MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 12, 2005 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, Chairman (D)
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: None.

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: None.
Executive Action: SB 3, SB 49, SB 122, SB 111, SB 103, SB 4, SB 35, SB 84, SB 139 & SB 160

CHAIRMAN WHEAT stated that there were apparently a couple of other bills similar to SB 3 trying to do the same thing and because **SEN. LASLOVICH** had been working on amendments to the bill and not knowing what the other bills would do, it was determined that it would be best to Table SB 3 and wait for the other bills.

SEN. ELLINGSON stepped out of the meeting.

Motion/Vote: SEN. LASLOVICH moved that SB 3 BE TABLED. Motion carried 11-0 by voice vote.

EXECUTIVE ACTION ON SB 49

CONTINUATION OF EXECUTIVE ACTION FROM JANUARY 11, 2005

SEN. MCGEE reminded the Committee that they had amended the bill twice. He went on to say that they had worked out the language issues, therefore, he would like to move to strike the previous two amendments and present a new amendment which embodied the previous two amendments with the proper sentence structure.

Motion/Vote: SEN. WHEAT moved to STRIKE the previous two amendments to SB 49. Motion carried 11-0 by voice vote.

Motion: SEN. MCGEE moved that SB 49 BE AMENDED.

A copy of the new proposed amendment to SB 49 was provided to the Committee and is attached as Exhibit 1.

EXHIBIT(jus08a01)

Motion: SEN. MCGEE moved that AMENDMENT NO. SB004906.AVL DO PASS.

Discussion:

SEN. MCGEE stated that all that had been added to the bill was that if the request was oral, in writing or a private written statement, that statement could be taken to the Department and the Department would be able to respond with fact-specific information.

Valencia Lane read the appropriate section of the bill to allow the Committee to hear how the amendment would fit into the language of the bill.

SEN. MCGEE stated that he felt the amendment embodied all of his first amendment, all of **SEN. ELLINGSON'S** amendment, and the issues brought forward at the hearing the day before.

SEN. PERRY inquired as to whether or not there was a comma after the word "orally". **SEN. MCGEE** responded that there was no comma it was simply a mark on the paper.

SEN. CROMLEY further asked if there was a comma after the word "private" and if or if not the comma would change the meaning. He went on to ask what the intent was. **Valencia Lane** replied that there was no comma after "orally" so ", orally or in writing," defined public statements. She went on to say that taking the comma out after the word "private" would not make a difference. She then stated that with the comma it meant private and written.

SEN. PERRY asked **SEN. MCGEE** if it was his intent that any statements made to the news media, a member of Congress, a State Legislator or Committee would need to be written. He concluded by asking at what point a statement would need to be in writing to the news media. **SEN. MCGEE** replied that it would depend upon the situation to which the Department would be responding. He went on to say that anyone could say anything to the newspaper at any time and that there was another section in the bill that would deal with that. He then stated that what they were talking about was when the Department would have to make a fact-specific statement.

SEN. CROMLEY inquired of **SEN. MCGEE** who would make the determination as to whether or not the disclosure would be detrimental to the child. **SEN. MCGEE** responded that he believed that the Department would make that determination.

SEN. CROMLEY further asked **SEN. MCGEE** if they should make it specific that it would be determined by the Department whether or not the information would be detrimental to the child. He went on to say that his concern was that a Court or someone else later on would determine that the information was detrimental, therefore, maybe they should make it specific that it would be the Department's determination. **SEN. MCGEE** said that he would recommend that they take action on the motion and then if **SEN. CROMLEY** had a way to modify the language that they take action on that.

SEN. MANGAN asked if blanket confidentiality could legally be waived for everyone concerned by one person or was it always just the confidentiality of the person who made the statement. **CHAIRMAN WHEAT** responded that the right to confidentiality

belonged to the individual. He went on to say that in cases where there is a responsible party, such as a parent or conservator, they would be the one to protect the confidentiality of the child or person involved. He concluded that it was the individuals right to waive confidentiality and provided an example for clarity.

SEN. MANGAN questioned the intent of the bill and provided an example.

CHAIRMAN WHEAT and **SEN. MANGAN** continued to discuss the intent of SB 49.

Motion/Vote: SEN. MCGEE moved that SB 49 BE AMENDED. Motion carried unanimously by voice vote.

Motion: SEN. MCGEE moved that SB 49 DO PASS AS AMENDED.

Discussion:

SEN. CROMLEY stated that he wished to amend SB 49 by adding the words "by the Department" following the word "determined" on Line 8 of amendment number 5, item 5.

Motion: SEN. CROMLEY moved that SB 49 BE AMENDED.

Discussion:

SEN. MCGEE stated that he felt **SEN. CROMLEY'S** proposed amendment was a friendly amendment and a good idea.

Motion/Vote: SEN. CROMLEY moved that the CONCEPTUAL AMENDMENT DO PASS. Motion carried unanimously by voice vote.

Motion/Vote: SEN. MCGEE moved that SB 49 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 17.8}

EXECUTIVE ACTION ON SB 122

Motion: SEN. CROMLEY moved that SB 122 DO PASS.

CHAIRMAN WHEAT discussed the definition of transfer and the fact that no one really understood it. He went on to say that Counsel from the Auditor's Office was present to explain what was meant by the term transfer under SB 122.

Patrick M. Driscoll, Chief Legal Counsel, State Auditor's Office, Commissioner of Insurance and Securities, stated that the bill was a model act. He went on to say that the definition of transfer was the heart of the bill intent to protect people. **Mr. Driscoll** referred to Page 3, Subsection 19, and informed the Committee that it had an exception which confused the Committee. He went on to say that the term "transfer" did not include the creation of or perfection of a security interest in a structured settlement payment right under a blanket security agreement entered into with an insured depository institution. **Mr. Driscoll** stated that it was intended to deal only with exceptions to the term "transfer" in that type of transaction. He then said that the Auditor's Office would suggest that it not be amended fundamentally, however, **Ms. Lenmark's** amendment which would change the punctuation and numbering would not do any damage to the meaning of the exception to the definition. He then indicated that the other suggestions that language be stricken or the entirety of Subsection B be stricken would do serious harm to the bill. He concluded by saying that this was a very narrow exception.

Discussion:

SEN. SHOCKLEY asked **Mr. Driscoll** what happens when 19(b) applies, as the instrument had already been transferred and become part of a package. **Mr. Driscoll** replied that he believed that was correct.

Amendment SB0122001. avl was distributed to the Committee for their review and is attached as Exhibit 2.

EXHIBIT(jus08a02)

Motion: SEN. CROMLEY moved that AMENDMENT SB012201.AVL DO PASS.

Discussion:

CHAIRMAN WHEAT explained the amendment and informed the Committee that it was a simple amendment which would simply clean up the bill.

Motion/Vote: SEN. CROMLEY moved that AMENDMENT NO. SB012201.AVL DO PASS. Motion carried unanimously by voice vote.
Motion: SEN. CROMLEY moved that SB 122 DO PASS AS AMENDED.

A copy of the Amendment provided by Jacqueline Lenmark was distributed to the Committee and is attached as Exhibit 3.

EXHIBIT(jus08a03)

{Tape: 1; Side: A; Approx. Time Counter: 17.8 - 27.5}

Discussion:

SEN. SHOCKLEY stated that he was fine with the Lenmark amendment.

Motion/Vote: SEN. SHOCKLEY moved that AMENDMENT NO. SB012203.AVL DO PASS. Motion carried unanimously by voice vote.

Motion: SEN. CROMLEY moved that SB 122 DO PASS AS AMENDED.

Discussion:

SEN. ELLINGSON inquired about what was meant by a responsible administrative authority if it was a structured settlement reached prior to the filing of a lawsuit. **CHAIRMAN WHEAT** responded that he felt the responsible administrative authority would be the district court in most cases.

Motion/Vote: SEN. CROMLEY moved that SB 122 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 111

Motion: SEN. MCGEE moved that SB 111 DO PASS.

Discussion:

SEN. MCGEE stated that there was an amendment to SB 111, which was provided to the Committee, and is attached as Exhibit 4.

EXHIBIT(jus08a04)

Motion: SEN. MCGEE moved that SB 111 BE AMENDED.

Discussion:

SEN. MCGEE explained that the amendment referred to Title 37 which is the main title for licensure of professional licenses, such as surveyors and engineers. He then read the proposed amendment.

SEN. SHOCKLEY stated that he supported the amendment.

SEN. PERRY asked **SEN. MCGEE** if his purpose in the amendment was to narrow the scope of the bill and eliminate some other categories which were on the original laundry list. **SEN. MCGEE** stated that he was trying to clarify to a greater degree that people who are licensed in the State of Montana to do certain types of work are experts in those fields and are competent to be able to discuss law as it applies to their profession. He went on to say that the amendment did narrow the scope of the bill.

CHAIRMAN WHEAT gave an example to clarify the reason the bill was before the Committee.

SEN. O'NEIL gave his reason for bringing the bill forward.

SEN. CROMLEY explained his problems with the amendment and the bill.

Substitute Motion/Vote: **SEN. CROMLEY made a substitute motion that SB 111 BE TABLED. Substitute motion carried 8-4 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL and SEN. SHOCKLEY voting no.**

{Tape: 1; Side: B; Approx. Time Counter: 0 - 20.3}

EXECUTIVE ACTION ON SB 103

Motion: **SEN. CROMLEY moved that SB 103 DO PASS.**

Discussion:

SEN. CROMLEY stated that the bill was specifically directed at the prohibition of enterprises and was the desire of the Department of Justice. He continued saying there were no amendments for the bill.

SEN. MCGEE indicated that he had problems with the bill. He went on to say that he believed that the bill was unconstitutional and that there was no way to enforce it. He concluded saying that it was in violation of the right to privacy.

{Tape: 1; Side: B; Approx. Time Counter: 20.3 - 24.4}
{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.5}

SEN. MANGAN stated that he concurred with **SEN. MCGEE.**

Substitute Motion/Vote: SEN. MCGEE made a substitute motion that SB 103 BE TABLED. Substitute motion carried 10-2 by roll call vote with SEN. CROMLEY and SEN. ELLINGSON voting no.

{Tape: 2; Side: A; Approx. Time Counter: 1.5 - 3.3}

EXECUTIVE ACTION ON SB 4

Motion: SEN. MANGAN moved that SB 4 DO PASS.

Discussion:

SEN. O'NEIL stated that the bill would put more liability on an organizer or sponsor of a sport and explained why he felt that way.

SEN. MCGEE asked **CHAIRMAN WHEAT** if he felt it would be prudent to get some sort of acknowledgment of the inherent risks. He then asked if the document would be of use should a case be brought and end up in Court. **CHAIRMAN WHEAT** replied that if there were a lawsuit and there was a disclosure of the possible inherent risks and an individual had signed off on that disclosure, it could be a significant issue in the case. He went on to say he felt it would be prudent for the organizer or sponsor to explain the possible risks involved. **CHAIRMAN WHEAT** indicated that these kinds of bills could create problems because individual duties could be watered down and take away their responsibility to protect people to the best of their ability.

SEN. MANGAN stated that he believed there was a need for a bill like this. He went on to say that he felt that SB 4 was too vague, therefore, he could not support it as written.

SEN. MOSS stated that she supported **SEN. MANGAN'S** observations. She spoke about HB 61 sponsored by **REP. BROWN** which was similar to this bill, so there could be an opportunity to work on some amendments and bring the bill back at a later date.

Substitute Motion/Vote: SEN. WHEAT made a substitute motion that SB 4 BE TABLED. Substitute motion carried 11-1 with SEN. CURTISS voting no by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 3.3 - 12.5}

EXECUTIVE ACTION ON SB 35

Motion: **SEN. CROMLEY moved that SB 35 DO PASS.**

Discussion:

It was determined that the Fiscal Note had not been received, therefore, Executive Action could not be taken.

SEN. CROMLEY withdrew his DO PASS Motion.

EXECUTIVE ACTION ON SB 84

Motion: **SEN. CROMLEY moved that SB 84 DO PASS.**

Discussion:

SEN. CROMLEY stated that his question regarding permanently disabling slot machines had been resolved.

CHAIRMAN WHEAT talked about an e-mail he had received and that part of the bill which would allow a machine to be shipped into the State for testing and then shipped back out, and the fact that he liked that particular section of the bill.

Motion/Vote: **SEN. CROMLEY moved that SB 84 DO PASS. Motion carried 11-1 with SEN. MCGEE voting no by voice vote.**

{Tape: 2; Side: A; Approx. Time Counter: 12.5 - 16.2}

EXECUTIVE ACTION ON SB 139

Motion: **SEN. CROMLEY moved that SB 139 DO PASS.**

Discussion:

Amendments to SB 139 were passed out to the Committee and are attached as Exhibit 5.

EXHIBIT(jus08a05)

Motion: **SEN. O'NEIL moved that SB 139 BE AMENDED.**

Discussion:

SEN. O'NEIL explained the amendment would add one more criteria for a change in a child support order and explained how the change would work.

Motion/Vote: SEN. O'NEIL moved that AMENDMENT NO. SB013901.AVL DO PASS. Motion carried unanimously by voice vote.

Motion/Vote: SEN. CROMLEY moved that SB 139 DO PASS AS AMENDED. Motion carried 11-1 with SEN. SHOCKLEY voting no by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 16.2 - 21}

EXECUTIVE ACTION ON SB 160

Motion/Vote: SEN. CROMLEY moved that SB 160 DO PASS. Motion carried 8-4 with SEN. O'NEIL, SEN. SHOCKLEY, SEN. CURTISS and SEN. MCGEE voting no by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 21 - 22.5}

ADJOURNMENT

Adjournment: 10:15 A.M.

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SEN. MIKE WHEAT, Chairman

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MARI PREWETT, Secretary

Additional Exhibits:

EXHIBIT(jus08aad0.PDF)