

**SENATE JOURNAL
TWENTY-THIRD LEGISLATIVE DAY**

Helena, Montana
January 29, 1999

Senate Chambers
State Capitol

Senate convened at 12:30 p.m. President Crippen presiding. Invocation by Reverend Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present. Quorum present.

Mr. President: We, your committee on Bills and Journal, having examined the daily journal for the twenty-second legislative day, find the same to be correct.

Miller, Chairman

REPORTS OF STANDING COMMITTEES

BILLS AND JOURNAL (Miller, Chairman): 1/29/1999
Correctly printed: SB 313, SB 314, SB 315, SB 316, SB 317, SB 318, SB 319, SB 320.

BUSINESS AND INDUSTRY (Hertel, Chairman): 1/28/1999
SB 27, introduced bill, be amended as follows:

1. Page 1, lines 14, 18, 19, 20, 22, 23, and 29.

Strike: "13"

Insert: "14"

2. Page 1, line 23.

Strike: "(a)"

3. Page 1, line 25.

Strike: "(i)"

Insert: "(a)"

Renumber: subsequent subsections

4. Page 1, line 30 through page 2, line 4.

Strike: subsection (b) in its entirety

5. Page 2, line 6.

Strike: "13"

Insert: "14"

6. Page 3, line 5.

Strike: "commercial"

7. Page 3, line 8.

Following: "States"

Insert: "or an agency, bureau, or department of government of the United States"

8. Page 3, line 16.

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Strike: "-- felony violations"

9. Page 4, lines 21 and 28.

Strike: "13"

Insert: "14"

10. Page 5, line 12.

Strike: "13"

Insert: "14"

11. Page 5, line 17.

Following: "of"

Strike: "[section 8, 10, 11, or 12] or"

12. Page 5, line 18.

Following: "provisions of"

Insert: "[section 14] and"

13. Page 6, line 18.

Following: "2"

Insert: ", or staff members, licensed or unlicensed, of the producer"

14. Page 6, line 19.

Following: "system"

Insert: "or a radio or television station"

15. Page 6, line 22.

Following: "commission"

Insert: ", the federal communications commission, a rural telephone cooperative or its subsidiary or agent,"

16. Page 7, line 26.

Strike: "13"

Insert: "14"

17. Page 8, line 24.

Strike: "13"

Insert: "14"

18. Page 8, line 30.

Strike: "13"

Insert: "14"

19. Page 9, line 1.

Strike: "13"

Insert: "14"

20. Page 11, line 30.

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Strike: "13"
Insert: "14"

21. Page 12, line 3.

Following: "30-14-103"

Insert: "and is subject to the penalty provisions of [section 14] and the Montana Unfair Trade Practices and Consumer Protection Act of 1973"

22. Page 12, line 6.

Strike: "13"

Insert: "14"

Following: "telemarketer"

Insert: ", purposely or knowingly,"

23. Page 12, line 23.

Following: "30-14-103"

Insert: "and is subject to the penalty provisions of [section 14] and the Montana Unfair Trade Practices and Consumer Protection Act of 1973"

24. Page 12, line 25.

Strike: "-- burden of proof"

25. Page 12, line 26.

Strike: "13"

Insert: "14"

26. Page 13, lines 9 through 11.

Strike: subsection (3) in its entirety

27. Page 13, lines 24, 27, and 28.

Strike: "13"

Insert: "14"

28. Page 14, line 1.

Insert: "NEW SECTION. **Section 14. Penalties -- misdemeanor and felony violations -- burden of proof.**

(1)(a) A person who fails to follow the requirements of [sections 4, 8, 10, 11, or 12] commits the offense of failure to comply with the requirements of [sections 1 through 14]. Except as otherwise provided in [section 11], this offense is specifically intended to be an absolute liability offense as provided for in 45-2-104.

(b) A person convicted of the offense of failure to comply with the requirements of [sections 1 through 14] shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(c) Upon a second or subsequent conviction for the offense of failure to comply with the requirements of [sections 1 through 14], a person shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(2) (a) A person commits the offense of telemarketing fraud when the person knowingly violates [sections 1 through 14] with the purpose of depriving an owner of property.

(b) A person convicted of the offense of telemarketing fraud in which the value of the property does not exceed \$500 shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

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(c) A person convicted of the offense of telemarketing fraud in which the value of the property exceeds \$500 or the person has engaged in telemarketing fraud as part of a common scheme shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) In any criminal proceeding alleging a violation of [sections 1 through 14], the burden of producing evidence to support a defense based on an exemption under [section 5] or an exception from a definition in [section 3] is on the person claiming the exemption or exception."

Renumber: subsequent sections

29. Page 14, lines 19 and 21.

Strike: "13"

Insert: "14"

30. Page 14, line 23.

Strike: "15"

Insert: "16"

31. Page 14, line 25.

Strike: "14"

Insert: "15"

And, as amended, do pass. Report adopted.

COMMITTEE ON COMMITTEES (Devlin, Chair)

1/19/1999

We your Committee on Committees, have appointed the following Senators to the Legislative Council for the current biennium:

1. Senator Tom Beck
2. Senator Chris Christiaens
3. Senator Mack Cole
4. Senator Debbie Shea

MESSAGES FROM THE OTHER HOUSE

House bills concurred in and transmitted to the Senate for concurrence:

1/28/1999

HB 98, introduced by B. Simon

HB 155, introduced by B. Pavlovich

FIRST READING AND COMMITMENT OF BILLS

The following Senate bills were introduced, read first time, and referred to committees:

SB 321, introduced by R. Jabs, referred to Local Government.

SB 322, introduced by M. Waterman, C. Christiaens, J. Cobb, D. Hargrove, L. Soft, referred to Public Health, Welfare and Safety.

SB 323, introduced by S. Doherty, A. Bishop, J. Bohlinger, C. Christiaens, V. Cocchiarella, D. Eck, J. Ellingson, E. Franklin, S. Gallus, M. Halligan, G. Jergeson, L. Nelson, S. Stang, E. Swanson, J. Tester, C. Williams, referred to Finance and Claims.

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- SB 324**, introduced by K. Miller, referred to Fish and Game.
SB 325, introduced by J. Hertel, referred to Education and Cultural Resources.
SB 326, introduced by J. Tester, J. Ellingson, K. Galvin-Halcro, D. Wyatt, referred to Business and Industry.
SB 327, introduced by G. Devlin, referred to Agriculture, Livestock and Irrigation.
SB 328, introduced by J. Ellingson, S. Bartlett, J. Bohlinger, D. Eck, E. Franklin, M. Waterman, referred to Judiciary.
SB 329, introduced by J. Ellingson, referred to Fish and Game.
SB 330, introduced by A. Mohl, C. Ahner, T. Beck, W. Crismore, B. DePratu, G. Devlin, B. Glaser, J. Harp, R. Holden, J. Lynch, K. Mesaros, D. Shea, C. Swysgood, M. Taylor, referred to Highways and Transportation.
SB 331, introduced by D. Shea, referred to Business and Industry.
SB 332, introduced by P. Ekegren, L. Grinde, J. Harp, M. Lindeen, referred to Business and Industry.
SB 333, introduced by C. Swysgood, S. Bookout-Reinicke, M. Cole, B. Crippen, B. DePratu, G. Devlin, A. Ellis, L. Grinde, M. Hanson, J. Harp, H. Harper, J. Hertel, R. Jabs, B. Kasten, W. McNutt, K. Mesaros, A. Mohl, K. Ohs, R. Peck, J. Quilici, B. Rehbein, P. Sliter, B. Story, F. Thomas, M. Waterman, T. Zook, referred to Highways and Transportation.
SB 334, introduced by K. Mesaros, J. Hertel, C. Hibbard, E. Swanson, referred to Fish and Game.
SB 335, introduced by K. Mesaros, J. Hertel, C. Hibbard, E. Swanson, referred to Fish and Game.
SB 336, introduced by K. Mesaros, J. Hertel, C. Hibbard, E. Swanson, referred to Fish and Game.
SB 337, introduced by K. Mesaros, J. Hertel, C. Hibbard, E. Swanson, referred to Fish and Game.

The following House bills were introduced, read first time, and referred to committees:

- HB 98**, introduced by B. Simon (by request of the Board of Plumbers), referred to Labor and Employment Relations.
HB 155, introduced by B. Pavlovich (by request of the State Auditor), referred to Business and Industry.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

SB 40 passed as follows:

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Doherty, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Toews, Waterman, Wells, Wilson, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 217 passed as follows:

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Yeas: Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Doherty, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Hertel, Holden, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Toews, Waterman, Wells, Wilson, Mr. President.

Total 47

Nays: Bartlett, Harp, Mohl.

Total 3

Absent or not voting: None.

Total 0

Excused: None.

Total 0

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Senator Harp moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Swysgood in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 200 - Senator M. Taylor moved SB 200 do pass. After discussion, the committee reverted to the body of the bill for purpose of amendment.

SB 200 - Senator M. Waterman moved SB 200, second reading copy, be amended as follows :

1. Page 5, line 10 through line 29.

Strike: subsection (d) through subsection (g) in their entirety

2. Page 34, line 4 through line 15.

Strike: section 32 in its entirety

Insert: "NEW SECTION. Section 32. Report on economic incentives. The department of revenue shall report to the revenue oversight committee at least once each year on:

(1) the number and type of taxpayers claiming the tax credit for property taxes paid, as provided in [section 3], and the amount of the credit claimed by type of taxpayer;

(2) the number and type of taxpayers claiming the job creation tax credit, as provided in [sections 6 and 7], the number and type of jobs created, the level of the qualifying wage to which the credit is applied, and the amount of the credit claimed by type of taxpayer;

(3) the number and type of taxpayers claiming the job training tax credit, as provided in [sections 8 through 10], the number and type of job training program jobs, the level of the qualifying wage to which the credit is applied, and the amount of the credit claimed by type of taxpayer."

3. Page 35, line 12.

Following: "29,"

Insert: "32,"

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4. Page 35, line 14.

Following: "30"

Strike: "through"

Insert: ", 31, and"

Amendment **failed** as follows:

Yeas: Bartlett, Christiaens, Cocchiarella, Doherty, Eck, Ellingson, Franklin, Halligan, Jergeson, Lynch, McCarthy, Nelson, Roush, Shea, Stang, Tester, Waterman, Wilson.

Total 18

Nays: Beck, Berry, Bishop, Bohlinger, Cole, Crismore, DePratu, Devlin, Ekegren, Ellis, Glaser, Grimes, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Keating, Keenan, Mahlum, McNutt, Mesaros, Miller, Mohl, Sprague, Swysgood, Taylor, Thomas, Toews, Wells, Mr. President.

Total 32

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 200 - Senator DePratu moved SB 200, second reading copy, be amended as follows :

1. Page 7, line 16.

Strike: "qualifying annual"

Following: "salary"

Insert: "paid to employees"

2. Page 7, line 21.

Following: "PAY"

Insert: ", on an hourly basis,"

Amendment **adopted** as follows:

Yeas: Beck, Berry, Bishop, Bohlinger, Cole, Crismore, DePratu, Devlin, Eck, Ekegren, Ellis, Glaser, Grimes, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Keating, Keenan, Mahlum, McNutt, Mesaros, Miller, Mohl, Nelson, Sprague, Swysgood, Taylor, Thomas, Toews, Waterman, Wells, Wilson, Mr. President.

Total 36

Nays: Bartlett, Christiaens, Cocchiarella, Doherty, Ellingson, Franklin, Halligan, Jergeson, Lynch, McCarthy, Roush, Shea, Stang, Tester.

Total 14

Absent or not voting: None.

Total 0

Excused: None.

Total 0

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SB 200 - Senator Glaser moved SB 200, second reading copy, be further amended as follows :

1. Page 4, line 23 and line 24.

Strike: "THE CREDIT MAY BE CLAIMED FOR EACH COUNTY IN WHICH THE TAXPAYER OWNS PROPERTY."

2. Page 4, line 26.

Strike: "a county"

Insert: "the state"

3. Page 5, line 1.

Strike: "a county"

Insert: "the state"

4. Page 5, line 6.

Strike: "a county"

Insert: "the state"

5. Page 5, line 11.

Strike: "a county"

Insert: "the state"

6. Page 5, line 16.

Strike: "a county"

Insert: "the state"

7. Page 5, line 22.

Strike: "a county"

Insert: "the state"

8. Page 5, line 27.

Strike: "A COUNTY"

Insert: "the state"

9. Page 5, line 30 through page 6, line 1.

Strike: subsection (3) in its entirety

Renumber: subsequent subsections

Amendment **failed** as follows:

Yeas: Bartlett, Christiaens, Cocchiarella, Doherty, Eck, Ellingson, Franklin, Glaser, Halligan, Holden, Jergeson, Keating, Lynch, McCarthy, Miller, Nelson, Shea, Stang, Tester, Toews, Waterman, Wilson.

Total 22

Nays: Beck, Berry, Bishop, Bohlinger, Cole, Crismore, DePratu, Devlin, Ekegren, Ellis, Grimes, Grosfield, Hargrove, Harp, Hertel, Jabs, Keenan, Mahlum, McNutt, Mesaros, Mohl, Roush, Sprague, Swysgood, Taylor, Thomas, Wells, Mr. President.

Total 28

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Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 200 - Senator Ellingson moved SB 200, second reading copy, be further amended as follows :

1. Page 5, line 10.

Following: "2002"

Insert: "and for each succeeding tax year"

2. Page 5, line 15 through line 29.

Strike: subsections (e) through (g) in their entirety

Amendment **failed** as follows:

Yeas: Bartlett, Christiaens, Cocchiarella, Doherty, Eck, Ellingson, Franklin, Halligan, Jergeson, Lynch, McCarthy, Nelson, Roush, Shea, Stang, Tester, Waterman, Wilson.
Total 18

Nays: Beck, Berry, Bishop, Bohlinger, Cole, Crismore, DePratu, Devlin, Ekegren, Ellis, Glaser, Grimes, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Keating, Keenan, Mahlum, McNutt, Mesaros, Miller, Mohl, Sprague, Swysgood, Taylor, Thomas, Toews, Wells, Mr. President.
Total 32

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 200 - Senator Stang moved SB 200, second reading copy, be further amended as follows :

1. Page 9, line 16.

Strike: "80% OF the average weekly wage as defined in 39-71-116"

Insert: ", on an hourly basis, the qualifying annual salary defined in [section 5]"

Amendment **failed** as follows:

Yeas: Bartlett, Bohlinger, Christiaens, Cocchiarella, Crismore, Doherty, Eck, Ellingson, Franklin, Glaser, Grosfield, Halligan, Jergeson, Lynch, McCarthy, Nelson, Roush, Shea, Stang, Tester, Toews, Waterman, Wilson.
Total 23

Nays: Beck, Berry, Bishop, Cole, DePratu, Devlin, Ekegren, Ellis, Grimes, Hargrove, Harp, Hertel, Holden, Jabs, Keating, Keenan, Mahlum, McNutt, Mesaros, Miller, Mohl, Sprague, Swysgood, Taylor, Thomas, Wells, Mr. President.
Total 27

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Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 200 - Senator Eck moved SB 200, second reading copy, be further amended as follows :

1. Page 35.

Following: line 24

Insert: "NEW SECTION. Section 39. Coordination instruction. If House Bill No. 2 does not contain an express appropriation for the reimbursement for loss of taxable valuation of class six property, as provided in [section 1], for the biennium ending June 30, 2001, then [sections 1, 2, 11 through 27, and 29 through 31] are void."

Amendment **failed** as follows:

Yeas: Bartlett, Christiaens, Cocchiarella, Doherty, Eck, Ellingson, Franklin, Grimes, Halligan, Jergeson, Lynch, McCarthy, Nelson, Roush, Shea, Sprague, Stang, Tester, Waterman, Wilson.
Total 20

Nays: Beck, Berry, Bishop, Bohlinger, Cole, Crismore, DePratu, Devlin, Ekegren, Ellis, Glaser, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Keating, Keenan, Mahlum, McNutt, Mesaros, Miller, Mohl, Swysgood, Taylor, Thomas, Toews, Wells, Mr. President.
Total 30

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 200 - Senator Taylor moved SB 200, as amended, do pass. Motion passed as follows:

Yeas: Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Ekegren, Ellis, Glaser, Grimes, Grosfield, Hargrove, Harp, Hertel, Holden, Jabs, Keating, Keenan, Mahlum, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Sprague, Swysgood, Taylor, Tester, Thomas, Toews, Wells, Wilson, Mr. President.
Total 38

Nays: Bartlett, Doherty, Eck, Ellingson, Franklin, Halligan, Jergeson, Lynch, McCarthy, Shea, Stang, Waterman.
Total 12

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SB 213 - Senator L. Grosfield moved SB 213, second reading copy, be amended as follows :

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1. Title, lines 4 and 5.

Following: "ACT" on line 4

Strike: remainder of line 4 through ";" on line 5

2. Title, lines 7 and 8.

Strike: "REPEALING" on line 7 through ";" on line 8

3. Page 1, line 10 through line 13.

Strike: lines 10 through line 13 in their entirety

4. Page 3, lines 13 and 14.

Strike: section 2 in its entirety

Insert: "NEW SECTION. Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Amendment **adopted** unanimously.

SB 213 - Senator L. Grosfield moved SB 213, as amended, do pass. Motion carried as follows:

Yeas: Beck, Berry, Cole, Crismore, DePratu, Devlin, Ekegren, Ellis, Glaser, Grimes, Grosfield, Hargrove, Harp, Hertel, Holden, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Roush, Shea, Sprague, Swysgood, Taylor, Tester, Thomas, Toews, Wells, Wilson, Mr. President.

Total 36

Nays: Bartlett, Bishop, Bohlinger, Christiaens, Cocchiarella, Doherty, Eck, Ellingson, Franklin, Halligan, Jabs, Nelson, Stang, Waterman.

Total 14

Absent or not voting: None.

Total 0

Excused: None.

Total 0

Senator Harp moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Crippen in the chair. Chairman Swysgood moved the Committee of the Whole report be adopted. Report adopted

MOTIONS

SB 200 - Senator McNutt moved he be allowed to change his vote on SB 200, second reading, from nay to aye. Motion carried.

ANNOUNCEMENTS

Committee meetings were announced by committee chairmen.

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Majority Leader Harp moved that the Senate adjourn until 9:30 a.m., Saturday, January 30, 1999. Motion carried.

Senate adjourned at 3:16 p.m.

ROSANA SKELTON
Secretary of Senate

BRUCE CRIPPEN
President of the Senate