

## JUDICIARY COMMITTEE

January 26, 1977

The regularly scheduled meeting of the House Judiciary Committee was held on Wednesday, January 26th at 8:00 A. M. with Chairman Scully presiding. All members were present with the exception of Representative Dussault who was excused and then came in later.

Bills scheduled for hearing were House Joint Resolution #17 and House Bills #313, 243, 334, 354 and 356.

CHIEF SPONSOR REPRESENTATIVE MOORE, District #41 introduced House Bill #334 and spoke in its behalf.

This bill concerns the pleading of damages in actions for personal injury or wrongful death. He introduced Gerald Neeley, representing the Montana Medical Association. He was a proponent for the bill and spoke in favor of it. He said the bill has a number of points of merit. He talked about the high cost of the insurance and that only 16% of the premium dollar ever filters down to the patient. He explained the bill, and discussed the bar association commission study that had been done. He asked the committee to support this bill.

PROPONENT, JOHN CAVIN, Attorney, Billings, Montana. He said the Billings Bar Association was in support of this bill.

OPPONENT, KENT PARCELL, representing the State Bar of Montana said the Bar Association supports this bill.

OPPONENT, TOM DOWLING, representing the Montana Trial Lawyers Association said they strongly oppose this bill. He said the bill is trying to revamp the entire tort system. If you are going to do that then how do you handle the default. There should be an amendment, as to jurisdiction of limits.

REPRESENTATIVE COURTNEY asked of Mr. Dowling, how many malpractice cases are heard each year. He said he did not have the figures. A survey had been done but it was not broken down, it only makes comparisons. There was then some discussion about how many were settled, etc.

REPRESENTATIVE RAMIREZ mentioned that on the default it indicated that notice has to be given and how would they do that.

Mr. Neeley said you would have to give him notice of claim. There was considerable discussion about how this would be done.

REPRESENTATIVE RAMIREZ asked if the new changes in the Montana Code of Civil practice did not require that they reveal the insurance policy limits, and Mr. Neeley said, yes, it had been passed by the legislature.

The hearing closed on House Bill #334.

THE HEARING OPENED ON HOUSE JOINT RESOLUTION #17.

PROPONENT, REPRESENTATIVE O'CONNELL, District #34, explained the purpose of the bill, called the right to life amendment. She mentioned that the bill requests that the state apply to the Congress of the United States to call convention for the purpose of proposing an amendment to the United States Constitution, in the effect that the right to life guarantee that every human being subject to the jurisdiction of the United States or any state is, from the moment of fertilization, a person with the right to life.

No other proponents.

OPPONENT, LINDA SANDMAN, Representing the Women's Political Caucus, asked the committee to look at how this bill would work. She said there are two routes that can be taken for a constitutional amendment and that this route was wrong. She opposed the bill on that stand.

REPRESENTATIVE O'CONNELL closed with the remark that "everything worth getting is worth fighting for".

The hearing closed on House Joint Resolution #17.

THE HEARING OPENED ON HOUSE BILL #243.

CHIEF SPONSOR, REPRESENTATIVE KIMBLE, District #94, stated that this bill would permit a person to drive if their employment required it, even though their drivers license might be revoked for a charge of driving while intoxicated, or under the influence of drugs. It would provide for a special permit, but only when providing proof of condition of employment. He said they should not be permitted to drive except in the course of their employment.

No other proponents.

OPPONENT, CAPTAIN TOOLEY, of the Montana Highway Patrol, spoke against the bill, but he said it was only because there was another bill that he felt was better, and that the department feels is better. There was considerable discussion about the judge and the discretion of the judge, etc.

The hearing closed on House Bill #243.

THE HEARING OPENED ON HOUSE BILLS #354 and 356, sponsored by:

REPRESENTATIVE GOULD, District #98. He mentioned that there should be three bills in this package, but one had inadvertently gotten into the Highway Committee but that he asked the Judiciary Committee to withhold any action until they had received House Bill #355, which would be coming over, and that they then consider them all three together.

PROPONENT, CAPTAIN TOOLEY, Montana Highway Patrol, spoke in behalf of these three bills. He said they all deal with various driver rehabilitation in different forms. To provide for a driver rehabilitation counsel, to improve driving technique, etc.. This would be largely under the control of the Department of Justice. He mentioned some of the organizations in support of the bill, such as the Highway Safety Office, the Traffic Education Department, the Patrol Office, etc.

There was discussion about 1st, 2nd and 3rd offenses, and the penalty for these.

Captain Tooley stated that he would like to committee to amend Bill #354, on page 4, subsection (d), line 10, after institutions, insert the words, "except as otherwise provided in this chapter".

A spokesman for the Department of Community Affairs, stated that they support the concept and the intent of the bills. He said that they could provide some service and rehabilitation to the convicted DWI. I feel that it is the basic package of bills that are in full support of the law enforcement and that are related to traffic matters in the state.

PROPONENT, GEORGE SWARTZ, Department of Institutions, alcohol and drug section, said he was in support of these bills. He said there are some programs across the state at the present time but they have to be worked locally. He said they had discussed at length the need for these bills with the Highway Patrol.

Could closed with asking the committee to support them as a package.

REPRESENTATIVE SEIFERT, asked Captain Tooley, how many are convicted of driving while intoxicated each month, and the Captain said, they have about 200 on a first offense each month.

He then asked how many personnel would be needed to set up this program.

CAPTAIN TOOLEY, said there would be a fiscal note on this.

REPRESENTATIVE ROTH, asked who would make the determination of who should attend these programs, and the Captain said the 2nd or subsequent offender would be treated as if he had an alcohol problem. There was discussion about the point system and it was mentioned that ten points are registered for DWI.

The Hearing closed on House Bills #354 and 356.

CHAIRMAN SCULLY appointed a sub-committee to study these three bills, as soon as House Bill #355 comes over from the Highway Committee. Appointed to the sub-committee was Representative Lory, Chairman, and Representative Seifert and Representative Keyser.

1-26-77

THE HEARING OPENED ON HOUSE BILL #313, CHIEF SPONSOR being:  
REPRESENTATIVE FAGG, District #63.

This is a very severe bill, but there are so many uninsured motorists, that something must be done about them. The poor risk becomes a part of our premium. Most people do not favor madatory insurance. It might be that your committee could modify it if you feel it is too severe. He went onto explain some aspects of the bill, as to penalty, etc. He said one section of the bill should be clarified concerning the part about forced sale. It is not clear.

After some discussion it was mentioned that the purpose of the bill is to get the old junker off the road, usually they don't have any insurance and if they crash into you, they do not have any means of taking care of it, and your own insurance must pay it and thus creates higher rates.

The hearing closed on House Bill #313.

CHAIRMAN SCULLY stated that this bill would be held in committée until the hearing on House Bill #316, which concerns mandatory liability motor vehicle insurance.

#### EXECUTIVE SESSION

CHAIRMAN SCULLY had to leave to attend another hearing, so Vice-Chairman Representative Teague took over the meeting.

REPRESENTATIVE HAND made a motion to "DO PASS", House Bill #228. Motion seconded, discussion followed.

It was mentioned that people could save money by this method, but that it could be done in secrecy. Several comments were made as the reason a person might want to change his or her name.

REPRESENTATIVE TEAGUE made a motion to amend by striking "either in line 24, page 1 and on page 2, line 1, strike "or" and insert "and".

REPRESENTATIVE RAMIREZ opposed the amendment. Discussion followed.

REPRESENTATIVE LORY offered a substitute motion that House Bill #228 "DO NOT PASS". Motion seconded and question called. Motion carried vote as follows:

FOR

Colburn  
Conroy  
Day  
Eudaily  
Keyser  
Lory

AGAINST

Baeth  
Courtney  
Hand  
Holmes  
Kennerly  
Teague

McLane  
Ramirez  
Roth  
Seifert

The next bill to be brought up for consideration was House Bill #251.

This bill was referred to the sub-committee, along with House Bill #260, (all of the DWI bills in the committee).

The next bill brought up for consideration was House Bill #226,

REPRESENTATIVE SEIFERT made the motion to "DO PASS".  
Motion seconded.

There was discussion about the penalty, jurisdiction, danger, etc.  
Question called, motion carried, vote unanimous.

The next bill under consideration was House Bill #320.

REPRESENTATIVE KEYSER made the motion to "DO PASS".

REPRESENTATIVE RAMIREZ made a motion to amend line 4 of the title, following: "TO" strike "AMEND AND".

Motion carried, question called. Motion carried with unanimous "DO PASS AS AMENDED".

The next bill up for consideration was House Bill #291.

REPRESENTATIVE LORY made a motion to "DO PASS". Motion seconded.  
Discussion followed concerning the possession and transfer, having the right of presumption, in the case of someone bringing something to a second-hand store, etc.

REPRESENTATIVE LORY made a substitute motion to table and hold for future action. Substitute motion carried with unanimous vote.

SUB-COMMITTEE TO STUDY HOUSE BILL #188 and 261 gave a preliminary report so that the whole committee could have some time to think about it before the final report to be presented Friday. The Sub-committee recommended that House Bill #261 come out first and hold #188 to come out later. These bills are on mandatory sentencing.

REPRESENTATIVE RAMIREZ suggested that on House Bill #261 the 5th sub-section, line 24, page 16, be abolished altogether or it should be limited to 1st offense. The committee agreed to delay any action until the full report of the sub-committee.

MEETING ADJOURNED 10:20 A. M.

---

Representative Scully, Chairman