

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 4, 1987

The twenty-first meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 4, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All members were present with the exception of Senators Crippen and Halligan.

CONSIDERATION OF SB 220: Senator Bill Yellowtail, Senate District #50, introduced the bill and said it is by request of the Association of Clerks of the District Court to revise fees to be collected by clerks for incidental charges.

PROPOSERS: Tom Harrison, Montana Clerks of Court Association, stated the fee changes are "bringing into line" the fees with the Clerk of Court offices and the federal district level. He said the fees that were eliminated were more trouble to collect than what they were worth.

OPPOSERS: None.

DISCUSSION ON SB 220: Senator Pinsoneault said he talked to the Clerk of Court in his district and she said a fifty cent flat rate for each page would be better. Mr. Harrison said he had no comment on that. Senator Pinsoneault asked who makes the decision for the percentages on page 5, subsection (2) of the bill. Mr. Harrison said the bill drafters from the Clerks of the District Court Association decided the percentages in this bill.

Senator Bishop inquired about the search referred to on page 4, lines 7 and 8. Mr. Harrison responded the search is for plaintiffs or defendants cases, and what year the case was done. Senator Mazurek asked if a person who does his own searching in the records would be charged. Mr. Harrison said he will not be charged.

Senator Yellowtail closed the hearing on SB 220.

CONSIDERATION OF SB 241: Senator Mazurek opened the hearing on Senate Bill 214, and said it is a request of the Department of Social and Rehabilitation Services. The bill amends the laws relating to parent child relationships. Senator Mazurek stated there have been incidents in the state where parents sign over the parental rights to a department, and that department may or may not have agreed to accept the child. He said parents do this to be free of the financial burdens.

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PROPOSERS: Norma Harris, SRS, testified that the bill will put the best interest of the child as part of the relinquishing process.

OPPOSERS: None.

DISCUSSION ON SB 214: Senator Pinsoneault asked how this bill would affect the Indian Child Welfare Act. Leslie Taylor of the SRS legal division said there should be no problem because the two acts are compatible.

Senator Mazurek closed the hearing on SB 214.

ACTION ON SB 214: Senator Blaylock moved SB 214 DO PASS. The motion carried.

ACTION ON SB 220: Senator Pinsoneault felt there should be a flat rate on the copies of records (50¢ a page). Senator Bishop felt this bill will upset and affect the ordinary citizen more so than attorneys and state or county employees because the ordinary people will not know about the change until they go to get a record.

Senator Pinsoneault suggested having a limit set on names given before charging. Senator Bishop suggested limiting oral requests. Senator Beck asked how long a search was. Senator Mazurek said it depends on how many names you have to search through. Senator Yellowtail said many clerks of court try to discourage people from asking them to perform searches that will take up a lot of time. The committee decided to wait on action.

ACTION ON SB 164: Senator Galt moved SB 164 DO PASS. The motion carried unanimously.

ACTION ON SB 137: Senator Pinsoneault said the fees were too high. Senator Mazurek said Senator Weeding would like some action on it.

The committee decided to TABLE the bill.

ACTION ON SB 51: Valencia Lane handed out a gray bill and amendments (Exhibit 1). She explained the amendments take out fault and puts negligence back in. She said pages 4 and 5 of the gray bill discuss Joint and Several liability. She stated existing law has been put back in, with a new subsection (2) on page 4 and new language starting on page 5, line 11.

Senator Mazurek asked if there was an exception for employees. Ms. Lane said on page 6, line 8, states who is jointly liable. She said she forgot to leave the words "in concert" in the bill. Senator Mazurek asked for comments on the gray bill. Senator Mazurek said the committee should strike "remaining" on page 4, line 25 and "only" on page 5, line 1. Mr. Englund agreed.

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Mr. Englund said the person under 25 percent should be responsible for contribution should one of the defendants found to be greater than 25 percent could not pay his share.

Mr. John Hoyt wanted the committee to use his bill instead (see Exhibit 2).

Senator Mazurek stated the big issue is negligence vs. liability. He said the problem lies in the comparing of negligence of "persons" or "parties" because if "persons" is used, the negligence percent may split in three directions, but only two are paying for the lawsuit because the third party was not brought into the lawsuit to begin with. The third party's negligence is still determined in the case.

Mr. Robischon suggested the word "negligence" be replaced in line 20 on page 4, instead of "liability".

Karl Englund said one can't use the term negligence in all cases because product liability cases don't use it. He explained the MCA section (27 17 03) on Joint and Several Liability says each party in any action is an issue with negligence.

Mr. Robischon said on page 4, line 20 it should be "negligence" because it is referring to Liability.

Senator Pinsoneault believed it should be "negligence" in that section also.

Senator Mazurek commented that the word "nelgigence" has to fit in the pie, and we can't have every person who caused an action in the lawsuit case.

Senator Pinsoneault said don't leave anyone hanging out in the middle.

Senator Mazurek believed it was not fair. Mr. Hoyt felt the gray bill was letting people "off the hook". Senator Mazurek felt there should be a subcommittee to figure out person vs. party and other issues. He appointed Sentors Brown, Bishop, Halligan and Mazurek.

Senator Brown presented a product liability amendment (see Exhibit 3). Randy Bishop, Montana Association of Defense Counsel presented the amendments.

Senator Blayolock stated if he had an Audi 5000 car that had been "called back" for the gas tank blowing up, but he knew it might blow up when he

bought it, then he could never take the Audi company to court.

Mr. Bishop replied if the person was given a warning or was aware of the defect, then the person could not recover. He said he tried a product liability case where the manufacturer was at fault 60 percent and the driver was 40 percent at fault. The jury ordered a \$200,000 verdict to the driver reduced at 40 percent. He said it takes existing law and applies it in the context of these amendments.

Mr. Hoyt said everyone misuses a product, so there should not be a defense in that. Karl Englund agreed with Mr. Hoyt. Senator Mazurek felt the idea should be looked at in the apportionment of liability. The committee decided they would think on it.

Senator Brown thought the committee should look at the California law which divides non economic and economic damages (see Exhibit 4).

Randy Bishop handed out amendments from his group on this (see Exhibit 4a).

Mr. Hoyt felt this will add evidence and confusion to very long lawsuits because of the concepts of non-economic vs. economic damages. He felt SB 51 didn't need it. Senator Brown stated this was the first time he had seen the amendment.

Senator Mazurek asked if Senator Brown wanted to wipe out a threshold and have joint and several on economic, and have several only on non-economic. Senator Brown said that is how California does it, but he didn't know if he wanted to get rid of the threshold.

Mr. Robischon said non-economic vs. economic damages is nothing new to his group; it would not be that hard to combine.

Mr. Hoyt said the threshold concept hurts the injured person and he thought the committee should go with the concept of economic vs. non-economic.

Mr. Bishop agreed. Mr. Robischon didn't believe in the "economic" concept because it will allow the "deep pocket" person to become the victim. Mr. Englund said the combination of the two theories is not a good idea.

Senator Mazurek said Ms. Lane will work with the threshold theory with deducting the plaintiff's fault first. He wanted her to look at "negligence" vs. "liability". She said she would have all the technical changes for the next meeting.

The committee adjourned at 12:15 p.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 4, 1988

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X	X	
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X	X	
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

Proposed Amendments to SB 51

25% THRESHOLD

1. Title, lines 7 through 9.
Following: "LIABILITY;" on line 7
Strike: the remainder of line 7 through "NEGLIGENCE;" on line 9
2. Title, lines 9 through 10.
Following: "LIABILITY" on line 9
Strike: the remainder of line 9 through "TORTFEASORS" on line 10
Insert: "IN CERTAIN CASES"
3. Page 1, line 15.
Following: "negligence"
Strike: "fault"
Insert: "negligence"
4. Page 1, line 16.
Following: "negligence"
Strike: "fault"
Insert: "negligence"
5. Page 1, line 17.
Following: "damages."
Strike: "(1)"
Following: "negligence"
Strike: "fault"
Insert: "negligence"
6. Page 1, line 20.
Following: "in"
Insert: "negligence resulting in"
7. Page 1, line 21.
Following: line 20
Strike: "contributory fault"
Insert: "negligence"
Following: "negligence"
Strike: "fault"
Insert: "negligence"
8. Page 1, line 22.
Following: "combined"
Strike: "fault"
Insert: "negligence"
9. Page 1, line 25.
Following: line 24
Strike: "fault"
Insert: "negligence"

10. Page 1, line 25 through line 10, page 2.

Following: "recovering" on line 25

Strike: the remainder of lines 25 through line 10, page 2 in their entirety

11. Page 2, line 13.

Following: "contribution"

Strike: "-- apportionment of fault"

Insert: "-- determination of liability"

12. Page 3, line 14 through line 9, page 4.

Strike: subsections (1) through (3) in their entirety

Insert: "(1) Except as provided in subsection (2), whenever the negligence of any party in any action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) Any party whose liability is determined to be 25% or less of the combined liability of all persons described in subsection (3) is severally liable only and is responsible only for the amount of liability attributable to him. The liability of a party found to be 25% or less liable must be deducted from the total of the combined liability of all persons described in subsection (3), and the remaining parties are jointly and severally liable only for the remainder of the total less the amount attributable to the claimant. A party found to be 25% or less liable for the injury complained of has no right to and is not liable for contribution under this section.

(3) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the liability of the claimant, injured person, defendants, third-party defendants, persons released from liability by the claimant, persons immune from liability to the claimant, and any other persons who have a defense against the claimant. The trier of fact shall apportion the percentage of liability of all such persons. However, in attributing negligence among persons, the finder of fact may not consider or determine any amount of negligence on the part of any injured person's employer or coemployee to the extent that such employer or coemployee has tort immunity under the Workers' Compensation Act or the Occupational Disease Act of this state, of any other state, or of the federal government. Contribution shall be proportional to the liability of the parties against whom

recovery is allowed. Nothing contained in this section shall make any party indispensable pursuant to Rule 19, M.R.Civ.P.

(4) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties who are jointly liable shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party."

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SENATE JUDICIARY

EXHIBIT NO. 1

DATE 2-4-87

BILL NO. S.B. 51

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SENATE BILL NO. 51
INTRODUCED BY B. BROWN
BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
ON LIABILITY ISSUES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
LAWS RELATING TO LIABILITY; ~~SUBSTITUTING THE DOCTRINE OF~~
~~COMPARATIVE--FAULT---FOR---THE---DOCTRINE---OF---COMPARATIVE~~
~~NEGLIGENCE; ELIMINATING JOINT LIABILITY;--PROVIDING FOR THE~~
~~APPORTIONMENT OF FAULT AMONG JOINT--TORTFEASORS~~ IN CERTAIN
CASES; AND AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-702, MCA, is amended to read:

"27-1-702. Comparative negligence ~~fault~~ NEGLIGENCE --
extent to which contributory negligence ~~fault~~ NEGLIGENCE
bars recovery in action for damages. ~~(1)~~ Contributory
negligence ~~fault~~ NEGLIGENCE shall not bar recovery in an
action by any person or his legal representative to recover
damages for ~~negligence-resulting-in~~ NEGLIGENCE RESULTING IN
death or injury to person or property if such negligence
~~contributory--fault~~ NEGLIGENCE was not greater than the
negligence ~~fault~~ NEGLIGENCE of the person or the combined
fault NEGLIGENCE of all persons against whom recovery is
sought, but any damages allowed shall be diminished in the

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1 proportion to the amount of negligence fault NEGLIGENCE
 2 attributable to the person recovering or-for-whose-death--or
 3 injury-to-person-or-property-recovery-is-made.

4 (2)--"Fault"--includes-acts-or-omissions-that-are-in-any
 5 measure--wrongful,--unlawful,--negligent,--or-reckless-or-that
 6 subject-a-person-to-strict-tort--liability.--The--term--also
 7 includes:

8 (a)--breach-of-warranty,

9 (b)--assumption-of-risk,

10 (c)--misuse-of-a-product,--and

11 (d)--failure--to-avoid-or-mitigate-an-injury,--including
 12 failure-to-use-safety-devices."

13 Section 2. Section 27-1-703, MCA, is amended to read:

14 "27-1-703. Multiple defendants jointly-and-severally
 15 liable----right-of-contribution ----apportionment--of--fault
 16 -- DETERMINATION OF LIABILITY. (1)--Whenever-the-negligence
 17 of-any-party-in-any-action-is-an-issue,--each--party--against
 18 whom-recovery-may-be-allowed-is-jointly-and-severally-liable
 19 for--the--amount-that-may-be-awarded-to-the-claimant-but-has
 20 the-right--of--contribution--from--any--other--person--whose
 21 negligence--may-have-contributed-as-a-proximate-cause-to-the
 22 injury-complained-of.

23 (2)--On-motion-of-any-party-against--whom--a--claim--is
 24 asserted--for--negligence--resulting--in--death-or-injury-to
 25 person-or-property,--any-other-person--whose--negligence--may

1 have---contributed---as---a---proximate---cause---to---the---injury
 2 complained-of-may-be-joined-as-an-additional---party---to---the
 3 action.---Whenever---more---than---one---person---is-found-to-have
 4 contributed-as-a-proximate-cause-to---the---injury---complained
 5 of,---the---trier---of-fact-shall-apportion-the-degree-of-fault
 6 among-such-persons.---Contribution-shall-be---proportional---to
 7 the---negligence---of---the---parties---against---whom-recovery-is
 8 allowed.---Nothing-contained-in-this-section---shall---make---any
 9 party-indispensable-pursuant-to-Rule-19, M.R.Civ.P.

10 (3)---If---for-any-reason-all-or-part-of-the-contribution
 11 from-a-party-liable-for---contribution---cannot---be---obtained,
 12 each---of---the-other-parties-against-whom-recovery-is-allowed
 13 is-liable-to-contribute-a-proportional-part---of---the---unpaid
 14 portion---of---the-noncontributing-party's-share-and-may-obtain
 15 judgment-in-a-pending-or-subsequent-action-for---contribution
 16 from-the-noncontributing-party.

17 (1)---In---an-action-involving-the-fault-of-more-than-one
 18 person, the trier of fact shall determine the percentage of
 19 fault attributable to each person whose actions contributed
 20 to the damages. Such persons may include but need not be
 21 limited to the claimant, injured person, defendants,
 22 third-party defendants, persons released from liability by
 23 the claimant, persons immune from liability to the claimant,
 24 and any other persons who have a defense against the
 25 claimant.

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EXHIBIT NO. 1DATE SB 51 2-4-87BILL NO. S.B. 51

1 (2) Judgment must be entered against each defendant in
2 an amount representing his proportionate share of the
3 claimant's total damages unless the defendant:

4 (a) has been released by the claimant;

5 (b) is immune from liability to the claimant; or

6 (c) has prevailed against the claimant on any other
7 individual defense.

8 (3) The liability of a defendant is several only
9 except that one defendant may be responsible for the fault
10 of another if both acted in concert in contributing to the
11 claimant's damages or if one defendant acted as an agent of
12 the other: (1) EXCEPT AS PROVIDED IN SUBSECTION (2),
13 WHENEVER THE NEGLIGENCE OF ANY PARTY IN ANY ACTION IS AN
14 ISSUE, EACH PARTY AGAINST WHOM RECOVERY MAY BE ALLOWED IS
15 JOINTLY AND SEVERALLY LIABLE FOR THE AMOUNT THAT MAY BE
16 AWARDED TO THE CLAIMANT BUT HAS THE RIGHT OF CONTRIBUTION
17 FROM ANY OTHER PERSON WHOSE NEGLIGENCE MAY HAVE CONTRIBUTED
18 AS A PROXIMATE CAUSE TO THE INJURY COMPLAINED OF.

19 (2) ANY PARTY WHOSE LIABILITY IS DETERMINED TO BE 25%
20 OR LESS OF THE COMBINED LIABILITY OF ALL PERSONS DESCRIBED
21 IN SUBSECTION (3) IS SEVERALLY LIABLE ONLY AND IS
22 RESPONSIBLE ONLY FOR THE AMOUNT OF LIABILITY ATTRIBUTABLE TO
23 HIM. THE LIABILITY OF A PARTY FOUND TO BE 25% OR LESS LIABLE
24 MUST BE DEDUCTED FROM THE TOTAL OF THE COMBINED LIABILITY OF
25 ALL PERSONS DESCRIBED IN SUBSECTION (3), AND THE REMAINING

1 PARTIES ARE JOINTLY AND SEVERALLY LIABLE ONLY FOR THE
 2 REMAINDER OF THE TOTAL LESS THE AMOUNT ATTRIBUTABLE TO THE
 3 CLAIMANT. A PARTY FOUND TO BE 25% OR LESS LIABLE FOR THE
 4 INJURY COMPLAINED OF HAS NO RIGHT TO AND IS NOT LIABLE FOR
 5 CONTRIBUTION UNDER THIS SECTION.

6 (3) ON MOTION OF ANY PARTY AGAINST WHOM A CLAIM IS
 7 ASSERTED FOR NEGLIGENCE RESULTING IN DEATH OR INJURY TO
 8 PERSON OR PROPERTY, ANY OTHER PERSON WHOSE NEGLIGENCE MAY
 9 HAVE CONTRIBUTED AS A PROXIMATE CAUSE TO THE INJURY
 10 COMPLAINED OF MAY BE JOINED AS AN ADDITIONAL PARTY TO THE
 11 ACTION. FOR PURPOSES OF DETERMINING THE PERCENTAGE OF
 12 LIABILITY ATTRIBUTABLE TO EACH PARTY WHOSE ACTION
 13 CONTRIBUTED TO THE INJURY COMPLAINED OF, THE TRIER OF FACT
 14 SHALL CONSIDER THE LIABILITY OF THE CLAIMANT, INJURED
 15 PERSON, DEFENDANTS, THIRD-PARTY DEFENDANTS, PERSONS RELEASED
 16 FROM LIABILITY BY THE CLAIMANT, PERSONS IMMUNE FROM
 17 LIABILITY TO THE CLAIMANT, AND ANY OTHER PERSONS WHO HAVE A
 18 DEFENSE AGAINST THE CLAIMANT. THE TRIER OF FACT SHALL
 19 APPORTION THE PERCENTAGE OF LIABILITY OF ALL SUCH PERSONS.
 20 HOWEVER, IN ATTRIBUTING NEGLIGENCE AMONG PERSONS, THE FINDER
 21 OF FACT MAY NOT CONSIDER OR DETERMINE ANY AMOUNT OF
 22 NEGLIGENCE ON THE PART OF ANY INJURED PERSON'S EMPLOYER OR
 23 COEMPLOYEE TO THE EXTENT THAT SUCH EMPLOYER OR COEMPLOYEE
 24 HAS TORT IMMUNITY UNDER THE WORKERS' COMPENSATION ACT OR THE
 25 OCCUPATIONAL DISEASE ACT OF THIS STATE, OF ANY OTHER STATE,

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1 OR OF THE FEDERAL GOVERNMENT. CONTRIBUTION SHALL BE
2 PROPORTIONAL TO THE LIABILITY OF THE PARTIES AGAINST WHOM
3 RECOVERY IS ALLOWED. NOTHING CONTAINED IN THIS SECTION
4 SHALL MAKE ANY PARTY INDISPENSABLE PURSUANT TO RULE 19,
5 M.R.CIV.P.

6 (4) IF FOR ANY REASON ALL OR PART OF THE CONTRIBUTION
7 FROM A PARTY LIABLE FOR CONTRIBUTION CANNOT BE OBTAINED,
8 EACH OF THE OTHER PARTIES WHO ARE JOINTLY LIABLE SHALL
9 CONTRIBUTE A PROPORTIONAL PART OF THE UNPAID PORTION OF THE
10 NONCONTRIBUTING PARTY'S SHARE AND MAY OBTAIN JUDGMENT IN A
11 PENDING OR SUBSEQUENT ACTION FOR CONTRIBUTION FROM THE
12 NONCONTRIBUTING PARTY."

-End-

Hoyt & Blewett

Attorneys at Law

JAN 20 1987

John C. Hoyt
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January 16, 1987

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SENATE JUDICIARY

EXHIBIT NO. 2
DATE FEB 4, 1987
BILL NO. SB 51

Senator Joseph P. Mazurek
516 Hayes
Helena, MT 59601

Re: Senate Bill No. 51

Dear Senator Mazurek:

At the conclusion of the hearing before the Senate Judiciary Committee on this bill yesterday, you requested that we submit proposed amendments in writing prior to the executive hearing next Wednesday.

After carefully studying this bill and listening to the arguments pro and con concerning the ramifications which would follow if it were enacted in its present form, we are submitting proposed amendments to Sections 27-1-702, MCA and 27-1-703, MCA.

Zander and I are independent attorneys and have been attempting for a long, long time to support and help with the passage of any legislation which is fair and workable.

The proposed amendment we are making to 27-1-702 clarifies a gray area which definitely needs that clarification for orderly and consistent judicial rulings and construction. Frankly, nothing else in that Section needs changing and no improvement would result from attempting to do so.

In regard to Section 27-1-703, MCA, we have had a great deal of dialogue with persons representing diverse interests, and it is the unanimous consensus of those with whom we have discussed the issues that the comparative negligence law as it presently exists in Montana has worked well. To change comparative negligence to comparative fault would open a huge Pandora's box of problems. It would doubtless increase litigation, and clear winners, if any there may be, are difficult to identify.

On the other hand, it is likewise the consensus that the one-percenters should not be involved in joint and several, but only several liability. Likewise, persons who are substantially involved in causing damage to others should remain jointly liable.

Senator Joseph P. Mazurek
January 16, 1987
Page Two

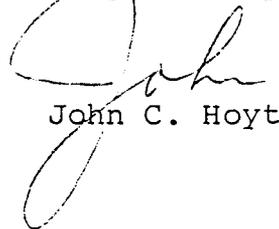
Underlying all of the concepts of this Section is the important factor that a resolution of cases is the most desirable result and the amendment that we suggest would encourage settlements rather than discourage settlements.

In the original draft, we would point out that there are other bills covering other aspects. In our judgment, obviously, misuse of a product is a defense, whether it is set forth as such by legislative enactment or not. We understand there is a bill in already to require the use of seatbelts, so that part 2(d) could become law if that is the wish of the legislature, without involving those concepts in this Section where they really don't belong.

Please convey to the other members of your committee that we are not in any way attempting to interfere with the legislative processes, but to assist wherever possible in the enactment of fair, workable legislation and to point out proposed legislation which does not accomplish this purpose.

Both Zander and I wish to thank you and your committee for your courtesies.

Respectfully submitted,


John C. Hoyt

JCH:tcb

✓ Enclosures

✓ bcc: Karl Englund

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EXHIBIT NO. 2

DATE 2-4-87

A BILL CLARIFYING 27-1-702, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 27-1-702, MCA, is amended to read:

"27-1-702. Comparative negligence — extent to which contributory negligence bars recovery in action for damages. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property if such negligence was not greater than the ~~negligence-of-the person~~ combined negligence of all persons against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering.

-End-

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EXHIBIT NO. 2

DATE 2-4-87

BILL NO. SB 51

A BILL FOR AN ACT ENTITLED: "CLARIFYING WHEN MULTIPLE DEFENDANTS ARE JOINTLY AND SEVERALLY LIABLE — EXCEPTION — RIGHT OF CONTRIBUTION"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 27-1-703, MCA, is amended to read:

"27-1-703. Multiple defendants jointly and severally liable — right of contribution. (1) Whenever the negligence of any party in any action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of. (a) Exception. When the negligence of any party in an action is an issue and the negligence of such party is determined to be 10 percent or less of the combined negligence of all parties in such action, the negligence of such party shall be treated severally only and such party shall be responsible only for the amount of negligence attributable to such party, and the amount of that negligence shall be deducted from the whole of the combined negligence of all parties and the remaining parties shall be jointly and severally liable only for the remaining negligence.

(2) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an

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additional party to the action. Whenever more than one person is found to have contributed as a proximate cause to the injury complained of, the trier of fact shall apportion the degree of fault among such persons. Contribution shall be proportional to the negligence of the parties against whom recovery is allowed. Nothing contained in this section shall make any party indispensable pursuant to Rule 19, M.R.Civ.P.

(3) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the contributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party.

-End-

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EXHIBIT NO. 2

DATE 2-4-87

BILL NO. 57

Montana Association of Defense Counsel
Proposed Amendments to SB 51

27-1-702 (2):

Proposed Product Liability Amendment to SB 51
There shall be a new subsection (2) to section 27-1-702.

New 27-1-702 (2):

Except as herein stated contributory negligence shall not be a defense to the liability of manufacturers or sellers, based on strict liability in tort, for personal injury or property damage caused by defectively manufactured or defectively designed products. A manufacturer or seller, named as a defendant, in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user, his legal representative, or those persons claiming damages by reason of injury to the user:

(a) The fact that the user of the product discovers the defect and is aware of the danger, and nevertheless proceeds unreasonably to make use of the product and is injured by it.

(b) Misuse of the product by the user where such misuse causes or contributes to the injury.

(c) Failure by the user to follow warnings or instructions, which are reasonably available to and reasonably understandable to the user, where the injury would have been prevented or mitigated if such warning or instructions had been followed.

(d) If the user is under the influence of intoxicating liquor or any illegal drug and such condition contributed to his or her injury. If the amount of alcohol in a persons blood is shown by chemical analysis of his or her blood, breath, or other bodily substance to have been 0.10% or more by weight of alcohol in the blood, it is conclusive proof that the person was under the influence of intoxicating liquor.

The foregoing affirmative defenses shall mitigate or bar recovery and shall be applied in accordance with the principles of comparative negligence set forth in subsection 1.

Proposed Amendments to SB 51

(ELIMINATE JOINT LIABILITY FOR
NONECONOMIC DAMAGES - CALIFORNIA APPROACH)

1. Title, lines 7 through 9.
Following: "LIABILITY;" on line 7
Strike: the remainder of line 7 through "NEGLIGENCE;" on line 9
2. Title, lines 9 and 10.
Following: "LIABILITY"
Strike: the remainder of line 9 through "TORTFEASORS" on line 10
Insert: "IN CERTAIN CASES"
3. Page 1, line 15.
Following: "negligence"
Strike: "fault"
Insert: "negligence"
4. Page 1, line 16.
Following: "negligence"
Strike: "fault"
Insert: "negligence"
5. Page 1, line 17.
Following: "damages."
Strike: "(1)"
Following: "negligence"
Strike: "fault"
Insert: "negligence"
6. Page 1, line 20.
Following: "in"
Insert: "negligence resulting in"
7. Page 1, line 21.
Following: line 20
Strike: "contributory fault"
Insert: "negligence"
Following: "negligence"
Strike: "fault"
Insert: "negligence"
8. Page 1, line 22.
Following: "combined"
Strike: "fault"
Insert: "negligence"
9. Page 1, line 25.
Following: line 24
Strike: "fault"
Insert: "negligence"

10. Page 1, line 25 through line 10, page 2.

Following: "recovering" on line 25

Strike: the remainder of line 25, page 1 through line 10, page 2
in their entirety

11. Page 2, line 13.

Following: "~~contribution~~"

Strike: "~~-- apportionment of fault~~"

Insert: "~~-- determination of liability -- several liability for
noneconomic damages~~"

12. Page 3, line 14 through line 9, page 4.

Strike: subsections (1) through (3) in their entirety

Insert: "(1) Whenever the negligence of any party in any action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount of economic damages that may be awarded to the claimant but has the right of contribution on the economic damages from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) In any action referred to in subsection (1), the liability of each defendant for noneconomic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against that defendant for that amount.

(3) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. Whenever more than one person is found to have contributed as a proximate cause to the injury complained of, the trier of fact shall apportion the degree of fault among such persons. Contribution toward economic damages shall be proportional to the negligence of the parties against whom recovery is allowed. Nothing contained in this section shall make any party indispensable pursuant to Rule 19, M.R.Civ.P.

(4) If for any reason all or part of the contribution toward economic damages from a party liable for contribution cannot be obtained, each of the other parties against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party.

(5)(a) For purposes of this section, "economic damages" means objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, loss of employment and loss of business or employment opportunities.

(b) For the purposes of this section, "noneconomic damages" means subjective, nonmonetary losses, including but not limited to pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation."

NEW SECTION. Section 3. 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."

7033b/L:JEA\WP:jj

SENATE JUDICIARY

EXHIBIT NO. 4

DATE 2-4-87

BILL NO. S.B. 51

1 SENATE BILL NO. 51

2 INTRODUCED BY B. BROWN

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

4 ON LIABILITY ISSUES

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE

7 LAWS RELATING TO LIABILITY; ~~SUBSTITUTING THE DOCTRINE OF~~

8 ~~COMPARATIVE FAULT FOR THE DOCTRINE OF COMPARATIVE~~ ³

9 ~~NEGLIGENCE; ELIMINATING JOINT LIABILITY; PROVIDING FOR THE~~

10 ~~APPORTIONMENT OF FAULT AMONG JOINT TORTFEASORS; AND AMENDING~~

11 SECTIONS 27-1-702 AND 27-1-703, MCA."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 27-1-702, MCA, is amended to read:

14 "27-1-702. Comparative ³ negligence ³ extent to

15 which contributory negligence ⁴ negligence ⁴ recovery in action

16 for damages: ⁵ ~~Contributory negligence fault shall not bar~~ ^{negligence}

17 recovery in an action by any person or his legal

18 representative to recover damages for negligence--resulting

19 ⁶ negligence resulting in ^{negligence} death or injury by person or property if such negligence

20 contributory fault ⁷ negligence ⁷ not greater than the negligence ^{negligence} fault

21 of the person or the combined ⁸ negligence ⁸ of all persons against

22 whom recovery is sought, but any damages allowed shall be

23 diminished in the proportion to the amount of negligence

24 ⁹ negligence ⁹ attributable to the person recovering ¹⁰ ~~or for whose~~

SENATE JUDICIARY

EXHIBIT NO. 4

DATE 2-4-87

1 death or injury to person or property recovery is made.

2 (2) "Fault" includes acts or omissions that are in any

3 measure wrongful, unlawful, negligent, or reckless or that

4 subject a person to strict tort liability. The term also

5 includes:

6 (a) breach of warranty; ¹⁰

7 (b) assumption of risk;

8 (c) misuse of a product; and

9 (d) failure to avoid or mitigate an injury, including

10 failure to use safety devices.

Section 2. Section 27-1-703, MCA, is amended to read:

11 "27-1-703. Multiple defendants jointly--and--severally--is

12 liable--right-of-contribution ¹¹ ~~apportionment of~~

13 ~~Whenever the negligence of any party in any action is--~~

14 ~~issued each party against whom recovery may be allowed--is~~

15 ~~jointly--and--severally--liable--for--the amount that may be~~

16 ~~awarded to the claimant but has the right--of--contribution~~

17 ~~from any other person whose negligence may have contributed~~

18 ~~as a proximate cause to the injury complained of.~~

19 (2) ~~On motion of any party against whom a claim--is~~

20 ~~asserted--for--negligence--resulting--in--death--or--injury--to~~

21 ~~person or property, any other person--whose--negligence--may~~

22 ~~have--contributed--as--a--proximate--cause--to--the--injury~~

23 ~~complained of may be joined as an additional party--to--the~~

24 ~~action--Whenever--more--than--one--person--is--found--to--have~~



1 contributed as a proximate cause to the injury complained
 2 of, the trier of fact shall apportion the degree of fault
 3 among such persons. Contribution shall be proportional to
 4 the negligence of the parties against whom recovery is
 5 allowed. Nothing contained in this section shall make any
 6 party indispensable pursuant to Rule 19-M.R.Civ.P.
 7 (3) If for any reason all or part of the contribution
 8 from a party liable for contribution cannot be obtained
 9 each of the other parties against whom recovery is allowed
 10 is liable to contribute a proportional part of the unpaid
 11 portion of the noncontributing party's share and may obtain
 12 judgment in a pending or subsequent action for contribution
 13 from the noncontributing party.

14 (1) In an action involving the fault of more than one
 15 person, the trier of fact shall determine the percentage of
 16 fault attributable to each person whose actions contributed
 17 to the damages. Such persons may include but need not be
 18 limited to the claimant, injured person, defendants,
 19 third-party defendants, persons released from liability by
 20 the claimant, persons immune from liability to the claimant,
 21 and any other persons who have a defense against the
 22 claimant.

23 (2) Judgment must be entered against each defendant in
 24 an amount representing his proportionate share of the
 25 claimant's total damages unless the defendant

1 ~~(a) has been released by the claimant;~~
 2 ~~(b) is immune from liability to the claimant; or~~
 3 ~~(c) has prevailed against the claimant on any other~~
 4 ~~individual defense. (12)~~
 5 ~~(3) The liability of a defendant is several only~~
 6 ~~except that one defendant may be responsible for the fault~~
 7 ~~of another if both acted in concert in contributing to the~~
 8 ~~claimant's damage or if one defendant acted as an agent of~~
 9 ~~the other."~~ A

-End-

Proposed Joint and Several Liability Amendment to SB 51.

Proposed section 27-1-703 (3) is amended to read:

(3) The liability of a party against whom recovery may be allowed is several only, subject to the following exceptions: (a) one defendant may be jointly liable for the economic damages arising from the negligence of another if the percentage of negligence attributable to him exceeds 25%. That defendant shall not be jointly liable for the non-economic damages arising from the negligence of another; (2) one defendant may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimants damages or if one defendant acted as an agent of the other. (b) definitions: (1) "Economic Damages" are objectively determined pecuniary damages as compensation for medical expenses and care, rehabilitation services, custodial care, loss of earnings and earning capacity, loss of income, funeral or burial expenses, loss of use of property, costs of repair or replacement of property, cost of obtaining substitute domestic services, loss of employment, loss of business or employment opportunities, and any other objectively verifiable monetary losses. (2) "Non-Economic Damages" are subjectively determined non pecuniary damages arising from pain, suffering, inconvenience, grief, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, fear of loss, fear of illness, fear of injury, and any other subjectively determined non pecuniary damages.

(4) Right of Contribution. (a) A party against whom recovery may be allowed and who is jointly and severally liable under (3)(b) above has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of. [(b) Subsection (b) and subsections (c) refer to existing law section 27-1-703 (2), (3).]

STANDING COMMITTEE REPORT

February 4

37

19.....

MR. PRESIDENT

Senate Judiciary

We, your committee on

Senate Bill

164

having had under consideration..... No.....

first

white

reading copy (_____)
color

Senate Bill

164

Respectfully report as follows: That..... No.....

DO PASS

~~XXXXXXXXXX~~
DO NOT PASS

.....
Chairman.

STANDING COMMITTEE REPORT

February 4

19 87

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on

having had under consideration

SENATE BILL

No. **214**

first

white

reading copy (_____)
color

Requiring SRS consent before relinquishing parental rights.

~~SENATE~~ **Senate Bill**

214

Respectfully report as follows: That

No. _____

DO PASS

~~DO NOT PASS~~

Chairman.