

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 10, 1979

The thirty-third meeting of the Senate Judiciary Committee was called to order on the above date in room 331 of the capitol building by Senator Everett R. Lensink at 9:32 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 283:

Senator Lowe gave an explanation of this bill, which is an act relating to products liability. He stated that product liability actions have exploded in size and in number in the past few years, affecting all areas and all states. He said that it has now reached a crisis proportion and that all members of the selling chain are involved. He explained how a small business trying to get started in business finds they cannot afford the insurance rates, that some insurance companies have increased their rates as much as 1000 per cent; and as they are going now, they will have deductibles that are not acceptable to business.

Tom Harrison, representing the Montana Equipment Dealers Association, stated that there was no limitation on the length of time for which one of these pieces of equipment is held responsible for liability. He said if there was a piece of equipment that was sold in the 1930s and if someone were injured, that a suit could come about. He testified that everything has got to come to an end, that this is not a unique piece of legislation and he presented a chart showing the other states that passed some type of legislation.

Barry Stevenson, representing the National Federation of Independent Businesses, which consists of 5,000 small businesses in the state of Montana, stated that they are unable to pass these costs on to the consumer completely. He said that insurance companies are being very select about whom they cover and what they will insure, and 27 per cent of their members do not feel that they are getting adequate coverage now. He stated that many have dropped their coverage and have no insurance. He gave statistics showing how these rates have increased and examples of many individual business people who have dropped their product liability insurance.

Judge Jim Tanor, representing the Fam Car Corporation, which is an automobile designed for people in wheelchairs stated that the cost of insurance to him is about \$6,000.00 per automobile. (See pamphlet)

Glen Drake, representing the American Insurance Association, which includes 150,000 casualty insurers, stated that up until a few years ago, suits for personal injury by products were quite limited, and that there had to be a contractual relationship with a person being sued. He stated that that is no longer necessary and this bill is a fair adjustment.

Pat Melby, representing the Alliance of American Insurers, stated that no one really knows what the status of the law is now, and that this bill provides some perimeters and some guidelines.

Janelle Fallan, representing the Montana Chamber of Commerce, gave a statement in support of this bill.

Bob Dolan, representing the Western Equipment Company in Billings, presented an article in Business Week, wherein they estimate that the cost of product liability insurance has tripled; and he stated that they buy from a manufacturer and sell that product, but they are still subject to a law suit. He also said that many times a customer will use a product in a different way than it was originally designed for. He gave the example of a woman who had bought a candle and wanted it to be scented and poured perfume on it, and she was injured and sued the manufacturer of the perfume.

Jo Driscoll, Chief Deputy Commissioner of Insurance in the Auditor's Department, stated that this certainly would be an excellent alternative to them and would help reduce the cost of product liability insurance.

Mike Meloy, representing the Montana Trial Lawyers Association, stated that they were in strong opposition to this bill. He said that the law now holds the manufacturer liable for any injury that could be the direct result of an unreasonably defective product. He said that the purpose of this is to protect the consumers from injuries and to be a deterrent to wrongful conduct by manufacturers. He referred to Section 3 of the bill - affirmative defenses and under subsection b, he stated that this is jury question in Montana, that the facts are submitted to the jury and the jury decides. He made several references to inadequate design, state of the art and warnings on the package. He stated that these things should be considered by a jury. He gave an example of a warning on a battery, which would state on the box, that you should not jump this because there is a possibility of an explosion, and he stated that that is the warning that lets the manufacturer out. He said maybe a mechanic installed it.

He stated that Section 11 is the section he is most concerned about wherein it states that no suit may be commenced more than eight years after the product was sold. He stated that what that does is wipe out a claim before the injury has occurred. He said that the statute that protects architects and engineers was a departure from the statute that protects architects and engineers was a departure from the statute of limitations law which his estimation, is a supreme departure and in everyone of those statutes of limitation, the time period starts to run from the time the injury occurred. He said that this lets you out before the injury has occurred, and he felt that it was much simpler to let the jury decide. He stated that all this bill does is shift the burden from the manufacturer to the consumer and violates the policy that a manufacturer should be responsible for their product.

Bill Murray, representing the Montana Trial Lawyers Association, stated that he opposed this bill and he was appearing as an advocate for the citizens of Montana. He stated that he felt that most everything that was said here, in due respect, is a fabrication; and that he could say this because no one has the facts to challenge his statement. He stated that the insurance industries have attempted to incite a scare into these business people based on allegations, they say that most lawsuits are from \$1 to \$2 million and that that is not supportable, and as soon as a few people get injured, a call seems to go out that a system is abused and must be curtailed. He stated that the losses in insurance companies claim do not mean just money paid out, but also includes reserves and claims occurred but not reported (OBNR). He said that insurance companies obtain many benefits from setting these reserves high, they get great tax benefits and enormous amounts of funds for what has become their primary business investment. He also offered a questionnaire that he felt the legislators should have answered by the insurance carriers. (See attached)

Bill Rossbach gave a statement in opposition to this bill. He stated that he did not see how this bill was going to solve all these problems, that he did not see how they were going to reduce premiums across the board, that the jury is the balancer, that the state of the art is a defense, that more cases are won by defendants than by complainants and as far as warnings are concerned, there are any number of cases where the individual using the product has no choice in the matter, that the insurance companies are asking the people of Montana to insulate them, that people are injured, they are products and they get hurt and that we should not just say "tough" and that he did not feel that this is fair to the people to Montana.

Senator Lowe summarized and said that he felt that Ralph Nader is a large part of the inflation that is going on, that we know what the increase in premiums have been and that there is only one company left that will sell football helmets in the state of Montana.

CONSIDERATION OF SENATE BILL 284:

Senator Lowe introduced Tom Harrison, who gave an explanation of this bill, which is an act to establish reporting requirements for product liability insurers. He stated that this bill addresses one of the problems that many opponents brought up on the last bill. He stated that this bill is drafted after the medical malpractice act which requires a great deal of information on lawsuits, claims, verdicts, etc.

Jo Driscoll, Chief Deputy Commissioner of Insurance, stated that with their small staff this is not available, and she said that product liability is a very difficult area because it is a part of a contract along with other coverage. With the original bill, she felt that they would require one additional staff member, but if they would accept the amendments, they probably would not need the additional staff.

William T. Kelly, representing the trial lawyers from Billings, stated that they are concerned over the many injury bills. He stated that the committee should be aware of this statute which is now in existence wherein with workmen's compensation insurance as well as other insurance, when a carrier has paid an amount out, that insurer is allowed up to 100 per cent recuperation of money advanced. He stated that an insurance company can take it out of one pocket and put it in another, and this is not being reported and being adjusted in for their insurance rates. He said that this has been true in medical practice and malpractice and that the insurance companies should report these figures and that until these figures are reported, he thinks any other legislation is premature.

Bill Murray, representing the Montana Trial Lawyers Association, stated that he would be in support of this bill as proposed and not with the amendment and he felt that the citizens of Montana must know how their insurance rates come about. He gave an example of where in a 8 1/2 month reporting period, the insurance companies indicated that the average bodily injury claim paid was \$11,000.00. He stated that that figure was misleading and was given to Congress and the actual payout on a

bodily injury claim was \$3,592.00. He stated that this bill will help future legislators, the citizens and your constituents.

William A. Rossback stated that the medical professional group and the insurance companies are in an unholy alliance. He said that after much discussion, the Montana Medical Association showed to a large extent that the insurance companies were really taking advantage of the Montana practitioners of medicine.

Lloyd Klinger, representing the Hall-Perry Machinery Company, told of a case in which they were involved.

There were no questions and no comments and the hearing on these two bills closed.

CONSIDERATION OF SENATE BILL 281:

Senator Hager gave an explanation of this bill, which is an act to clarify the requirement that the offense of fleeing or eluding a police officer must include the actions required for the conviction of reckless driving.

Duane Tooley from the Montana Highway Patrol, gave a statement in support of this bill. There were no further proponents and no opponents.

Senator Towe moved that the bill do pass. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 364 AND 349:

Senator Brown stated that Senate Bill 349 can be amended into Senate Bill 364. Senate Bill 364 is an act providing for fines in felony criminal cases and assessment of costs in all criminal cases. Senate Bill 349 is an act to give courts specific authority when sentencing criminal defendants to impose certain conditions on deferred and suspended sentences.

Tom Honzel, representing the Montana County Attorneys Association, stated that this allows the sentencing judge to impose fines in felony cases, and the judge may require them to pay costs and the sentencing court may impose a fine or costs as a condition of a deferred or suspended sentence. He gave an example of an individual who embezzled money from a horseracing association, when he was prosecuted a number of businessmen did not want this person to go to jail but that they did want restitution, and the judge gave a deferred sentence and ordered restitution. He said that he felt that there should have been some other additional fine placed on him.

There were no further proponents and no opponents.

DISPOSITION OF SENATE BILL 364:

Senator Brown moved that on page 3, after line 21, that the bill be amended by inserting "(vii) community service" and renumber all subsequent subsections and on page 4, after line 11, the same language. The motion carried unanimously.

Senator Towe questioned if we can exclude certain items. Senator Van Valkenburg stated that fines might be appropriate in a certain case, that there is nothing in the law that says a judge has to fine someone and to say he cannot fine someone in a certain circumstance is inconsistent and not a good idea.

Senator Towe questioned what was contemplated by the word, "costs". Mr. Honzel said that they were talking about reimbursing the county primarily for some defense costs.

Senator Galt moved that on line 14, page 1, the bill be amended by striking "\$10,000", and inserting "\$50,000". The motion carried unanimously.

Senator Brown moved that the bill be amended on page 1, line 6, after ";" insert "Allowing community service as a condition of deferred or suspended sentences". The motion carried unanimously.

Senator Van Valkenburg moved that on page 1, line 17 after the word "costs" insert "as defined in 25-10-201 of the M.C.A. plus costs of jury service". The motion carried with Senator Olson voting no.

Senator Brown moved that the bill do pass as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 349:

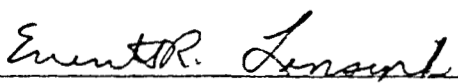
Senator Brown moved that this bill be tabled. The motion carried unanimously.

REDISPOSITION OF SENATE BILL 364:

Senator Towe moved that we reconsider our action on this bill. Motion carried. He moved that the bill be amended on line 5, by striking all the material and insert "felony" and on line 17 strike "criminal" and insert "felony". The motion carried unanimously.

Senator Towe moved that the bill again do pass as amended. The motion carried unanimously.

There being no further business, the meeting was adjourned.


SENATOR EVERETT R. LENSINK, Chairman

Date 2/10/79

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)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)			

Each Day Attach to Minutes.

Bills to be heard by Senate Judiciary
Saturday, Feb. 10, 1979

SB 281 - (Hager, Hazelbaker)

Current Law - reckless driving is defined as (a) operating a vehicle in a willful or wanton disregard for the safety of persons or property; or (b) fleeing or attempting to flee from a police officer in pursuit (whether or not in disregard of others' safety).

Proposed Bill - Clarifies the second part of the definition by requiring willful or wanton disregard of others' safety while fleeing a police officer in order to constitute reckless driving.

SB 364 - (S. Brown)

Proposed Bill - would allow a court to fine a person convicted of a felony instead of sentencing that person to jail.

Section 1.	New	Fines in felony cases.
Section 2.	New	Payment of costs by defendant.
Section 3.	New	Fine or costs as a condition on suspended or deferred sentence.

If a defendant is fined and the rest of his sentence is deferred or suspended, the court can make payment a condition for probation.

Section 4. New When payment of fine or costs due.

Fine is, ^{ju} immediately unless the court provides otherwise.

Section 5. New Disposition of money collected.

Section 6. Amend 46-18-201 Sentences that may be imposed.

SB 349 - (S. Brown) Amend 46-18-201

Proposed Bill - Amends 46-18-201 to provide three new sentencing alternatives when a judge defers or suspends sentence: payment of a fine, payment of costs, and community service.

Current Law - there is currently no statutory law in Montana relating to products liability. Product liability suits are determined under common law.

Proposed Bill - Creates a body of statutory law relating to product liability; the bill places certain limitations on common law remedies. In particular, the bill provides a statute of limitation that cuts off liability after 8 years from the sale of a product; in certain cases creates certain affirmative defenses in addition to the common law defenses; and establishes certain relationships between manufacturers and sellers with respect to indemnity.

Section 1. Short title

Product Liability Act of 1979

Section 2. Definitions

Section 3. Affirmative defenses

A defendant is not liable if he can prove any of the following:

- (1) the manufacture or design of the product conformed to the state of the art at the time the product was sold by the defendant;
- (2) unforeseen alteration or modification after sale.
- (3) use of the product which was unforeseen or contrary to express instructions or warnings

Section 4. Application of comparative negligence law

Section 5. Indemnification of seller

Section 6. Duty of prevailing plaintiff when seller granted indemnity.

Section 7. Indemnification of manufacturer.

Section 8. Duty of prevailing plaintiff when manufacturer granted indemnity.

Section 9. Contents of complaint

The complaint must ask for reasonable damages rather than for any dollar amount.

Section 10. Evidence of state of the art - industry standards or postaccident modification.

Section 11. Limitation.

Statute of limitation is 3 years from time the action occurs but not later than 8 years from sale of product unless the action is based on the negligence of the manufacturer or seller or a breach of an express warranty.

Proposed Bill - Establishes reporting requirements for product liability insurers. Such insurers must submit yearly reports to the Dept. of Insurance. Such reports are to be available upon request to the public (without revealing any names).

SENATE BILL NO. 284

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH REPORTING REQUIREMENTS FOR PRODUCT LIABILITY INSURERS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Product liability insurer -- report. (1)

Each insurance company doing business in this state that insures against product liability losses shall make and file with the department of insurance, on or before April 1 of each year, a report for the year ending December 31 immediately preceding, upon a form to-be as may be prescribed by the National Association of Insurance Commissioners.~~and that-may-be-furnished-by-the-department.~~

(STRIKE THE REMAINDER OF SECTION 1)

Section 2. Department to make ~~reports~~ information available. The department of insurance shall make the ~~reports~~ information required under (section 1) available to the public on-request-at-a-~~fee-prescribed-by-the-department, not-to-exceed-reasonable costs, and-in-a-manner-that-does-not-reveal-the-names-of-any manufacturer, distributor, seller, or-other-person-involved.~~

(NO CHANGE IN Section 3)

LEGISLATION

ACTIVE OR PASSE:

31

1978



REMEDIES

2. STATUS

- A. Passed House
B. Passed Senate
C. Sent to Signed by Governor
D. Effective Date
E. Referred to Study Committee

2. STATUTES OF INITIATIONS

4. Date of act or omission
5. Date act or omission should be reasonably ascertainable
6. In proving a prima facie case, plaintiff must do so without benefit of any presumption where product is 10 years old or older

STATUTE OF 1905

- Date product is first placed into stream of commerce, i.e., date of first sale, delivery, lease (to the ultimate consumer)
- Date of manufacture, construction or services rendered
- Useful life
- Subsequent duty to alter, modify, repair, recall, inspect or warn
- Limitations for indemnification or contribution
- Inapplicable or bars action in the case of fraud

STATE-OF-THE-ART

- Creates a rebuttable presumption product was in compliance with state-of-the-art at time designs, plans, etc. were prepared or used
- Creates an absolute defense if product complied with the state-of-the-art at time of manufacture or sale to initial user

★ This is a rebuttable presumption.

★ (User/Seller)

*** Does not apply where product constitutes proximate cause of injury.

Subordinate to the statute of repose provision.

§28-304 of the Tenn. Code Annotated provides a one year statute from date of injury.
The shorter statute of repose shall apply.

For further information contact Anne Maletta at (312)321-1470

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Farm & Industrial Equipment Institute

410 N. Michigan Ave.

Chicago, IL 60611

For further information contact Anne Maletta at (312)321-1470

LEGISLATION

ACTIVE OR PASSED

NI

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 - A. Date product is first placed into stream of commerce, i.e., date of first sale, delivery, lease (to the ultimate consumer)
 - B. Date of manufacture, construction or services rendered
 - C. Useful life
 - D. Subsequent duty to alter, modify, repair, recall, inspect or warn
 - E. Limitations for indemnification or contribution
 - F. Inapplicable or bars action in the case of fraud
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283

Senate Bill No. 283

February 10, 1979

Mr. Chairman and members of the Committee:

For the record, I am Boyce Clarke, representing Independent Insurance Agents of Montana.

My personal experience in the handling of products and completed operations coverage is pretty limited. However in my study of the situation relating to this bill, I find that there is considerable manufacturing and service business in Montana who have been affected by the products marketing and pricing crunch. I also learned that ~~built~~ into almost any liability policy there is coverage built in to recognize a products exposure - the liability section of the home-owners policy and in the auto liability policy. So the issue affects everyone - from the individual family straight through to the manufacturer.

That public demand exists to develop some guidelines for the handling of the products exposure is evident from the recent in depth study conducted by the Department of Commerce with resultant development of model legislation. Also, eleven states have passed similar legislation in the past 2 or 3 years, among them being Arizona, South Dakota, Utah, Colorado and Oregon in this part of the country.

My people feel that the buying public is the victim of higher insurance costs. Thus that the practical limitations outlined in this bill will benefit the the consumer, yet still provide avenues for just product claims.

Thank you.

Boyce Clarke

MONTANA

Testimony Given By: National Federation of Independent Business (NFIB)

Committee: *Judiciary*

Date: *Feb. 10, 1979*

Issue: Products Liability, S.B. 283

Mr. Chairman...members of the committee. I am Barry Stephenson and I'm a governmental affairs representative of the National Federation of Independent Business...NFIB.

Our organization represents more than 5,000 small, independently owned and operated businesses in Montana. Almost all of our members are among those business entities that comprise ninety-two percent of all non-farm businesses in Montana. These businesses employ 19 or fewer workers, provide jobs for forty-five percent of the private non-farm work force in the state and account for forty-one percent of the state's annual private payroll.

Because of the size of these businesses, any extensive increase in costs poses a real problem for them. They are unable to pass all of the increase along to the consumer and remain competitive within their market. In the past four years, the cost of products liability insurance has become exorbitant. Our members are reporting increases in their premiums for this coverage of as much as 400 percent in the past three years.

The results of our annual surveys of our Montana members over the past two years, shows that forty-eight percent of our members rank products liability as a growing or serious problem for them. Another six percent said it threatens their ability to stay in business.

The skyrocketing cost of the insurance has been brought on by a combination of factors. Not the least of which is a change in the interpretation of tort liability in the past 16 years by our courts. A doctrine of strict liability in tort has swept the country. Presently 38 states, including Montana, have adopted this doctrine.

An injured party today no longer has to prove negligence by the manufacturer. All that is needed under strict liability in tort is for

the plaintiff to prove that a product is defective and the defect caused his injury.

A changing consumer attitude has also had a significant affect on the problem. There seems to be a sue syndrome among Americans. It seems to be a new way of redistributing the wealth. The number of products liability suits have mushroomed. Just suits filed in federal courts, nationwide, have increased 158 percent from 1,579 in 1974 to 4,077 in 1977.

The size of jury awards being made to plaintiffs at times are at the multimillion dollar level. Because of such awards and the infinite liability exposure that manufacturers and sellers of products have under strict liability, insurance companies have responded by increasing their products liability insurance rates. These increases have come regardless of whether or not the client has had any products suits filed against him.

Because of the rising cost of coverage, we have found that insurance companies that write products liability coverage are becoming extremely selective in whom they cover and what products are included. This trend makes it difficult for the small business owner to find insurance. Twenty-four percent of our members, who say they are affected by products liability, report they are finding it difficult to get insurance.

Another twenty-seven percent say they do not feel they have adequate coverage. They have had to cut back because of the cost. Many have dropped all coverage and stand unprotected. If a claim is awarded against them, it means instant bankruptcy and the loss of much needed jobs in the community.

With your permission, Mr. Chairman, I want to read some of the comments we received from our members concerning the impact of products liability on their business.

Mr. E. M. Sieler, Jr., owner of S & S Canopies and Campers Manufacturing, Inc., in Kalispell, writes: "We are deeply concerned about the products liability problem. We are unable to secure any type of insurance locally. We have located an insurance company specializing in recreational vehicles, but the premium is in excess of \$30,000 a year and the policy carries a \$50,000 deductible."

I talked with Mr. Sieler and he said the annual premium of \$30,000 would take a little more than one-half of his net profit to pay it. As a result, he is without coverage and one suit against him, if it were successful, would destroy his business and cause 30 people to lose their jobs.

The Nelson Tire Company of Great Falls, produces retread tires. Three years ago its products liability insurance premium was \$480. Last year it was \$2,720.

An independent insurance agent in Glasgow wrote to say that products liability insurance is giving his agency fits. "We have lost good accounts because of the rising costs, and many businesses are going without it," he said.

He gave as an example of the problem, his inability to find products liability insurance from the larger national companies for a group of mobile home dealers. He had to go to a company specializing in this type of coverage. As a result, his clients' premiums went from 20 cents per \$1,000 of sales to \$10.00 per \$1,000 of sales. In order for his clients to retain their same profitability, they would have to add \$200 to each mobile home sold.

Mr. E. J. Martin, owner of the Wolf Point Saddlery, is another small manufacturer who is unable to find insurance at an affordable cost. He says there is no way a saddle manufacturer can make the rigging of a saddle strong enough to withstand the power of a horse under all circumstances. "If that rigging breaks on one of my saddles and the rider is injured or killed, I'm liable," he said.

The cruel thing about strict liability in tort is that Mr. Martin is liable for his saddles for as long as they are in use, which could be ten to fifteen years, or longer.

We believe the reforms contained in S.B. are reasonable. Their intent is to once again place defendants and plaintiffs on an equal footing in products liability suits. With this renewed balance in place, we are confident that products liability insurance premiums will stabilize or even decline.

Utah passed a similar bill in 1976. Since then, 16 other states have passed some form of products liability legislation. The Utah Manufacturers Association reports that among some of its members, products liability rates are beginning to drop.

We ask that you give S. B. 283 a DO PASS recommendation.

STANDING COMMITTEE REPORT

February 10, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 231

Respectfully report as follows: That Senate Bill No. 231

DO PASS

G. G.

STANDING COMMITTEE REPORT

February 10 19 79

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 364

Respectfully report as follows: That Senate Bill No. 364,
introduced bill, be amended as follows:

1. Title, line 4.

Following: "FINES"

Insert: "AND ASSESSMENT OF COSTS"

2. Title, lines 5 and 6.

Strike: "AND ASSESSMENT OF COSTS IN ALL CRIMINAL CASES"

3. Title, line 6.

Following: " ; "

Insert: "ALLOWING COMMUNITY SERVICE AS A CONDITION OF
DEFERRED OR SUSPENDED SENTENCES ;"

4. Page 1, line 14.

Following: "exceed"

Strike: "\$10,000"

Insert: "\$50,000"

DO PASS

(Continued)

5. Page 1, lines 16 and 17.

Following: "in a"

Strike: "criminal"

Insert: "felony"

6. Page 1, line 17.

Following: "costs"

Insert: ", as defined in 25-10-201, plus costs of jury service"

7. Page 3, line 21.

Following: "costs"

Insert: "as provided in [sections 2 and 3]"

8. Page 3.

Following: line 21

Insert: "(vii) community service;"

Renumber: subsequent subsections

9. Page 4, line 11.

Following: "costs"

Insert: "as provided in [sections 2 and 3]"

10. Page 4.

Following: line 11

Insert: "(vii) community service;"

Renumber: subsequent subsections

And, as so amended,
DO PASS

PA.

LEGISLATIVE QUESTIONNAIRE FOR INSURANCE COMPANIES
DOING BUSINESS IN MONTANA CONCERNING PRODUCTS
LIABILITY INSURANCE

1. Provide the name(s) of all individuals within your company who are qualified to provide accurate and helpful information to the Montana Legislature, its committee's and legislators concerning all aspects of your company's underwriting of product liability.
2. By your estimates and based on information from all sources, how does your company rank within the State of Montana as a provider of products liability insurance? What percentage of all products liability insurance of all types, written within the State of Montana, is written by your company?
3. What is the total number of all types of products liability insurance written by your company within the State of Montana and the total dollar volume of these policies for each of the last seven years? Please indicate the number of policies and the total dollar volume of primary policies and excess or umbrella policies, and please further indicate the total number of policies and dollar volume for each of the following classifications:
 - (1) Monoline product liability insurance;
 - (2)
 - (a) - rated product liability insurance;
 - (3) Comprehensive general liability insurance; and
 - (4) Commercial multi-peril insurance; and
 - (5) Other types of policies with product liability coverage not included in items (1) through (4).

In those policies that include coverage for items other than product liability, please indicate the percentage attributable to products liability.

4. What has been the company's profit or loss rate for all forms of product liability insurance written in the State of Montana for each of the last seven (7) years. Please supply this information for primary and excess policies and by the types of policies identified in sections (1) through (5) of Question No. 3. In responding to this question, define the process of determining the profits and / or losses and define what is included in the terms "profits" and "losses" as used in this analysis. Also list the company's total assets and net worth for each of the years.
5. If the company is a subsidiary, parent or holding company of or affiliated with any other company providing product liability insurance in any form, identify that company or those companies and provide the information requested in questions No. 3 and No. 4 for each.
6. What is the company's basic unit of exposure which forms the basis of your rate structure?
7. Please list by year for the last seven (7) years the number of product liability exposure units your company has maintained in the State of Montana. If there has been any significant increase or decrease in the company's product liability exposure units in a given year, please describe the underlying causes.
8. Within the State of Montana how much of your product liability coverage by numbers of policies and premium dollar amounts, is written on a prospective or guaranteed basis, and how much is written on a retrospective basis? Please distinguish by line of insurance and identify if such is a part of a primary or excess policy.

9. With regard to rates applicable to the State of Montana, to what extent does your company utilize rates established by the Insurance Services Office? If you use them as a base, what adjustments do you make to them? If you do not utilize ISO rates, describe in detail your own rating mechanism and the source for the actuarial data that you use.
10. The subjectivity of the rating process is perhaps one of the most controversial elements of the product liability insurance. In their report for the Interagency Task Force on Products Liability, McKinsey & Company states: "Both the selection of risks and the determination of premiums for product liability coverages are highly judgmental . . . Although the pricing process often begins with statistically derived 'basic limits' rates, the insurer usually determines the final rate by applying one or more judgmental modifications." To what extent do you rely fully on data, and to what extent are your underwriters utilizing their best subjective judgment?
11. In Montana, do you apply the ISO trend factor? If not, how is your trend factor calculated and what is it? Is the trend factor that you use confined to an inflation factor, or does it include other factors such as increased settlement payments? What trend factor have you used for each of the last seven years, and what are your best estimates as to growth of the trend factor over the next five years?
12. How do you obtain loss settlement information, and how is it aggregated by product line of insurance coverage?
13. Please construct a table listing for each of the last seven (7) years the number of product liability claims you have paid in the State of Montana in each of the following amount

categories:

- A) Above \$1 million.
- B) \$500,000 to \$1 million.
- C) \$100,000 to \$500,000.
- D) \$50,000 to \$100,000.
- E) \$10,000 to \$50,000
- F) Under \$10,000.

In each category please also list the percentage of the total number of paid claims in that policy year.

14. Please supply information listing, by year for the past seven (7) years, the number of product liability lawsuits initiated in the State of Montana which involved your company, the number of such suits won by the plaintiff, the number of out-of-court settlements and the amounts of the settlements, and the number of suits rendered for the defendant.
15. For the State of Montana, what is the company's loss development factor and how is it calculated?
16. Are increased premiums directly proportional to greater frequency and higher amounts of claims? Please describe the relationship.
17. Over the last seven years, what has been the average annual increase per unit of exposure in product liability insurance rates applicable to the State of Montana?
18. Are there any products within the State of Montana for which your company does not provide product liability insurance?
19. To what extent is the size of the insured company a factor in the rating process and the company's willingness to insure?

20. For the years 1970 to the present, how many policies in force in Montana were canceled by the company due to factors relating to the product liability exposures in the policies?
21. What ratio of total risk exposure to paid-in surplus or stockholders' equity does the company strive for? What has the ratio for the last five (5) years been? For the past five (5) years, what is the ratio of the total risk exposure in Montana to paid-in surplus or stockholders' equity?
22. What percentage of product liability policies written in the State of Montana within the last two years contain deductibles? What has been the average size of the deductibles employed?
23. How do investment decisions guide or determine assumptions of risks? Does the company, for example, seek to create the highest cash flow (used for investment purposes) commensurate with the least amount of risk?
24. Does the company allocate higher percentages of overhead costs (including fixed costs, commissions, investment activity, etc.) to particular lines of insurance, or are the overhead costs assessed against lines of insurance according to the percentage of total premium intake the particular lines represent?
25. With regard to policies written in Montana, please describe the company's reserving practices in detail, and address the following specific questions:
 - 1) What has been the dollar amount for the following categories of reserves for each of the past seven years;
 - (a) Reserves for known product liability claims in Montana.

- (b) Reserves for product liability claims incurred but not reported (IBNR's) in Montana.
 - 2) List the investment income or loss on reserves for
 - (a) Known claims in Montana, and
 - (b) INBR's in Montana for the last seven years.

What are the expense categories assessed against investment income?
 - 3) As applicable to the State of Montana, please state how and when underwriters profits or losses are re-adjusted to reflect changes in amounts of claims paid from reserves for known claims and IBNR's?
26. Please supply copies of the company's magazine and newspaper advertising for product liability insurance used over the course of the last three years.
27. Please supply any statements or speeches by corporate officials given on the subject of product liability insurance used by your company within the last three years. Also, submit any published annual reports to shareholders or policyholders.