2), D (2) can collect \$10,000 from D (1) and \$50,000 from D (3).

II. \$100,000 judgment -- SB 51 Third Reading Copy

Same situation as I. above

P can collect \$100,000 from D (2) or D (3), but P can only collect \$10,000 from D (1). If P collects \$100,000 from D (2), D (2) can collect \$50,000 from D (3) and \$10,000 from D (1). D (1) is severally liable only.

III. \$100,000 judgment -- Elimination of Joint Liability

Same situation as I. above

P can only collect \$10,000 from D (1), \$40,000 from D (2) and \$50,000 from D (3). If D (3) is insolvent, P only collects \$50,000.

IV. \$100,000 judgment -- Current Law

P	10%	D (1)	20%
		D (2)	30%
		D (3)	40%

P's \$100,000 judgment is reduced by the percentage of negligence attributed to P. Thus, P can only recover \$90,000 and can recover this amount from D (1), (2) or (3), but can only recover once. Any D who pays more than the amount attributed to it has the right of contribution.

V. \$100,000 judgment -- SB 51 Third Reading Copy

Same situation as IV. above

P can recover \$90,000 from D (2) or D (3), but can only recover \$20,000 from D (1). D (2) and D (3) have the right of contribution if they pay more than the amount attributed to them.

3-12-97
SB # 51

VI. \$100,000 judgment -- Elimination of Joint Liability

Same situation as IV. above

P can only recover \$20,000 from D(1), \$30,000 from D(2) and \$40,000 from D(3). If D(3) is insolvent, P recovers only \$50,000.

VII. \$100,000 judgment -- Current Law

P 30%	D(1) 20%
	D(2) 50%

P's \$100,000 judgment is reduced by 30% and either P cannot collect against D(1) or P can collect against either D(1) or D(2) but P can only collect once.

VIII. \$100,000 judgment -- SB51 Third Reading Copy

Same situation as VII. above

P's \$100,000 judgment is reduced by 30% and D(1) is severally liable only. D(2) is jointly liable and if P collects more than \$50,000 from D(2), D(2) has the right of contribution.

IX. \$100,000 judgment -- SB 51 Third Reading Copy

P 0%	D(1) 20%
	D(2) 20%
	D(3) 30%
	X 10%
	Z 20%

D(3) is jointly liable. D(1) and D(2) are severally liable only and the jury is allowed to apportion negligence to X and Z even though none of the parties sought to join them in the suit. Thus, if D(3) is insolvent, P collects only \$40,000.

Kim Schulke
Deputy Securities Commissioner
444-5236

F
3-10-34
SB # 354

SB 254-Office of the Securities Commissioner is a criminal justice agency. SECTION BY SECTION REVIEW.

Requested by State Auditor and Commissioner of Securities
Andrea "Andy" Bennett

Section 1. Amendment to 30-10-304.

Section 30-10-304 gives the Securities Commissioner the power to make investigations necessary to determine whether violations of the Securities Act have occurred.

New subsection (5) provides that the office of the Securities Commissioner is a criminal justice agency as defined in 44-5-103. Sections 44-5-101, et seq., MCA, comprise the Montana Criminal Justice Information Act of 1979. This Act contains guidelines for the effective protection of individual privacy in the collection, storage, and dissemination of criminal justice information.

Office of the Securities Commissioner is a criminal justice agency. JUSTIFICATION.

The Securities Department of the State Auditor's Office is already a criminal justice agency, and has been since September 7, 1983. On that date, Governor Schwinden signed an executive order designating the Department as a criminal justice agency, subject to the provisions of 44-5-101 et seq.

The Department does not wish to continue to seek an executive order at the beginning of each gubernatorial term. Instead, the Department would like the certainty that it may continue to (1) keep criminal investigation files confidential and (2) share criminal investigative information with other criminal justice agencies only. Without these confidentiality and dissemination restrictions, the Department would be unable to effectively investigate criminal violations of the Securities Act. Such criminal investigative files could become public information, which could result in an investigation subject fleeing our jurisdiction.

Since the Governor's executive order, the Securities Department has engaged in 16 criminal investigations, 8 of which have resulted in criminal prosecutions, and 7 of which are currently pending. These cases have resulted in over \$150,000 of

restitution to Montana investors, with more restitution likely at the completion of pending prosecutions.

Additionally, if the Department was not a criminal justice agency, we could not get valuable criminal investigative information from other criminal justice agencies, such as local law enforcement agencies, the US Department of Justice, and the US Postal Inspection Service.

The Securities Department currently has two investigators who have many years of criminal justice investigative experience between them. The Department maintains locked file cabinets for its criminal investigative information, and there is restricted access to those files. The criminal investigative information is not provided to the press or to the public.

The Securities Act of Montana provides for penalties for criminal violations of the Act, of a \$5,000 fine or 10 years in prison, or both. The number of criminal investigations has been steadily increasing since 1983. The Department believes these statistics indicate that securities fraud is on the increase in Montana, and the Securities Department would like to continue its efforts in effectively combatting these crimes. Statutory authority to operate as a criminal justice agency will help to accomplish that goal.

County of Yellowstone

BILLINGS, MONTANA 59101

COUNTY ATTORNEY'S OFFICE, YELLOWSTONE COUNTY COURTHOUSE, ROOM 508
(406) 256-2870



- Criminal Division
- Civil Division
- Deferred Prosecution

- Victim/Witness Assistance
- Child Support Enforcement

EXHIBIT

DATE 3-16-87
SB# 254

March 4, 1987

Senator Mike Walker
Montana State Senate
Helena, MT

Re: SB 254

Dear Senator Walker:

I am pleased to offer my support for SB 254. There is simply no reason for not statutorily designating the securities department as a criminal justice agency. Criminal enforcement is an important aspect of their regulatory duties.

During the past year, my office has had the opportunity to work on several major cases with them. I want you to know that the staff is highly professional and cooperative. They are a most valuable state recourse and it seems that they should be properly designated based on their function.

Yours very truly,

Harold Hanser
Harold F. Hanser,
County Attorney
Yellowstone County, MT

HFH/cr

RECEIVED
STATE AUDITORS
MAR 5 11 30 AM '87
HELENA, MONT.

Office of the County Attorney

Flathead County

Kalispell, Montana 59903-1516

P.O. Box 1516
Courthouse Annex
(406) 752-5300 · Ext. 241

TED O. LYMPUS, County Attorney
JONATHAN B. SMITH, Chief Deputy
DENNIS J. HESTER, Deputy
RANDY K. SCHWICKERT, Deputy
THOMAS J. ESCH, Deputy
EDWARD CORRIGAN, Deputy

March 4, 1987

3-10-87
SB # 254

Senator Mike Walker
Box 4009
Helena MT 59604

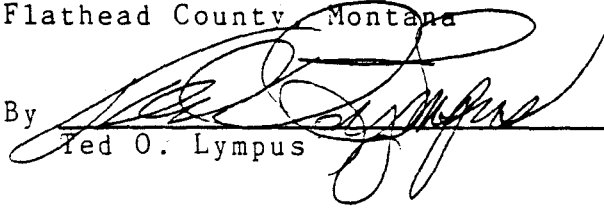
Dear Senator Walker:

I am writing to voice my support for S.B. 254 which would, as I understand, provide statutory authority for the Department of Criminal Investigation within the Securities Division of the State Auditor's Office. In 1986, we prosecuted here in Flathead County two extremely complex criminal cases involving multiple felony counts of securities fraud. Both of those cases were investigated and primarily prosecuted by an investigator and staff attorney, respectively, from that Department and involved victims not only from Flathead County, but from across the State of Montana. Had it not been for the availability and expertise of those people in that Department, not only would the fraudulent activity probably never been discovered, it almost certainly would not have been successfully prosecuted. As result of these people's diligent and professional efforts, however, not only were both cases successfully prosecuted, but substantial restitution has been obtained for the numerous victims.

I appreciate your attention and consideration and, if I can be of any additional information or assistance in this matter, please feel free to call upon me. Meanwhile, with kindest regards,

Yours sincerely,

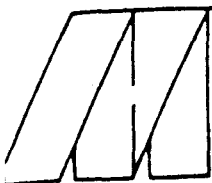
OFFICE OF THE COUNTY ATTORNEY
Flathead County, Montana

By 
Ted O. Lympus

TOL/kss

cc: Rep. Earl Lory

Mar 5 11 11 AM '87
HELENA, MONTANA
STATE AUDITOR'S OFFICE



MISSOULA COUNTY

OFFICE OF THE ATTORNEY
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
TELEPHONE (406) 721-5700

RECEIVED
STATE AUDITOR'S OFFICE

MAR 5 7 58 AM '87 March 4, 1987

HELENA, MONTANA

D
3-
SB = 254

ROBERT L. DESCHAMPS III
COUNTY ATTORNEY

Sen. Mike Walker
c/o Kim Schulke
Attorney
State Auditor's Office
P. O. Box 4009
Helena, Montana 59604

Re: SB 254

Dear Sen. Walker:

I have learned that you are the sponsor of SB 254 which would statutorily establish the Office of Securities Commissioner in the State Auditor's Office as a criminal justice agency. I strongly support this bill as there is no question that in fact the Securities commissioner is a criminal justice agency. I am personally familiar with several cases where the commissioner's staff has been instrumental and very actively involved in the detection, investigation, arrest and prosecution of felons committing violations of the securities laws.

The designation is required to obtain and share criminal justice information with other law enforcement agencies under both Federal and State law. The commissioner has gotten around the problem by having the Governor designate the office as a criminal justice agency by executive order, but these orders must be periodically renewed and the matter would be better resolved by a statute, such as is proposed by SB 254.

Sincerely,

Robert L. Deschamps III
ROBERT L. DESCHAMPS III
Missoula County Attorney


RLD:rm
cc: Rep. Earl Lory

290

**MONTANA
ASSOCIATION OF
COUNTIES**

H
3-10-87
SB # 349
1802 11th Avenue
Helena, Montana 59601
(406) 442-5209

TO: Representative Earl Lory, Chairman
Members, House Judiciary Committee
Senator Blaylock, Sponsor

FROM:  Gordon Morris, Executive Director

RE: SB 249 - Remove termination of governmental tort liability
limits

DATE: March 10, 1987

On behalf of the Montana Association of Counties I wish to indicate support for Senator Blaylock's Senate Bill 249.

Since the passage of SB 184 in the 85 Legislation Session insurance problems for local governments have continued. MACo has organized a "self-insurance fund" which currently is providing an insurance alternative for counties.

Nevertheless, local elected officials serve with the ever present fear of tort actions against them both personally and professionally. The overall climate is changing, but the failure to remove the "sunset provision" would send the wrong message to the public, the elected officials, and the insurance industry.

I therefore, urge your favorable consideration of SB 249 in the interest of local government in Montana.

GM/mrp

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE
BILL NO.

249

DATE

March 10, 1987

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Bruce W. Meyer	SSBA	✓	
Brookes Morin	City of Helena	✓	
Kay Easter	Billings Chamber	✓	
Kimberly Arsdale	City of Billings	✓	
John Maynard	Tort Claims / Admin.	✓	
Jill Pester	Blue Jay High		
Dana Mess	Rudyard		
Kathy Tolson	Rudyard		
Scott Stuart Sicker	Honigman	-	-
Gordon Mills	MACs	✓	
Ted Rollins	ASARCO, INC.	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE
BILL NO.

51

DATE

March 10, 1987

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
John C Hoyt	Hoyt + BLEWETT		✓
Tom Ruscigno	Mont. Liability Coalition	✓	
Lathy Irigoin	State Auditor's Office	✓	
Ted Rollins	ASARCO INC	✓	
Bill Leary	Mont. Hosp Assn	✓	
Gene W. ...	ASBA	✓	
Roger McGinn	INDEPENDENT INSURANCE AGENTS ASSOC. OF MT	✓	
H. Hovan	MT TECH Council	✓	
Gene T Neely	Mont. Med Assn	✓	
Larry Frank	Mont Farm Bureau	✓	
Roger Vippy	Beck & Wm Wholesale	✓	
DAN HOVAN	Mont. Home Ins. Reth.	✓	
Kay Foster	Gov Council on Economic Development + Bldg Chamber	✓	
Jim Van Arsdale	City of Billings	✓	
Sue Manganer	MT. ASSN of Defense Counsel	✓	
	MT Health Care Assn	✓	
Gordon Morris	MAA Co	✓	
Bryan Enderle	Missoula Chamber of Com	✓	
BRIAN EINS	MT. Medical Assn		✓

JOHN MAYNARD

TEBE CLAMIS

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE
BILL NO.

58

DATE

March 10, 1987

SPONSOR _____

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Bryan Enlish	Missouri Chamber of Com	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE

BILL NO. 254

DATE March 10, 1987

SPONSOR _____

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
J. Kim Schulke	State Auditor	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.