Montana State Legislature

2015 SESSION

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[Signed by Chairman]

Roll Call

Standing Committee Reports

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***Any other documents, which were submitted after the committee hearing has ended and/or was submitted late [within 48 hours], regarding information in the committee hearing.**

***Witness Statements that were not presented as exhibits.**

BUSINESS REPORT

MONTANA SENATE
64th LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Tuesday, February 17, 2015
Place: Capitol

Time: 9:00 AM
Room: 303

BILLS and RESOLUTIONS HEARD:

HB 186 - Revise laws related to protecting victims of sexual offenses - Rep. Carolyn Pease-Lopez
HB 232 - Generally revise laws related to identity theft - Rep. Kimberly Dudik
SB 253 - Provide for uniform act for powers of appointment for estate planning - Sen. Mary McNally
SB 266 - Provide for uniform act regarding fiduciary access to digital assets - Sen. Mary McNally
SB 291 - Revise laws on use of seatbelts and child safety restraints; primary enforcement - Sen. Bradley Hamlett

EXECUTIVE ACTION TAKEN:

HB 12-Be Concurred in As Amended
HB 19-Be Concurred In
HB 43-Be Concurred In
HB 88-Be Concurred In
HB 133-Be Concurred In
SB 224-Do Pass As Amended

Comments:

SEN. Scott Sales, Chair

MONTANA STATE SENATE

2015 JUDICIARY COMMITTEE

ROLL CALL

DATE: 2/17/15

NAME	PRESENT	ABSENT/ EXCUSED
CHAIRMAN, SENATOR SCOTT SALES	✓	
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	✓	
SENATOR DIANE SANDS	✓	
SENATOR ROBYN DRISCOLL	✓	
SENATOR KRISTEN HANSEN		✓
SENATOR JEDEDIAH HINKLE	✓	
SENATOR DOUG KARY	✓	
SENATOR CLIFF LARSEN	✓	
SENATOR MARY MCNALLY	✓	
SENATOR MARY SHEEHY MOE	✓	
SENATOR NELS SWANDAL	✓	
SENATOR CHAS VINCENT	✓	

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SENATE STANDING COMMITTEE REPORT

Madame President:

We, your committee on **Judiciary** report that **House Bill 12** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Senator Scott Sales, Chair

To be carried by Senator Nels Swandal

And, that such amendments read:

1. Page 1, line 10 through page 3, line 12.
Strike: everything after the enacting clause
Insert: "Section 1. Section 40-4-108, MCA, is amended to read:
"40-4-108. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree that dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of the court shall give notice of the entry of a decree of dissolution:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered, who shall enter the fact of dissolution in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that the official enter the fact of dissolution in the appropriate record.

(4) (a) The parties to a dissolution or legal separation may

Committee Vote:
Yes 11, No 1
Fiscal Note Required __

HB0012001SC16524.spt

request entry of a decree of dissolution or legal separation without a hearing by filing joint or individual affidavits with the court.

(b) The court may enter a decree of dissolution or legal separation without a hearing when:

(i) the affidavit sets forth a prima facie case that the parties have reached a voluntary resolution of all matters related to the dissolution or legal separation and consent to entry of the decree by affidavit in lieu of a hearing; and

(ii) it appears to the court that:

(A) the jurisdictional requirements of 40-4-104 exist;

(B) the parties have complied with the financial disclosure provisions of 40-4-252 through 40-4-254 or 40-4-257;

(C) a separation agreement, as provided for in 40-4-201(1), containing provisions for disposition of any property owned by either or both parties, distribution of any debts owed by either or both parties, maintenance of either party, and support, parenting, and parental contact with any minor children of the parties has been filed with the court prior to or concurrently with the affidavit;

(D) the affidavit includes a proposed decree; and

(E) the party filing the affidavit waives the right to appear personally in court to present testimony as to any matters and requests the court to enter a decree without a hearing.

(c) Regardless of compliance with the affidavit requirements of subsection (4)(b), the court may require a hearing for any reason the court considers necessary.

(d) If all parties in the action have submitted affidavits for dissolution of marriage or legal separation without a hearing and the court determines that entry of a decree is appropriate, the court may enter the decree without hearing.

~~(4)~~(5) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order the wife's maiden name or a former name restored.""

Insert: "NEW SECTION. **Section 2. Applicability.** [This act] applies to dissolution cases filed on or after October 1, 2015."

- END -

SENATE STANDING COMMITTEE REPORT

February 17, 2015

Madame President:

We, your committee on **Judiciary** report that **House Bill 19** (third reading copy -- blue) **be concurred in.**

Signed: _____
Senator Scott Sales, Chair

To be carried by Senator Mary Sheehy Moe

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required __

HB0019001SC16522.spt

SENATE STANDING COMMITTEE REPORT

Madame President:

We, your committee on **Judiciary** report that **House Bill 43** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Scott Sales, Chair

To be carried by Senator Mary McNally

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required __

HB0043001SC12607.spt

SENATE STANDING COMMITTEE REPORT

February 17, 2015

Madame President:

We, your committee on **Judiciary** report that **House Bill 88** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Scott Sales, Chair

To be carried by Senator Diane Sands

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required X

HB0088001SC13941.spt

SENATE STANDING COMMITTEE REPORT

February 17, 2015

Madame President:

We, your committee on **Judiciary** report that **House Bill 133** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Scott Sales, Chair

To be carried by Senator Robyn Driscoll

- END -

Committee Vote:
Yes 7, No 4
Fiscal Note Required X

HB0133002SC12924.spt

SENATE STANDING COMMITTEE REPORT

Madame President:

We, your committee on **Judiciary** report that **Senate Bill 224** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Scott Sales, Chair

And, that such amendments read:

1. Page 1, line 19.
Strike: "two"
Insert: "one"
Strike: "judges"
Insert: "judge"

2. Page 1, line 24.
Strike: subsection (iii) in its entirety
Renumber: subsequent subsections

3. Page 1, line 25.
Following: "sheriff"
Insert: "or chief of police"

4. Page 1, line 26 through line 27.
Strike: subsection (v) through subsection (vi) in their entirety
Renumber: subsequent subsections

5. Page 1, line 30.
Strike: "seven"
Insert: "two"
Strike: "including"
Insert: "to be selected from the following list"

Committee Vote:
Yes 11, No 1
Fiscal Note Required X

SB0224001SC.spt

6. Page 2, line 11.
Following: line 11
Insert: "(6) Decisions of the commission must be made by majority vote of the commission members."

- END -

MONTANA STATE SENATE
ROLL CALL VOTE
2015 JUDICIARY COMMITTEE

DATE 2/17/15 BILL NO HB133 MOTION NO. 1

MOTION: Be concurred in

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR CHAS VINCENT		—	—
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—		
SENATOR DIANE SANDS	—		
SENATOR CLIFF LARSEN	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR MARY MCNALLY	—		
SENATOR MARY SHEEHY MOE	—		
SENATOR KRISTEN HANSEN			—
SENATOR JEDEDIAH HINKLE		—	
SENATOR DOUG KARY		—	
SENATOR NELS SWANDAL	—		
CHAIRMAN, SENATOR SCOTT SALES		—	

7/4

SENATE PROXY

I, Senator CHAS VINCENT, hereby authorize Senator Scott Sales to vote my proxy before the Senate JUDICIARY meeting held on 2/17, 2015.

Chas Vincent
Senator Signature (Sen. Vincent)

2/17/15
Date

Said authorization is as follows: *(mark only one)*

- [x] All votes, including amendments.
- [ ] All votes as directed below on the listed bills, and all other votes.
- [ ] Votes only as directed below.

Bill No./Amendment No.	Aye	No
HB12 - ~~Be Concur In~~		
" " amend	X	
" " Be Concur As Amend	X	
HB19 - Be Concur In	X	
HB43 - Be Concur In	X	
HB 88 Be Concur In	X	
HB33 - Be Concur In		X
~~HB~~ 224 - amend	X	
" " - Do Pass As Amend	X	

SENATE PROXY

I, Senator K. Hansen, hereby authorize Senator J. Fielder to vote my proxy before the Senate meeting held on 2/17, 2015.

Senator Signature

2/17/15
Date

Said authorization is as follows: *(mark only one)*

- [x] All votes, including amendments.
- [ ] All votes as directed below on the listed bills, and all other votes.
- [ ] Votes only as directed below.

Bill No./Amendment No.	Aye	No
HB 12 ~~[illegible]~~		
" " amend	X	
" " Be Conc as amend	X	
HB 19 - Be Concur	X	
HB 43 Be Concur	X	
HB 88 Be Concur	X	
HB 133 - Be Concur	Excused	
SB 224 - amend	X	
" " - Do Pass as Amend	X	

SENATE PROXY

I, Senator ROBYN DRISCOLL _____, hereby authorize Senator _____ to vote my proxy before the Senate JUDICIARY meeting held on 2/17, 2015.

R. Driscoll
Senator Signature (Sen. Driscoll)

2/17/15
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No
HB12 - ~~[illegible]~~ amendment	1	

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, February 17, 2015
HB 186 - Revise laws related to protecting victims of sexual offenses
Sponsor: **Rep. Carolyn Pease-Lopez**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
ADRIENNE SLAUGHTER	DEPT. OF CORRECTIONS	✓		
Robin Turner	MCADSV	✓		
Dan Guzynski	MT Dept of Justice	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, February 17, 2015
HB 232 - Generally revise laws related to identity theft
Sponsor: **Rep. Kimberly Dudik**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Bryan Lockerby	DCI / DOJ	✓		
Donya Parrish	MT Credit Unions	✓		
Sarah Corbally	DPHHS-CFSD	✓		
Amie Grmoustez	MT Bankers Asso	✓		
Lora Adams		✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, February 17, 2015
SB 291 - Revise laws on use of seatbelts and child safety restraints; primary enforcement
Sponsor: **Sen. Bradley Hamlett**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Mike Tooley	MDT	✓		
Dwight Easton	Farmers Ins	✓		
Art Collins	Association MT Troopers	✓		
Kathy Myers	DPHHS	✓		
Jim DeTienne	DPHHS	✓		
Anna O'Donnell	AAA	✓		
Bruce Knudson	MT Hosp	✓		
Frank Stang	MCM	✓		
Brad Von Bergen	Billings Clinic	✓		
Michael Englehart, MD	Billings Clinic	✓		
WEBB BROWN	MT CHAMBER	✓		
Mike Foster	Catholic Hospitals	✓		
Al Smith	MTLA	✓		
Greg Jude	[illegible]	✓		
Jessica Luther	MHA/MCA	X		
Bill Warden	Benefis, St. Pete's, Boz Deac	✓		
Lora Nix	MPHA, AMPHO	✓		
Ed BARTLETT	CITY OF BILLINGS	X		
Erin McGowan	AMPHO, MPHA	✓		
Mona Jamison	GM	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, February 17, 2015
SB 253 - Provide for uniform act for powers of appointment for estate planning
Sponsor: **Sen. Mary McNally**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Chuck Willey	BETTR Sec'n of Bar	X		
Don McLean	State Bar BETTR Section	X		
Hanna Warhank	BETTR Section of Bar	X		
Jonathan Byington	Uniform Law Commission	X		
Derek Williams	BETTR Section State Bar	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Tuesday, February 17, 2015
SB 266 - Provide for uniform act regarding fiduciary access to digital assets
Sponsor: **Sen. Mary McNally**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Victoria Blachly	ULC	✓		
Rick Williams	State Bar BETTR Sect.	✓		
Dan McLean	State Bar of MT Better Sect	✓		
Jonathan Byington	Uniform Law Commission	✓		
Darya Parrish	MT Credit Union	✓		
Amee Grmoljez	MT Bankers Assoc	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

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Senator Mary McNally
Montana State Senate
PO Box 20050
Helena, MT 59620-0500

February 13, 2015

Re: Support for Uniform Fiduciary Access to Digital Assets Act (UFDAA"), Senate Bill 266.

Dear Senator McNally and members of the Montana Senate:

I have represented fiduciaries involved in administering assets in estates, in trusts and conservatorships and guardianships for over 30 years in Montana.

I am the current Vice Chair of the American Bar Association's Section on Real Property, Trust and Estate Law and will be its section chair in 2016 to 2017. I write this letter in my private capacity as an experienced trust and estates lawyer and as past chair of the Montana State Bar Association's Business, Estates Taxes, Trusts and Real Estate Committee (BETTR).

Montana should join other states in enacting the UFADAA because a predictable set of rules for a personal representative's or other fiduciary's access to digital assets after an account owner's death or incapacity is vital for estate administration in the information age and there needs to be a uniform set of laws in this area which crosses so many state lines. Here are a set of specific reasons for SB 266's enactment:

A. ***UFADAA gives account holders control.*** UFADAA allows account holders to specify whether their digital assets should be preserved, distributed to heirs, or destroyed.

B. ***UFADAA treats digital assets like all other assets.*** If a fiduciary has the legal authority to inventory and dispose of all of a person's documents, it should not matter whether those documents are printed on paper, stored on a personal computer, or stored in the cloud. UFADAA provides a fiduciary with access to both tangible and digital property.

C. ***UFADAA provides rules for four common types of fiduciaries.*** The executor of a decedent's estate may have responsibilities altogether different from those of an agent under a living person's power of attorney. UFADAA provides appropriate default rules governing access for executors, agents, conservators, and trustees.

D. ***UFADAA protects custodians and copyright holders.*** Under UFADAA, fiduciaries must provide proof of their authority in the form of a certified document. Custodians of digital assets that comply with a fiduciary's apparently authorized request for access are immune from any liability. A fiduciary's authority over digital assets is limited by federal law, including the Copyright Act and the Electronic Communications Privacy Act.

E. ***UFADAA provides efficient uniformity for all concerned.*** Digital assets travel across state lines nearly instantaneously. In our modern mobile society, people relocate more often than ever. Because state law governs fiduciaries, a uniform law ensures that, regardless of the state, fiduciaries will have equal access to digital assets and custodians will benefit from uniform regulation.

I hope that the Montana Legislature and this committee will give a favorable vote on Senate Bill 266.

Very Truly Yours,

s/ David J. Dietrich

David J. Dietrich