



**State Administration and Veterans' Affairs Interim Committee**  
**64th Montana Legislature**

**SENATE MEMBERS**

DEE BROWN--Chair  
DOUG KARY  
CLIFF LARSEN  
JONATHAN WINDY BOY

**HOUSE MEMBERS**

BRYCE BENNETT--Vice Chair  
FORREST MANDEVILLE  
WENDY MCKAMEY  
KATHY SWANSON

**COMMITTEE STAFF**

SHERI SCURR, Lead Staff  
GINGER ALDRICH, Staff Attorney  
KATYA GROVER, Secretary

## MINUTES LOG

February 10, 2016  
Room 102, Capitol Building  
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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### **COMMITTEE MEMBERS PRESENT**

SEN. DEE BROWN, Chair  
SEN. DOUG KARY  
REP. BRYCE BENNETT, Vice Chair  
REP. FORREST MANDEVILLE  
REP. WENDY MCKAMEY  
REP. KATHY SWANSON

### **COMMITTEE MEMBERS EXCUSED**

SEN. CLIFF LARSEN  
SEN. JONATHAN WINDY BOY

### **STAFF PRESENT**

SHERI SCURR, Lead Staff  
GINGER ALDRICH, Staff Attorney  
KATYA GROVER, Secretary

## VISITORS' LIST (Attachment 1)

## AGENDA (Attachment 2)

### COMMITTEE ACTIONS

#### **HJR 21 - Study of Personal Information Ownership**

##### Trade Practices and Consumer Protection

With respect to consumer information, the committee decided to further examine the following:

- Potential economic impacts on businesses of requiring in state law that a customer provide affirmative consent (i.e., opt-in) before a business may collect, use, or share a customer's personal information.
- Requiring in state law that businesses with an online presence inform customers about the business's information practices (i.e., what personal information is collected, how it will be used, and whether it will be passed on to third parties).
- Requiring in state law that individuals be allowed to access and correct or delete their personal information held by a business.
- Tightening Montana's security breach notification laws in this area.
- How best to provide for the enforcement of these requirements.

##### Financial and Insurance Information

With respect to financial and insurance information, the committee decided to further examine the following:

- Montana's current law that allows personal or privileged information to be shared for certain purposes without the affirmative consent of the individual and how and with whom that information is currently shared.
- Tightening Montana's security breach notification laws in this area.
- How best to provide for the enforcement of these requirements.

##### Health Information

With respect to health information, the committee decided to examine the following:

- Whether Montana health information law should be more stringent than the federal HIPAA (Health Insurance Portability and Accountability Act) to provide for more individual control over their health information.
- Whether and how to make the law consistent with respect to health care entities that are not covered by HIPAA.
- Section 50-16-812, MCA, and consider amendments that would ensure the statute does not violate HIPAA.

- How to address and define business associates with respect to the sharing of protected health information.
- Examine how best to provide for state-level policing and enforcement and consider amendments that would make state penalties at least match the federal penalties for violations.

#### Government Information

With respect to government information, the committee decided to examine the following:

- Whether some state agencies are exempt from following the information management guidelines developed by the state Information Technology Division.
- Whether there are penalties if a state agency violates the guidelines.
- Title 50, chapter 16, part 6, MCA, concerning government health care information and consider amendments to clarify that state agencies must still comply with HIPAA.

#### **Election Laws**

The committee voted to instruct staff to draft a committee bill providing for the following clarifications and provisions in election laws as a cleanup bill addressing issues that came to light after passage of HB 84 (a general revision of election laws) during the 2015 session:

- Clarification that an election of local government study commission members would be held only if the study was approved by the electorate.
- Clarification that an election of study commission members must be held in conjunction with the next local government election.
- A provision that allows a local government study approved by the electorate to be cancelled if there are not a sufficient number of candidates for the study commission.
- Reinsertion of language that requires that in the case of a resort tax election the governing body of the resort area provide public notice of the goods and services that would be subject to the resort tax.
- A provision that addresses the terms of office for special district trustees to bridge the gap created by moving their election from November to May when the school district elections are held.

#### **Administrative Matters**

- Approved a work plan for the remainder of the interim with the addition of information briefings on veterans' courts and the work of a nonprofit group that works with homeless veterans.

## **CALL TO ORDER AND ROLL CALL**

00:05:37 Rep. Bennett assumed chairmanship and called the meeting to order at 9:06 a.m. The committee secretary called roll. Sen. Brown and Sen. Kary were present by phone. **(Attachment 3)**

## **RULE REVIEW**

### **SAVA Poll Results on COPP Rules**

Review - Ginger Aldrich, Staff Attorney

00:00:52 Ms. Aldrich

00:02:11 Rep. McKamey arrived.

00:04:53 Rep. Bennett spoke about the process of the legislative poll.

### **Committee Questions of Ms. Aldrich**

00:05:37 Rep. Mandeville asked about those legislators who did not vote.

00:06:40 Sen. Brown asked whether there are rules and policies being worked out for potential future legislative polls.

Public Comment - none

## **Motion**

00:08:28 Rep. McKamey moved to adopt a letter documenting the results of the legislative poll about whether 16 campaign finance rules adopted by the Office of the Commissioner of Political Practices confirmed to legislative intent.

## **Vote**

00:08:46 The motion passed unanimously by voice vote with Sen. Larsen and Sen. Windy Boy absent.

## **Other Rule Review Matters**

Rule Review Memos - Ginger Aldrich, Staff Attorney

00:08:52 Ms. Aldrich reviewed MAR Notice No. 2-43-536, concerning the Public Employees' Retirement System employer contribution after the payoff of the plan choice liability.

### **Committee Questions**

00:11:39 Rep. McKamey asked Melanie Symons, Chief Legal Council, Montana Public Employees' Retirement Administration, to comment about a potential for a legal dispute with respect to the proposed rule.

Public Comment - none

00:14:50 Ms. Aldrich continued her report to the committee members on rule review, specifically, the rule review regarding fees charged by the Secretary of State (MAR Notice No. 44-2-214).

**Motion**

00:17:00 Sen. Kary stated that the Secretary of State's Office had not provided him with requested information about how a certain fee would be set and what the amount of the fee would be over time. Sen. Kary moved to delay the effective date of the rule until the next SAVA meeting date or until the Secretary of State's Office provides the SAVA committee with the requested information.

**Discussion on the Motion and Information Request**

00:18:10 Rep. Bennett  
00:19:24 Sen. Kary  
00:19:54 Sen. Brown  
00:20:38 Ms. Aldrich  
00:21:21 Rep. Bennett  
00:21:30 Sen. Brown  
00:22:03 Rep. Mandeville  
00:22:29 Rep. Bennett  
00:23:33 Sen. Kary

**Vote**

00:24:28 The motion failed on a roll call vote, 4-2, with Sen. Brown, Sen. Kary, Rep. Mandeville, and Rep. McKamey voting "yes" and Rep. Bennett and Rep. Swanson voting "no". Sen. Larsen and Sen. Windy Boy were not present. In order to pass, this motion required the majority of all committee members to vote in favor. ([Attachment 4](#))

00:25:37 Sen. Kary requested Rep. Bennett's permission to allow the committee members to send an objection letter to the committee's presiding officer by February 18, 2016, so that, as provided in section 2-4-305 (a), Montana Code Annotated, the letters would constitute an objection that would delay the effective date of the rule and require that the matter be placed on the committee's agenda for SAVA's next meeting.

00:26:46 Rep. Bennett ruled Sen. Kary's request out of order. (However, this was revisited later. See committee discussion at 04:53:30)

00:27:15 Rep. Mandeville asked Ms. Aldrich whether the rule noted in MAR Notice No. 44-2-214 would be allowed to move forward if the SAVA committee did not have today's meeting.

00:27:50 Sen. Brown reminded the committee members that if individual committee members still object to this rule, or to any other rule, appropriate legislation can be proposed during the 2017 Legislative Session.

**HJR 21 - STUDY ON PERSONAL INFORMATION OWNERSHIP**

**Staff Research Report on Ownership/Property Rights, Principles, Laws, and Options - Sheri Scurr, Staff Research Analyst**

00:28:29 Ms. Scurr provided the report overview and presented the first part of the report:

summary of the legal theories and models of personal information property rights. [\(Exhibit 1\)](#)

00:46:08 Ms. Scurr continued her presentation with the second part of the report: outlining the policy principles arising from these theories and models (starting with page 8 of Exhibit 1).

Committee Questions of Ms. Scurr About Part Two of the Report

00:49:04 Rep. Bennett asked about the reason for which the European Court of Justice issued a judgment declaring as invalid the European Commission's Decision 2000/520/EC of 26 July 2000 on the adequacy of the U.S.-EU Safe Harbor Framework.

01:02:10 Ms. Scurr continued her presentation with the third part of the report: offering options for further study (starting with page 18 of Exhibit 1).

Committee Questions of Ms. Scurr About Part Three of the Report

01:04:26 Rep. Bennett referred to Table 2 of Exhibit 1 and asked about corporate data collection.

01:05:44 Ms. Scurr continued the report about health information presented in Table 3 of Exhibit 1. In her presentation, Ms. Scurr brought the committee's attention to a document entitled "New Hampshire Statutes - 2015", which will be used by Jason Gregoire in his forthcoming presentation. [\(Exhibit 2\)](#) Ms. Scurr also discussed the content of the document entitled "Individual Access to Medical Records: 50 States Comparison". [\(Exhibit 3\)](#)

**BREAK** (reconvened at 10:30 a.m.)

**New Hampshire's Law Providing That Medical Information Is the Patient's Property - Jason D. Gregoire, J.D., Chair, Health Law Section, NH State Bar Association (via phone)**

01:24:31 Committee secretary called Mr. Gregoire.

01:26:04 Rep. Bennett welcomed Mr. Gregoire.

01:26:25 Mr. Gregoire delivered his report to the committee members. (refer to Exhibit 2)

Committee Questions of Mr. Gregoire

01:33:01 Rep. Mandeville asked about the history of the term a 'property right' in New Hampshire. Rep. Mandeville also asked about patients monetizing medical information.

01:35:43 Rep. Bennett asked Mr. Gregoire to provide a memo that he referenced in his presentation.

01:36:53 Rep. McKamey commented on the difference between property rights and privacy rights, and asked about these two terms in relation to New Hampshire law.

- 01:39:03 Ms. Scurr asked about the electronic exchange of health information and whether there are any ties of this exchange to the property rights provision.
- 01:42:32 Rep. Bennett asked whether defining health information as property has caused any problems being reported.
- 01:43:35 Rep. Bennett asked whether there is any other private information in the New Hampshire law that is defined in the law as property. Rep. Bennett also confirmed that he would like to see the report that Mr. Gregoire promised to put together.

Public Comment

- 01:45:20 Nick Mazanec, Staff Attorney, State Auditor's Office
- 01:50:12 Ms. Aldrich presented the results of a legal search on the New Hampshire law, which she conducted during the committee questions session.

**Staff Research Report on Ownership/Property Rights, Principles, Laws, and Options - Continued - Sheri Scurr, Staff Research Analyst**

- 01:51:21 Ms. Scurr continued the report about the healthcare information presented in Table 3 of Exhibit 1. (principle 1 - control, choice, affirmative consent, right to exit)

Committee Questions of Ms. Scurr

- 01:54:19 Rep. Mandeville asked about color coding in Exhibit 3.
- 01:57:52 Rep. Bennett noted that because there is no quorum today, the committee can only gather the interests and preferences of those committee members present.
- 01:58:18 Ms. Scurr continued the report about the healthcare information presented in Table 3 of Exhibit 1. (principle 2 - transparency, notice, access)

Suggestions to the Committee Staff for Further Study

- 01:59:36 Committee members made recommendations for further examination.
- 02:01:18 Ms. Scurr continued the report about the healthcare information presented in Table 3 of Exhibit 1. (principle 3 - onward transfer, consistent context)

Suggestions to the Committee Staff for Further Study

- 02:03:52 Committee members made additional recommendations for further examination.
- 02:05:19 Ms. Scurr continued the report about the healthcare information presented in Table 3 of Exhibit 1. (principle 4 - security)

Suggestions to the Committee Staff for Further Study

- 02:06:58 Committee members made additional recommendations for further examination.

- 02:11:09 Ms. Scurr continued the report about the healthcare information presented in Table 3 of Exhibit 1. (principle 5 - data integrity, verifiability, right to delete or correct)
- 02:12:05 Ms. Scurr continued the report about the healthcare information presented in Table 3 of Exhibit 1. (principle 6 - accountability, enforcement) Ms. Scurr also discussed a report titled "HJR 21 Study of Personal Information Ownership: Overview of Current Federal & Montana Law". **(Exhibit 4)**
- 02:14:11 Rep. Bennett commented on the HJR 21 report presented so far and emphasized the importance of work by the committee in this area. Rep. Bennett also recommended that the committee examine whether Montana laws should be stricter than HIPAA. This point was agreed on by consensus of the committee.
- 02:14:49 Ms. Scurr continued the report by going back to Table 1 of Exhibit 1 titled "Trade Practices and Consumer Protection". (principle 1 - control, choice, affirmative consent, right to exit)

Suggestions to the Committee Staff for Further Study

- 02:17:57 Committee members made additional recommendations for further examination.
- 02:22:38 Ms. Scurr continued the report about trade practices and consumer protection presented in Table 1 of Exhibit 1. (principle 2 - transparency, notice, access)

Suggestions to the Committee Staff for Further Study

- 02:23:35 Committee members made additional recommendations for further examination.
- 02:25:51 Ms. Scurr continued the report about trade practices and consumer protection presented in Table 1 of Exhibit 1. (principle 3 - onward transfer, consistent context)

Suggestions to the Committee Staff for Further Study

- 02:27:21 Committee members made additional recommendations for further examination.
- 02:28:35 Ms. Scurr continued the report about trade practices and consumer protection presented in Table 1 of Exhibit 1. (principle 4 - security)
- 02:30:05 Ms. Scurr continued the report about trade practices and consumer protection presented in Table 1 of Exhibit 1. (principle 5 - data integrity, verifiability, right to correct or delete)

Suggestions to the Committee Staff for Further Study

- 02:30:51 Committee members made additional recommendations for further examination.
- 02:31:47 Ms. Scurr continued the report about trade practices and consumer protection presented in Table 1 of Exhibit 1. (principle 6 - accountability, enforcement)



Suggestions to the Committee Staff for Further Study

02:33:12 Committee members made additional recommendations for further examination.

Committee Questions

02:28:50 Rep. Bennett asked those in the audience representing agencies to comment on some issues on enforcing our current statutes with regards to healthcare information.

02:34:35 Ryan Sullivan , Investigator, Office of Consumer Protection, Department of Justice, addressed Rep. Bennett's request.

02:36:41 Rep. Bennett asked Ms. Sullivan's opinion about whether current laws in Montana provide necessary tools to deal with needs and issues that this committee is investigating.

02:37:35 Ms. Scurr continued the report about trade practices and consumer protection presented in Table 1 of Exhibit 1. Ms. Scurr also distributed and discussed a document titles "Social Media Privacy Laws". **(Exhibit 5)**

Suggestions to the Committee Staff for Further Study

02:38:59 Committee members made additional recommendations for further examination.

02:42:32 Ms. Scurr continued the report about financial and insurance information presented in Table 2 of Exhibit 1. (principle 1 and 2 - control, choice, affirmative consent, right to exit, and transparency, notice, access)

Suggestions to the Committee Staff for Further Study

02:43:55 Committee members made additional recommendations for further examination.

02:50:45 Ms. Scurr continued the report about financial and insurance information presented in Table 2 of Exhibit 1. (principle 3 - onward transfer, consistent context)

Suggestions to the Committee Staff for Further Study

02:52:12 Committee members made additional recommendations for further examination.

02:53:04 Ms. Scurr continued the report about financial and insurance information presented in Table 2 of Exhibit 1. (principle 4 - security)

02:53:41 Ms. Scurr continued the report about financial and insurance information presented in Table 2 of Exhibit 1. (principle 5 - data integrity, verifiability, right to correct or delete)

Suggestions to the Committee Staff for Further Study

02:54:02 Committee members made additional recommendations for further examination.

### Committee Questions

- 02:50:10 Rep. McKamey asked for clarification of the term "ownership", whether it is a property or privacy.
- 02:57:13 Donya Parrish, Montana Credit Union Network, answered Rep. McKamey's question.
- 02:59:43 Ms. Scurr continued the report about financial and insurance information presented in Table 2 of Exhibit 1. (principle 6 - accountability, enforcement)

### Suggestions to the Committee Staff for Further Study

- 03:00:55 Committee members made additional recommendations for further examination.

### **LUNCH** (reconvened at 1:00 p.m.)

- 03:57:08 Rep. Bennett announced that the meeting reconvened.
- 03:57:36 Ms. Scurr continued the report about government information presented in Table 4 of Exhibit 1. (principle 1-3 - control, choice, affirmative consent, right to exit, transparency, notice, access, onward transfer, consistent context)

### Suggestions to the Committee Staff for Further Study

- 03:59:28 Committee members made additional recommendations for further examination.
- 04:07:56 Ms. Scurr continued the report about government information presented in Table 4 of Exhibit 1. (principle 4 - security)
- 04:11:19 Ms. Scurr continued the report about government information presented in Table 4 of Exhibit 1. (principle 5 - data integrity, verifiability, right to correct or delete)

### Suggestions to the Committee Staff for Further Study

- 04:12:11 Committee members made additional recommendations for further examination.
- 04:12:28 Ms. Scurr continued the report about government information presented in Table 4 of Exhibit 1. (principle 6 - accountability, enforcement)

### Suggestions to the Committee Staff for Further Study

- 04:13:57 Committee members made additional recommendations for further examination.
- 04:16:23 Ms. Scurr continued the report about government information presented in Table 4 of Exhibit 1. (point 7 - other issues)

### Suggestions to the Committee Staff for Further Study

- 04:18:33 Committee members made additional recommendations for further examination.

### Committee Questions

- 04:18:44 Rep. Mandeville asked Harold Blattie, Montana Association of Counties, to comment on the last portion of Ms. Scurr's presentation with regards to how the

information reported by Ms. Scurr may affect local governments, especially counties.

04:19:05 Mr. Blattie provided his comment as requested.

**HB 84 (2015) - ELECTION LAW GENERAL REVISION BILL - CLEANUP**

**Review and Identification of Statutes Needing Attention - Sheri Scurr, Staff Research Analyst**

04:23:01 Ms. Scurr ([Exhibit 6](#))

04:32:27 Rep. Bennett noted that the committee needs to authorize the drafting of a bill for the next legislative session that would correct the issues that Ms. Scurr has identified in her report.

**Public Comment**

04:33:33 Harold Blattie, Executive Director, Montana Association of Counties

04:41:00 Eric Brosten

**Motion**

04:38:15 Sen. Kary moved that the committee staff draft a bill addressing the five issues that have been brought forward.

04:38:43 Rep. Mandeville asked Rep. Bennett to confirm that if the committee wanted to separate out the last two items, they could be separated after the bill is drafted.

04:39:16 Ms. Scurr clarified on the five issues that will be addressed in the bill draft.

**Vote**

04:39:35 The motion passed unanimously on a voice vote with Sen. Larsen and Sen. Windy Boy being absent.

**Action Item on HJR 21**

04:41:35 Rep. Bennett asked to bring Sen. Kary on the phone as the committee needs to take executive action to approve the work plan.

**Motion**

04:42:16 Rep. Mandeville made a motion to approve the research plan with respect to HJR 21.

**Vote**

04:42:27 The motion passed unanimously on a voice vote with Sen. Larsen, Sen. Windy Boy, and Sen. Brown being absent.

**HB 142 (2011) OVERSIGHT DUTIES**

**Review of Statutory Requirements - Sheri Scurr, Staff Research Analyst**

04:42:55 Ms. Scurr ([Exhibit 7](#))

## **Employee Incentive Program Report**

04:46:23 Anjette Schafer, Administrator, State Human Resources Division

### **9-1-1 Advisory Council**

04:48:08 Quinn Ness, Bureau Chief, Public Safety Communications Bureau, Department of Administration

Public Comment - None

### Committee Discussion

Committee members and staff discussed the possibility of taking executive action on the items related to changes to the statute during the next committee meeting.

04:51:41 Rep. Bennett noted that at this time the committee will not take executive action with respect to any statutory changes and that executive action may take place during next SAVA meeting when the majority of committee members will be present.

04:51:58 Rep. Mandeville asked whether, assuming there will be quorum during the next meeting, the committee would be able to have executive items on these items without having reports and public comment.

04:52:26 Ms. Aldrich advised the committee members that if they think that they might take executive action on the items that are being discussed, to place executive action on the agenda, so that it is publicly noticed.

04:52:39 Rep. Bennett asked the committee members whether they would like to take executive action on the items that are being discussed during the next committee meeting.

04:52:47 Rep. Mandeville noted that in case the committee decides not to take executive action during the next meeting, there will be no changes to the statute.

### Committee Discussion

Committee members and staff discussed the motion made by Sen. Kary earlier in the meeting.

04:53:30 Rep. Bennett announced that there is a correction to his interpretation of the rules regarding Sen. Kary's motion made earlier during the meeting and asked Ms. Aldrich to clarify the process.

04:53:44 Ms. Aldrich read the statute (section 2-4-305 (9), MCA) regarding committee members notifying a presiding officer with the purpose of objecting to a notice of proposed rule-making. Ms. Aldrich advised that this statute allows committee members to notify a presiding officer about their objections via email.

04:55:55 Rep. Bennett said that if there are committee members, who wish to express their objections, that they should email him, the presiding officer of today's committee meeting, as well as the Chair for the committee Sen. Dee Brown. Rep.

Bennett announced that if enough committee members express their objections to the rule notice, then Sen. Kary's motion made earlier will pass. Rep. Bennett asked Ms. Aldrich to confirm that.

04:56:38 Rep. Mandeville asked Ms. Aldrich whether there is a time limit to send the objections.

**PUBLIC COMMENT ON ANY MATTER UNDER SAVA'S JURISDICTION** - none

**ADMINISTRATIVE MATTERS**

**Interim Work Plan** - - Sheri Scurr, Staff Research Analyst

04:57:43 Ms. Scurr went over Work Plan for the remaining committee meetings and asked the committee members whether they wished to add any other topics to the work plan. [\(Exhibit 8\)](#)

05:03:24 Rep. Bennett expressed his wish to learn about veterans' suicides.

05:03:58 Ms. Scurr continued presenting the work plan, specifically, the agency bill draft proposals.

05:05:32 Rep. Bennett asked staff to reach out to Sen. Larsen and Sen. Windy Boy and inquire whether they want to add any additional items to the work plan. Rep. Bennett announced that the date of the next meeting is April 19, 2016.

**ADJOURNMENT**

05:06:18 With no further business before the committee, Rep. Bennett adjourned the meeting at 5:50 p.m.

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