

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
February 19, 1979

The regular meeting of the Judiciary Committee was called to order on Monday, February 19, at 8:00 a.m. in room 436 of the Capitol Building. All members were present with the exception of Representatives Holmes, Eudaily and Seifert. Scheduled for hearing were bills 401, 747, 748, 749, 751, 760, 774, 775, 777, 782, and 783.

HOUSE BILL NO. 749: Representative Frates. This bill would make the sexual abuse of children a criminal offense. The second section is the offense, prima facie evidence, a prima facie case is a case that will win unless the other side comes forward with evidence to dispute it. This bill deals with a child under 13 years of age. He listed some of the porno magazines that use children and gave examples of other types of child abuse.

REPRESENTATIVE KEEDY: Why does your bill stop with children 13 years old, and Representative Frates said that was an arbitrary figure and the committee could amend it and he would have no objection.

REPRESENTATIVE KEYSER: Asked how many other states have this type of legislation and Mr. Frates said he did not know.

There was some discussion about the age limit and the general feeling was that it should be higher than 13. With no other discussion and no questions the hearing closed on House Bill No. 749.

HOUSE BILL NO. 747: Representative Hand. This bill has directed the Attorney General with another measure of assurance that the intent is clear. If there are no statements of intent on ballot issues he is to write one. I have a very short statement here from John Hellio that I would like to read. "I feel a growing concern because I have not understood. I have trouble in comprehension and I believe that others will make errors in voting. Even with the best educational background people could not understand these issues. It just will be helpful if the Attorney General will not let personal preference show."

MIKE McGRATH: We wanted to draft a bill to deal with the entire problem and under SB 256 we thought we had it. That is on second reading in the Senate today. That will explain the explanatory statement. Of the initiatives on the ballot last election most were self-serving.

Discussion about Senate Bill 256.

REPRESENTATIVE DAY: Will Senate Bill 256 help clear up the intent on the ballot.

Discussion about this, and the number of initiatives on the last ballot. Mr. McGrath said it won't prevent them from being on the ballot but it will allow the Attorney General and Secretary of State to correct the statement.

There was no other discussion and the hearing closed on House Bill 747.

HOUSE BILL NO. 751: Representative Hurwitz. This bill would permit election or appointment of city judges in third-class cities, and remove the residence requirements.

DAN MIZNER: League of Cities and Towns. Under the law it is allowable for an appointment of a Justice of the Peace. He discussed the section about city judge on page 2, line 25, and felt that it should be struck. He made the comment that at the present time the judge must be a resident of the city.

REPRESENTATIVE KEMMIS: Would this wording allow them to approach a city judge and Mr. Mizner said that that was in the intent.

There was discussion about the bill on page 3, section 5 and lines 3 and 4 on page 3. Representative Scully suggested that it be left in on two and taken out on page 3.

Representative Eudaily commented that it seemed to him that on page 2 you are removing all residence requirements. Mr. Mizner said that an elected office must live in the city but not an appointed one.

There was no further discussion and the hearing closed on House Bill No. 751.

HOUSE BILL NO. 748: Representative Marks. This will clarify and revise laws relating to industrial development projects, and would authorize additional types of projects, loan agreements and notes. Subsection 5 is a clarification that is presently in the revenue code. He mentioned some other parts of the bill that are being clarified.

TOM HARRISON: D.A. Davidson. Most of the changes are merely housekeeping but there are a few substantive changes in the bill.

BRUCE A. MacKENZIE: D. A. Davidson. This bill has been in the planning for about 6 months. Sometimes the language is cumbersome and costly. On page 25, he explained the lease-back arrangement. With the lease arrangement they don't seem to balk as much and it provides just as much security for the bonds. He explained the clarification on various changes. On page 7 and 8 are the loan arrangements and mortgages. On page 11 we are doing some of those things. He explained the section on page 11. Only non-profit organizations could use this section. Section 8, this wouldnt be attractive to a banker for a construction loan. He explained short-term financing which would make the project feasible.

Representative Lory asked about page 11, the second paragraph. Mr. MacKenzie said this language was changed by the legislative council and it does drastically change the intent.

Representative Conroy asked about a similar bill in the Senate, Number 43, and mentioned that they had been asked for input.

Discussion followed about input.

With no further discussion the hearing closed on House Bill Number 748.

HOUSE BILL NO. 777: Representative Huennekens. What this bill does is deal with a law that has existed for a long time. He gave an example of a case, Jean Curry reported to the Highway Patrol. In this particular case the man was a known alcoholic. There would be a cause of action against a third person.

MIKE MELOY: Montana Trial Lawyers. This bill is a dram-shot act. It is not in effect in Montana so is presently not responsible. He gave examples of cases.

Representative Seifert came in.

Mr. Meloy went on, again the question came to the Supreme Court where the bar-owner was found responsible. HB 777 provides this committee with the chance to address that policy question. On line 17, the counsel has added two sections of law. 16-6-304 has to do with serving after hours and that is in the intent of this bill.

MR. STROPE: Montana Tavern Owners Association. Without reviews of those cases, I disagree with what Mr. Meloy said about the Supreme Court. They would not hold the tavern owner liable. I suggest the salient thing for you as a committee is, what would this do to an industry. I am a lawyer myself

and I see the only thing necessary is a section on the lawyer view. What they do is hold a select few. I do think the bill is very well drafted.

GLEN DRAKE: American Insurance Organization. This bill, as I read it, is most confusing. I think its a lawyers relief act. Read through the bill. The insurance rates will go up very drastically for a tavern. From an insurance standpoint the amendments would take out part of the problem.

REPRESENTATIVE KEYSER: In using the word intoxicated are you defining it as it is now, the blood alcohol level. Mr. Meloy said, no blood alcohol. It covers both the retailer as well as the social person. In both of these cases there is no alcohol threshold. We are not changing that law at all. It would be a provision in the criminal code.

REPRESENTATIVE HUENNEKENS: We do have criminal law addressing this concern. There are darn few convictions under this law so the crime approach is not going to solve this problem. I think this is something the state must consider. It is not just that a few tavern owners would have the financial burden of this law. I would think this is a citizens relief act. As far as insurance costs it seems to me that that is what insurance is all about. This part actually is identical to the act in New York state.

Representative Lory asked how this would affect a private party, and Mr. Drake said this would be covered in your homeowners.

REPRESENTATIVE IVERSON: He led discussion about responsibility and Representative Roth asked if this law would make the tavern owner responsible. Mr. Meloy said that this law doesn't do it, the criminal law already does it.

REPRESENTATIVE EUDAILY: What if I bought a drunk a drink, who would be responsible, would I be or would the tavern owner. Mr. Strope said "you would be".

REPRESENTATIVE DAY: Why not add drugs to this bill, and Mr. Meloy said, we don't intend for it to be that broad.

REPRESENTATIVE HUENNEKENS: The intent was not to the act of driving. Mr. Day stated that he thought the liability was just as great. There was general discussion about drugs and alcohol and damages.

REPRESENTATIVE PAVLOVICH: Who is responsible if a guy has twelve drinks in twelve bars. Discussion about this. Mr. Kemmis then asked about the pool, and Mr. Strope said, it seems to me that the intent here is to fix liability.

REPRESENTATIVE KEMMIS: What is the meaning of the words on line 13, proximate cause. Mr. Strope answered that "proximate cause" is what most laws are about.

MR. MELOY: It's only a crime to give alcohol to someone who is under the influence. All this does is, if a judge is convinced after hearing the evidence finds that the third party was responsible, set damages.

Discussion about convictions, led by Mr. Keyser. Mr. Huennekens commented that in his experience there were very few.

There was no other discussion and the hearing closed on House Bill No. 777.

HOUSE BILL NO. 401: Representative Harper. This bill includes provisions for lodging and meals for witnesses. It does seem to me that it is right and proper to ask someone to drive to Helena only if you provide some kind of reimbursement.

DOUGLAS OLSON: Attorney. I rise in support of this legislation. It compensates a person for some expense for circumstances which he has no control over, such as if he has to go testify in court.

Representative Eudaily asked if those are the ordinary expenses that are allowed. The answer was yes.

There was no discussion and no other questions and the hearing closed on House Bill Number 401.

HOUSE BILL NO. 782: Representative Menahan. This is a snowmobile act. It will revise the registration requirements for snowmobile dealers, generally revise fees and their allocation, and provide a registration exception for nonresident snowmobile racers. It also will eliminate the discretion of the Department of Fish and Game over decibel standards.

KEN HOOVESTOL: Montana Snowmobile Association. There was a mistake on the bill. We are proposing various changes in definitions and procedures of the titling and registration of snowmobiles. These changes are necessary to conform with standard procedures within the motor vehicle department. He presented the committee with a copy of written testimony.

LARRY MAJORS:

I support this bill.

EVERETT WOODGERD:

Missoula Snowmobile Association. Our snowmobile club has about 200 members. We fully support HB 782, however, my remarks will be addressed to three subjects. Numbers, the present system doesn't meet any particular need, anyone can buy numbers without registration. The contour of the cowl is not satisfactory in many cases. There is a time lapse involved in registration and receipt of title and needless expense. The sound level, 1975 and newer sleds mandated by law to emission level of 78 decibils. It is satisfactory to the industry and the public and there is no need for provision permitting arbitrary action. The dealer registration will cost more money, but dealers surveyed agreed that some fly-by-night dealers are taking advantage of the present law, and that a change will benefit the industry. There is quite a time lapse in the title change, it sometimes takes 2 or 3 months. We would like to have the cowling specified as the place for the decal, and that the bill be amended so that the current registration be carried when the machine is in operation.

There was discussion about the temporary use permit. This 30 days time would be for racing purposes. Representative Curtiss asked about the fees and asked that this be clarified.

There was no further discussion and no further questions and the hearing closed on House Bill No. 782. Mr. Bob Bird of the Department of Fish and Game presented a copy of written testimony to be added to the record. He said he was sorry to be late.

HOUSE BILL NO. 760:

Representative Meyer. This bill would revise the fee for housing prisoners in county jails. It would cover federal and state prisoners. Line 25 is the major change in the bill. There also has been a new section added on line 24, page 2.

MIKE STEPHEN:

Montana Association of Counties. We think there should be an increase. We feel the compensation is low. On page 2, line 4, to provide this safe-keeping just compensation is necessary. At \$5.00 a day the county is losing money.

JOHN BELL:

Montana Sheriffs and Peace Officers. Preparation varies from county to county. He gave examples. We would like an amedment on page 1. He went on to talk about the fiscal note. He said the amount per day in Missoula is \$18.40.

There was no discussion and the hearing closed on House Bill No. 760.

HOUSE BILL NO. 783: Representative Lory. This could be a no-fault bill for hospitals. It does not help a person with no-fault from out of state. The purpose of this bill is to establish lien rights for physicians, nurses, and hospitals when a person receiving medical treatment is injured through the fault or neglect of another or is insured.

DON McDONALD: Most existing lien law was added in 1932. It would not take into account no-fault for self insurance. What we are trying to do is use an existing resource and it would result in lower costs to the state.

DENNIS RYAN: Patient accounts, St. Patricks Hospital. I have been in this field about 19 years and it is unfortunate that we see the abuses that we do. It is still our goal in the medical industry and this is one way that we can exert some idea of getting these costs paid. He gave examples of types of abuses.

BILL WAGNER: Very briefly, the present law has not been changed. We are not placing a tremendous burden upon insurance companies.

REPRESENTATIVE KEYSER: You put the same words right back in. Do you think the present law is ambiguous. Discussion about this and the new section.

REPRESENTATIVE EUDAILY: Talked about the two party checks for Blue Cross and he felt that it should be changed. Mr. McDonald answered that the only time this would apply there would be no notice of lien with the insurance company. Then Mr. Eudaily commented, in other words they would not be filed immediately if you left the hospital. This was agreed.

MR. McDONALD: About section 4(2) under the existing lien law is one and there is another against a third party. The hospital will have a new right to file a lien. This in answer to a question from Mr. Scully, what is new in the bill. The comment was made that the lien could apply right now when you are injured through someone elses fault or neglect.

There was no further discussion and the hearing closed on House Bill No. 783.

HOUSE BILL NO. 774: Representative Seifert. This bill would define marital status as used in the laws governing illegal discrimination and to exclude cohabitation from the definition of marital status. He went through the bill and explained the definitions.

RICK SHERWOOD: Staff Attorney for Human Rights Bureau.
I am neither a proponent or opponent.
This is just a matter of policy. On page 3, line 19 of the definitions, the intent would be more clearly explained if the word marriage were there rather than marital status.

REPRESENTATIVE KEMMIS: This also defines marital status as well as cohabitation.

Mr. Sherwood explained marital status, the meaning as used in the bill. There was discussion about a narrower interpretation of marital status.

REPRESENTATIVE TEAGUE: Why does this conflict with common law. Discussion followed.

There was no further discussion and no other questions and the hearing closed.

HOUSE BILL NO. 775: Representative Seifert. This bill would allow attorneys fees to a person alleged to have engaged in a discriminatory practice if the complaint should be dismissed. The person against whom the complaint was filed is entitled to recover a reasonable attorneys fee from the person filing the complaint.

DEBRA KEHR: We feel that the bill is necessary. She talked of human rights and gave an example of a case she was familiar with.

JIM HUGHES: Mountain Bell. I am sorry that I don't have this in final form. We are in support of this. Amend on lines 17, 18 and 19, by inserting another sentence. (Copy attached) The wording in section 2 may be a problem.

FREDERICK SHERWOOD: Montana Human Rights Division. I oppose the bill. I would like to point out the discouraging effect this would have on complaints. One is never completely certain of a case before it goes to court. He discussed how they might lose their complaint and be penalized by this bill. This bill speaks of attorneys fees in general. It does refer to attorneys fees from an present point forward, under this bill that a respondent would be encouraged to hire an attorney as soon as possible even if the initial report is not encouraging. The second point is that it awards attorney fees to the respondent. There are some made in bad faith but it is also true that there are a great many of complaints that are legitimate. This bill is different, the federal provisions for attorneys fees are in conflict. I believe it would be so at odds with the federal philosophy that we may lose our 706 funding. We have an arrangement whereby they will supply us with federal funds from EEOC. The effect of this bill would be to cut the guts out of the Human Rights Bureau.

TOM KEEGAN: This bill is wrong because it is unfair. I am speaking in behalf of myself. It should apply to both. There are nuisance defenses in these cases also. I could just skip the Human Rights Bureau completely and go directly to court. It might be that the fees could already be paid under current law. Make it fair for both sides.

REPRESENTATIVE LORY: Would the commission object to awarding of reasonable attorneys fees to the prevailing party.

MR. SHERWOOD: Since we have not met this month I am not sure what the feeling would be. However I think it would change the effect of the Human Rights Commission in Montana right now. We are merely an administrative agency.

Representative Keedy and Mr. Sherwood discussed the awarding of attorneys fees.


REPRESENTATIVE KEMMIS: There are a number of kinds of statutes that create rights. I am just wondering if you can tell me of any statute that just awards attorneys fees on the other side of the equation. Mr. Hughes answered 23-3-204.

REPRESENTATIVE HOLMES: Is it possible to divide the fees, divide them according to the fault. Discussion.

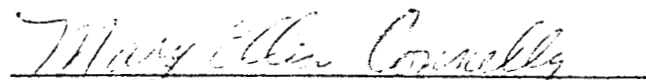
The hearing closed on House Bill No. 775.

After a brief recess the committee went into executive action on bills pending,

at 10:05 a.m.



John P. Scully, Chairman



Mary Ellen Connelly, Secretary