

**SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY**

Helena, Montana  
February 16, 1999

Senate Chambers  
State Capitol

Senate convened at 1:00 p.m. Senator Hertel presiding. Invocation by Reverend Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present except Senator McCarthy, excused. Quorum present.

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

Miller, Chairman

**REPORTS OF STANDING COMMITTEES**

**BILLS AND JOURNAL** (Miller, Chairman): 2/16/1999  
Correctly printed: SB 293, SB 362, SB 371, SB 380, SB 383, SB 387, SB 492, SB 493, SB 494, SB 495, SB 496, SB 497, SB 498, SB 499, SB 500, SB 501, SJR 12.  
Correctly engrossed: SB 111, SB 224, SB 235, SB 241, SB 314, SB 359, SB 364, SB 381, SJR 4, HB 85, HB 137.  
Signed by the Secretary of Senate at 8:19 a.m., February 16, 1999: SJR 2.  
Signed by the President at 11:30 a.m., February 16, 1999: SB 9, SR 3.  
Delivered to the Governor for his approval at 10:20 a.m., February 16, 1999: SB 6, SB 11, SB 21, SB 55, SB 62, SB 76, SB 77.

**AGRICULTURE, LIVESTOCK AND IRRIGATION** (Jabs, Chairman): 2/16/1999  
**SB 183**, introduced bill, be amended as follows:

1. Title, line 4.

**Following:** "SEED"

**Strike:** "DEALERS"

2. Page 2, line 24.

**Following:** "or"

**Insert:** "is a variety for which a United States certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act, 7 U.S.C. 2321, et seq., without the authority of the owner of the variety or"

3. Page 6, line 27.

**Following:** "dormant seed"

**Strike:** "and"

**Insert:** "multiplied by"

4. Page 7, line 8.

**Following:** "business"

**Insert:** ", whether a permanent or portable facility,"

5. Page 9, line 1.

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

**Following:** "production;"  
**Strike:** "and"

6. Page 9, line 3.

**Following:** "address"

**Insert:** "; or (c) a Montana grower who labels seed only of that labeler's own production with a gross annual sales value of \$5,000 or less"

7. Page 9, line 10.

**Following:** "year;"

**Strike:** "and"

8. Page 9, line 12.

**Following:** "conditioner"

**Insert:** "; or (d) a Montana grower selling only seed of that grower's own production with a gross annual sales value of \$5,000 or less"

9. Page 9, line 18.

**Strike:** brackets around the sentence on line 18

10. Page 9, line 21.

**Strike:** "\$360"

**Insert:** "\$100"

11. Page 9, line 23.

**Strike:** "\$180"

**Insert:** "\$50"

12. Page 9, line 25, following line 24.

**Insert:** "(e) The license fee for a Montana grower who sells or labels only seed of that grower's own production is \$50 a year."

13. Page 14, line 17.

**Following:** "Seed"

**Strike:** "dealers"

**Insert:** "labelers"

14. Page 14, line 18.

**Following:** "fee of"

**Strike:** "25"

**Insert:** "15"

15. Page 14, lines 18 and 19.

**Following:** "seed" on line 18

**Strike:** remainder of line 18 through "license" on line 19

16. Page 15, line 28.

**Following:** "Section 16."

**Strike:** "remainder of line 28 through "void." on line 29"

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

**Insert:** "**Contingent voidness.** If Constitutional Amendment No. 75, enacting Article VIII, section 17, of the Montana constitution, is not declared invalid, then 80-5-202(5)(e) of this act is void."

And, as amended, do pass. Report adopted.

**SB 342**, introduced bill, be amended as follows:

1. Page 3, line 16.

**Strike:** "5"

**Insert:** "4"

2. Page 3, line 17.

**Strike:** "5"

**Insert:** "4"

3. Page 3, line 19.

**Strike:** "5"

**Insert:** "4"

4. Page 3, line 20.

**Strike:** "5"

**Insert:** "4"

5. Page 3, line 22.

**Strike:** "5"

**Insert:** "4"

And, as amended, do pass. Report adopted.

**SB 394**, introduced bill, be amended as follows:

1. Title, line 6.

**Following:** "LAW"

**Insert:** ", UPON PETITION BY CERTIFIED ORGANIC MONTANA PRODUCERS, PROCESSORS, AND HANDLERS"

2. Title, line 13.

**Following:** "ACCOUNT;"

**Insert:** "AMENDING SECTIONS 50-31-103 AND 50-31-203, MCA; REPEALING SECTIONS 50-31-221, 50-31-222, 50-31-223, AND 50-31-231;"

**Following:** "PROVIDING"

**Strike:** "AN IMMEDIATE"

**Following:** "EFFECTIVE"

**Strike:** "DATE"

**Insert:** "DATES"

3. Page 1, line 18.

**Following:** "(1)"

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

**Strike:** "The"

**Insert:** "Upon petition by 50% or more of certified organic producers, processors, and handlers in Montana, the"

4. Page 1, lines 29 and 30.

**Strike:** "20%" on line 29 through "Montana" on line 30

**Insert:** "two-thirds of the certified organic producers, processors, and handlers who petitioned for development of a state plan pursuant to subsection (1)"

5. Page 2, line 4.

**Following:** "department"

**Insert:** ", a consumer member of the public at large,"

6. Page 2, line 9.

**Following:** "handlers"

**Insert:** "certified under the state organic certification program"

7. Page 2, line 18.

**Insert:** "(5) A state organic certification program may not be construed to apply to organic producers, processors, and handlers certified solely by other organic certification programs, whether public, private, foreign, or domestic, nor may the state organic certification program prohibit those other certifying organizations from certifying and collecting fees from organic producers, processors, handlers, or any other commercial entity in Montana. Organic producers, processors, and handlers may be certified under both the state organic certification program and programs administered by other certifying organizations."

8. Page 2, line 30.

**Insert:** "**Section 3.** Section 50-31-103, MCA, is amended to read:

**"50-31-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.

(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.

(4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source and that is disinfected and placed in a sealed container or package for human consumption.

(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

(7) "Color" includes black, white, and intermediate grays.

(8) (a) "Color additive" means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with another substance) of imparting color to the human body.

(b) The term does not include material that has been or is exempted under the federal act.

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

(9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant to the federal act. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.) or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151 through 157), commonly known as the Virus-Serum-Toxin Act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act (21 U.S.C. 353(b)(1) and 356);

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551 through 1610).

(10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(11) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(12) "Counterfeit drug" means a drug, drug container, or drug label that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and that falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and that contains not more than 10 parts per million total solids.

(14) "Department" means the department of public health and human services provided for in 2-15-2201.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(b) to affect the structure or function of the body of humans or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of humans or other animals;

(d) articles intended for use as components of any article specified in subsection (18)(a), (18)(b), or (18)(c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and that complies with the food and drug administration

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

quality standards set forth in 21 CFR 103.35.

(21) "Food" means:

- (a) articles used for food or drink for humans or other animals;
- (b) chewing gum; and
- (c) articles used for components of these articles.

(22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) The term does not include:

- (i) a pesticide chemical in or on a raw agricultural commodity;
- (ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;
- (iii) a color additive;
- (iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 603, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption, either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

- (i) a fat content no greater than the federal standard set forth in 9 CFR 319.15; and
- (ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

- (i) a fat content no greater than 22%; and
- (ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

- (i) a fat content no greater than 16%; and
- (ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

- (i) a fat content no greater than 12%; and
- (ii) a lean content of no less than 88%.

(25) "Honey" means the nectar and saccharine plant exudations, gathered, modified, and stored in the comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25% of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. "Immediate container" does not include package liners.

(27) "Labeling" means labels and other written, printed, or graphic matter:

- (a) on an article or its containers or wrappers;
- (b) accompanying the article.

(28) "Menu" means a list presented to the patron that states the food items for sale in a food service

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but that has not, other than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

~~(32)~~ "Organic food" means food that conforms to the definition in 50-31-222.

~~(33)~~(32) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers.

(b) The term does not include:

(i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(ii) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

~~(34)~~(33) "Person" includes an individual, partnership, corporation, and association.

~~(35)~~(34) "Pesticide chemical" means a substance that alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.), as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

~~(36)~~(35) "Placard" means a nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

~~(37)~~(36) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

~~(38)~~(37) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of the food in a package.

~~(39)~~(38) "Purified water" means water that is produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the Pharmacopoeia of the United States of America, 1980.

~~(40)~~(39) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

~~(41)~~(40) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

~~(42)~~(41) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

~~(43)~~(42) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

~~(44)~~(43) "Water-bottling plant" means a facility in which bottled water is produced.

~~(45)~~(44) "Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device using external force or vacuum;

(b) is not modified in its mineral content; and

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process. ""

**Insert: "Section 4.** Section 50-31-203, MCA, is amended to read:

**"50-31-203. When food misbranded.** A food is considered to be misbranded if:

- (1) its labeling is false or misleading in any particular;
- (2) it is offered for sale under the name of another food;
- (3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately after that word, the name of the food imitated;
- (4) its container is made, formed, or filled in a manner that is misleading;
- (5) it is in package form, unless it bears a label containing:
  - (a) the name and place of business of the manufacturer, packer, or distributor;
  - (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;provided that reasonable variations must be permitted and exemptions as to small packages must be established by regulations prescribed by the department;
- (6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:
  - (a) it conforms to that definition and standard; and
  - (b) its label bears the name of the food specified in the definition and standard and, as may be required by the regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in the food;
- (8) it purports to be or is represented as:
  - (a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below that standard, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below that standard; or
  - (b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below that standard;
- (9) it is not subject to the provisions of subsection (7) unless it bears labeling clearly giving:
  - (a) the common or usual name of the food, if there is one; and
  - (b) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of this subsection (9)(b) is impractical or results in deception or unfair competition, exemptions must be established by regulations promulgated by the department. The requirements of this subsection (9)(b) do not apply to food products that are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department.
- (10) it purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties that the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for special dietary uses;
- (11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact. To the extent that compliance with the requirements of this subsection is impracticable, exemptions must be established by regulations promulgated by the department. Butter, cheese, ice cream, and frozen desserts as described in 81-22-101 are exempt from label statements for artificial flavoring and artificial coloring.



SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with packaging and labeling requirements applicable to that color additive prescribed under the provisions of the federal act;

~~(14) it is labeled "organic", "organically grown", "naturally grown", "ecologically grown", or "biologically grown" but does not conform to the definition in 50-31-222. "~~

**Insert:** "NEW SECTION. Section 5. Repealer. Sections 50-31-221, 50-31-222, 50-31-223, and 50-31-231, MCA, are repealed."

**Renumber:** subsequent sections

9. Page 3, line 5.

**Following:** "Effective"

**Strike:** "date"

**Insert:** "dates"

**Strike:** "[This"

**Insert:** "(1) Except as provided in subsection (2), [this"

10. Page 3, line 6.

**Insert:** "(2) [Sections 3 through 5] are effective upon the implementation of a state organic certification program pursuant to [section 1(3)]."

And, as amended, do pass. Report adopted.

**BUSINESS AND INDUSTRY** (Hertel, Chairman):  
**SB 263**, introduced bill, be amended as follows:

2/15/1999

1. Title, page 1, line 5.

**Strike:** "AFTERMARKET"

**Insert:** "NONORIGINAL"

2. Title, page 1, line 6.

**Strike:** "PERMISSION"

**Insert:** "CONSENT"

3. Page 1, line 12.

**Strike:** "3"

**Insert:** "4"

4. Page 1, line 13.

**Strike:** "aftermarket"

**Insert:** "nonoriginal"

5. Page 1, line 14.

**Strike:** "permission"

**Insert:** "consent"

6. Page 1, line 15.

**Strike:** "and 2"

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

**Insert:** "through 3"

7. Page 1, lines 16 through 19.

**Strike:** subsection (a) in its entirety

8. Page 1, line 20.

**Strike:** "(b)"

**Insert:** "(a)"

9. Page 1, following line 21.

**Insert:** "(b) "Nonoriginal crash repair part" means a part for an automotive vehicle made by a company other than the original manufacturer or a licensed affiliate and is limited to only the following metal, fiberglass, or plastic motor vehicle crash repair parts; hood; fender; radiator support; cowl panel; doors; roof; rocker panel; quarter panel; and trunk lid."

10. Page 1, line 23.

**Strike:** "permission"

**Insert:** "consent"

11. Page 1, lines 24 and 25.

**Strike:** "an aftermarket"

**Insert:** "a nonoriginal"

**Following:** "without"

**Insert:** "first obtaining"

12. Page 1, line 26.

**Strike:** "permission"

**Insert:** "consent"

**Following:** "claimant"

**Insert:** "verifiable by the insured's or other claimant's signature on the repair estimate or work order"

13. Page 1, following line 26.

**Insert:** "(2) An insurer or automobile body repair facility shall notify the customer anytime that a nonoriginal crash repair part is to be installed."

**Renumber:** subsequent subsection

14. Page 1, line 28.

**Strike:** "an aftermarket" in two places

**Insert:** "a nonoriginal" in two places

15. Page 1, following line 30.

**Insert:** "NEW SECTION. Section 3. Fraud. (1) It is considered insurance fraud under Title 33, chapter 1, part 13, if an automobile body repair facility or a part person places a nonoriginal crash repair part on a vehicle and submits an invoice for an original equipment part.

(2) An insurer, insurance producer, or other person who has reason to believe that fraud has occurred under this section shall comply with the reporting requirements of 33-1-1303."

**Renumber:** subsequent sections

16. Page 2, lines 5 and 7.

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

**Strike:** "3"  
**Insert:** "4"

And, as amended, do pass. Report adopted.

**SB 351**, introduced bill, be amended as follows:

1. Title, page 1, line 4.

**Following:** " ; "

**Insert:** "ALLOWING A CASINO NIGHT TO BE HELD ON TWO SEPARATE OCCASIONS, NOT TO EXCEED 6 CONSECUTIVE HOURS EACH; ESTABLISHING LIMITS FOR CASH PRIZES;"

2. Page 1, line 12.

**Following:** "(1)"

**Strike:** "The"

**Insert:** "(a) Except as provided in subsection (1)(b), a"

3. Page 1, following line 12.

**Insert:** "(b) A casino night may be split into two separate, 6- consecutive hour sessions that may not be held on the same day but must be held in the same calendar year."

4. Page 1, following line 19.

**Insert:** "(5) If cash prizes are awarded, the prizes for bingo and keno may not exceed the prize limits established in 23-5-412. Live card games must be limited to those authorized in 23-5-311, and the prizes may not exceed the prize amount established in 23-5-312."

And, as amended, do pass. Report adopted.

**SB 369**, introduced bill, be amended as follows:

1. Title, page 1, line 5 through line 9.

**Strike:** "REQUIRING" on line 5 through " ; " on line 9

2. Title, page 1, line 9.

**Following:** "CONVERSION"

**Insert:** "FOR AN INDIVIDUAL WHO HAS BEEN INSURED MORE THAN 3 YEARS"

3. Page 1, line 24.

**Strike:** "years"

**Insert:** "months"

4. Page 2, line 5.

**Strike:** "150%"

**Insert:** "200%"

5. Page 2, line 6.

**Following:** " . "

**Insert:** "If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate."

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

6. Page 2, line 24.

**Strike:** "years"

**Insert:** "months"

7. Page 3, line 4.

**Strike:** "150%"

**Insert:** "200%"

8. Page 3, line 5.

**Following:** ". "

**Insert:** "If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate."

And, as amended, do pass. Report adopted.

**SB 377**, introduced bill, be amended as follows:

1. Page 1, line 21.

**Following:** ". "

**Insert:** "If the association determines that there is a surplus over what the board of directors has determined is necessary, the association may refund, abate, or otherwise credit the surplus to the insurer member."

2. Page 2, line 6.

**Strike:** "TO 2% OF NET DIRECT WRITTEN PREMIUMS"

**Insert:** "BY IMPOSING AN ANNUAL FIXED 2% ASSESSMENT ON A MEMBER INSURANCE COMPANY'S NET DIRECT WRITTEN PREMIUMS TO COVER COSTS OF THE ASSOCIATION, TO INCLUDE PAYING VALID CLAIMS OF MONTANA CITIZENS WHEN AN INSURANCE COMPANY IS FINANCIALLY UNABLE TO PAY CLAIMS"

3. Page 2, line 7 through line 8.

**Strike:** "setting" on line 7 through "premiums" on line 8

**Insert:** "assessing property and casualty insurance companies 2% of annual premiums to pay valid consumer claims in Montana on behalf of financially impaired insurance companies"

4. Page 2, line 9 through line 10.

**Strike:** "setting" on line 9 through "premiums" on line 10

**Insert:** "assessing property and casualty insurance companies 2% of annual premiums to pay valid consumer claims in Montana on behalf of financially impaired insurance companies"

And, as amended, do pass. Report adopted.

**SB 378**, do pass. Report adopted.

**SB 379**, introduced bill, be amended as follows:

1. Page 2, line 9.

**Following:** "obligations"

**Insert:** "or the assessment, in whole or in part, would violate Article VIII, section 17, of the Montana constitution. The association may also abate, defer, or credit, in whole or in part and in the same pro rata basis as those assessments were calculated, the payment of any assessment by all member insurers for any year if in the

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

opinion of the association, the payment would result in more funds than necessary to carry out the powers and duties of the association under 33-10-219 and 33-10-220 with regard to an impaired insurer. The total of all assessments upon a member insurer for each account may not in any 1 calendar year exceed 2% of annual premiums to pay valid consumer claims in Montana on behalf of financially impaired insurance companies"

2. Page 3, line 17 through line 18.

**Strike:** "setting" on line 17 through "state" on line 18

**Insert:** "assessing life and health insurance companies 2% of annual premiums to pay valid consumer claims in Montana on behalf of financially impaired insurance companies"

3. Page 3, line 19 through line 20.

**Strike:** "setting" on line 17 through "state" on line 18

**Insert:** "assessing life and health insurance companies 2% of annual premiums to pay valid consumer claims in Montana on behalf of financially impaired insurance companies"

And, as amended, do pass. Report adopted.

**SB 386**, introduced bill, be amended as follows:

1. Title, page 1, line 10.

**Strike:** "AND"

**Following:** "MCA"

**Insert:** "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 2, following line 21.

**Insert:** "NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval."

And, as amended, do pass. Report adopted.

**SB 414**, introduced bill, be amended as follows:

1. Page 7, line 27.

**Following:** "-"

**Insert:** "The total of all assessments upon a member insurer for each account may not in any 1 calendar year exceed 2% of the insurer's premiums in this state on the policies covered by the account."

And, as amended, do pass. Report adopted.

**SB 439**, do pass. Report adopted.

**SJR 9**, be adopted. Report adopted.

**EDUCATION AND CULTURAL RESOURCES** (Toews, Chairman):

2/16/1999

**SB 428**, introduced bill, be amended as follows:

1. Page 4, line 24.

**Strike:** "superintendent of public instruction"

**Insert:** "board of regents"

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

2. Page 5, line 17.

**Strike:** "traffic education"

**Insert:** "motorcycle safety"

And, as amended, do pass. Report adopted.

**ETHICS** (Bishop, Chairman):

2/16/1999

**SB 395**, do pass. Report adopted.

**FINANCE AND CLAIMS** (Swysgood, Chairman):

2/16/1999

**HB 3**, be concurred in. Report adopted.

**JUDICIARY** (Grosfield, Chairman):

2/15/1999

**SB 153**, introduced bill, be amended as follows:

1. Title, line 17.

**Strike:** "30-9-432,"

2. Page 70, line 7.

**Following:** "number,"

**Insert:** "the debtor, the creditor, and"

3. Page 76, line 28.

**Strike:** "section"

**Insert:** "sections 72 and"

4. Page 76, line 29.

**Strike:** "section"

**Insert:** "sections 72 and"

5. Page 77, line 14.

**Strike:** "section"

**Insert:** "sections 72 and"

6. Page 77, line 16.

**Strike:** "section"

**Insert:** "sections 72 and"

7. Page 77, line 18.

**Strike:** "The"

**Insert:** "Subject to the requirements of Title 2, chapter 6, part 2, the"

8. Page 79, line 3.

**Strike:** "every"

**Insert:** "a reasonable form or"

9. Page 155, line 14.

**Strike:** "30-9-432,"

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

And, as amended, do pass. Report adopted.

**SB 251**, introduced bill, be amended as follows:

1. Title, line 9.

**Following:** "61-8-410,"

**Insert:** "61-8-714,"

2. Page 3, line 22.

**Insert:** "**Section 3.** Section 61-8-714, MCA, is amended to read:

**"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense. (1)**

A person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than \$100 or more than \$500. The initial 24 hours of the imprisonment term must be served in the county jail and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the defendant.

(2) On a second conviction, the person shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days or more than 6 months. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. Three days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. Except for the initial 3 days of the imprisonment term, the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the defendant.

(3) On the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$500 or more than \$1,000. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the defendant."

**Renumber:** subsequent sections

3. Page 5, line 10.

**Strike:** "chemical dependency"

**Following:** "assessment"

**Insert:** ", education, and treatment"

**Following:** "(1)"

**Strike:** "(a)"

4. Page 5, line 11.

**Strike:** "Before a sentence is imposed under"

**Insert:** "In addition to the punishments provided in"

5. Page 5, line 12.

**Following:** "complete"

**Insert:** ":

(a)"

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

6. Page 5, line 13 through line 14.

**Following:** "assessment" on line 13

**Strike:** remainder of line 13 through "services" on line 14

7. Page 5, line 15.

**Following:** "~~both~~"

**Strike:** "."

**Insert:** ";

(b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406 or as required by subsection (8) of this section, alcohol or drug treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment, the chemical dependency education course, and alcohol or drug treatment must be completed at a treatment program approved by the department of public health and human services and must be conducted by a certified chemical dependency counselor. The defendant may attend the program of the defendant's choice as long as the program is approved as required by this subsection. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4)"

8. Page 5, line 16 through line 18.

**Following:** "both." on line 16

**Strike:** remainder of line 16 through "cost." on line 18

9. Page 5, line 19.

**Following:** "by a"

**Insert:** "certified chemical dependency counselor or a"

10. Page 5, line 20 through line 22.

**Following:** "services." on line 20

**Strike:** remainder of line 20 through "both." on line 22

11. Page 5, line 23 through line 29.

**Strike:** line 23 through "services." on line 29

**Insert:** "(5)"

12. Page 6, line 6.

**Strike:** "(c)"

**Insert:** "(6)"

13. Page 6, line 10.

**Strike:** "(d)"

**Insert:** "(7)"

14. Page 6, line 13.

**Strike:** "(2)"

**Insert:** "(8)"



SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

15. Page 6, line 14.

**Strike:** "Upon"

**Insert:** "Alcohol or drug treatment, or both, must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon"

16. Page 6, line 14 through line 15.

**Following:** "finding" on line 14

**Strike:** remainder of line 14 through "report" on line 15

17. Page 6, line 17 through line 18.

**Following:** "services" on line 17

**Strike:** remainder of line 17 through "61-8-406" on line 18

18. Page 6, line 19 through line 23.

**Strike:** subsection (3)(a) in its entirety

19. Page 6, line 24.

**Strike:** "(b) (i)"

**Insert:** "(9) (a)"

**Following:** "conviction"

**Insert:** "or after treatment required under subsection (8)"

20. Page 6, line 25.

**Strike:** "(1)"

**Insert:** "(5)"

21. Page 6, line 27.

**Strike:** "(ii)"

**Insert:** "(b)"

**Following:** "subsection"

**Strike:** "(3)(b)(i)"

**Insert:** "(9)(a)"

22. Page 6, line 28.

**Following:** the first "sentence,"

**Insert:** "if any,"

And, as amended, do pass. Report adopted.

**SB 306**, introduced bill, be amended as follows:

1. Title, line 5.

**Following:** "SECTIONS"

**Strike:** "40-4-212,"

**Following:** "40-4-219"

**Strike:** ", "

2. Page 1, line 10 through page 2, line 17.

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

**Strike:** section 1 in its entirety

**Renumber:** subsequent sections

3. Page 2, line 20.

**Following:** "(1)"

**Insert:** "(a) Except as provided in subsection (1)(b), the court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child or a parent and that the amendment is necessary to serve the best interests of the child.

(b)"

**Following:** "may"

**Strike:** "in its discretion"

**Insert:** "not"

4. Page 2, line 21.

**Following:** "parenting plan"

**Strike:** "if"

**Insert:** "to change the child's residence and shall retain the child's residence as established by the prior plan unless"

5. Page 2, line 26.

**Strike:** "(a)"

**Insert:** "(i)"

**Renumber:** subsequent subsections

6. Page 2, line 30.

**Strike:** "(i)"

**Insert:** "(A)"

**Renumber:** subsequent subsections

**Following:** "or"

**Insert:** "or"

7. Page 3, line 1.

**Following:** "attempted"

**Strike:** "or threatened"

**Following:** "frustrate"

**Strike:** " "

**Following:** "or"

**Insert:** "or"

**Following:** "deny"

**Strike:** ", or delay"

8. Page 3, line 3.

**Strike:** subsection (iii) in its entirety

9. Page 3, line 5.

**Following:** "parent"

**Strike:** ": or"

**Insert:** " . "

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

10. Page 3, line 6 through line 8.

**Strike:** subsection (f) in its entirety

11. Page 3, line 15.

**Following:** "parents"

**Insert:** "and to apportion transportation costs between the parents"

And, as amended, do pass. Report adopted.

**SB 372**, introduced bill, be amended as follows:

1. Title, line 6.

**Following:** "PLANS"

**Strike:** "MUST BE REFUNDED"

**Insert:** "MAY NOT BE COLLECTED"

2. Title, line 12.

**Strike:** "IMMEDIATE"

3. Page 3, line 22.

**Following:** "If"

**Insert:** "the moving party files a statement signed by the nonmoving party agreeing not to contest"

**Following:** "plan"

**Strike:** "is granted by default"

**Insert:** "at the time the petition for amendment is filed"

4. Page 3, line 23.

**Strike:** "shall refund to"

**Insert:** "may not collect from"

5. Page 3, line 24.

**Strike:** "collected"

6. Page 6, line 3.

**Following:** "If"

**Insert:** "the moving party files a statement signed by the nonmoving party agreeing not to contest"

**Following:** "plan"

**Strike:** "is granted by default"

**Insert:** "at the time the petition for amendment is filed"

7. Page 6, line 4.

**Strike:** "shall refund to"

**Insert:** "may not collect from"

8. Page 6, line 5.

**Strike:** "collected"

9. Page 10, line 23.

**Following:** "and"

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

**Insert:** "residential and"  
**Following:** "addresses"  
**Strike:** "address for purposes of service"  
**Insert:** "addresses"

10. Page 10, line 24.  
**Following:** "~~number,~~"  
**Insert:** "telephone number, [social security number,]"

11. Page 15, line 2.  
**Strike:** "on passage and approval"  
**Insert:** "July 1, 1999"

And, as amended, do pass. Report adopted.

**NATURAL RESOURCES** (Crismore, Chairman): 2/16/1999  
**SB 412**, do pass. Report adopted.

**PUBLIC HEALTH, WELFARE AND SAFETY** (Bishop, Chairman): 2/16/1999  
**SB 438**, do pass. Report adopted.

**STATE ADMINISTRATION** (Cole, Chairman): 2/15/1999  
**SB 400**, do pass. Report adopted.  
**SB 434**, do pass. Report adopted.  
**HB 56**, be concurred in. Report adopted.  
**HB 89**, be concurred in. Report adopted.  
**HB 118**, be concurred in. Report adopted.  
**HB 119**, be concurred in. Report adopted.  
**HB 198**, be concurred in. Report adopted.

**MESSAGES FROM THE OTHER HOUSE**

House bills passed and transmitted to the Senate for concurrence: 2/15/1999

**HB 96**, introduced by L. Grinde  
**HB 182**, introduced by C. Ahner  
**HB 183**, introduced by R. Dale  
**HB 267**, introduced by B. Molnar  
**HB 338**, introduced by G. Masolo  
**HB 353**, introduced by B. Tash  
**HB 412**, introduced by C. Juneau  
**HB 435**, introduced by P. Clark  
**HB 455**, introduced by L. Soft  
**HB 461**, introduced by B. Simon  
**HB 467**, introduced by C. Hibbard  
**HB 474**, introduced by C. Hibbard  
**HB 509**, introduced by G. Gutsche  
**HB 512**, introduced by L. Soft

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

**HB 522**, introduced by B. Pavlovich  
**HB 523**, introduced by J. McKenney

House joint resolutions passed and transmitted to the Senate for concurrence:

2/16/1999

**HJR 13**, introduced by J. McKenney  
**HJR 14**, introduced by D. Adams

**MOTIONS**

**Senator Harp** moved that the following Transmittal Agreement be adopted by the Senate. Motion carried.

TRANSMITTAL AGREEMENT

It is hereby agreed that the following bills shall be treated as hereinafter set forth for the purposes of transmittal.

1. All bills in or referred to the House Appropriations or Senate Finance and Claims Committees, as well as other bills designated as appropriations bills by Council staff, shall be subject to the 67th day transmittal deadline.
2. All bills in or referred to the House or Senate Taxation Committees, as well as other bills designated as revenue bills by Council staff, shall be subject to the 71st day transmittal deadline.
3. Each caucus leader is allowed to designate, in writing filed with the Chief Clerk and the Secretary of the Senate by 5:00 p.m. on the 44th legislative day, up to ten bills which will be exempt from the 45th day transmittal deadline. Such bills will be subject to the 71st day revenue transmittal deadline.

Bruce Crippen  
President of the Senate

John A. Mercer  
Speaker of the House

Steve Doherty  
Senate Minority Leader

Emily Swanson  
House Minority Leader

**Senator Harp** moved that the Senate suspend the rules to allow bills heard on second reading the 23rd day of February, the forty-fourth legislative day, to automatically be placed on third reading the forty-fourth legislative day. Motion carried 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, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Toews, Waterman, Wells, Wilson, Mr. President.  
Total 49

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: McCarthy.

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

Total 1

**SB 442** - Senator Stang moved that SB 442 be taken from the committee on State Administration and rereferred to the committee on Education and Cultural Resources. Motion carried.

**HB 197** - Senator Thomas moved that HB 197 be taken from second reading and rereferred to the Judiciary Committee for purpose of amendment. Motion carried.

**SB 385** - Senator Grimes moved that SB 385 be taken from the committee on Public Health, Welfare and Safety and rereferred to the committee on Finance and Claims. Motion carried.

**SB 202** - Senator Bartlett moved that SB 202, as amended, be taken from the table in the Labor and Employment Relations Committee, printed and placed on second reading. Motion **failed** as follows:

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

Total 20

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

Total 29

Absent or not voting: None.

Total 0

Excused: McCarthy.

Total 1

**HB 310** - Senator Jergeson moved that HB 310 be taken from the committee on Education and Cultural Resources and rereferred to the committee on Judiciary. Motion carried.

**SPECIAL ORDERS OF THE DAY**

A JOINT PROCLAMATION OF THE SENATE AND THE HOUSE OF  
REPRESENTATIVES OF THE STATE OF MONTANA

WHEREAS, the citizens of Montana recognize reading as fundamental to children's education; and

WHEREAS, Montana has a strong tradition of community involvement in the education of our young people, grounded in the principle that education is key to Montana's well being; and

WHEREAS, research shows that children who read regularly, especially with adults, have greater success in schools; and

WHEREAS, "Read Across America," a national celebration of Dr. Seuss's birthday on March 2, promotes reading and adult involvement in the education of our students; and

WHEREAS, "Read Across America" is cosponsored by groups such as the American Library Association, National

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

PTA, Boys & Girls Clubs of America, and the International Reading Association, and is supported by educators and parents across Montana;

THEREFORE BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That this body recognizes March 2 as "Read Across Montana Day; and recommits this state to help make Montana's children, and America's children, the best readers in the world.

BRUCE CRIPPEN  
President of the Senate

JOHN MERCER  
Speaker of the House of Representatives

STEVE DOHERTY  
Senate Minority Leader

EMILY SWANSON  
House Minority Leader

DALE MAHLUM  
Senate Sponsor

REP. LINDA MCCULLOCH  
House Sponsor

**Senator Thomas** introduced the Senate pages for the week of February 15 - 20 and welcomed them to the Senate.

**FIRST READING AND COMMITMENT OF BILLS**

The following Senate bill was **rereferred**:

**SB 490** - introduced by B. Glaser, rereferred to Business and Industry.

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

**SB 502**, introduced by L. Grosfield, referred to Taxation.

**SB 503**, introduced by J. Ellingson, S. Bartlett, S. Doherty, S. Gallus, L. Grosfield, M. Halligan, J. Hurdle, W. McNutt, C. Williams, D. Wyatt, referred to Judiciary.

**SB 504**, introduced by J. Lynch, M. Sprague, referred to Local Government.

**SB 505**, introduced by D. Grimes, C. Ahner, T. Beck, A. Bishop, C. Christiaens, J. Cobb, H. Harper, D. Harrington, J. Lynch, R. Peck, L. Soft, C. Tuss, referred to Judiciary.

**SB 506**, introduced by D. Grimes, C. Ahner, T. Beck, A. Bishop, C. Christiaens, J. Cobb, H. Harper, D. Harrington, J. Lynch, R. Peck, L. Soft, C. Tuss, referred to Judiciary.

**SB 507**, introduced by D. Grimes, C. Ahner, T. Beck, A. Bishop, C. Christiaens, J. Cobb, H. Harper, D. Harrington, j. Lynch, R. Peck, L. Soft, C. Tuss, referred to Judiciary.

**SB 508**, introduced by V. Cocchiarella, referred to Labor and Employment Relations.

**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 111** passed as follows:

Yeas: Beck, Berry, Bohlinger, Cocchiarella, Cole, Crismore, DePratu, Devlin, Ekegren, Ellis, Glaser, Grimes,

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jergeson, Keating, Keenan, Mahlum, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Sprague, Stang, Taylor, Tester, Thomas, Toews, Wells, Mr. President.  
Total 37

Nays: Bartlett, Bishop, Christiaens, Doherty, Eck, Ellingson, Franklin, Lynch, McCarthy, Shea, Swysgood, Waterman, Wilson.  
Total 13

Paired: Hertel, Aye; McCarthy, No.

Absent or not voting: None.  
Total 0

Excused: None.  
Total 0

**SB 387** passed as follows:

Yeas: Bartlett, Beck, Berry, Bishop, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, Doherty, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, Miller, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Tester, Thomas, Waterman, Wells, Wilson, Mr. President.  
Total 42

Nays: DePratu, Devlin, McNutt, Mesaros, Mohl, Taylor, Toews.  
Total 7

Absent or not voting: None.  
Total 0

Excused: McCarthy.  
Total 1

**HB 85** concurred in as follows:

Yeas: Bartlett, Berry, Bishop, Christiaens, Cole, Crismore, Devlin, Doherty, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jergeson, Keating, Lynch, Mahlum, McNutt, Mesaros, Miller, Nelson, Roush, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Toews, Wells, Wilson, Mr. President.  
Total 40

Nays: Beck, Bohlinger, Cocchiarella, DePratu, Eck, Keenan, Mohl, Shea, Waterman.  
Total 9

Absent or not voting: None.  
Total 0

Excused: McCarthy.  
Total 1



SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

**HB 137** concurred in 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, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Toews, Waterman, Wells, Wilson, Mr. President.  
Total 49

Nays: None.  
Total 0

Absent or not voting: None.  
Total 0

Excused: McCarthy.  
Total 1

**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 Tester in the chair.

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

**SB 410** - Senator B. Keenan moved SB 410, second reading copy, be amended as follows :

1. Page 1.

**Following:** line 27

**Insert:** "(3) This section does not apply to:

- (a) bed and breakfasts as defined in 50-51-102(1);
- (b) guest ranches as defined in 50-51-102(4);
- (c) outfitting and guide facilities as defined in 50-51-102(6); and
- (d) unlicensed commercial halls or facilities if the owner or operator does not require any additional

consideration beyond hall or facility rental for the privilege of providing or consuming liquor on the premises and the owner or operator of the hall or facility does not sell food on the premises."

**Renumber:** subsequent subsection

Amendment **adopted** unanimously.

Senator Grosfield excused at this time.

**SB 410** - Senator B. Keenan moved SB 410, as amended, do pass. Motion carried as follows:

Yeas: Beck, Berry, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Ekegren, Ellingson, Ellis, Franklin, Glaser, Halligan, Hargrove, Harp, Hertel, Holden, Jabs, Jergeson, Keating, Keenan, Mahlum, McNutt, Mesaros, Miller, Mohl, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Wells, Wilson.  
Total 37

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

Nays: Bartlett, Bishop, Doherty, Eck, Grimes, Lynch, Nelson, Thomas, Toews, Waterman, Mr. President.  
Total 11

Absent or not voting: None.  
Total 0

Excused: Grosfield, McCarthy.  
Total 2

**SB 126** - Senator W. Crismore moved SB 126 do pass. Motion carried unanimously.

**SB 123** - Senator W. Crismore moved SB 123 do pass. Motion carried unanimously.

**SB 125** - Senator W. Crismore moved SB 125 do pass. Motion carried unanimously.

**SB 303** - Senator F. Thomas moved SB 303, second reading copy, be amended as follows :

1. Page 4, line 14.

**Strike:** "60"

**Insert:** "30"

2. Page 4, line 20.

**Strike:** "60"

**Insert:** "30"

3. Page 4, line 22.

**Insert:** "(c) An award of attorney fees under subsection (9)(a) may be made only if it is determined that the actions of the insurer were unreasonable.

(d) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18."

Amendment **failed** as follows:

Yeas: Berry, Bohlinger, Crismore, Grimes, Hargrove, Harp, Holden, Keating, Keenan, Mahlum, Mohl, Taylor, Thomas, Wells, Mr. President.

Total 15

Nays: Bartlett, Beck, Bishop, Christiaens, Cocchiarella, DePratu, Devlin, Doherty, Eck, Ellingson, Ellis, Franklin, Glaser, Halligan, Hertel, Jabs, Jergeson, Lynch, McNutt, Mesaros, Miller, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Tester, Toews, Waterman, Wilson.

Total 31

Absent or not voting: Cole, Ekegren.  
Total 2

Excused: Grosfield, McCarthy.  
Total 2

**SB 303** - Senator F. Thomas moved consideration of SB 303 be passed for the day. Motion carried unanimously.

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

**SB 397** - Senator S. Stang moved SB 397 do pass. Motion carried unanimously.

**HB 36** - Senator D. Hargrove moved HB 36 be concurred in. Motion carried unanimously.

**HB 141** - Senator B. Wilson moved HB 141 be concurred in. Motion carried unanimously.

**SB 235** - Senator Wells moved SB 235 do pass. Motion carried unanimously.

**SB 293** - Senator A. Bishop moved SB 293 do pass. Motion carried unanimously.

**SB 359** - Senator E. Franklin moved SB 359 do pass. Motion carried unanimously.

**SB 383** - Senator D. Hargrove moved SB 383 do pass. Motion carried as follows:

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

Total 40

Nays: Bishop, Crismore, Devlin, Ekegren, Glaser, Harp, Miller.

Total 7

Absent or not voting: Keenan.

Total 1

Excused: Grosfield, McCarthy.

Total 2

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

**MOTIONS**

**SB 303** - Senator F. Thomas moved that SB 303 be taken from the second reading board and rereferred to the Judiciary Committee for purpose of amendment. Motion carried.

**ANNOUNCEMENTS**

Committee meetings were announced by committee chairmen.

Majority Leader Harp moved that the Senate adjourn until 1:00 p.m., Wednesday, February 17, 1999. Motion carried.

Senate adjourned at 2:52 p.m.

SENATE JOURNAL  
THIRTY-EIGHTH LEGISLATIVE DAY - FEBRUARY 16, 1999

ROSANA SKELTON  
Secretary of Senate

BRUCE CRIPPEN  
President of the Senate