

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 27, 1986

The fourth meeting of the Senate Judiciary Committee for the 49th Second Special Session was called to order at 3:05 P.M. on March 27, 1986, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

FURTHER CONSIDERATION OF SB 1: Senator Towe has a proposal to amend SB 1 per attached Exhibit 1. He said what he has done is to take the operative language in SB 12, the language on page 2, lines 21, 22 and 23, and included that language in SB 1. He feels that inasmuch as the court has referred to an exception, and we already have an exception for the workers compensation, this is more likely to be upheld by the court. That is a blanket authority, however, we are putting a proviso in which says that the legislature may not, without a two-thirds vote of the legislature, impose a direct monetary cap upon the amount of compensatory damages for injuries. That means that when it comes to the amount of the damages that you cannot put a cap on that without a two-thirds vote of the legislature.

Senator Mazurek said the language proposed does not include the language "damages for injuries" so that cap would apply to punitive damages. He asked Mr. Towe if that was correct and if that was his intention.

Senator Towe said we could add the words "for injuries" at the end after "damages".

Senator Shaw asked Mr. Towe how easy it would be to impose a cap on damages and to get that two-thirds vote out of the legislature.

Senator Towe said he does not think that will be a big problem but we should recognize there is some sacrilege about the tort system in our state and this will allow some tinkering with it but it is on a safeguard of a two-thirds vote.

Senator Mazurek said he has some problem with what is being proposed. He suggested we would be better off just putting in a new subparagraph 3 to do what Senator Towe wants to do.

Senator Towe said then we would not have it worded as an exception and that concerns him. He feels that the language of the court is very explicit. If it is put in terms of an exception to full legal redress then there will be no problem.

Senator Crippen said you have to deal with the court's emphasis on "full" legal redress or we will be right back to the same thing.

Senator Mazurek asked Valencia Lane to respond to Senator Crippen's concern.

Valencia Lane said the word "full" does make a difference in her opinion. This is what the court looked at in the Pfoest case. She thinks that if you have separate sections you are going to limit this full legal redress to Workers' Compensation situations. If you don't want this to relate strictly to Workers' Compensation, you should make this a subsection or put in the words as proposed originally "full legal redress".

Senator Towe made a motion to move his amendments. The motion carried with a vote of 6-4. See attached Roll Call Vote.

Senator Towe said he wants to make it clear that he is talking about a dollar cap and nothing else when the two-thirds vote is in force.

Senator Mazurek asked Mr. Towe if it was his intention in making these changes that the two-thirds vote would apply to tort reform as mentioned in the hearings.

Senator Towe said it would only apply to a dollar limit on damages.

Senator Mazurek asked if that would apply to punitive damages.

Senator Towe said that as it is now written with "for injuries" added after "damages" it would not apply to punitive damages.

Senator Crippen said it is apparent to him that this committee has not listened to what was discussed this morning. It is obvious from the discussion that there is some confusion on these amendments, even the majority leader has some questions with this bill. He said he has a valid point on full legal redress and he is afraid of what we are doing. We are sending this back to the courts and we will be right back where we were before and will not have done our job.

Senator Towe said he has taken the language right out of SB 12. He has no doubt but that the way SB 12 is written it would be declared internally inconsistent and we will be right back where we are now. He said this language does not garbage up the constitution like some of the other proposals that he has seen. He said this is the best we can do and it does preserve interest of those persons who feel full legal redress is an important constitutional right and there is some merit in preserving that important constitutional right. At the same time this does allow full legislative prerogative in establishing limits or modifying remedies, claims for relief or damages in any civil proceedings.

Senator Pineseault made a motion to strike from page 1, line 18 the words "this full". He can appreciate the concern shown and hopes this will restore back to this body some measure of authority in this area which we thought we already had.

Senator Crippen said that is not a complete motion as far as restoring authority but it is a start in the right direction. The two-thirds vote situation is still in there and that is a problem.

Senator Pineseault's motion failed by a vote of 5-5. See attached Roll Call Vote sheet.

Senator Mazurek commented that the bill would need a title change to coincide with the amendments accepted by the committee. He would propose that Valencia Lane make the necessary changes in the title to coincide with the amendments if the committee has no objection. The committee was in agreement.

Senator Towe made a motion that SB 1 DO PASS AS AMENDED. The motion failed with a vote of 5-5. See attached Roll Call Vote sheet.

The meeting adjourned at 3:35 P.M.


COMMITTEE CHAIRMAN

CONSTITUTIONAL AMENDMENT

1 SENATE BILL NO. 1
2 INTRODUCED BY HALLIGAN, CHRISTIAENS
3 BY REQUEST OF THE GOVERNOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBMIT TO THE
6 QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II,
7 SECTION 16, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE
8 LEGISLATURE MAY IMPOSE MONETARY LIMITS ON LIABILITY IN CIVIL
9 LAW SUITS FOR INJURY TO PERSON, PROPERTY, OR CHARACTER; AND
10 PROVIDING AN EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 Section 1. Article II, section 16, of the Constitution
14 of the State of Montana is amended to read:

15 "Section 16. The administration of justice. All Courts
16 of justice shall be open to every person, and speedy remedy
17 afforded for every injury of person, property, or character.

18 (a) No person shall be deprived of this full legal
19 redress for injury incurred in employment for which another
20 person may be liable except as to fellow employees and his
21 immediate employer who hired him if such immediate employer
22 provides coverage under the Workmen's Compensation Laws of
23 this state; or

24 ~~all the legislature by a two-thirds vote of each~~
25 ~~house, may impose monetary limits on this full legal redress~~
~~for other injuries.~~

(b) ^H Except ~~the~~ legislature shall have the authority to enact

statutes ~~limiting~~ establishing, limiting or modifying remedies,
claims for relief, or damages in any civil proceeding; provided, however,
may not, ~~without~~ without a 73 vote vote of each house, impose a direct monetary cap upon the amount of

1 for injury of person, property, or character. Damage awards
2 with such limits constitute the full legal redress
3 available under this section and do not deny equal
4 protection of the laws under Article II, section 4.

5 (1) Right and justice shall be administered without
6 sale, denial, or delay."

7 NEW SECTION. Section 2. Effective date. This
8 amendment is effective on approval by the electorate.

9 NEW SECTION. Section 3. Submission to electorate.
10 This amendment shall be submitted to the electors of Montana
11 at the general election to be held in November 1986 by
12 printing on the ballot the full title of this act and the
13 following:

14 FOR allowing the legislature to set monetary limits
15 on recoveries in civil lawsuits.

16 AGAINST allowing the legislature to set monetary
17 limits on recoveries in civil lawsuits.

-End-

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 032786
BILL NO. SB1

CORRECTED
INTRODUCED BILL
SB1

Compendium for injuries

JUDICIARY

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 3-27-86

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	✓		
Senator Bob Brown	✓		
Senator Bruce Crippen	✓		
Senator Jack Galt	✓		
Senator R.J. Pinsoneault	✓		
Senator James Shaw	✓		
Senator Tom Towe	✓		
Senator William Yellowtail, Jr.	✓		
Vice Chairman Senator M. K. "Kermit" Daniels	✓		
Chairman Senator Joe Mazurek	✓		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date March 27, 1986 Bill No. SB 1 Time 3:25 P.M.

NAME	YES	NO
Senator Chet Blaylock	X	
Senator Bob Brown		X
Senator Bruce D. Crippen		X
Senator Jack Galt		X
Senator R. J. "Dick" Pinsoneault	X	
Senator James Shaw		X
Senator Thomas E. Towe	X	
Senator William P. Yellowtail, Jr.	X	
Vice Chairman Senator M. K. "Kermit" Daniels	X	
Chairman Senator Joe Mazurek	X	

Aggie Hamilton
Secretary

Senator Joe Mazurek
Chairman

Motion: Amendments proposed by Senator Towe per attached Exhibit 1.

The motion carried 6-4.

Senator Towe's amendments adopted in executive session March 27, 1986.

Amendments to SB 1, white(introduced):

1. Title, lines 8 and 9

Following: "MAY" on line 8

Strike: remainder of line 8 through "CHARACTER" on line 9

Insert: "ESTABLISH, LIMIT, OR MODIFY REMEDIES, CLAIMS FOR
RELIEF, OR DAMAGES IN CIVIL PROCEEDINGS"

2. Page 1, line 19

Following: "redress"

Insert: "(a)"

3. Page 1, line 23

Following: "state"

Strike: "."

Insert: "; or"

4. Page 1, line 24 through line 4, page 2.

Strike: subsection (3) in its entirety

Insert: "(b) for other injuries, except the legislature shall
have the authority to enact statutes establishing, limiting,
or modifying remedies, claims for relief, or damages in any
civil proceeding; provided, however, that the legislature may
not, without a two-thirds vote of each house, impose a direct
monetary cap upon the amount of compensatory damages for
injuries."

5. Page 2, lines 14 and 15

Following: "to" on line 14

Strike: remainder of lines 14 and 15

Insert: "establish, limits, or modify remedies, claims
for relief, or damages in civil proceedings."

6. Page 2, lines 16 and 17

Following: "to" on line 16

Strike: remainder of lines 16 and 17

Insert: "establish, limit, or modify remedies, claims for
relief, or damages in civil proceedings."

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date March 27, 1986 Bill No. SB 1 Time 3:30 P.M.

<u>NAME</u>	<u>YES</u>	<u>NO</u>
Senator Chet Blaylock	X	
Senator Bob Brown	X	
Senator Bruce D. Crippen		X
Senator Jack Galt		X
Senator R. J. "Dick" Pinsoneault	X	
Senator James Shaw		X
Senator Thomas E. Towe		X
Senator William P. Yellowtail, Jr.	X	
Vice Chairman Senator M. K. "Kermit" Daniels		X
Chairman Senator Joe Mazurek	X	

Aggie Hamilton
Secretary

Senator Joe Mazurek
Chairman

Motion: Senator Pinsoneault's amendment to strike from page 1,
line 18 the words "this full". The motion failed 5-5.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date March 27, 1986 Bill No. SB 1 Time 3:35 P.M.

<u>NAME</u>	<u>YES</u>	<u>NO</u>
Senator Chet Blaylock	X	
Senator Bob Brown		X
Senator Bruce D. Crippen		X
Senator Jack Galt		X
Senator R. J. "Dick" Pinsoneault	X	
Senator James Shaw		X
Senator Thomas E. Towe	X	
Senator William P. Yellowtail, Jr.	X	
Vice Chairman Senator M. K. "Kermit" Daniels		X
Chairman Senator Joe Mazurek	X	

Aggie Hamilton
Secretary

Senator Joe Mazurek
Chairman

Motion: Senator Towe's motion that SB 1 DO PASS AS AMENDED.

The motion failed 5-5.