

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 26, 1979

The sixteenth meeting of the committee was called to order by Chairman Lensink at 10:00 a.m. in room 331 on the above date.

ROLL CALL:

All members were present with the exception of Senator Turnage, who was excused.

CONSIDERATION OF SENATE BILL 183:

Senator Van Valkenburg gave an explanation of this bill, which is an act to eliminate the criminal offense of criminal defamation from the criminal code. He said that the county attorneys find that this portion of the law is virtually unenforceable and that they feel that it is not in the best public interest. He introduced Tom Honzel, representing the Montana County Attorneys Association, who gave a statement in support of this bill. He cited a case in Jefferson County which was filed and ended up being a civil case, and he stated that it was virtually impossible to prosecute under this law.

There were no further proponents and no opponents.

Senator Brown stated that he opposed this bill. He felt that even though this law hasn't been used much that in a case where there was a very heated campaign and there was abusive and inflammatory statements made that he would like to see this bill on the books even if there was only one single instance in the state of Montana.

Senator Van Valkenburg stated that certainly there was a deterring value to have this statute on the books but that county attorneys really should be devoting their time to other things.

Senator Lensink questioned of Mr. Honzel if there have been any of these cases that have been carried out and Mr. Honzel stated that none had been successful.

Senator Lensink closed the hearing on this bill.

CONSIDERATION OF HOUSE BILL 95:

Representative John Scully gave an explanation of this bill which is an act to make the section applicable to all licenses under the liquor code; to remove language relating to criminal sanctions when the applicant makes a false statement on the license application and to provide for denial or

revocation of licenses whenever false statements are made in license applications. He stated that this does not prohibit the county attorneys from filing under criminal court.

Tom Mulholland from the Liquor Division stated that he was here to answer any questions that the committee might have.

There was some discussion.

There were no further proponents and no opponents.

DISPOSITION OF HOUSE BILL 95:

Senator Brown moved that this bill be concurred in. The motion carried unanimously.

CONSIDERATION OF HOUSE JOINT RESOLUTION 2:

Representative Scully was not here for the first hearing on this bill and was given an opportunity to explain his views on this bill at this time.

Senator Towe explained that he was concerned that this would not allow many applicants to appeal further to the Supreme Court. He wondered how do you raise a new issue or how do you handle it if the Supreme Court had not taken a position on the issue and then changed their mind in the matter.

Representative Scully felt that that person would be out of luck. He stated that what we have done as attorneys is to always find a way to reopen these cases and we are always reluctant to end anything. There has to be a finality and he stated that he thinks a person is entitled to his day in court but he doesn't think he is entitled to a year.

Senator Van Valkenburg stated that he was mainly concerned by those people who don't have the funds or intelligence as to know how to get legal counsel. In that situation, they do not have legal expertise. He moved that the bill be amended on page 2, line 5, after the word "appeal" insert "so long as the petitioner is represented by counsel or has effectively waived the right to counsel". The motion carried unanimously.

Senator Towe moved to amend the bill on page 2, line 4 by striking the word "all" and on line 5 after word "relief" insert "on the same issues". There was some discussion

and then Towe said he would like to divide his motion into two motions. The motion on page 2, line 4 passed with Senators Galt and O'Hara voting no and all others yes. The vote on the second part failed with everyone voting no, except Senator Towe.

DISPOSITION OF HOUSE JOINT RESOLUTION 2:

Senator O'Hara moved that the bill be concurred in as amended. The motion carried with all voting yes, with the exception of Senator Towe who abstained.

CONSIDERATION OF HOUSE BILL 75:

Duane Tooley from the Highway Patrol gave an explanation of this bill in the absence of the sponsor, Representative Kanduch. He said that the way the language reads now that an individual who forfeits bail on the first offense of a DWI will not be treated as a second offender if he gets a DWI even a week later. He stated that the penalties become more severe with each offense and on the third offense there is a mandatory jail sentence.

There were no further proponents and no opponents.

Senator Towe explained that with this bill a forfeiture of bail will be considered a conviction and next time the offender will be considered as having a second offense.

Senator Van Valkenburg was concerned that if a person forfeited bail on a DWI in 1955 and then was picked up in 1968, would this be considered a second offense and Major Tooley said under this bill it would.

Senator O'Hara moved that House Bill 75 be concurred in. The motion carried with Senator Olson voting no.

DISPOSITION OF SENATE BILL 183:

Senator Brown moved that this bill do not pass. The motion carried unanimously.

DISPOSITION OF SENATE BILL 124:

Senator Olson moved that this bill be tabled. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 88:

Senator Brown moved that this bill be concurred in. The motion carried unanimously.

Senator Lensink said that they were going to assign SB 37 and SB 129 to a sub-committee to work out all the problems.


RECONSIDERATION OF HOUSE BILL 75:

Senator Towe moved to reconsider House Bill 75. The motion carried with Senator Anderson voting no.

Senator Van Valkenburg explained that he was concerned about this bill if a teenager should forfeit a bail for DWI and then maybe 10 or 15 years later he should have another offense, this would make a second offense for him. He felt there should be a period of time after which this should not apply. He requested that he take this up with the highway patrol and the county attorneys and they should be able to offer a reasonable period of time. Senator Lensink granted his request.

Senator Lensink reviewed the status of the bills which we have in this committee at this time.

There being no further business, the meeting was adjourned at 11:09 a.m.



SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 1/24/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)			✓
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Gall, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Bealy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Please sign & return to secretary

HB-75

SENATE

Judiciary

COMMITTEE

HB-75

BILL SB 183

VISITORS' REGISTER

DATE 1/2

NAME	REPRESENTING	BILL #	Please note bill no. (check one)	
			SUPPORT	OPP
Donald A. Eidmann				
Deane B. Tooley	WHP	HB 75	✓	
Tom Hays	County Attorney	SB 183	✓	
Marc Racicot	MCAA	SB 183	✓	
Tom McKeithell	Liquor Div.	HB 95	✓	
Bill Hainumfox	DEPT. OF REV. INVESTIGATION DIV.	H.B. 95		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE COMMITTEE JUDICIARY

Date January 26, 1979 Bill No. SB 183 Time _____

NAME	YES	NO
Lensink, Everett R., Chr. (R)	✓	
Olson, S. A., V. Chr. (R)		✓
Turnage, Jean A. (R)		
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)		✓
Galt, Jack E. (R)		✓
Towe, Thomas E. (D)		✓
Brown, Steve (D)		✓
Van Valkenburg, Fred (D)	✓	
Healy, John E. (Jack) (D)	✓	

Alvin Conway
Secretary

Everett R. Turnage
Chairman

Motion: Motion to Do Pass

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date January 26, 1979 Bill No. SB 183 Time _____

NAME	YES	NO
Lensink, Everett R., Chr. (R)		✓
Olson, S. A., V. Chr. (R)	✓	
Turnage, Jean A. (R)		
O'Hara, Jesse A. (R)		✓
Anderson, Mike (R)	✓	
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)	✓	
Brown, Steve (D)	✓	
Van Valkenburg, Fred (D)		✓
Healy, John E. (Jack) (D)		✓

William Manning
Secretary

Everett R. Leonard a/c
Chairman

Motion: Motion to DO NOT PASS.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date January 26, 1979 Bill No. HJR 2 Time _____

NAME	YES	NO
Lensink, Everett R., Chr. (R)		✓
Olson, S. A., V. Chr. (R)		✓
Turnage, Jean A. (R)		
O'Hara, Jesse A. (R)		✓
Anderson, Mike (R)		✓
Galt, Jack E. (R)		✓
Towe, Thomas E. (D)	✓	
Brown, Steve (D)		✓
Van Valkenburg, Fred (D)		✓
Healy, John E. (Jack) (D)		✓

Walter Conway
Secretary

Everett R. Lensink
Chairman

Motion: Page 2, line 5 after "relief", insert "on the
same issues".

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date January 26, 1979 Bill No. HJR 2 Time _____

NAME	YES	NO
Lensink, Everett R., Chr. (R)	✓	
Olson, S. A., V. Chr. (R)	✓	
Turnage, Jean A. (R)		
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)	✓	
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)	<i>Withdrawn</i>	
Brown, Steve (D)	✓	
Van Valkenburg, Fred (D)	✓	
Healy, John E. (Jack) (D)	✓	

Melvin Brown
Secretary

Everett R. Leonard *ap*
Chairman

Motion: Motion DO PASS.

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

January 26, 1979

MR. President:

We, your committee on Judiciary

having had under consideration House Joint Resolution Bill No. 2

Respectfully report as follows: That House Joint Resolution Bill No. 2

in the third reading bill, be amended as follows:

1. Title, line 6.

Strike: "ALL"

2. Page 2, line 4.

Strike: "all"

3. Page 2, line 5.

Following: "appeal"

Insert: "whenever the petitioner is represented by counsel or has effectively waived the right to counsel"

And, as so amended, BE CONCURRED IN

~~DO PASS~~

Everatt R. Lensink

Chairman.

STANDING COMMITTEE REPORT

.....January 26..... 19 79.....

MR. President:.....

We, your committee on Judiciary

having had under consideration House Bill No. 95

Respectfully report as follows: That House Bill No. 95

BE CONCURRED IN

~~DO PASS~~

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STANDING COMMITTEE REPORT

January 26, 1979

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 183

Respectfully report as follows: That Senate Bill No. 183

DO NOT PASS

STANDING COMMITTEE REPORT

January 26, 1979

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 88

Respectfully report as follows: That House Bill No. 88

BE CONCURRED IN

~~DO PASS~~