

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY**

**Call to Order:** By **CHAIRMAN AL BISHOP**, on January 8, 1999,  
at 3:00 P.M., in Room 410 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Al Bishop, Chairman (R)  
Sen. Fred Thomas, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Dale Berry (R)  
Sen. John C. Bohlinger (R)  
Sen. Chris Christiaens (D)  
Sen. Bob DePratu (R)  
Sen. Dorothy Eck (D)  
Sen. Eve Franklin (D)  
Sen. Duane Grimes (R)  
Sen. Don Hargrove (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Susan Fox, Legislative Branch  
Martha McGee, Committee Secretary

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: **SB 30, SB 36, SB 76**, 12/28/98  
Executive Action:

**CHAIRMAN AL BISHOP** called the meeting to order and stated that he  
would like to tailor the conduct of the Senate Public Health,  
Welfare and Safety Committee to the handout he presented.

**EXHIBIT (ph**  
**s05a01)**

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**CHAIRMAN AL BISHOP** stated we do have something in there and if not we'll get it. He also asked the Committee members to be sure to notify the Secretary if they are going to be absent. If they are in another hearing on another Bill, to be sure to tell the Secretary where they will be so she can send a page when their bill comes to the floor. Also, all amendments must be in writing and given to the Secretary and ready for Executive Action on bill. He asked if there were questions from the Committee.

**Questions from the Committee Members and Responses:**

**SENATOR GRIMES** said he had a question regarding Executive Session see #2 in the handout, which basically says that the bills will be left open at the Chairman's discretion, and asked if a Committee member was absent how it should be handled.

**CHAIRMAN BISHOP** stated the bill would be open for 24 hours or until the next day. Be sure to leave in writing your vote on a specific bill, or they can indicate a vote by proxy in writing.

**HEARING ON SB 36**

**Sponsor:** SEN. BOB KEENAN, SD 38, Big Fork

**Proponents:** Dr. Jay Erickson, M.D., Medical Director,  
Shepherd's Hand Free Clinic, Flathead Valley  
Lt. Monte Jones, Commander Salvation Army,  
Kalispell  
Sue Weingartner, Montana Optometric and  
Montana Pediatric Associations  
Jim Ahrens, Montana Hospital Association  
Steve Staneart, Touch of Grace Free Clinic,  
Kalispell  
Sami Butler, Montana Nurses' Association  
Senator John Bohlinger, SD 7, Billings  
Jerry Loendorf, Representing MMA,  
Montana Medical Association  
Theresa Dougherty, Registered Dental Hygienist  
Legislative Representative,  
Montana Dental Hygiene Association  
Cynthia Burke, Private Citizen

**Opponents:** Al Smith, Executive Director,  
Montana Trial Lawyers Association

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**Opening Statement by Sponsor:**

**SEN. KEENAN, SD 38, Big Fork**, said he hadn't had a lot of communication from the public on **SB 36**, however, many people are experts on this particular issue. **Senate Bill 36** is a statute that went into place on April 22, 1997, to limit the liability for dentists and free medical clinics. What he is doing is amending the statute to include medical practitioners. When he was studying to present the bill, in his mind, medical practitioner, meant the family doctor, but it is much more inclusive. Montana state statute **37-2-101** includes medicine and dentistry. The bill is awkwardly drafted and it may be something that the Committee would want to look at changing if it gets to that stage. This is expanding the statute to include medical practitioner.

**CHAIRMAN AL BISHOP** stated Susan Fox would take a look at it and make recommendations.

**Senator Keenan:** Thanked the Committee and said he concluded his opening remarks.

**Proponents' Testimony:**

**Dr. Jay Erickson, M.D., Medical Director Shepherd's Hand Clinic Flathead Valley**, spoke in support of **SB 36**, presented written testimony, and included an informational brochure.

**EXHIBIT (phs05a02) EXH****IBIT (phs05a03)**

**Lt. Monte Jones**, commanding officer of the **Salvation Army**, in **Kalispell**, said in the last year he has had the joy of being a part of the Touch of Grace Free Clinic. The Touch of Grace Free Clinic provides access to doctors and nurses for the uninsured. They are averaging about 100 people a month and they provide health services for those who have no medical benefits. No one is ever turned away from the clinic the very first time they come to see them. If the client is not eligible, they are still seen and then connected with other agencies that can help them, i.e., Medicare, Medicaid, or some other type of assistance.

The current law doesn't cover them, it is only fair to protect them just as other doctors are protected. These doctors and nurses are professional people who are willing to give of their personal time and education to help others. They could be at home with family and friends, but instead make a conscious choice

to help in a non-selfish way in their communities. It is felt that the least we can do is to support them by passing this addition to the current law.

Their type of programs, the Touch of Grace Program, the Shepherd's Hand Program and many people whose health depends on this type of legislation, is in the Committee's members hands.

**EXHIBIT (ph)**

**s05a04)**

**Sue Weingartner, Executive Director, Montana Optometric**

**Association** said they represent 130 optometrists that provide primary eye care services in 63 Montana communities. They too have a charitable program. Since 1991, their members have provided free eye examinations, and eye glasses to low-income working Montanans who need eye health and vision services, but who have no means of obtaining them.

Between 1991 and 1997 their members provided 949 free exams and 633 pairs of eyeglasses. This year 42 of our members have volunteered to participate in the Vision, USA Program. It too is like some of the other programs she has heard about today, and was designed to catch people who fall between the cracks of government and private health care and have no medical insurance. In addition many of our members also work with their local Lions clubs in providing free exams and eyeglasses. They think this is an appropriate public policy and urge the Committee's support of **SB 36**.

**JIM AHRENS, representing the MHA (Montana Health Care Providers, or the Montana Hospital Association).** He stated that the MHA supports this bill and urges the Committee's support.

**STEVE STANEARTS, Director, Salvation Army Community Center, Kalispell, MT and Administrator of the Touch of Grace Clinic,** said he wanted to tell the Committee a story. He said telling a story will "put a healing face on what has already been stated" regarding a man named Fred.

Fred is in his early twenties and has a barely over the minimum wage job that he goes to every single day and works very hard at for he and his family. Fred had two in-grown toe nails. He stated that now that may not seem like a big thing when you first think about it but the fact was that Fred could not walk across the room without severe pain and was in danger of losing his job. Fred was seen throughout our clinic and was referred to a Podiatrist to cure his toenail problem and was able to keep his job and provide for his family.

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Without clinics such as Touch of Grace and without doctors providing their service *pro bono* they can't help people like Fred. The trial lawyers will argue that even the poorest deserve protection under the law and that's why they'll argue against this bill. He stated that if this bill doesn't pass and if even one lawsuit comes before us even if it's a frivolous lawsuit that never goes to court, it will put such a shock wave in the medical community, they will not be willing to volunteer their time on the scale that is needed and they are needed to volunteer their time.

They have over 90 volunteers that work with our clinic and they need all 90 of them. They're at capacity every single week. So he wanted to encourage passing of the Bill as he stated without this bill they would be in danger of closing and it's worth every single patient that they see and this bill would protect the clinic and keep them working. He thanked the committee and provided an informational brochure about their services.

**Sami Butler representing Montana Nurses Association**, said she wanted the Committee to know that in the interest of time, she is stating that the Montana Nurses Association supports **SB 36**.

**SEN. JOHN BOHLINGER** said he represents the good people from **SD 7**. He was the person last session who brought forward the bill that provided immunity to dentists from law suits who provided pro bono work or charity work to our poor. He stated during the last two years the Deering Clinic in Billings, where the poor in his community receive care, have benefitted greatly from this experience. At the last session the Trial Lawyers Association did not come forward and oppose the bill. He was not sure whether they were going to come forward today and oppose the bill. They recognized the need for charity work. This does not excuse a professional person from derelict of duty. He can't come to the clinic and think he's going to perform these tasks if he's drunk or incapacitated in any way so there's some assurance here that these people will act and behave in a professional way. I would encourage the Committee to do the right thing, bring this bill forward, so that charity work can be provided for other members of our medical community.

**Jerry Loendorf, Representing MMA, Montana Medical Association**, said they concur in the testimony given that health care providers should be encouraged to provide services free of charge to people who need their services. As **SEN. BOHLINGER** just alluded to this is only a partial grant of immunity not a complete grant of immunity. He thinks it will go a long way to help retired physicians and other providers to be able to provide

their services to those people who would not otherwise receive healthcare services.

**SENATOR AL BISHOP** reminded everyone to sign the witness registered.

**Theresa Dougherty, Registered Dental Hygienist and Legislative Representative for the Montana Registered Dental Hygienist Association** said they concur with the testimony given today. They would like to offer an amendment to include dental hygienists in three separate lines of Section 27-1-736 of Montana annotated codes. They have spoken with **SEN. KEENAN** about the amendment.

In the definition of a medical practitioner, dental hygienist is not included in that portion of the Montana annotated codes. They would like to be included in this limited liability because dental hygienists should be able to provide services in charitable clinics. There are dental hygienists that are doing that and would like to continue. The periodontal services that we provide, unfortunately are very much a part of malpractice suits. She submitted copies of her written testimony and proposed amendments.

**EXHIBIT (phs05a05) EXH**

**IBIT (phs05a06)**

**Cynthia Burke** said it is a good bill and she supports it because malpractice insurance gets in the way of good surgeons telling the truth to patients. She goes to the Mayo Clinic now. She has had four surgeries on my leg, she should have had only one or two. At the Mayo Clinic, they put you first and it is free if necessary. Malpractice insurance is awful, for good surgeons who can't tell the truth because they're scared.

**Opponents' Testimony:**

**Al Smith, Representing the Montana Trial Lawyers Association** said he has a prepared statement to hand out to the Committee providing information. He spoke to **SEN. BOHLINGER** and with apology he said they the Montana Trial Lawyers Association opposes the bill at this time.

**EXHIBIT (phs05a07)**

**SEN. JOHN BOHLINGER** said, "it surprises him."

**Al Smith**, replied, it's not because it's not doing good work. They understand that it's doing good work. They applaud that

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good work that's being done. Some of them may know that attorney's do the same type of thing. We have what's called a pro bono program. They are expected to volunteer our time to help the members of our community who cannot afford our legal services. They don't have a gratuity for doing it and we don't expect it. They are professionals and they understand that is their job. They should do their job to the best of their abilities to their professional standards, whether it's for a fee or whether it's for free. That's the way they think it should be working here.

However there are some laudable things that are addressed by the speakers that unfortunately aren't what the bill says. One of the things that we heard was that this would attract retired doctors to be able to volunteer their time for these clinics. Nowhere in the bill does it say that immunity is granted just for retired doctors. It's for everybody. The doctor's that are currently volunteering their time, he assumes have malpractice insurance. That malpractice insurance covers them whether they're working in a free clinic, in their own office, or in the hospital. Anybody if they are doing surgery, and he doesn't know of a hospital in the state that doesn't require that surgeon to carry malpractice insurance in order to operate in that hospital. The liability insurance is already there for those doctors who are actively practicing. He doesn't see anything in the bill that limits it so that it is just for retired physicians.

He said to **SEN. BOHLINGER**, when they brought this bill to the last Legislative Session that was the impetus also. It was retired dentists that they were going to do this with.

They don't think that immunity is a good idea anywhere you go, because poor people should be able to have access, of course. But if you are going to do it, limit it to where the need is at. If folks already have liability insurance, they're paying the premium, they don't get a reduction in the premium for doing this volunteer service, and they don't get an increase in their premium for doing this volunteer service. It is already there. It is being paid for and should be available for use of people that may be harmed.

One of the things to look at is there are a number of states that have statutes similar to this. Most of those states have a requirement that if charitable care is going to be given to someone and there is this immunity, then there needs to be some written notice (waiver acknowledgment), that the patient signs before they accept care. This tells them up front, that this is care for a charitable purpose and the doctor is not going to be liable for any negligence that may occur in this case. Again, there's nothing like this that restricts it here. One of the

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things to look at is what is the definition of a charitable purpose. Their members have had cases already where there is no immunity now. They've had cases where doctor's have argued.."but I didn't charge them." Is it a charitable purpose after a procedure is done and unfortunately something goes wrong. It's like "well, I didn't charge..I'm not going to send a bill, therefore it's charitable purpose and I get immunity." He said there's no definition in the statute that would tell us, or give any guidance that would tell us where would we go with this.

They applaud the efforts that are being made by these two clinics and he thinks it's laudable that professionals are working in the community and bringing other persons in the community together to meet a very, very dire need. But that doesn't mean just because they're poor and need this free help that they should also have the doors of the courthouse slammed in their face if for some reason something has happened to one of them.

He would use the example that was given by **Steve Stanearts**. If they take the example of Fred with the ingrown toenails, he needed to have help in order to continue working. But if in the course of that help he maybe have somehow developed an infection that somehow was the result of negligent care and he therefore had to have his feet amputated, he's no longer working either. He loses that American dream that's gone wrong. He's going to be somebody again, that can't work, can't pay his bills, and can't support his family.

They urge that the Committee take a close look at this bill. If there are any questions they will certainly be willing to answer those. If there is anything the Committee would like them to work on as far as amendments, they'd certainly be willing to do that also.

**Questions from Committee Members and Responses:**

**SEN. DUANE GRIMES** asked **SEN. KEENAN** if they were specific enough in the bill and if it really describes what was presented in the testimony. Is it his intent to provide immunity for those who offer care or assistance in a facility such as the one described in Kalispell, or for any portions of their care that they might provide that they don't get reimbursed for that is charitable in some fashion? He said he was just curious if that distinction was ever discussed?

**SEN. BOB KEENAN**, answered it was his understanding of the bill, that it was for the free health clinics, not the charitable work that would be done in a professional location.

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**SEN. GRIMES** remarked to **SEN. KEENAN**, then he would not be opposed to an amendment to clarify that.

**SEN. EVE FRANKLIN** said she had a question for the staff that could be answered later and followed up. In the new language, "except for reimbursement, is not liable for civil damages or acts or omissions other than damages occasioned by gross negligence or willful wanton acts of omission", that is qualified? As she reads it, is it or isn't it? She doesn't know if that's a question for the sponsor, or if it would be a staff question. She will just hold on this question and maybe it is something they can talk about in Executive Session. It doesn't seem to be blanket immunity entirely. She doesn't know if she is reading it correctly, and she needs a bit of help before she makes a decision. The parameters seem to permit liability for what is considered under the law to be gross negligence. That is some information she'd need to have.

**SEN. DEPRATU** said he had a question for **Dr. Jay Erickson, M.D.** He is from my community and the Shepherd's Hand Clinic has been an exceptional example in his community. He and his wife have been the ones who have really promoted it and they are the people who have got it going. The way he understands the Clinic works is that they see people there on a Monday night, but they may have to be referred back to their regular clinic because the equipment is in Whitefish. They meet in the Lutheran Church which really doesn't have a lot of medical facilities or equipment there. Then sometimes later in the week, they have to take the patient back to his clinic, and either refer them to North Valley Hospital, or to a specialist that would operate under the normal medical parameters in a medical facility...is that not correct?

**Dr. Jay Erickson, M.D.** answered that is right. They see patients and as **SEN. DEPRATU** mentioned. They operate out of the Lutheran Church. They have two Pastor's offices where they set up examination rooms. They set them up and take them down each Monday evening. Their waiting room is the parish hall. They report out about 14 percent of their patients. They are referred either back to our own offices or to our specialty colleagues offices. For example he just did a flexible sigmoidoscopy on a patient that was referred from the Shepherd's Hand Clinic. He'll see patients with more complicated medical conditions such as ongoing diabetes and such that is just difficult to do at our free clinic location.

As **SEN. DEPRATU** stated, they have a number of subspecialists that have again given us a number of surgeries, skin cancers, breast

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biopsies, mastectomies, and the list goes on and on. They would like coverage for those subspecialists when they refer those patients out. He thinks that's very important. Again they all have coverage, but the minute one of our referral colleagues has a law suit from one of our Shepherd's Hand Clinic patients, that is the beginning of the end for the clinic. He'd like to go back to the patient with the ingrown toenails. Certainly, complications happen and he lives the threat every day of the malpractice case. He's been in practice for nine years and he hasn't had any.

However, he has colleagues that have had close cases, and it scares them. It's a terrible, terrible thing to undergo. All of us practice to the best of our abilities. That podiatrist practiced to the best of his abilities...he's given this guy a chance to walk again without pain. Complications happen. He could have an infection, but if their clinic isn't around, treatment would not even be a possibility. Let's give this bill a chance.

**SEN. DEPRATU** asked **Dr. Jay Erickson**, the way he understood it, the amendment would be going against the intent of what they need, is that correct?

**Dr. Jay Erickson** answered, exactly. They need coverage for our specialty colleagues or else they are limiting their scope of practice in what they can offer their patients.

**SEN. CHRIS CHRISTAENS** asked **Dr. Erickson**, when he come in for services at his clinic, is he finding any statement now regarding waiver of liability, responsibility, or what is the process now for a patient who comes in for services?

**Dr. Jay Erickson** answered, all patients that come in are met by a greeter and then they are sent to one of their intake persons. Their intake personnel basically gain demographic information, income information and medical information from their patients.

Basically they inform them as indicated in the brochure he made available to the Committee members. They inform them that this is a free clinic and they do not expect reimbursement for their services, but would love to have them donate to their clinic. They will get checks months later from patients who've had a hard times and are appreciative of the care they have been given. They will send them a check in order to be part of the effort, but they don't have anything for the patients to sign in terms of immunity releasing them from mal practice claims.

**SEN. CHRIS CHRISTIAENS** asked if surgery is done, there is still no signature obtained?

**Dr. Jay Erickson, M.D.** answered "no", there isn't.

**SEN. BOHLINGER** said he had a question for **Dr. Erickson, M.D.** However before he asks his question he wants to say that he admires him for the way he lives out his faith. It's very remarkable. He was wondering if amongst those that are volunteering their professional service, if he has any retired physicians presently on board or if they would be working without malpractice insurance, probably? Because if they are retired they don't carry insurance or if he had some retired physicians that if this immunity provision is available have expressed their willingness to come work with him. Has he been able to get commitments from some of his retired colleagues?

**Dr. Jay Erickson**, answered, that's a good question. From the beginning of the clinic, they've had one physician that was retired. His statement was that he believed in what we were doing and he was willing to "go bare" which is saying that he went without malpractice coverage. Again, he believed in what he was doing and the services he provided. That's the only physician that we have without coverage that's retired. And yes they do have a number of physicians he has on a list that are sort of waiting for this legislation to pass. They are excited for the opportunity. **Dr. Elliot**, a physician from Havre, whom they may be familiar with on the Hi-line, just retired this past year after delivering 5,000 babies. He moved to Whitefish. He has been in contact with him and he's very excited to be able to help do something.

**SEN. GRIMES** said he had a question for the doctor again. He asked if it would be fair to say that the care they are talking about is that they want to be provided immunity in his case, is care provided either at the clinic or referred by the clinic, would that be accurate?

**Dr. Jay Erickson, M.D.**, answered, that would be accurate.

**CHAIRMAN AL BISHOP** explained the testimony procedure in during the committee hearing. He noted that some persons would have liked to say more. He clarified that once testimony from the witnesses is finished and the Committee starts their questioning, there can be no more further testimony by the witnesses, except for the questioning by the Committee members.

**Closing by Sponsor:**

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**SEN. BOB KEENAN** said he appreciated the folks that have come a long way today, and taken time out of their schedules to appear. He also thanked **Mr. Al Smith** for his input, and he thanked the Committee members for a good hearing.

{*Tape : 1; Side : A; Approx. Time Counter : 1 - 38}*}

### HEARING ON SB 30

Sponsor: SEN. DON HARGROVE, SD 16, Belgrade

Proponents: Mary Ann Wellbank, Administrator, Child Support Enforcement Division, DPHHS  
Betty Waddell, Representing Montana Association of Churches  
Wendy Young, Organizer, WEEL, Working for Equality and Economic Liberation  
Colleen Murphy, Executive Director, MT Chapter, National Association of Social Workers

Opponents: None

#### Opening Statement by Sponsor:

SEN. DON HARGROVE, SD 16, Belgrade, said in the 1997 Legislative Session, they will recall that legislation was enacted to implement the "Personal Responsibility and Work Opportunity Reconciliation Act". He finds it personally interesting to know that the Act was originated at the Federal level in the House Ways and Means Committee. It was a revenue bill, and not a welfare bill or Health and Human Services Bill. It was a major building block for balancing the budget.

Also **Congressman Rick Hill** appeared at the hearings and spent a day with them, providing testimony in a Conference Committee. He indicated to them that this bill had received a lot of debate. Since it was used to balance the Federal budget at a time which was important, there wasn't much interest in revisiting it.

He would focus on the term "Responsibility" in the name of the Act, which is what it is, more than anything else. A very simple method of explaining that entire bill was to provide a mechanism to ensure that parents support their children. And in this case it is the non-custodial parent or people in a home that has broken up, that the non-custodial parents provide, when a Court

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order is issued provide the support for the children or child support. In most cases, in fact, I would argue that in all cases of this legislation that we passed, provisions in this bill were already in effect in Montana as probably everyone in this Committee and many of the public know, Montana was at the forefront of welfare reform.

We had asked for waivers before they were available, we waited for them, and as soon as we could get them, we initiated them and so we were doing almost all of those things. There was no opposition to the bill in terms of public testimony, in terms of opponents, in terms of this sort of thing although it had numerous hearings but there was concern within the legislature in terms of issues of privacy and so in the end we thought that it would be wise and probably important to gain some experience and bring portions of this bill back.

There are three portions of a rather large bill that were left or put into "sunset" and that's what we are looking at here today is "de-sun setting", if you will, those three provisions. I won't take long, but I'd like to tell a little more of the history and then go back to what those are to close before we go to the opponents and proponents. Other elements of protection for the concerns that people have within the legislature were that when the bill was passed the Director of the Department of Health and Human Services, Child Support Enforcement Division should throughout the interim work to seek exemptions from the requirements of the legislation and the Department has diligently pursued that in all cases.

They were not very successful really but they had a certain amount of success. They obtained one exemption from the requirements to include Social Security numbers and that's why you will see that in the first part of the bill because that exemption was granted for a three-year period which will end at the end of the year 2000 at which time we will apply and must receive in order to stay in compliance, a renewal of the exemption. The other things that the Department diligently pursued were denied and in some cases we found that the Federal government does not have the authority to give exemptions. Near the time when this bill was going through it's passage, it was deemed wise and the Speaker of the House appointed a committee to determine what would happen, how Montana would get along if we were, which was the alternative to passing the bill, if we were to run our Montana State Welfare FAIM(Families Achieving Independence in Montana) program without the funds that were provided by the Federal government and so a committee was formed. He believed **SEN. GRIMES**, was the **Chairman**, wasn't that correct?

**SEN. GRIMES** answered he didn't recall.

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**SEN. HARGROVE** said, the truth is he tried to forget most of that himself. However there was not much time. It was a daunting challenge and it did not come to fruition. However, as a result of that and the legislature and it was a part of the legislation, we determined that we would pursue that throughout the interim period so an interim committee was appointed and funded.

They did meet and it was chaired by the Chairman of the Senate Finance and Claims Committee and it was looked at in some depth and in the end it was recommended by that committee basically to accept the position of the Department that we would in fact lose welfare reform and without question welfare would sort of back off to right what it used to be just writing checks and writing checks at a much lower level because there would be much less funding and then the Committee also determined too that we should in this Legislature, terminate the "sunset" provisions. Those three things that were "sunset", I'll mention those briefly and then we can get into the rest of the testimony. One of those was called a "Financial Institution Data Match" and that's where there is a requirement if there is a court order. This is done now except it's done manually. Now under this legislation and the procedures that have been developed, it's done electronically and so there is no data bank.

He really didn't feel it was necessary at the time the bankers supported this bill, and no one was particularly concerned about it and he has to confess that he, as a sponsor, didn't really object to putting this in as a "sunset" because he thought it would sort of "bulk-up" the exceptions a little bit. It wasn't really a big one...but it wasn't controversial. There are electronic matches made and if there is a court order on the match, then it proceeds just the way it is now and has for a long period of time. One of the requirements that we did "sunset" that received a little more attention was "New Hire Reporting" but also we always have to report to the government for income tax purposes, new hires.

The difficulty with that is that they are reported once a quarter. The folks who are trying to avoid their responsibility and the alternative of paying for it, is that the taxpayers pay for it. The family goes on welfare and so they avoid their responsibility and the taxpayer gets to assume it for them. They develop ways of avoiding things and when you have 90 days of reporting, it will take 120 days or more to actually find the individual and put into effect those things that have always been in effect. That is the process. In this legislation, we now report in 20 days and it actually does not go just to the Department of Revenue who keeps the data, but also to the Child Support Enforcement Division.

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He believes that in the end it isn't really a matter of privacy because it's done anyway. It is a situation kind of like .... "We're Montanans and we don't want to be told to do something." He must confess that he shares that opinion and to some extent he shares it on this issue, but doesn't feel it is significant. The Social Security numbers on certain documents was also "sunset" and you can understand from a federal standpoint it's extremely important when you talk about interstate movement of people, people moving to avoid meeting their responsibilities. This is a way to make sure that they comply with a court order and I need to emphasize that is through Social Security numbers. So those three portions were "sunset". We are here to "de-sunset" them now and I would point out the program really has not caused any problem. I talked to the outgoing President of the Chamber of Commerce just as he was leaving a couple of months ago and he said as far as he knew there had been no complaints about this new hire reporting business. I don't know of any from the Administration. The new hire reporting it says here that State and Federal requirements attributed to Montana's new hire reporting from October 1 of 1997 through December...three months... are \$2.1 Million. I understand and I've read in newspapers...billions and billions of dollars...I'm sure we can safely say...we don't have the data on that and haven't been able to get it...but certainly hundreds of million dollars at the federal level and that is being used to balance the budget so it has been successful and it is my understanding that all States in the Union are in compliance with the legislation and I'm sure Montana would not like to be the magnet for the folks that are avoiding their responsibilities from other states and urge favorable consideration from this Committee.

**Proponents' Testimony:**

**Mary Ann Wellbank, Administrator Child Support Enforcement Division DPHHS,** said she thought **SEN. HARGROVE** gave a very good overview of **SB 30**. They serve 41,000 Montana families. They locate absent parents, establish support, enforce support, modify support orders, and distribute money to the families. They establish Medicaid medical support for children which does help the state save Medicaid dollars. We're obligated to serve everyone on welfare and the theory is if there is someone on welfare, child support will help to get them off and keep them off welfare.

It also helps the State and Federal's recovery of tax dollars spent on welfare. We are also obligated to serve anyone who applies for Child Support Services. **Senate Bill 30** is a really important piece of legislation for Montanans. The bill renews the "sun-sun sun setted" provisions of the 1997 Legislation and

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these will "sunset" on June 30th, 1998 unless renewed by this legislature.

As **SEN. DON HARGROVE** has indicated, the key provisions that you're looking at are NEW HIRE REPORTING, FINANCIAL INSTITUTION DATA MATCH, and the requirement of SOCIAL SECURITY NUMBERS for certain documents. She assured them that the bill before the Committee is nothing new. It is purely an elimination of the termination date for the requirement for the Department. And it also eliminates the requirement for the Department to seek exemption provisions period.

It doesn't do anything else, we haven't changed anything. When the legislation was enacted last session, she counted and it went to a total of eleven (11) committees, sub-committees and three conference committees so she can assure them it was thoroughly reviewed by the 55th Legislature and they haven't changed a word of what they did.

You may recall concerns expressed by the legislature last session and to address these concerns in addition to "sun-setting" these provisions of Senate Bill 374 the legislature directed the Department to seek exemptions from legislation specifically the sections in this bill. In addition to the "sunset" language the legislature further inserted a series of contingency terminations. For example these provisions terminate if an exemption from the Federal requirement is granted, if the Federal government extends payments to Montana for child support or public assistance program, or, if the final decision is rendered in Federal Court which invalidates these provisions so there's a lot of safeguards even if you do choose to "let the sun rise" on this bill.

The legislature further inserted language safeguarding and protecting the use of Social Security numbers in every single section of the law describing the inclusion of the Social Security number except for the provision on drivers' licenses, commercial drivers' license applications which must be shared with the Federal government for Federal highway funding purposes. Every provision of the bill which requires a Social Security number also requires the record keeper to maintain the confidentiality of the Social Security number.

They have given the Committee a folder and inside is the bright yellow document that we call the Legislator's Reference Guide.

**EXHIBIT (ph)**  
**s05a08)**

This guide shows the original legislation and she knows the bill is only 4 pages and their guide is 40 pages, but the reason is

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when they looked at the bill they could see that all it does is refer to old sections of the bill and we really don't know actually what it's doing. The guide is there to help you, should you wish to look at it. On Page C, there's a reference guide to the sections of the bill, Page B gives you the background. Page C refers the provisions to what they're talking about. On Page D there's a section by section explanation of the bill. Section F outlines the exemption the Department has requested as directed by the legislature, and as **SENATOR HARGROVE** said, they requested exemptions in all areas, weren't successful in all areas. Page H summarizes the constitutional challenge the State of Kansas gave to this legislation and the Court's dismissal of this challenge.

A copy of the Kansas order is in your file as well.

**EXHIBIT (phs05a09)**

What you see in Section I of Senate Bill 30 is the language of the session law continuing the contingency terminations I have described with the exception of the requirement of the Department to seek exemptions from New Hire reporting, Financial Institution Data Match, Social Security numbers on certain documents.

The reason the requirement to seek exemption has been removed is because the Department has already sought exemptions and we don't feel there is any longer a need to seek exemptions. The Federal government granted exemptions from the requirement to include Social Security numbers on death certificates and there is another provision of Senate Bill 374 that wasn't passed that you don't see in this bill that was an exemption to provide jury trials in Paternity cases. That was never passed by the Montana Legislature. We did get the exemption, so you don't see it in this bill. Section II of Senate Bill 30 restores the requirement to include the Social Security numbers on death certificates and as I mentioned above an exemption in this area was granted. Why are we restoring it? Because the exemption terminates December 31st, 2000. At that time we proposed, and, I can assure you in my testimony we are going to seek a renewal of this exemption and that the language is written in the event the exemption terminates and we need to comply with the requirements. Section III provides the Law is effective upon passage and approval except for the language requiring Social Security numbers and death certificates which has the special existing exemption language.

The structure of the bill is unusual, it's really hard to read as it amends session law and does not include specific language concerning the New Hire reporting, the Financial Institution Data Match and Social Security numbers. New Hire reporting requires employers to report newly hired people actually to the Department of Revenue which the Child Support Enforcement Division within 20

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days of hiring and the legislature in this area was concerned about the burden on the employers and the security of the Federal data base to which the State information is uploaded. These issues have been addressed. Throughout the year the Child Support Enforcement Division has worked very closely with the Department of Revenue in their "one-stop shopping" area to work with the employers and get something that works easier with them and we've been assured that most employers are satisfied with the way this is working. Employers can report this information that is convenient for them including, facsimile, telephone calls, hard copies, however they want to report, they get to report.

In my opinion this particular section of the law was a section that Montana has long been lacking. It's one of the most effective things the Montana Legislature has done and as **SEN.**

**HARGROVE** pointed out it, resulted in \$2 Million additional collection. The requirement to include Social Security numbers on documents is very important to the CSED (Child Support Enforcement Division) because one of our jobs is to locate parents and at any point during a case, a parent can disappear, move to another state, move to another job, so without a Social Security number, we can't track that parent and without a Social Security number, we cannot distinguish John Jones from John Jones. This is carefully safeguarded, the record keeper cannot release this information to anyone. Finally, the Financial Institutional Data Match allows the CSED to take our data base showing only the delinquent names, send them electronically to banks and financial institutions for match. The financial institution only matches on the name of the delinquent parent. I really think that the last legislature might have become confused with this requirement thinking that financial institutions originally in the very beginning of the bill, we allowed financial institutions to share their names with us so we could do the match...that was eliminated right out in the very beginning of the bill. I really don't think this bill would have been contentious but I think it got caught up in all the other concerns about the bill. We have not been working this yet, but we do propose to do it in the next biennium and Massachusetts has been very, very successful in matching delinquent parents against financial data bases.

As you know this legislation is required to continue Federal funding of the state welfare and child support programs that amounts to a little over a hundred million dollars in Federal funds each biennium. Because of the controversy surrounding this legislation, as **SEN. HARGROVE** indicated, a committee was formed last fall to propose the actions for the 56th Legislature should this particular legislature choose not to renew this bill and therefore risk Federal funding and the Federal funding for the

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two programs represents about 70 percent of the investment in the program.

The Subcommittee Report is also in your packet.

**EXHIBIT (phs05a10)**

The committee gathered and heard a substantial amount of public testimony on what we do with Federal Funding and I think the Committee determined that without Federal funding it would be a devastating impact on Montana because there's no private sector of support systems in place to help the people who are now in welfare.

Before I conclude, I want to summarize what else besides the interim committee happened between last session and today. In addition to the committee meetings, we did seek the exemptions, and I want to assure you, we did it wholeheartedly and in good faith. We really did our best jobs to get these exemptions for Montana.

We monitored to the extent possible everything that was going on in other States and that's how we became aware of the State of Kansas challenge on the basis of the 10th Amendment. We also learned and that is the only state we know of that has challenged it and of course that has been dismissed. We also learned that the State of Idaho did actually fail to pass the requirements of the Personal Responsibility and Work Opportunity Act when they were supposed to and as a result it's kind of interesting because their concerns were different than Montanans. The only similar concern were Social Security numbers on certain documents. They didn't have concerns about the New Hire or Financial Institution Data Match but actually the Federal government and, I have not been able to obtain a copy of this letter, did send the State of Idaho a letter that "was going to" it wasn't just "we would withdraw" Federal funds, it was a serious threat to withdraw Federal funds if they didn't get it enacted and, in fact, the Idaho legislature did pass the necessary legislation.

At any rate, they did adopt the law and just after legislative session last session, Governor Racicot wrote a letter to our Congressional delegation outlining all the concerns of the legislature with respect to this legislation just so that they would be aware of it in Washington. And last, but not least we've spent our time implementing all the requirements of the Personal Responsibility and Work Opportunity Act. I'm asking you to endorse Senate Bill 30 not just from the standpoint of Federal funding but from the standpoint that we have 41,000 Montana families depending on the Child Support Enforcement Program and really to make child support work and to recoup the welfare money

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and to keep children out of poverty we need to invest in the program and we need strong laws.

We need laws that send a message that Montana is serious about collecting child support. The Financial Institution Date Matches are the next really big steps that we're going to take to collect child support for children. We're not going to be able to do good matches unless we are sure we have an accurate Social Security number. So we do need that. **Staff Attorney, Amy Pfeiffer** and myself are here to answer questions and thank you for your time.

**Betty Waddell, Representing, Montana Association of Churches which is made up of the following denominations: The American Baptist, The Christian Church, ELCA Lutheran, Episcopalian, Presbyterians, Roman Catholics, The United Church of Christ or Congregational and the United Methodist Church.** They tend to fight issues where people are denied basic needs. She is here today speaking on behalf of the children of Montana and they call upon the Legislature and the people of Montana to recognize the rights of children. In Montana, she wanted to remind them that the younger you are, the more likely you are to live in poverty. Overall about 16% of our citizens are living below the Federal poverty line but only 12% of the adults live in poverty. If you are 18 years old or younger about 20% of that population lives in poverty and for children under the age of five, 24.3% or about one-fourth of all our children, all of our pre-schoolers that is, live in a home with income under the Federal guideline for poverty. This is 13,980 of the 57,600 kids under the age of five. Child support payments are determined by the court. Children are entitled to these payments in order to develop physically, mentally and socially, in a healthy and normal manner with freedom and dignity. Children are our future. They will be our leaders, even Senators. They will be the parents and citizens of tomorrow. Our children bring us special gifts and they are the sign of God's continual gift to the world. Thus, we need to respect them and place their rights as a priority in our society. As adults, she urged the committee to respect the rights of children and pass **SB 30**.

**Wendy Young, WEEL Organizer, Working for Equality and Economic Liberation** said they are a low-income group comprised of about 1100 low-income families. She is here today to voice our support for Senate Bill 30 and the continued acceptance of Federal monies to provide a safety net for Montana's families. She urged the Committee to follow the recommendations of their colleagues who sat on the Committee of Welfare and Child Support Enforcement. They did an in depth study of this subject and understood the devastation that would occur if this bill was not passed. That

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Committee voted to recommend compliance with the Federal regulations to continue the acceptance of the Federal Block Grants. She urged them to do the same.

**EXHIBIT (phs05a11)**

**Colleen Murphy, Executive Director, Montana Chapter, National Association of Social Workers** representing over 400 members statewide who work in a variety of fields including income maintenance, child protective services, geriatrics and prevention of drug and chemical dependency, and mental health services. The primary mission of the social work profession is to enhance human well-being and help to meet the basic needs of all people with particular attention to the needs and empowerment of people who are vulnerable, oppressed and living in poverty. She is here to ask them to endorse **SB 30**. Child support payments are critical to the financial independence of single parent families. Child Support Enforcement Programs ensure that children are supported financially by both parents. The Federal regulations required, ensure that they are able to access \$100 million dollars in Federal funds to support families in their goal of self-sufficiency.

**SEN. JOHN BOHLINGER**, said for the record he represents the good people in **SD 7, Billings**. He said one of the darkest days, or the darkest day of his legislative days, came when **SB 374** went down. It went down because there was fear that it was too intrusive, and by making Social Security numbers available, that evil things would happen.

Thank God, it was reconsidered and it was approved. He said this on the House Floor 2 years ago, and had it gone down and they would have lost the \$100 million that would have provide money for the poor and provides public assistance to our poor. He referred to two pieces of classic literature to the body...didn't have time to read them overnight, but one was "Victor Hugo's Les Misérables that talks about what happened in France at the time of the French Revolution. There was no system of public assistance, there was no welfare program and "Peter" stole a loaf of bread, became a criminal and lived a life of running from the law and was eventually caught and thrown in prison for this crime.

He also referred to a wonderful piece of literature, by "Dostoyevsky", Crime and Punishment, the story of Sonya, the saintly prostitute who had to sell her body in order to feed her family. He thinks that if we don't have a system of public assistance, there are no alternatives for people, but to steal or to prostitute themselves and we in this country and in this state cannot allow that. They need to pass **SB 30**, it's absolutely

essential to renew the "sunset" provisions of this piece of legislation. He's glad that **SEN. HARGROVE** has brought this bill forward and hopes that the Committee can vote yes on it.

**Opponents' Testimony:** **None**

**Questions from the Committee Members and Responses:**

**VICE CHAIRMAN FRED THOMAS** asked **SEN. HARGROVE** about the study report which was handed out to the Committee. He commented that **SEN. GRIMES** served on the study committee and he recommended strong and swift action on the legislation. He asked if he wanted this bill to move forward as soon as possible, or if he needed any special time considerations at this time?

**SEN. HARGROVE** answered, he could see no reason why it shouldn't move along. The sooner we get it to the House, the better. He is ready when they are.

**Closing by Sponsor:**

**SEN. HARGROVE** said the testimony has been complete. There's only a couple things he'd like to mention. One is the **Montana Congressional Delegation** has been involved, and both **SENATOR BURNS** and **SENATOR BAUCUS** have helped them out. They have presented proposals and bills that were not "smiled upon".

However, they were instrumental in getting some legislation approved, like important amendments that would dump the data base periodically. Basically, they could say that every twelve months there would be a cleansing, so people's names just don't go in there and stay there.

So there is some comfort level for the people who think their privacy is being invaded. Other than that, he very much likes the term that says we "will let the sun rise" on this legislation. He thanked the Committee members.

{**Tape : 1; Side : B; Approx. Time Counter : 1 - 33}**}

**HEARING ON SB 76**

**Sponsor:** **SEN. TOM BECK, SD 38, Deer Lodge**

**Proponents:** **Mary Ann Wellbank, Administrator, Child Support Enforcement Division, DPHHS**  
**Brenda Norlund, Assistant Attorney General,**  
**Montana Department of Justice,**

**Motor Vehicle Division**

**Informational:** **Dave Mott, Chief Administration/Finance**  
**Montana Department of Fish, Wildlife**  
**and Parks**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**SEN. TOM BECK, SB 28, Deer Lodge** said for the record he also is sponsoring **SB 76** for the Department of Public Health and Human Services. This bill stems from technical amendments in the Personal Responsibility and Work Opportunity Reconciliation Act that was included in the Balanced Budget Act of 1997.

The Committee has heard **SEN. HARGROVE'S** and **Mary Ann Wellbank's** testimony on **SB 30**. This legislation is similar. The enactment of **SB 76** will ensure continued federal funding of the State Welfare and Child Support Programs. The first section amends current law. When families receive welfare benefits as a condition of welfare they are required to assign their rights of child support to the State. When the child support is collected from families on welfare, it is used to reimburse the State and Federal Government for welfare payments that were already made. The original language in the PRWORA (Personal Responsibility and Work Opportunity Reconciliation Act) caused some confusion. It was not clear to the Department until they received further federal guidance and federal legislation that the custodial parent must assign past due support that accrued before the family received welfare benefits.

He knows this sounds a little confusing, but **Mary Ann Wellbank, DPHHS** will explain that portion. As a result of the last session, that section of the law was amended. It provides that the support assignment did not or does not apply to the support that accrued before the welfare recipient received public assistance. That addition was based on an incorrect reading of the Act. The section amends the law to conform with the Federal requirements and the result is that the State will only collect assigned child support that accrued prior to the custodial parent receiving welfare to the extent that the custodial parent has received any welfare benefits.

Any money collected over and above the welfare benefit is due to the parent. Sections two and three may be a little bit contentious when we get to the floor, or maybe even in this Committee. It deals with the requirement that the Department of Justice collects Social Security numbers on driver's license

applications. Now note, this requirement applies to applications only and does not require the Social Security number to appear on the actual driver's license.

To insure confidentiality the amendments also require the Department of Justice to change its method of assigning driver's license numbers. The Department of Justice will use a number that is not the individual's Social Security number on the driver's license, unless the licensee individual specifically requests their Social Security number on the driver's license.

There's some concern about privacy of the Social Security numbers. They are trying to make that little bit of a change. This is the opposite of how it is handled now. Now if an individual receives a driver's license, the Social Security number will automatically be used as the driver's license number, unless the individual requests otherwise. The Department of Justice suggested this change in addition to conforming to Montana's requirements to the PRWORA and the balanced budget, these amendments also conform to the Federal Illegal Alien Immigration Act which has identical requirements.

New sections four and five require the Department of Fish, Wildlife and Parks to collect Social Security numbers for recreational licenses. Last session the Department proposed that Social Security numbers be collected on recreational licenses application to facilitate matching for purposes of license suspension. This was supported by the Department to insure the correct persons would be pulled from the drawings.

The Child Support Enforcement Division suspended licenses eligible for delinquent support at the time this was not mandatory requirement for the Federal Government and it was amended out very early in the legislative process. However, with the passage of the Balanced Budget Act of 1997, it is now required.

In addition to conforming with the Federal Law , **SB 76** has an additional requirement for the Department of Fish, Wildlife, and Parks to keep Social Security numbers also confidential except for the Child Support Enforcement Division. To insure protection of privacy, this bill adopts the same confidentiality requirements as in **SEN. HARGROVE'S** legislation. He agreed to sponsor this legislation because it is necessary.

It enhances Montana Child Support Enforcement's program and the confidential Social Security numbers are always a concern to Montanans. However, the Department has built in safeguards to ensure Social Security numbers are only accessible to the Child Support Enforcement Division. For those of you familiar with the

Child Support Enforcement Program you know that if the Child Support Enforcement Division does not know an individual's Social Security number, that individual can evade support for years. Social Security numbers are the single most important tool to actually identify individuals owing support and to identify assets and income that can be used to pay the support.

He hopes they will support **SB 76** because it's integral in the whole process of keeping the federal government happy and not losing our funds. **Mary Ann Wellbank, DPHHS** may also have some additional comments.

**Proponent's Testimony:**

**Mary Ann Wellbank, Administrator, Child Support Enforcement Division, DPHHS** said, as **SEN. BECK** told them, this legislation does go hand-in-hand with **SB 30**. The purpose of **SB 76** is to conform Montana law to technical amendments to the Personal Responsibility and Work Opportunity Reconciliation Act that came in the Balanced Budget Act of 1997 which was enacted after the 55th Legislature adjourned.

They have tried to give a "heads-up" to legislators on this provision. The Department puts out a quarterly newsletter and she thought she might have mentioned it three or four times this year. Although this legislation, like **SB 30** conforms Montana law to Federal law, the reason they chose two separate bills was at the very strong recommendation of the interim sub-committee on welfare reform.

The committee thought it would be much less confusing to legislators to let them look at the "sunset" provisions in one bill and look at the new provisions in another so we wanted to do that.

**Senate Bill 30** contains three major pieces. They are pretty self-explanatory. This bill is pretty simple and straight forward. The first part deals with public assistance and that's probably the most confusing part. When a person goes on the welfare system, they are required to assign all their child support to the state. The theory is that while they are on welfare, if the state collects any child support, they don't get that child support too, the state gets to keep its 30% of that child support and then the state returns 70% to the Federal government. It's sort of a reimbursement to taxpayers continuing. Section 1 clarifies that when a recipient receives public assistance, they are required to assign all child support benefits that accrued prior to them going on welfare to the state.

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Under no circumstances would the department be able to collect and retain more than what was paid out in welfare benefits, but it does help reimburse the state and federal governments. This was intended but not clear in other legislation and it's been subsequently clarified in both the Balanced Budget Act of 1997, and in also technical guidance that we received from the federal government. So basically we took it out last session and we're putting it back in this session. Section 2 requires the inclusion of Social Security numbers on Drivers' License Applications as **SEN. BECK** said, and this law is required by both the Balanced Budget Act of 1997 and also the Illegal Alien Immigration Act that was enacted and is a requirement for the Department of Justice to adopt. In developing Section 2 we mirrored the requirement inserted by the legislature in **SB 374** for the record keeper to keep Social Security numbers confidential.

This section also remains subject to the original, what they call 101 ways to make the bill go away, to the original contingency language in **SB 374**. You have the same thing, if the federal government quits funding the programs, this will go away. If the state successfully challenges the federal law this will go away, etc.

This section will improve Montana and interstate enforcement as most people have drivers' licenses and inclusion of Social Security numbers on their driver's applications really facilitates the inclusion and identification of these people. Section 3 requires the Department of Justice Motor Vehicle Division to use the pseudo- number rather than your Social Security number and this was suggested by the Department of Justice whom we worked very closely with. In developing this section of the bill to pro-actively address legislative concerns and it means that when you go to renew your drivers' license after October 2000, the number appearing on your drivers' license will not be your Social Security number unless you specifically ask for your Social Security number.

Section 4 and 5 require applicants seeking hunting, fishing, wildlife conservation and recreational licenses issued by the Department of Fish, Wildlife and Parks to again provide Social Security numbers on the applications and it further requires that Department to keep this number confidential except for our purposes. We worked closely with the Department of Fish, Wildlife and Parks to develop this section of the bill to make sure it worked both for the Department and for the Montana sportsman.

Right now, again without the Social Security number we risk identifying the wrong person. Section 6, (1) provides an

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immediate effective date for Section 1 which concerns the assignment of Child Support if the State is currently out of compliance. Section 6,(2) provides an October 1, 2000 effective date for Sections 2 and 3 of the bill concerning Social Security numbers on drivers' license applications and this state is required by federal legislation for both the Illegal Alien Act and for the Balanced Budget Act.

Section 4, (3) provides an effective date of July 1, 1999 for Sections 4 and 5 concerning the Social Security Numbers on Fish, Wildlife and Park applications. Section 7 is a little different than the effective dates. It's called the applicability dates and the changes regarding Social Security numbers on drivers' licenses applies to all licenses issued on or after October 1st, 2000. The changes concerning Social Security numbers on Fish, Wildlife, and Park applications would apply to the license year beginning March 1, 2000 and that's to accommodate the Department of Fish, Wildlife and Parks need to have the forms prepared for the next license year, beginning after the effective date of the provisions. So the effective date is July 1, and it allows them time to get their forms in place and distributed to the people that need them.

She sincerely hopes that they will support this legislation. They worked very hard over the interim to develop this legislation and feel is the best possible legislation given the concerns of the legislature. They have been very sensitive to the issues of privacy. This legislation requires record keepers to keep all the Social Security numbers confidential and to safe guard them. She thanked the Committee for their consideration. Present is their staff attorney, **Amy Pfeifer**. They both are available to answer any questions. **Dave Mott**, and **Barney Benkelman**, Department of Fish, Wildlife and Parks, and **Brenda Nordlund**, Department of Justice, Motor Vehicle Division are also present, and she hopes they can answer their questions.

**Brenda Nordlund, Montana Department of Justice, Motor Vehicle Division**, said what both **SEN. BECK** and **Mary Ann Wellbank** have told the Committee is true. Were it not for the Department of Public Health and Human Services coming before the Committee to request submission and collection of Social Security numbers on drivers license, it would be the Department of Justice coming before them to ask for the same provision. She is handing out at this time a copy of a portion of the Federal Law that was referred to by both **SEN. BECK** and **Ms. Wellbank**, that deals with immigration.

**EXHIBIT (phs05a1)**

**2)**

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It was part of the Omnibus Consolidated Appropriations Act with Fiscal Year 1997. It was enacted on September 30, 1996. It is the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Unlike the Child Support Personal Responsibility Act, at the Federal level there is no stick, if they as the Motor Vehicle Division choose because of legislative direction, not to collect Social Security numbers. There will not be a withdrawal of funds as a result of not collecting the Social Security numbers. But it will be extremely inconvenient for Montanans, who depend on drivers license issued by the Montana Department of Justice, or identification cards issued by the Montana Department of Justice, to use those identification cards for any federal required purpose.

Under the Immigration and Reform Act it says Federal agencies may not accept as proof of identity, any state issued drivers license, or identification card, unless the requirements for issuance of that drivers license, include the collection of the Social Security number and the verification of the validity of the Social Security number with the Social Security Administration. So she can't come to the Committee and say, "if you think this is too intrusive, we will lose \$100 million dollars."

However, she can tell them, if they think it is too intrusive, the drivers license might not get them across the border after October 1, 2000. They will be implementing, if this bill passes, a change in how they structure the driver license numbers, as they are aware. They don't compel the Social Security number, unless you are a commercial driver. That is already required by Federal Law, and has been since 1986, but as a base driver, they don't ask for the Social Security number on the application. Merely their examiner says, "would you like to use the Social Security number as your drivers license number." If a person says "yes", they include it as the drivers license number. If they say "no", they give them a 9-digit, alphanumeric number.

Upon the Committee's approval, and with the enactment of this bill, they will switch to a 13-digit driver's license number. Only in the instance where the licensee insists on the use of their Social Security number, will utilize the Social Security number as part of the 13-digit number.

They intend to abide by the confidentiality provisions. They understand, people are extremely protective of their Social Security number. She reported to them that the incidence of licensees already asking for pseudo-numbers, rather than their Social Security number, continues to rise every year. This is because of concerns about identity factors and other possible invasions of privacy. They support this bill. It is necessary

for them to comply with Federal mandates, and it is probably a good public policy in terms of changing the way they do business currently.

**Opponent's Testimony: None**

**Questions from Committee Members and Responses:**

**SEN. CHRISTIAENS** said to **Brenda Nordlund**, he is not positive he fully understood the use of the driver's license for the state identification as a... and he is assuming that she is referring to an I #9 requirement or that type of thing. With a pseudo-number, does that take it out of that realm?

**Brenda Nordlund** answered the use of the pseudo-number affords them the ability to not have to use the Social Security number as the drivers license number under the Federal Law. They give states an exception, and that is the starred exception, that she noted in the hand out. For states that collect the Social Security number and maintain an electronic data base, and then verify the Social Security number with the Social Security Administration. They don't have to use the Social Security number as a drivers license number. They can use, alternative numeric identification number. That is what they intend to do.

**SEN. CHRISTIAENS** asked, it still will be okay for I#9 purposes?

**Brenda Nordlund** answered, she is not sure what I#9 is.

**SEN. CHRISTIAENS** answered, that it is the form that all employers are required to have you sign two valid pieces of ID before they can make a pay voucher for anyone.

**Brenda Nordlund** answered, that is absolutely "right". If they adopt this law, then their drivers license will conform to their identity requirements. If they do not, you could not use a driver's license for that purpose.

**SEN. BARTLETT** asked **Brenda Nordlund** on the driver's license or motorcycle license, language on Page 3, Line 28 of the bill it talks about keeping the Social Security number confidential, except that it can be used for specific section of the Federal Code, which she assumes is the Child Support, or as otherwise permitted by State Law. They are striking the words, "or as otherwise permitted by state law, striking "administered by the Department." That looks to her to broaden the potential permitted uses.

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**Brenda Nordlund** answered, it is possible to be perceived as bad. The intention in striking the "administered by the department" is that if this body, either in this Legislative Session or in previous sessions, has already taken action, where another agency requires the use or collection of Social Security numbers, or the verification of Social Security numbers under their current record release policies they release driver records to other governmental agencies. If for example, the Fish, Wildlife and Parks Department had a mandate, that said they had to check the Social Security number of game violators, she really can't think of the right kind of scenario, then that law isn't administered by the Department of Justice. That law is administered by the Department of Fish, Wildlife and Parks. It still is a state law that requires the information to be shared. That is why they struck, "the administered by the Department," because that is such a specific reference.

**SEN. BARTLETT** said so as things stand in the example that she gave, you would not be able to match with the Department of Fish, Wildlife and Parks, and give them verification. But striking this language will enable the Department to do that.

**Brenda Nordlund** answered, "that is true." She also wants to bring to the Committee's attention, they have separate legislation, **SB 82**. It will strengthen the driver record release section to specifically exclude Social Security numbers, as they currently exclude home addresses that they might be familiar with on driver licensees. The combination of the two will really tamp down basically their release language in section 61-11-105. It says that they can release licensee identification data, including the license number. Obviously, when they go to a 13 digit number, that will moot the question of release of a Social Security number.

**SEN. BARTLETT** asked **Mary Ann Wellbank**, she has heard of, but not actually seen in operation the virtual pavilion from DPHHS, therefore she needs to know whether death certificates are accessible through the virtual pavilion. She knows that birth certificates are, but are death certificates?

**Mary Ann Wellbank** answered, she was sorry, but she didn't know. She does know that if they are, the Social Security number wouldn't be shown on those.

**SEN. BARTLETT** asked if that was because death certificates are going to carry the Social Security number, are there provisions in place to see that should those certificates be accessible, the Social Security number will not be accessible ?

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**Mary Ann Wellbank** answered that was in the other bill, but what it does say is the record should go, which in most cases would be the DPHHS. They are required to keep that number confidential so they could not display it on the virtual pavilion.

**SEN. BARTLETT** asked **Mary Ann Wellbank**, in any of these instances is there a 12-month dump on the collected Social Security numbers, so that an agency only has them on record in their offices for a one year period, presumably having served their purpose?

**Mary Ann Wellbank** answered, there is one in the other bill. Are you asking about the other bill?

**SEN. BARTLETT** clarified that she was asking if after 12 months is there any provision in any bill that says, "after 12 months, the Department of Justice will dump out that year's Social Security numbers, Department of Fish, Wildlife and Parks will dump out that year's Social Security numbers?"

**Mary Ann Wellbank** answered, "no there isn't." The reason there isn't, is first of all any one can come into the Child Support Enforcement system at any time and maybe they don't have that case today, but tomorrow someone walks in, with \$10,000 owed, then they need to be collecting it. Additionally anyone can get lost at any time, and unless they have access to Social Security numbers, they wouldn't be able to locate them, even if it had occurred 12 months. There's no provision for dumps. The provision that they sought was the confidentially requiring the record keeper to safe guard that information.

**SEN. BARTLETT** said her recollection from the last session, it could be wrong, so that is the question. The Federal Legislation did not include the requirement that Social Security numbers be on the Fish and Game license applications. Is that accurate, is that still not required by any of the Federal Legislation?

**Mary Ann Wellbank** answered, the Social Security numbers on recreational license applications are now required. She thinks what **SEN. BARTLETT** is thinking of, is in **SB 374**, last session, they did include at the very beginning, a requirement for Social Security numbers on recreational licenses. This was because it would help them, it would help the Department of Fish, Wildlife and Parks. However, when they got the immediate reaction of the Legislature, the idea was to just do strict conformity with the Personal Responsibility and Work Opportunity Act. They eliminated that Section. It never went any further. It wasn't required. However, subsequently with the Balanced Budget Act of 1997, they went back and clarified the requirements of the

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Personal Responsibility Act, and now it is a requirement. Every thing the Committee sees in this bill is a Federal requirement.

**SEN. THOMAS** said he would like to recognize **Dave Mott**, representing the Department of Fish, Wildlife and Parks. He asked how are they going to handle this, right now they require a driver's license number to apply for a conservation license, etc.? Could he please expand on this subject?

**Dave Mott, Chief Administrator/Finance, Montana Department, Fish, Wildlife, Parks** answered that they require a form of identification, which typically is the driver license that type of thing. The way he sees this happening, is at the time of application, the Social Security number would be just another piece of information like they get the physical description of the person that they put on the license as well. It would be entered on the license and then put into the data system.

**SEN. THOMAS** asked, if they would need both the Social Security number and the driver's license number, as well as the 19 or 17 digit number?

**Dave Mott** said actually on their applications, they don't put the driver's license number on it. It is used mainly as a method to determine residencies. To be sure that the person is a resident of Montana.

**SEN. THOMAS** asked like an example is on a conservation license or elk license, do those have it on the front of the license?

**Dave Mott** asked, "the driver's license number?"

**SEN. THOMAS** replied, "yes."

**Dave Mott** said he was not sure, or if they would be required to collect both pieces of information. He doesn't see a need for it.

**SEN. THOMAS** said he had a question for **Mary Ann Wellbank**. If he was to apply for assistance of some nature, he would have to supply his Social Security number on such an application, for any public assistance that he would apply for?

**Mary Ann Welland** answered, "that is true."

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**SEN. BECK** said in closing, he wanted to say it has been less than 2 years ago when they implemented **SB 376**. What a contentious time it was. The contentious time was not about the intent and purpose of this bill. The intent and purpose of this bill is to try to get those fathers that are not paying their child support. It's a good bill and it's working. They have got to give the Department the tools to work with and Social Security numbers is one of the tools that they have to give them to use. They have kept confidentiality into it. He doesn't think it is going to be any type of intrusiveness on any individual, except those that are not supporting their kids. He hopes this bill absolutely gets passed through the Senate and out of this Committee, and he is going to fight like a dog, if they start to pull the same things they did last session, because they need this legislation. Thank you.

{**Tape : 2; Side : A; Approx. Time Counter : 0 - 33}**}

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**ADJOURNMENT**

Adjournment: 5:00 P.M.

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SEN. AL BISHOP, Chairman

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MARTHA MCGEE, Secretary

AB/MM

**EXHIBIT (phs05aad)**