

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 6, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building on Tuesday. All members were present except Representatives Rosenthal and Holmes, excused. Scheduled for hearing were Senate Bills 86, 278, 293, 382, 374, and 423.

SENATE BILL NO. 86: Senator Hazelbaker. This bill will repeal a section dealing with information that is required of professional liability insurers.

RITA TYSON: Counsel, State Auditor and Insurance Commissioner. It is very difficult for them to comply, and it is questionable whether the information is of any value. It is hard to make a comparison. The insurance office already requires them to make an annual statement. It is not current being done and we would like to see it repealed.

GLEN DRAKE: American Insurance Association. I represent 150 casualty insurers. We support the bill as proposed. The principle problem is that there are some laws that are virtually impossible to comply with. It causes problems with both the company and the commissioner.

OPPONENT, GERALD NEELY: Attorney for the Medical Association, in opposition to this bill. Some of you may remember when this legislation came up before. At that time the insurance companies and the Insurance Commissioner wanted it. And now the insurance companies and the Insurance Commissioner are asking for its repeal. He passed out a report and said this is a closed claims study. It does provide data on an annual basis. The information required by this bill is information in the report that is presentable in one page. It is clear that the companies complied in 1977 and the information is easy to obtain and is not costly to obtain. The information provided in this study is a test and I am speaking on behalf of the physicians. He presented a copy of testimony to the committee along with the report. (copy attached)

KEN RUTLEDGE: Montana Hospital Association. I would like to tell you that we at the Hospital Association made use of the information this bill would do away with. What you do is take that information of costs and relate them and attempt to find the factors that have lead to the increase. What we did, is we mailed out a survey to our hospitals. It did not include all hospitals and was not immediately verifiable. These figures can't be disputed because they were verified. We feel this information is very valuable and for this reason we would like to see this information continue to be reported.

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MIKE MELOY:

Montana Trial Lawyers. How many times have you had a bill on insurance premiums

and the assertion is that the rates are very high and you want to know what is causing it. He explained some of the reasons why costs are so high and what goes into making up those rates. We oppose this bill.

SENATOR HAZELBAKER:

I will submit some figures that the insurance department has and also from each insurance company when they file their annual report.

REPRESENTATIVE KEYSER:

I have a few problems with this. When we had these hearings in 1977 we had constant hearings on malpractice and one of the areas very conspicuous by their absence was the insurance companies.

JO DRISCOLL:

Chief Deputy, Insurance Commission. This information is very misleading. She went through the forms and talked of the expenses, the claim costs and other problems. She commented that the public is going to be hurt because this is not the true picture. She discussed professional liability as it pertained to the insurance industry. She exhibited a book that is currently being used by the department to compile information.

REPRESENTATIVE SCULLY:

If you can show me in that book, Montana earned premiums, the trial ratios, the reserves, the interest ratios, I want to see it. Why wasn't that information presented to the committee.

JO DRISCOLL:

Tom Hayden testified many times at the hearings.

Representative Seifert asked how much effort it takes to compile the information and Jo Driscoll answered, it doesn't take all that long, it just didn't seem to be accurate and caused confusion.

There was no other discussion and the hearing closed on Senate Bill 86.

SENATE BILL NO. 278:

Senator Thomas. This bill will provide for the use of interpreters for the deaf, in certain kinds of judicial proceedings. When we had the hearing in the Senate we lined the halls with people. But this time we only brought a few from the deaf and blind school in Great Falls.

MR. McDOWELL:

This is a good bill. From my own experience I would like to tell you the need for it. Since I am from the deaf and blind school in Great Falls, during the past several years some things have occurred which involved a deaf person in legal proceedings. I was called upon to interpret for several persons when they have been called into a court of law, sometimes

for a very serious matter. The need comes about because I don't think it is provided in many cases, and an interpreter is sometimes hard to find and we need good people to serve in that way. But now the SRS has a service for deaf people which is the proper place for courts of law or if need be to go there and qualify to serve as an interpreter.

BETTY VAN TIEGAN:

The deaf people are very pleased with this bill and we encourage your consideration in its passage. This gives full protection to deaf people. Sometimes when someone has to go court and they are deaf, they might be left there without an interpreter and this is very time consuming. With the help of our interpreter we can be first-class citizens like everyone else.

WM: ROMINE:

Montana Sheriffs and Peace Officers. Basically we support this bill, but one of the problems is traffic offenses and having to find an interpreter. The areas with traffic offenses should be exempted out. I think the bill should be amended, in section 9, page 6, which deals with compensation. The sheriffs budgets are set by the County Commissioners. Is the sheriff the appointing officer. It should be made clear. The other question I have is the granting of waiver, lines 14 to 16, section 10. If they don't have an interpreter they are not effectively waiving their rights or understanding their rights.

SENATOR THOMAS:

I want to offer some amendments. We would like to have change the part that the sheriffs and peace officers are concerned about.

House Bill No. 278.

There were no questions and no further discussion and the hearing closed on

HOUSE BILL NO. 293:

Senator Thomas. This is a restitution bill. The reason is, number 1, to provide a mechanism for rehabilitating a youth who has destroyed property. And number 2, if a youth causes some kind of vandalism, to make some kind of restitution to the person whose home has been broken into.

GERALD W. METZGER:

8th Judicial District, Youth Court Services. There are four reasons why we need a restitution bill. 1. To provide specific legal sanction. It is not specifically stated in the code now and the only way you can do it is through the judge. 2. The second reason is to provide due process of the youth and this again makes the judge responsible for the amount of money to be paid to the victim. 3. It goes back to 1976 and the New Jersey Supreme Court case where it was ordered that the only one to order restitution is the Youth Court Judge. He gave examples of trouble kids get into and once they are involved in a recidivist act. By this act being included we are looking at making the youth responsible and

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not his parents. If we are looking at just straight dollars we have contracts over \$12,000 dollars and over \$6,000 has come back to the victims. The last thing is the order of commitment and he explained.

REPRESENTATIVE CONROY: How would this work with regard to making the youth pay.

MR. METZGER: We realize the youth cannot pay for it. Discussion followed about how this might be accomplished.

Discussion about page 9 and the stricken language.

Then followed discussion about the \$1500 limit.

There was no further discussion and no further questions, the hearing closed on Senate Bill No. 293.

SENATE BILL NO. 382: Senator Thomas. This bill was requested by the County Attorney of Yellowstone and was part of a study by the Crime Control Board. It removes the 15 days on a continuance.

TOM HONZEL: County Attorneys Association. This is not a county attorneys bill but it did come out of the youth counsel and the study made on Youth Court legal problems. One of the problems has been the strict time limits. As a general rule we can get most of these cases heard within 15 days but sometimes not. He elaborated further.

KAREN MIKOTA: League of Women Voters. We do feel there should be some maximum limit rather than leaving it open. We do oppose the bill as it now stands.

REPRESENTATIVE LORY: With the amendment the Senate put on, you can't have a continuance unless the youth has absconded. Is this true.

MR. HONZEL: If the youth is held in custody it is imperative that you have the hearing right away. It would only apply to those who are not in custody.

There was no further discussion and the hearing closed on Senate Bill No. 382.

SENATE BILL NO. 374: Senator Van Valkenburg. This bill would change the divorce law slightly. It modifies and terminates provisions for maintenance, support, and property disposition, upon a showing of changed circumstances so

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substantial as to make the terms unconscionable. If there is no provision for the spouse it can be modified within two years. Quite often during the breakup of a marriage they may overlook real needs and then about a year later wake up and find they don't have anything to live on, as an example. This does not go on forever. He went into examples.

REPRESENTATIVE KEEDY: If there are circumstances which can change, why do you want to put a two year limitation on the bill.

SENATOR VAN VALKENBURG: Discussion about the original decree and what might make a change in circumstances.

Discussion about whether there should be a two year limitation. Mr. Van Valkenburg commented that Senator Turnage thought there should be a time limit. Then followed considerable discussion about an unconscionable circumstance and changed circumstances.

Representative Kemmis asked about a possible amendment on Page 1, lines 23 and 24. There was some discussion, and the hearing closed on Senate Bill 374.

SENATE BILL NO. 423: Senator Van Valkenburg. This bill would release liens held by the Department of Social and Rehabilitation Services. The Code Commissioner has interpreted this as language of a temporary nature and would not codify this section of the law. The SRS has periodically been asked to release these liens. He said that on line 15 "shall be" was changed to "are hereby". This would allow the release of the liens. The liens deal with property assistance grants and are liens on real property.

There was discussion about what the original language said. It was mentioned that the intent was to abolish the liens.

With no further discussion the hearing closed on Senate Bill 423.

The meeting adjourned at 9:10 and the committee went into executive session.


John P. Scully, Chairman


Mary Ellen Connelly, Secretary