

JUDICIARY COMMITTEE  
EXECUTIVE SESSION  
February 9, 1977

Following the regular meeting the Judiciary Committee went into executive session at 10:15 a.m. Wednesday, February 9, 1977 in Room 436 of the Capitol Building, Helena, Montana. Chairman Scully presided.

CHAIRMAN SCULLY asked for a motion on HOUSE BILL 721. This bill had been sent out of committee on a "do pass" but was re-referred due to a technicality. The motion was made by Representative Ramirez and the motion carried with the vote unanimous.

CHAIRMAN SCULLY announced there would be a change in meeting time. The committee will now meet at 7:30 a.m. and Tuesday evening there will be an executive meeting at 7:30 to clear up all bills left in committee.

CHAIRMAN SCULLY appointed a sub-committee to handle HOUSE BILL 532, and report by Friday. The following representatives were appointed: Representative Dussault, chairman and Representatives McLane, Colburn and Kennerly.

HOUSE BILL # 320: REPRESENTATIVE RAMIREZ made a motion to amend and gave a statement as to why he felt it was necessary. This bill had been passed out of committee and been re-referred. A copy of the proposed amendments and the statement is attached. The motion to amend carried with the vote unanimous. A motion was made by REPRESENTATIVE HAND to "do pass as amended". The motion carried with the vote unanimous.

HOUSE BILL #353: REPRESENTATIVE COURTNEY made a motion to table this bill indefinitely. The motion carried with the vote unanimous.

HOUSE BILL # 382: REPRESENTATIVE RAMIREZ made a motion "do not pass". The motion carried with the vote unanimous.

HOUSE BILL #408: REPRESENTATIVE BAETH made a motion "do pass". The motion carried with Representatives Courtney, Lory and Eudaily voting "no". Representatives Holmes, Dussault, and Day were absent and did not vote.

HOUSE BILL #567: REPRESENTATIVE LORY made a motion "do not pass". REPRESENTATIVE COLBURN made a substitute motion "do pass". The substitute motion failed with the vote as follows:

<u>Not voting</u>	<u>Yes</u>	<u>No</u>	
Conroy	Baeth	Hand	Ramirez
Holmes	Colburn	Kennerly	Roth
Day	Courtney	Eudaily	Seifert
Dussault	Teague	Keyser	Scully
		Lory	
		McLane	

The motion then reverted to the original motion of "do not pass".  
The motion carried with the vote as follows:

<u>Not voting</u>	<u>Yes</u>	<u>No</u>
Conroy	Hand	Kennerly
Holmes	Eudaily	Keyser
Day	Lory	McLane
Dussault	Ramirez	Roth
	Seifert	Scully
		Baeth
		Colburn
		Courtney
		Teague

HOUSE BILL # 585: REPRESENTATIVE LORY made a motion "do pass".  
The motion carried with Representatives Seifert, Roth, Teague,  
Keyser and Hand voting "no". Representatives Conroy, Holmes,  
Day and Dussault were absent.

HOUSE BILL # 589: REPRESENTATIVE McLANE made a motion to amend  
this bill. A copy of the amendments is attached. The motion to  
amend carried with the vote unanimous. REPRESENTATIVE EUDAILY  
made a motion to "do pass as amended". The motion carried with  
the vote unanimous.

HOUSE BILL # 590: REPRESENTATIVE McLANE made a motion to "do pass".  
The motion carried with Representatives Roth, Courtney and Keyser  
voting "no". Representatives Conroy, Holmes, Day and Dussault  
were absent.

HOUSE BILL # 607: REPRESENTATIVE LORY made a motion to accept  
the amendments presented by the Highway Patrol. The motion to  
amend carried with the vote unanimous. REPRESENTATIVE LORY made  
a motion to "do pass as amended". The motion carried with Rep-  
resentative Seifert voting "no". A copy of the amendments is  
attached.

HOUSE BILL #633: REPRESENTATIVE HAND made a motion "do pass".  
The motion carried with the vote unanimous.

HOUSE BILL #634: REPRESENTATIVE LORY made a motion to amend this  
bill, (a copy of the proposed amendments attached). The motion to  
amend carried with the vote unanimous. REPRESENTATIVE LORY made  
a motion "do pass as amended". The motion carried with the vote  
unanimous.

HOUSE BILL # 642: REPRESENTATIVE McLANE made a motion "do not  
pass". The motion carried with the vote unanimous.

The meeting adjourned at 11:35 a.m.

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John Scully, Chairman

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Mary Ellen Connelly, Secretary

HOUSE BILL # 320

Page 2

4. Amend page 1, section 1, line 21.

Following: "verdict"

Insert: ", "

Following: "or"

Strike: ", "

Following: "in"

Strike: "the absence of a jury"

Insert: "a non-jury trial"

5. Amend page 1, section 1, line 22.

Following: "fact"

Insert: ", "

6. Amend page 2, section 2, line 8.

Following: "injury"

Strike: "shall"

Insert: "may"

7. Amend page 2, section 3, line 10.

Following: line 9

Strike: section 3 in its entirety

Renumber: all subsequent sections

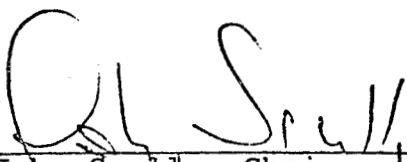
8. Amend page 3, section 5, line 4.

Following: line 3

Strike: section 5 in its entirety

Renumber: subsequent section

AND AS AMENDED, DO PASS

  
John Scully, Chairman

## STANDING COMMITTEE REPORT

February 9, 1977  
Journal

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 320

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND AND CLARIFY THE LAW RELATING TO COMPARATIVE NEGLIGENCE: TO REQUIRE SPECIAL VERDICTS OR SPECIFIC FINDINGS OF FACT IN ACTIONS INVOLVING ISSUES OF COMPARATIVE NEGLIGENCE, TO REQUIRE JOINDER OF PERSONS WHOSE NEGLIGENCE IS CLAIMED TO HAVE CONTRIBUTED TO THE INJURY, TO ABOLISH THE LAST CLEAR CHANCE DOCTRINE, TO PROVIDE THAT MULTIPLE DEFENDANTS CONTRIBUTE TO PAYMENT OF THE JUDGMENT IN PROPORTION TO THEIR COMPARATIVE NEGLIGENCE, TO DEFINE "NEGLIGENCE", AND TO SPECIFY THE APPLICABILITY OF THE PRECEDING PROVISIONS."

Respectfully report as follows: That HOUSE Bill No. 320

second reading, be amended as follows:

1. Amend title, line 7.

Following: "TO"

Strike: "REQUIRE"

Insert: "PERMIT"

2. Amend title, lines 9 and 10.

Following: "INJURY,"

Strike: "TO ABOLISH THE LAST CLEAR CHANCE DOCTRINE,"

3. Amend title, line 12.

Following: "NEGLIGENCE,"

Strike: "TO DEFINE "NEGLIGENCE","

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REPRESENTATIVE RAMIREZ  
HOUSE BILL # 320

I am moving to amend HB 320, in order to avoid concerns which have arisen and to limit its effect to procedural matters. Before the amendments, the bill in sections 3 and 5 appeared to affect substantive law. Section 3 definitely affected substantive law, abolishing the last clear chance doctrine. Section 5 was intended simply to preserve present law pertaining to strict liability and breach of warranty. After discussing these sections with a number of people, I have concluded that the bill should be silent on these matters in order to leave to the courts to determine by case decision the manner in which comparative negligence will affect the doctrine of last clear chance and the manner in which it will be applied to strict liability and breach of warranty.

It is my view, and I believe it is supported by the authorities, that contributory negligence in some form is a defense to claims based on strict liability and breach of warranty under some circumstances. Misuse of the product is a defense. Contributory negligence is generally not a defense where it consists of a failure to discover a defect in the product, but is a defense where it consists of continuing to use the product with actual knowledge of the defect. How these principles will be applied under comparative negligence is best left to the courts to determine on a case by case basis.

The amendments to HB 320, striking sections 3 and 5, are for this purpose only, they are not to be construed in any way as an expression of intention on my part that last clear chance should not be abolished or that comparative negligence should not be applied to strict liability or breach of warranty.

February 9, 1977

## STANDING COMMITTEE REPORT

February 9, 1977  
Journal

MR. SPEAKER:

## JUDICIARY

We, your committee on .....

having had under consideration ..... HOUSE Bill No. 589

A BILL FOR AN ACT ENTITLED: "AN ACT TO GIVE JUSTICE, MUNICIPAL,  
AND CITY COURTS EXCLUSIVE JURISDICTION OVER TRAFFIC VIOLATIONS,  
FISH AND GAME VIOLATIONS AND FIRST-TIME DRINKING VIOLATIONS  
COMMITTED BY MINORS, AND CONCURRENT JURISDICTION WITH THE YOUTH  
COURT OVER MULTIPLE DRINKING VIOLATIONS; AMENDING SECTION  
10-1206, R.C.M. 1947."

Respectfully report as follows: That ..... HOUSE Bill No. 589,

introduced bill, be amended as follows:

1. Amend title, line 5.

Following: "COURTS"

Strike: "EXCLUSIVE"

Insert: "CONCURRENT"

Following: "JURISDICTION"

Strike: "OVER"

2. Amend title, lines 6 and 7.

Following: line 5

Strike: lines 6 and 7 in their entirety

3. Amend title, line 8.

Following: line 7.

Strike: "JURISDICTION"

Following: "OVER"

Strike: "MULTIPLE"

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Continued on page 2

HOUSE BILL 589

Page 2

4. Amend page 1, section 1, subsection (2), line 23.

Following: "concurrent"

Strike: "exclusive"

Insert: "concurrent"

Following: "jurisdiction"

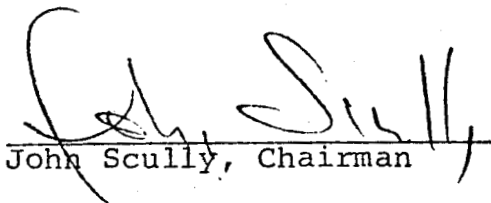
Insert: "with the youth court"

5. Amend page 2, section 1, subsection (3), lines 10 through 13.

Following: line 9

Strike: subsection (3) in its entirety

AND AS AMENDED, DO PASS

  
John Scully, Chairman

## STANDING COMMITTEE REPORT

February 9, 1977  
Journal

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 607

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW BOND IN THE CASE  
OF TRAFFIC VIOLATIONS TO BE MADE BY CHECK IN LIEU OF CASH."

Respectfully report as follows: That HOUSE Bill No. 607,

introduced bill, be amended as follows:

1. Amend page 1, section 1, subsection (2), line 18.  
Following: "the"  
Strike: "person"  
Insert: "highway patrolman or other authorized agent"
2. Amend page 1, section 1, subsection (2), line 20.  
Following: line 19  
Strike: "insufficient funds"  
Insert: "non-payment"

AND AS AMENDED, DO PASS

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## STANDING COMMITTEE REPORT

February 9, 1977  
Journal

SPEAKER:  
MR. ....

## JUDICIARY

We, your committee on .....

having had under consideration ..... HOUSE Bill No. 634

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 16-216  
AND 16-234, R.C.M. 1947, TO EXPAND GALLATIN AND PARK COUNTIES TO  
INCLUDE CONTIGUOUS PORTIONS OF YELLOWSTONE NATIONAL PARK THAT ARE  
WITHIN THE STATE OF MONTANA BUT THAT ARE NOT WITHIN A COUNTY;  
PROVIDING FOR APPROVAL OF THE VOTERS AS REQUIRED BY THE CONSTITUTION;  
AND PROVIDING AN EFFECTIVE DATE FOR THE BOUNDARY CHANGE IF APPROVED."

Respectfully report as follows: That ..... HOUSE Bill No. 634

introduced bill, be amended as follows:

1. Amend page 9, section 3, line 20.  
Following: "counties"  
Strike: "at the primary election to be held June 6, 1978"
2. Amend page 9, section 3, line 22.  
Following: line 21  
Strike: "each"  
Insert: "the"
3. Amend page 9, section 3, line 23.  
Following: "effective"  
Strike: "July 1, 1978"  
Insert: "upon approval"
4. Amend page 9, section 3, line 23.  
Following: line 23  
Insert: "Section 4. Effective date. This act is effective  
on its passage and approval."

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AND AS AMENDED, DO PASS