

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **SEN. BRENT R. CROMLEY**, on March 9, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Mike Wheat, Chairman (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 232, HB 354, HB 701, HB 598, HB 345, HB 146, HB 245
Executive Action: HB 232, HB 354, HB 701, HB 598, SB 493, HB 216

VICE CHAIR CROMLEY opened the hearing. He indicated that the order of the bills would be HB 232, HB 354, HB 701, HB 598, HB 345, HB 146, and HB 245. He opened the hearing on HB 232.

HEARING ON HB 232

Opening Statement by Sponsor:

REP. MARK NOENNIG (R), HD 46, opened the hearing on **HB 232**, Require presentence report to propose payment of IT charge.

REP. NOENNIG explained that HB 232 dealt with the surcharge charged in courts. He informed the Committee that the bill would extend the termination date and would require that presentence investigation reports include a directive that the surcharge be charged. He noted that the surcharge was the primary source of funding for information technology (IT) for Montana district courts and courts of limited jurisdiction. The surcharge applies to defendants convicted of any offense that is criminal, and to the initiating party in a civil or probate case for each defendant and respondent who appears in the case. He reported that the surcharge had not raised as much money as it should have for various reasons, including the fact that some judges omitted the charge.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 2.5}

Proponents' Testimony:

Mary Phippen, Representing the Montana Association of Clerks of District Court, stood in support of HB 232.

{Tape: 1; Side: A; Approx. Time Counter: 2.5 - 2.7}

Jim Oppedhal, Administrator for the Montana Supreme Court, rose in support of HB 232 because it was an effort to insure adequate, long term, stable funding for court automation and IT projects. He mentioned that there were 102 courts of limited jurisdiction who use Full Court which is a modern court IT package. They want to make sure that the surcharges are applied uniformly.

{Tape: 1; Side: A; Approx. Time Counter: 2.7 - 4.6}

Ted Clack, Representing the Montana Magistrates Association, provided a written version of his testimony. He expressed that the Association was in strong support of HB 232 and he urged the Committee give a do pass recommendation.

EXHIBIT(jus52a01)

Tom Morrison, an Attorney from Helena, discussed the benefits of automating the court system. He urged the Committee to support the bill.

{Tape: 1; Side: A; Approx. Time Counter: 4.6 - 5.9}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

{Tape: 1; Side: A; Approx. Time Counter: 5.9 - 6.1}

VICE CHAIR CROMLEY requested that in the closing statement **REP. NOENNIG** address the specific language regarding the presentence reports.

Closing by Sponsor:

REP. NOENNIG cited Page 1, Line 30, of HB 232 which contained the language regarding the presentencing report. He explained that the language was a checklist. He indicated that the surcharge was required, but some judges overlook the requirement when they impose their sentences. He informed the Committee that the bill would highlight the surcharge in the presentencing investigation report that is given to the judge. He asked the Committee for a do concur vote.

{Tape: 1; Side: A; Approx. Time Counter: 6.1 - 6.9}

VICE CHAIR CROMLEY closed the hearing on HB 232.

SEN. SHOCKLEY volunteered to carry the bill on the Senate Floor.

{Tape: 1; Side: A; Approx. Time Counter: 6.9 - 7.5}

VICE CHAIR SHOCKLEY opened the hearing on HB 354.

HEARING ON HB 354

Opening Statement by Sponsor:

REP. MARK NOENNIG (R), HD 46, opened the hearing on **HB 354,** Revise mobile home landlord tenant law.

REP. NOENNIG informed the Committee that HB 354 was intended to fix and clarify the language of Montana's Abandoned Mobile Home Statute. The bill deals with the issue of an owner of a mobile home court dealing with an abandoned mobile home. He reported that the current law reads that the owner of the mobile home court can have an abandoned mobile home towed, stored, and charge the storage costs to the owner. The problem he saw with this was the expense. HB 354 would allow the mobile court owner the option of storing the abandoned mobile home on the premises or storing it off their property. The second issue the bill addressed was that after a mobile court owner follows proper procedure there is the right to have public or private sale of the motor home. The problem he expressed with this was that Uniform Commercial Codes were deleted. The bill would reinstate a reference to the Uniform Commercial Code for the procedure under private sale, this topic is covered on Page 2, Line 10-11. The third issue he discussed was the issue of a public sale. The third provision Page 2, Lines 12-17, of HB 354 addressed this topic.

{Tape: 1; Side: A; Approx. Time Counter: 7.5 - 11.3}

Proponents' Testimony:

Chris Christians, Representing the Montana Landlord Association, strongly supported HB 354.

{Tape: 1; Side: A; Approx. Time Counter: 11.3 - 11.9}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. NOENNIG asked for a do pass recommendation. He informed the Committee that he did not have a senator to carry the bill on the Senate Floor.

VICE CHAIR CROMLEY closed the hearing on HB 354.

SEN. O'NEIL offered to carry the bill on the Senate Floor.

{Tape: 1; Side: A; Approx. Time Counter: 11.9 - 12.7}

HEARING ON HB 701**Opening Statement by Sponsor:**

REP. MARK NOENNIG (R), HD 46, opened the hearing on **HB 701**, Revise estate and trust law.

REP. NOENNIG expressed that the State Probate and Trust Division of the State Bar requested that the bill be brought forth. He informed the Committee that each section of the bill did something different. He went through and explained Sections 1-4 of the bill and their purposes.

{Tape: 1; Side: A; Approx. Time Counter: 12.7 - 18.8}

Proponents' Testimony:

Dan McClain, Attorney from Helena and Member of the Business Estate Trust Tax and Real Property (BETTR), called the bill a clean-up bill. He expressed support of the changes to Section 1 dealing with unsuitable trusts, specifically. He explained in more detail what Section 3 pertained to. He also explained Section 4 in more detail. The most important aspect of the bill, in his opinion, was the second part of Section 4, Receipts for Liquidating Assets.

{Tape: 1; Side: A; Approx. Time Counter: 18.8 - 24.2}

Tom Morrison, an Attorney from Helena, Tax Lawyer and Vice Chairman of the BETTR Committee, strongly supported HB 701. He especially appreciated the section of the bill which would raise the limit to \$50,000 for informally avoiding probate. He claimed that this bill would help eliminate the unnecessary probates.

{Tape: 1; Side: A; Approx. Time Counter: 24.2 - 26}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. NOENNIG closed on HB 701.

VICE CHAIR CROMLEY volunteered to carry the bill on the Senate Floor.

{Tape: 1; Side: A; Approx. Time Counter: 26 - 26.8}

VICE CHAIR CROMLEY closed the hearing on HB 701 and opened the hearing on HB 598.

HEARING ON HB 598

{Tape: 1; Side: A; Approx. Time Counter: 26.8 - 27}

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 598**, Revise dates applicable to selection of trial juries.

REP. GALLIK informed the Committee that a bill passed last session to combine the jury pools was late in being implemented. HB 598 would delay the effective date of the combination of jury pool individuals until, as indicated in HB 598, 2007 with the applicability date of 2008.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 1.4}

Proponents' Testimony:

Mary Phippen, Representing the Montana Association of Clerks of District Court, informed the Committee that the bill was brought forth at the request of the Clerks because it had become apparent that they could not meet the statutory requirements concerning the timeframe. She provided a fact sheet that was prepared by the Court Administrator's Office, reviewed by the Secretary of State's Office and the Department of Motor Vehicles' Office that explained the complexity of implementing HB 540. In order to maintain the integrity of the jury selection process the delay is necessary in her opinion. She spoke on behalf of Yellowstone County and their lobbyist Charles Brooks in support of HB 598. She had also talked to Al Smith of the Montana Trial Lawyers Association and Scott Chriehton of ACLU and discovered that they were not opposed to the bill. In addition, the Clerk and Recorders Association supported HB 598.

EXHIBIT(jus52a02)

{Tape: 1; Side: B; Approx. Time Counter: 1.4 - 2.9}

Elaine Gravely, Election Deputy for Secretary of State Brad Johnson, expressed that the Secretary of State's Office stood in strong support of HB 598.

{Tape: 1; Side: B; Approx. Time Counter: 2.9 - 3.4}

Brenda Nordlund, Representing the Department of Justice, spoke in support of HB 598. She indicated that the Department had been a partner in the process to implement the IT programs. She urged the Committee's support for HB 598.

{Tape: 1; Side: B; Approx. Time Counter: 3.4 - 4.2}

Nancy Sweeney, Lewis and Clark County Clerk of Court, rose in support of HB 598. She expressed that the clerks of court are very concerned with the quality of juries that would be developed after the procedure was implemented.

{Tape: 1; Side: B; Approx. Time Counter: 4.2 - 5.3}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. GALLIK stressed that it was important to pass HB 598 in order to ensure that juries were not challenged by individuals who are convicted. He indicated that **SEN. ELLINGSON** was carrying the bill on the Senate Floor.

{Tape: 1; Side: B; Approx. Time Counter: 5.3 - 6.2}

VICE CHAIR CROMLEY closed the hearing on HB 598 and opened the hearing on HB 345.

At this time, **SEN. MOSS** left the hearing.

HEARING ON HB 345

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 345**, Revise time period for fraudulent transfer statute of limitations.

REP. GALLIK handed out two statutes, 31-2-333 and 31-2-334, which would be amended by HB 345. He explained that HB 345 would extend the period of time for which a cause of action for a fraudulent transfer may be filed. He brought the bill at the request of several business people who have found that there is

not a sufficient amount of time to bring forth a cause of action for a fraudulent transfer. He explained what he hoped to do with the changes in the two statutes. He gave the definition of a fraudulent transfer. He expressed that they had found that the time limit of two years, set forth in the fraudulence transfer statute, was not sufficient. He indicated that the bill had passed through the House without any problems. There was only one section which was stricken, the Retroactive Applicability, to ensure that the bill would be prospective only.

EXHIBIT(jus52a03)

{Tape: 1; Side: B; Approx. Time Counter: 6.2 - 11.1}

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

VICE CHAIR CROMLEY asked **REP. GALLIK** why they had changed the words "extinguished" to "terminated" on Lines 13 and 14 of HB 345.

REP. GALLIK expressed that he had not requested that change but it came about by the Legislative Services drafters.

VICE CHAIR CROMLEY requested that **REP. GALLIK** speak briefly to Lines 21 and 22.

REP. GALLIK thought that the language in those two lines was trying to say that if there are two competing claims against the transfer or that one of those claims is not going to be deemed extinguished, or terminated, by way of the statute of limitations and the competing claims were going through the judicial system at the same time, then the time period for filing a claim would be extended for the claim which was filed second.

{Tape: 1; Side: B; Approx. Time Counter: 11.1 - 13.7}

VICE CHAIR CROMLEY asked **REP. GALLIK** to run through a scenario in which this bill might be applied.

{Tape: 1; Side: B; Approx. Time Counter: 13.7 - 15.1}

SEN. GARY PERRY, SD 35, MANHATTAN, cited Lines 21-22. He wondered if the language meant that the timeframes set forth in Lines 15-20 did not apply until the judgment was obtained.

REP. GALLIK affirmed **SEN. PERRY'S** statement. He reiterated that the statute of limitations would not start running until there was a judgement attained against an individual on a competing claim.

SEN. PERRY took this to mean that regardless of how long the lawsuit might go on there would be no limit.

SEN. GALLIK explained that there would be a limit it would be the exact same and it would not start until a judgment was obtained.

SEN. PERRY followed up by asking when the tolling began.

REP. GALLIK replied that the statute of limitations did not start to run until one of the two claims had a judgment against it. He clarified that the statute would start to run at the time the judgment was obtained by one of the competing claims on a fraudulent transfer.

{Tape: 1; Side: B; Approx. Time Counter: 15.1 - 18.8}

SEN. PERRY clarified that he had been asking about when the tolling began. He wanted to know if it was when the judgment was obtained or when the lawsuit was filed.

REP. GALLIK responded that the cause of action would arise at the time the fraudulent transfer was made or when there was actual knowledge of a transfer that was made which was fraudulent.

VICE CHAIR CROMLEY questioned **REP. GALLIK** in regard to a situation for a personal injury where an individual transferred property because they knew that they were going to be charged and the plaintiff found out that there was no money to be had because of the transfer. He wanted to know if the tolling period would apply to this scenario.

REP. GALLIK remarked that it would not in that claim because they were not talking about the transferred property being the subject of the claim against the transferor. He stressed that it only applied to the claim for fraudulent transfer.

VICE CHAIR CROMLEY continued asking about the scenario he put forth.

REP. GALLIK clarified that the statute of limitations begins from the time an individual learns that the other person transferred their assets or from the time the individual should have known. He wanted to pass this bill because it would recognize the length of time litigation takes and allow an individual to discover if they had a legitimate claim before they lose the ability to bring a fraudulent transfer claim.

{Tape: 1; Side: B; Approx. Time Counter: 18.8 - 23}

VICE CHAIR CROMLEY was unclear as to when the tolling takes place. He cited Lines 21 and 22.

REP. GALLIK remarked that the limitation periods are tolled until a judgment is obtained. If the property that was transferred was also the subject of another claim, where somebody else has the exact same situation, it is tolled until there is a judgment obtained by one or the other.

{Tape: 1; Side: B; Approx. Time Counter: 23 - 24.7}

At this time **SEN. MOSS** returned.

SEN. MCGEE requested that **REP. GALLIK** provide a layman's definition of toll.

REP. GALLIK explained that toll meant the statute of limitations would not start to run, it is put on standby until a further date.

SEN. PERRY referenced Lines 13-20. He presented the scenario of someone suing him, and he did not want to put assets at risk. If he transferred those assets, he wanted to know if it was a fraudulent transfer because he had knowledge that someone wanted to sue him or would it only be a fraudulent transfer after a lawsuit had been filed.

REP. GALLIK directed the Committee to look at 31-2-333 which explains a fraudulent transfer. He expressed that it was only fraudulent if an individual was going to transfer assets with the intent to hinder, delay, or defraud any creditor of the debtor without having reasonable equivalent value in exchange for the transfer.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 2.9}

SEN. PERRY followed up indicating that until there was a judgment there would be no debtor.

REP. GALLIK responded that there could still be a fraudulent claim. If an individual knew that a person was going to sue them, and would most likely be successful, and they try to defraud the claimant, that would be a fraudulent claim and at that point in time the statute of limitation would start to run.

SEN. PERRY wanted to know how a person was to know who was going to win a lawsuit.

REP. GALLIK provided examples of cases which are fairly clear in the outcome.

{Tape: 2; Side: A; Approx. Time Counter: 2.9 - 5.6}

Closing by Sponsor:

REP. GALLIK offered to provide a specific memorandum explaining the answers to all of the questions put forth by the Committee before they took Executive Action. He did not have a Senator to carry the bill on the Senate Floor.

{Tape: 2; Side: A; Approx. Time Counter: 5.6 - 7.3}

VICE CHAIR CROMLEY closed the hearing on HB 345 and opened the hearing on HB 146.

At this time, **SEN. PEASE** and **SEN. ELLINGSON** left the hearing.

HEARING ON HB 146

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), **HD 79**, opened the hearing on **HB 146**, Civil false claims act.

REP. GALLIK explained the history of a civil false claims act. He expressed that in HB 146 he was trying to repeat what the federal government had done in their False Claims Act Law. He thought that this bill was a good idea because the people of Montana had entrusted the legislature to take care of the budget. He explained that a false claim was one that was a request or demand for money, property, or services that is made by a third party to a governmental entity that is false and they know it is false. He walked through the bill and addressed a few areas where he would like to see amendments. He described mitigating factors that the government attorney could use. The section of the bill he was most concerned with was on Page 4, New Section 6. This language would allow a private citizen who found out, not

through the newspaper or court action, that an individual had made a false claim against the State to come forth and hand over the case to the Attorney General and share in the proceeds. He wanted to make sure that through an amendment they could clarify that it is not a criminal complaint but a civil complaint under the False Claims Act. In this instance, the private citizen could also carry forth a claim against the suspect if the Attorney General decides for some reason not to. The citizen would be entitled to 10-15% of the proceeds unless they were the only ones to prosecute, in which case they would be entitled to 25-50% of the recovery. He requested that the Committee consider placing back into the bill, on Page 6, Lines 12-13, the words "and the court finds that it was clearly frivolous or brought solely for harassment purposes." He briefly discussed the fiscal note attached to the bill. He brought forth the concern about the confusion with a civil or criminal claim.

{Tape: 2; Side: A; Approx. Time Counter: 7.3 - 23.8}

Proponents' Testimony:

Ali Bovington, Representing the Attorney General's Office, spoke in support of HB 146. She reiterated that the bill was a Civil False Claim Act which mirrored the federal law. They were in support because it would add another avenue of relief for state government when they do business with individuals or organizations who attempt to defraud the government.

{Tape: 2; Side: A; Approx. Time Counter: 23.8 - 24.5}

Jed Fitch, Representing the Montana Trial Lawyers Association, rose in support of the bill. He discussed the background of the Civil False Claims Act as well. He claimed that the bill was a governmental privatization initiative. He asserted that it could be used to deal with Medicaid and Medicare fraud. He supported the replacement of the stricken language and the insertion of the word civil.

{Tape: 2; Side: A; Approx. Time Counter: 24.5 - 28.5}

Harris Himes suggested that the bill mirror more closely the federal bill and the other states by taking out the section which would potentially make another person pay the attorney fees for a large corporation.

{Tape: 2; Side: B; Approx. Time Counter: 0 - .9}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS, presented a scenario where an individual sued his ex-wife for fraud on a shared tax form for their child.

REP. GALLIK referred to Page 3, Lines 4-9, any and all claims against taxes would be exempted out. He noted that this was uniform with federal law.

At this time, **SEN. ELLINGSON** returned.

SEN. JEFF MANGAN, SD 12, GREAT FALLS, was curious why the Trial Attorneys would support a bill which stated that if an individual brought a frivolous action the person who brought the action would get stuck with the court and attorney costs. Yet, when other bills in non-governmental actions like this were brought before the Committee, the Trial Lawyers vehemently opposed them.

Mr. Fitch replied that they support the bill, although the particular section which **SEN. MANGAN** was discussing was not in other state's bills and they would like to see the whole section deleted. However, if that part was to remain in they would want to see the stricken language placed back in the bill.

{Tape: 2; Side: B; Approx. Time Counter: .9 - 4.5}

SEN. MANGAN wondered how **REP. GALLIK** saw this bill working with the Department of Justice and the laws and personnel that are already in place to deal with the issues at the CSED and for welfare fraud.

REP. GALLIK cited Page 3, Lines 23-26, Subsection D. He explained that if there was a present or former employee of the state and during the course of employment they discovered a fraud, they must bring it to the attention of their supervisors first.

SEN. MANGAN clarified that his question was how the bill would work in conjunction with other agencies. He wondered who would have precedence--the other agencies or this law.

REP. GALLIK thought that it would depend on who the whistle blower went to. If they went to a government attorney, that attorney would have precedence. He deferred the question to Ms. Bovington.

Ms. Bovington believed that if there was a false claim against a state agency and there were separate specific laws dealing with that particular claim, those claims would trump the Civil False Claims Act. She explained that if there is a more specific statute, it would apply over a more general statute.

SEN. MANGAN asked Ms. Bovington if she thought that they needed to clarify the language in the bill or if it was clarified in other statutes.

Ms. Bovington thought that it was clear because of the rules of statutory interpretation. She also had a hard time thinking of an example when there were specific regulatory statutes that would apply and conflict with this particular bill.

{Tape: 2; Side: B; Approx. Time Counter: 4.5 - 11.2}

SEN. MANGAN was troubled by the payment to the whistle blower. He wondered if **REP. GALLIK** saw a potential problem with an individual finding out about a false claim and waiting to report it in order to receive a larger percentage of the proceeds. He wanted some assurance that the payment was necessary and would not be abused.

At this time **SEN. PEASE** returned to the Committee hearing.

REP. GALLIK expressed that, if the whistle blower was a government employee, they have an obligation to inform their superiors and would not be able to take advantage of the bill's payment. However, he had found that if the payment of money is taken out then there is no need to have the bill. The point of the payment of money is that it is the incentive to have people stay the course with the case.

REP. MANGAN followed up by asking if **REP. GALLIK** knew if State Fund would provide money to the individuals who turned others in for fraud.

REP. GALLIK answered that he did not know for sure, but he did not think that they do. He promised to find out for the Committee.

REP. MANGAN, assuming that they don't, wanted to know if **REP. GALLIK** would say that they have been successful in encouraging people to watch out for fraud without having to pay a monetary award.

REP. GALLIK did not know. He knew that they had a paid staff of investigators who go after solely these types of false claims.

He thought that this bill would add another way, without costing taxpayers, another way of protecting taxpayer dollars.

{Tape: 2; Side: B; Approx. Time Counter: 11.2 - 15.9}

SEN. MCGEE addressed the stricken language which **REP. GALLIK** wanted added back into the bill. He wanted to know where the language was stricken.

REP. GALLIK replied that it had been stricken in House Judiciary.

SEN. PERRY asked who originally requested the bill.

REP. GALLIK answered that he had been the one to request the bill.

{Tape: 2; Side: B; Approx. Time Counter: 15.9 - 16.9}

SEN. PERRY referred to Page 5, Line 22, where it said, "If a private citizen participated in the act or acts found to be in violation..." He wanted to know if that private citizen would be called a co-conspirator or co-perpetrator.

REP. GALLIK thought that what the language was trying to get at was that, if this private citizen had some inside knowledge of the fraud, it would give the court the out to prevent that individual from receiving the cash because they were complicit in the setting up of the fraud.

SEN. PERRY followed up citing that 50% under any circumstance was the highest compensation a private citizen would receive.

REP. GALLIK affirmed this statement.

At this time **SEN. PEASE** left the hearing.

SEN. PERRY wondered if it was possible that a disgruntled employee might find incentive in this bill to bring a fraudulent claim and expect a reasonable settlement without going to court.

REP. GALLIK hoped that it would not be the case. He noted that the bill was not for an individual bringing a fraudulent claim or a false claim but rather must prove that they have the ability to prove that there has been a knowing false claim made against the State of Montana, that resulted in the loss of money for Montana. He agreed that **SEN. PERRY'S** scenario might happen but he did not see that happening.

{Tape: 2; Side: B; Approx. Time Counter: 16.9 - 22.5}

SEN. PERRY cited Page 4, Lines 13-21. He wondered if the other 50% would go to the government agency.

At this time **SEN. MOSS** returned to the meeting.

REP. GALLIK affirmed that the money would go back to the governmental entity--State of Montana.

REP. PERRY asked when the interests of the governmental entities would be adequately represented by the private citizen in any case. He was not aware of any case where a private citizen would file a lawsuit on behalf of a governmental entity.

REP. GALLIK explained that the governmental entity had first choice to decide if they want to go forth. If they chose not to, the private citizen would have the right to go forth on their own. If the government attorney decides that the State of Montana's interests were not being adequately represented, they have the right to intervene in the case.

{Tape: 2; Side: B; Approx. Time Counter: 22.5 - 25.8}

SEN. PERRY understood that but wanted to know when the interests of the government entity were being adequately or not adequately being represented by a private citizen in a court of law.

REP. GALLIK thought that it would be decided on a case by case basis and would be decided by the government attorney or by the court.

{Tape: 2; Side: B; Approx. Time Counter: 25.8 - 26.4}

SEN. PERRY clarified that he was asking if there were any other cases or circumstances where a private citizen representing themselves, also represents a government entity in a privately filed complaint in which the government entity itself may receive half or more of any damages awarded in such a case.

Ms. Bovington explained that this was very common in cases against pharmaceutical companies, where a whistle blower brings forth a case. In response to the question of when can a private citizen adequately protect the interests of a governmental entity, in the context of litigation, she stated that it would have to be dealt with case by case. She imagined that if there was a complaint brought by a private citizen, and based on the information the government had at the time the complaint was brought, they decided it was not worth pursuing, but the plaintiff went forward with the case anyway; there is a situation

where that private citizen could potentially receive a judgment where the State's interest was adequately represented.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 4}

SEN. PERRY thought that the legislation was revolutionary and precedence setting in the bill. He wanted to know if there were private citizens filing lawsuits anywhere at anytime on behalf of a government entity through which the result may be that the government entity may receive damages.

Ms. Bovington offered to do research on the topic.

SEN. SHOCKLEY wanted to do away with Section 11, which dealt with costs and attorney's fees. He felt that if that Section was dealt with then the problem of a private citizen becoming rich, would be dealt with.

REP. GALLIK thought that the costs and attorney's fees had to be in the bill because if they were removed there would be no way to find an individual who would prosecute it through to a judgment. If it was that good a case, then the Attorney General would take it on.

{Tape: 3; Side: A; Approx. Time Counter: 4 - 6.9}

SEN. SHOCKLEY mentioned that if the government decided to enter into a case they had originally passed on, they would be taking on the costs and fees yet the private citizen would still receive 10-15%.

REP. GALLIK referenced Page 4, Lines 17-21, Subsection 4 of Section 6. In the scenario **SEN. SHOCKLEY** put forth, the private citizen would retain the principal responsibility for full control of the action.

VICE CHAIR CROMLEY thought that the federal statute did not have the attorney fee provision.

REP. GALLIK clarified that the federal statute has the attorney fee provision but they do not have the attorney fee provision that allows the person who has been alleged to be defrauded to file a claim against the private citizen and get their attorney fees paid for.

{Tape: 3; Side: A; Approx. Time Counter: 6.9 - 10}

SEN. MCGEE asked for a definition of private citizen.

REP. GALLIK could not cite that statute that defined private citizen but he knew that a citizen is one that is an individual, not an entity. He thought that a person, as it was defined, included all of the entities. Whereas, a private citizen cannot be anything other than an individual.

SEN. MANGAN asserted that he was an entity, as a contractor, although he was the only one in the company. If he knew of a scam against the State of Montana and he came forward with it, he wanted to know if he could come forward as Dan McGee or if he would have to come forward as McGee and Co.

REP. GALLIK thought that he would have to come forward as Dan McGee, the private citizen.

SEN. MCGEE wanted to know why **REP. GALLIK** would want it that way.

REP. GALLIK did not know, although he thought that it would not be a problem to change the bill to allow for the other possibility.

{Tape: 3; Side: A; Approx. Time Counter: 10 - 12.8}

SEN. MANGAN noted that in the original bill, 17-8-231 was repealed. He wanted to know what the reason was for the House removing this section of the bill.

REP. GALLIK believed that the reason they removed the section was that if HB 146 went into law then the current False Claims Act would be conflicting. He deferred the question to Ms. Bovington.

SEN. MANGAN mentioned that the House had taken out the repealer so that both laws would be on the books if HB 146 passed. He wanted to know how Ms. Bovington saw the two laws working together.

Ms. Bovington responded that the bill had originally been drafted to repeal 17-8-231. She mentioned that the Department of Justice had a bill that was sponsored by **REP. HARRIS**, HB 40, which was the reverse false claims bill. In terms of coordinating these two pieces of legislation, she explained that the decision was made to strike the repealer from **REP. GALLIK'S** bill, keeping 17-8-231 on the books and also HB 40 if it passed.

REP. MANGAN followed up by asking how Ms. Bovington saw all of these statutes working together, especially when the current statute says a "penalty not to exceed \$2,000 plus double the damages sustained by the State."

Ms. Bovington explained that HB 146 on Page 2, Lines 20-21, include language that constitutes a reverse false claim. Therefore, the Department's amendments to Title 17 would not be necessary. She expressed that the only part of HB 40 that would remain would be the amendment to Title 45, the criminal false claims statute. She felt that if HB 146 were to pass then the repealer should be restored.

{Tape: 3; Side: A; Approx. Time Counter: 12.8 - 16.9}

Closing by Sponsor:

REP. GALLIK informed the Committee that because HB 40 did not have the tax exemption, **REP. HARRIS** had asked **REP. GALLIK** to ask the Committee to fold in HB 40 with HB 146. This would provide for the reverse false claims with the False Claims Act and there would be no need for a repealer. He indicated that instead of using the word "civil" they would prefer to place on Page 1, Line 10, between the words "of Montana" and "false claims," "Montana civil false claims." He suggested doing this also on Page 4, Line 6, renaming the bill to "Civil Complaint by Private Citizen." He wanted to fashion the law after the federal False Claims Act since it was proven to work well. He reiterated that he wanted Page 6, Lines 12-15, deleted. He reminded the Committee that they were trying to find another tool to make sure that the taxpayers' money was properly spent and used effectively. He urged do pass for HB 146.

{Tape: 3; Side: A; Approx. Time Counter: 16.9 - 21.5}

VICE CHAIR CROMLEY closed the hearing on HB 146 and opened the hearing on HB 245.

HEARING ON HB 245

Opening Statement by Sponsor:

REP. GARY MACLAREN (R), HD 89, opened the hearing on **HB 245**, Require parental consent for body piercing of a minor.

REP. MACLAREN commented that HB 245 was a result of a constituent's request. He explained that the purpose of the bill was to add body piercing to the same regulations that govern tattooing of minors. This would simply require that the piercer verify that the minor has parental consent. He reserved the right to close.

{Tape: 3; Side: A; Approx. Time Counter: 21.5 - 23.3}

Proponents' Testimony:

Jackie Trude, Representing Eagle Forum, asserted that she was responsible for the care and protection of her children. She felt that it was her right to know about the piercing of her children. She related the story of her daughter's tongue piercing. She called the bill pro-parent and urged a do pass consideration by the Committee.

{Tape: 3; Side: A; Approx. Time Counter: 23.3 - 25.4}

Harris Himes, Representing the Montana Family Coalition, related stories from the days when he was in the Navy. He felt that if there was parental consent necessary there would not be circumstances where a teenager is under peer pressure or the influence of a drug when they get a piercing. He urged a do pass recommendation and suggested placing language in the bill to cover future evolutions of body alterations.

{Tape: 3; Side: A; Approx. Time Counter: 25.4 - 27.5}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. MACLAREN reiterated that the bill would only add body piercing to the same sections which cover tattooing. He requested a do concur.

{Tape: 3; Side: A; Approx. Time Counter: 27.5 - 28.8}

VICE CHAIR CROMLEY closed the hearing on HB 245. He opened Executive Action on HB 232.

Executive Action on HB 232

Motion/Vote: SEN. LASLOVICH moved that HB 232 BE CONCURRED IN. Motion carried unanimously by voice vote with SEN. MANGAN and SEN. WHEAT voting by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 1.9}

Executive Action on HB 354

Motion/Vote: SEN. O'NEIL moved that HB 354 BE CONCURRED IN. Motion carried unanimously by voice vote with SEN. MANGAN and SEN. WHEAT voting by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 1.9 - 3.6}

Executive Action on HB 701

Motion: SEN. LASLOVICH moved that HB 701 BE CONCURRED IN.

Discussion: SEN. AUBYN CURTISS, SD 1, FORTINE, had a question relative to Section 4, Page 2. She thought that the bill was retroactive for a long period of time. She wanted Ms. Lane to comment.

Valencia Lane, Legislative Fiscal Analyst Assistant, explained that the retroactive applicability date applied only to Section 4 of the bill. Section 4 of the bill had to do with the estate tax returns. The goal was to allow individuals whose family member died when the tax credit was still available would be able to take advantage of the credit.

{Tape: 3; Side: B; Approx. Time Counter: 3.6 - 5.3}

SEN. JESSE LASLOVICH, SD 43, ANACONDA, addressed Line 26, of Page 2. He indicated that the language "decendent dying" should be stricken and "person who died" should be added.

Ms. Lane wanted to be careful in taking out the word decendent because through the entire act, there were references to decendent.

SEN. LASLOVICH agreed but reiterated that decendent dying sounded redundant.

VICE CHAIR CROMLEY commented that if he was going to change the wording it would be changed to "decendent who died prior to."

{Tape: 3; Side: B; Approx. Time Counter: 5.3 - 7.8}

Motion/Vote: SEN. LASLOVICH moved that HB 701 BE AMENDED TO STRIKE THE WORD "DYING" AND INSERT THE WORDS "WHO DIED" ON PAGE 2, LINE 26. Motion carried unanimously by voice vote with SEN. WHEAT and SEN. MANGAN voting by proxy.

EXHIBIT (jus52a04)

Motion: SEN. SHOCKLEY moved that HB 701 BE CONCURRED IN AS AMENDED.

Discussion: SEN. SHOCKLEY commented that they might be able to strike a section of code. He wanted to know if they couldn't just remove the whole section.

Ms. Lane replied that they shouldn't do that because there were still estates open which could take advantage of the credit. She knew that the bill was requested by the State and Trust Division of the State Bar Association and they had chosen to amend it instead of repeal it. She suggested that before they repeal it, the Committee should ask the State and Trust Division about the issue.

SEN. SHOCKLEY clarified that the law that was in effect on the 31 of December, 2004, would cover the open estates.

Ms. Lane repeated that she did not know enough about the laws to answer these questions accurately.

{Tape: 3; Side: B; Approx. Time Counter: 7.8 - 11.3}

VICE CHAIR CROMLEY agreed with SEN. SHOCKLEY.

SEN. SHOCKLEY explained that Certified Public Accountants have to use the tax code in effect the year of an individual's death.

Vote: Motion carried unanimously by voice vote with SEN. WHEAT and SEN. MANGAN voting by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 11.3 - 12.3}

Ms. Lane commented that there needed to be a senator to carry the previous bills.

VICE CHAIR CROMLEY replied that HB 354 would be carried by SEN. O'NEIL and he volunteered to carry HB 701.

Executive Action on HB 598

Motion/Vote: SEN. PERRY moved that HB 598 BE CONCURRED IN. Motion carried unanimously by voice vote with SEN. WHEAT and SEN. MANGAN voting by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 12.3 - 13.6}

VICE CHAIR CROMLEY indicated that **SEN. ELLINGSON** would carry HB 598 on the Senate Floor.

Executive action on SB 493

Motion: **SEN. LASLOVICH** moved that SB 493 BE CONCURRED IN.

Discussion: **SEN. LASLOVICH** informed the Committee that SB 493 was the bill he introduced prior to transmittal that dealt with motor vehicle liability insurance. He also indicated that **SEN. SHOCKLEY'S** bill had to coordinate with SB 493.

Brenda Nordland, Representing the Department of Justice, explained what the policy question was which was prevented by the possible coordination between SB 493 and SB 205, which the Senate passed. She cited Page 3, of SB 493, Lines 9-17. The policy question she presented to the Committee was whether they wanted to do a driver's license suspension under the current law and apply it to the second or subsequent violation. She noted that the current law position as amended by SB 205 would require the suspension of the driver's license until such a time as the individual provides proof of compliance with 61-6-301. She explained that **SEN. SHOCKLEY'S** bill changed the law so that driver's license suspension would start at second offenses instead of fourth or subsequent offenses. The difference between **SEN. SHOCKLEY'S** bill and **SEN. LASLOVICH'S** was that, upon report of the second or subsequent conviction, the driver's license would be suspended and would not be reinstated until the driver produced the SR-22 showing proof of future responsibility, directly from the insurance carrier to the Motor Vehicle Division. She provided a copy of the SR-22 form and the SR-26 form.

EXHIBIT(jus52a05)

{Tape: 3; Side: B; Approx. Time Counter: 13.6 - 20.1}

SEN. SHOCKLEY inquired about the cancellation policy of the SR-22.

Ms. Nordland replied that the only way an SR-22 could be canceled is if the insurance company gave the Department of Justice at least ten days' notice of the cancellation.

SEN. SHOCKLEY thought that this would essentially accomplish what the preexisting system was already doing. He suggested killing SB 205.

Ms. Nordland remarked that it was a system that worked and the industry was comfortable with the use of the system.

SEN. SHOCKLEY offered to table his bill in the House.

{Tape: 3; Side: B; Approx. Time Counter: 20.1 - 21.4}

Motion/Vote: **SEN. LASLOVICH** moved that SB 493 BE AMENDED WITH SBO49301.ALK. Motion carried 11-1 by voice vote with **SEN. O'NEIL** voting no and **SEN. WHEAT** and **SEN. MANGAN** voting aye by proxy.

[EXHIBIT\(jus52a06\)](#)

Motion: **SEN. LASLOVICH** moved that SB 493 BE AMENDED TO INCLUDE HB038502.ALK.

[EXHIBIT\(jus52a07\)](#)

Discussion: **SEN. LASLOVICH** explained that the amendment would make the bill apply to a second or subsequent offense.

SEN. MCGEE asked if this would emulate **SEN. SHOCKLEY'S** bill.

SEN. LASLOVICH expressed that **SEN. SHOCKLEY'S** bill would have taken the license plates away, while his bill made it mandatory that on the second or subsequent offense an individual must get the SR-22 insurance.

{Tape: 3; Side: B; Approx. Time Counter: 21.4 - 24.3}

SEN. SHOCKLEY commented that SB 493 would be more workable for the industry.

Vote: Motion carried unanimously by voice vote with **SEN. WHEAT** and **SEN. MANGAN** voting by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 24.3 - 24.8}

Motion: **SEN. LASLOVICH** moved that SB 493 BE CONCURRED IN AS AMENDED.

Discussion: **SEN. O'NEIL** thought that there was a section of the Constitution which stated that a person has a right not to incriminate themselves.

SEN. LASLOVICH did not know constitutional law. He referred the question to **SEN. SHOCKLEY**.

SEN. SHOCKLEY remarked that the 5th Amendment provided that right.

SEN. O'NEIL followed up by asking where an individual had given up their right against self incrimination because according to Page 1, Line 17, an individual has to respond to a survey which asks if they have a vehicle and whether or not it is insured. He felt that they would incriminate themselves if they answered that they did have a car but did not have insurance.

SEN. MCGEE believed that the bill applied to individuals who had already been convicted of not having insurance. He thought that they were trying to follow up on individuals who have been convicted of not having insurance to make sure that they get their insurance at some later time. To him it was similar to a parole or probation period in the sense that it was part of their conviction. He did not see that there was a fifth amendment situation where they were yielding their rights.

SEN. SHOCKLEY asserted that another way of looking at this survey was: the government gets to ask the question but the individual does not have to answer.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 1.3}

SEN. O'NEIL interpreted the bill to mean that the survey would be given to individuals when they were no longer being charged with anything. He thought that if the survey was part of the sentence he would not have a problem with it. However, since they have not lost the right to self-incrimination he felt that the bill was inappropriate. He attested that if they did not have to answer the survey then there was no reason to have it in the bill.

SEN. MCGEE responded that **SEN. O'NEIL'S** supposition was that the person did not have the insurance or did not want to answer the survey. However, the bill would allow the State to ask the question. The point he wanted to make was that an individual might have bought the insurance and want to inform the State. He stressed that these individuals would not be implicating themselves.

{Tape: 4; Side: A; Approx. Time Counter: 1.3 - 3.2}

SEN. LASLOVICH agreed with **SEN. MCGEE**. He stated that this bill would allow the Department to randomly survey those convicted. He reminded the Committee that **SEN. HANSON** had carried a bill at the beginning of session which requested that all people be surveyed. He explained that they had paired this down to

encompass only those who had been convicted of driving without insurance.

SEN. PERRY wanted to know if the fiscal note was still accurate because the date on it was February 21.

SEN. LASLOVICH replied that it was no longer accurate. He expressed that the reason it had changed was the amendments which they had added during the meeting. He indicated that the amount of money entering the general fund would be decreased.

SEN. PERRY asked if the rest of the fiscal note was still accurate.

SEN. LASLOVICH thought that it would be because the rest of the fiscal note applied to the full-time-equivalents associated with the survey.

SEN. PERRY followed up by asking why Part 1 of the assumptions said SB 493 requires surveys, but Line 13 of the bill said that the Department or its agent may ask to perform a survey.

SEN. LASLOVICH did not know why the fiscal note said requires when the bill said may.

Ms. Nordland reported that the fiscal note was built off of **SEN. HANSON'S** fiscal note. She indicated that the wording was may and if the intent was must then the bill would need to be reworded.

{Tape: 4; Side: A; Approx. Time Counter: 3.2 - 7.5}

SEN. PERRY cited Line 13 of the bill. He was confused because on Line 1 of the Assumptions it stated that surveys were required of individuals who were convicted of no automobile insurance violations over the past five years.

SEN. LASLOVICH answered that in Assumption 1 of the fiscal note the wording meant convicted of not having automobile insurance, not that the individual had been convicted of no violations. He clarified that the bill stated that individuals who were convicted over the last five years could be randomly sampled by the Department and what **SEN. PERRY** was wondering about the "no" in Assumption 1 of the fiscal note.

{Tape: 4; Side: A; Approx. Time Counter: 7.5 - 11}

SEN. O'NEIL commented that he felt that the bill was harassing individuals and that the fiscal note would not be as large as expected.

Vote: Motion carried unanimously by voice vote with SEN. MANGAN and SEN. WHEAT voting aye by proxy.

{Tape: 4; Side: A; Approx. Time Counter: 11 - 12}

Executive Action on HB 216

Motion: SEN. MCGEE moved that HB 216 BE CONCURRED IN.

Discussion: SEN. MCGEE indicated that there was an amendment for the bill.

EXHIBIT(jus52a08)

SEN. MCGEE informed the Committee that on Page 2, Subsection 8, Lines 9-11, he had a question regarding the phrase "rights to earnings." He was curious if this could result in the employer of the obligor being responsible for payments. He explained what the amendment would do to the bill's language. He wanted to make sure that the records of the employer would not be subjected to scrutiny.

Ms. Lane clarified the language.

{Tape: 4; Side: A; Approx. Time Counter: 12 - 16.3}

Vote: Motion carried unanimously by voice vote with SEN. WHEAT and SEN. MANGAN voting by proxy.

{Tape: 4; Side: A; Approx. Time Counter: 16.3 - 16.6}

Motion/Vote: SEN. MCGEE moved that HB 216 BE CONCURRED IN AS AMENDED. Motion carried 11-1 by voice vote with SEN. SHOCKLEY voting no and SEN. WHEAT and SEN. MANGAN voting aye by proxy.

{Tape: 4; Side: A; Approx. Time Counter: 16.6 - 17.2}

Ms. Lane brought to the Committee's attention that HB 245 would conflict with SB 137. She indicated that SB 137 was extensive and would adopt a board to regulate body alterations. She expressed that the two bills needed to coordinate and she would not be able to coordinate them unless there was a policy decision. She suggested that a senator who was interested in either of the two bills should visit with the sponsors and determine the policy decision.

SEN. LYNDA MOSS, SD 26, BILLINGS, believed that SB 137 was SEN. LEWIS' bill from the Public Health Committee. She thought that

it would be worthwhile to visit with **SEN. LEWIS** to come forward with an alternative. She offered to meet with him in order to discuss the bill.

{Tape: 4; Side: A; Approx. Time Counter: 17.2 - 19.6}

SEN. O'NEIL wanted to know how an individual could have indirect partial ownership as it related to HB 216.

Ms. Phieffer responded that they could list out all the different types of business interests but they were trying to cover all of the possibilities of an interest in a business that might include limited liability. She indicated that they wanted an individual who had a financial interest in the business and some rights to management. She was not prepared to give the alternate scenarios.

Motion/Vote: **SEN. O'NEIL** moved to RECONSIDER THE MOTION on HB 216. Motion failed 1-11 by voice vote with **SEN. CROMLEY**, **SEN. CURTISS**, **SEN. ELLINGSON**, **SEN. LASLOVICH**, **SEN. MANGAN**, **SEN. MCGEE**, **SEN. MOSS**, **SEN. PEASE**, **SEN. PERRY**, **SEN. SHOCKLEY**, and **SEN. WHEAT** voting no with **SEN. MANGAN** and **SEN. WHEAT** voting no by proxy.

{Tape: 4; Side: A; Approx. Time Counter: 19.6 - 23.5}

ADJOURNMENT

Adjournment: 11:18 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

BRITT NELSON, Secretary

MW/mp/bn

Additional Exhibits:

EXHIBIT ([jus52aad0.PDF](#))