

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 13, 1979

The fifty-eighth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in room 331 of the capitol building on the above date at 9:33 a.m.

ROLL CALL:

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

CONSIDERATION OF HOUSE BILL 774:

This is an act to define marital status as used in the laws governing illegal discrimination and to exclude cohabitation from the definition of marital status, etc. Representative Seiffert from Polson stated that this bill came about because of two cases in the supreme court right now. He said that it was the feeling of the people who requested that this bill be introduced that those cases would not be there if there was a definition of marital status.

There were no further proponents and no opponents.

Senator Anderson questioned that you want us to define what is marital status. Representative Seiffert said that in our public school system they had a teacher who was teaching, and who was living with a female who was not of age, and they were not married. They fired him and this case is still in litigation. Senator Anderson questioned if they fired him on what they considered a moral ground. Representative Seiffert said that they had other grounds - he said that he was a biology teacher, that he had obtained some human embryos that were up to three months old and that was what he was fired for and then this other thing came up.

Senator Brown stated that there was another human rights case that did go to the supreme court involving a teacher who taught at the Hutterite colony. She was living with a man and they wanted to dismiss her on moral grounds and he said that he did not know how this was resolved. Senator Galt stated that they never hired her - he did know that.

Senator Lensink stated that defining marital status has some far-reaching effects in terms of employment, and other areas other than employment.

There was a comment that Chad Smith wanted to offer some amendments to HB774 and they felt that it was definitely difficult to read.

There being no further questions or comments, the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 775:

This is an act to allow attorneys fees to the prevailing party in a contested case hearing under the human rights act, etc. Representative Seifert stated that this might do away with some of the insurance accidents that are filed under the human rights bill.

Chad Smith, representing the Montana School Board's Association, stated that this is an important bill; however, on this bill, they are concerned somewhat about the language and he offered a proposed amendment to this bill. He stated that one important consideration is if a complaint is brought to the human rights commission, it is the human rights commission that takes over and an individual defending against this charge is really defending against the state of Montana. He said that, for the most part, the action is brought by the staff and the staff will generally prosecute the case and the individual can go to considerable expense and he thought the party successfully defending should get his attorneys' fees.

There were no further proponents and no opponents.

Senator Brown questioned if the human rights commission appeared in the house. Representative Seifert said that he did discuss this bill with the human rights commission and the commission is not in a position to award the attorneys' fees. He stated that he believed the amendment might have a bearing on the bill.

Senator Brown questioned if they have any information that indicates how many times the staff proceeds with the case and what amount of money in attorneys' fees would be paid. He stated what you are really talking about is the state paying these attorney fees. Representative Seifert said that he did not but he could look it up.

Senator Lensink said that it was almost implied that a suit is filed simply on a complaint of a party. Mr. Smith stated that yes, that is all it takes. If they accept it, they will use the power of their staff to prosecute it.

Senator Lensink asked if a number of complaints do not come in that they don't accept. Mr. Smith said he would assume they tend to regulate the merits of what is accepted, but once they accept one, then they accept the responsibility for prosecuting for that case. He said they were defending three without validity. He also stated that one case has been pending for five years - he apparently lost interest and was plagued with loss of funds and loss of desire.

CONSIDERATION OF HOUSE BILL 797:

This is an act to clarify who is permitted access to youth court records and related documents, etc. Representative Uhde stated that this bill allows records to be made available to certain people.

Glen Hufstetler, chief probation officer in Kalispell, stated that they support this bill because they feel that the information found in those juvenile records is of benefit to courts and the community at large. He stated that thousands of dollars are spent on evaluation and currently the law does not allow certain individuals to gain access to those records. He stated that after they have been sealed for ten years, then they are destroyed and he said that in most areas, the court is allowing parole officers the opportunity to see those records, but there are a few around the state who will not allow this.

There were no further proponents and no opponents.

Senator Van Valkenburg questioned if this still allows the judge some discretion on opening their files. Mr. Hufstetler stated that it does, that the court order is not automatic..

There were no further questions or comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 783:

This is an act to provide liens for physicians, nurses, and hospitals for services rendered, etc. Representative

Lory stated this was to address a problem that is the result of modern technology.

Dan MacDonald, representing St. Peters Hospital, gave an example of an individual who moved to Kalispell, owing \$22,000.00 and the hospital realized nothing.

Dennis Ryan, representing St. Peters Hospital, gave a statement in support of this bill.

Bill Wagner, representing St. Patricks Hospital, gave a statment in support.

Chad Smith, representing the Montana Hospital Association, stated that he has had experience working with the present lien laws over the years and said there are some problems. He said that the companies doing business in the state of Montana have been very cooperative and he said that there are a number of companies that do not do business in Montana and that is where the problem basically lies. He stated that this is an improvement of the law and he would endorse it.

There were no further proponents and no opponents.

Senator Anderson questioned if this goes on life insurance benefits. Mr. Smith answered no, just on casualty. Senator Turnage said that a major change was disease and he said that was a substantial change and did they see any problems with health insurance benefits and he wondered what kind of problems are we raising by slipping disease in. He said that the old statute simply stated injury.

Senator Galt wondered how this is going to affect the insurance involved where a policy pays \$50.00 a day and call it compensation and he wondered if they were getting into that too. It was answered that they wanted to make this as broad as possible and as it stands, it states "which provides coverage as result of disease." He said that if they are getting \$50.00 to \$100.00 a day, the way he reads it, they will be able to claim it.

Senator Lensink questioned if they interpret this as proceeds for disability insurance and he stated that

disability starts a week or two weeks after the person is disabled and if they are in the hospital for two months, can they file a lien on disability insurance.

Representative Lory stated that as a practical matter, they did not think they would and that their purpose was to gather as much resources as they could under medical payments. He suggested that perhaps there should be a specific disclaimer dealing with disability.

Senator Anderson said that in terms of exemptions under federal law, pension plans are not to be used, and a lot of people are putting money into annuities and buying investments and he wondered if these should be included.

There were no further questions or comments, and the hearing on this bill was closed.

#### DISPOSITION OF HOUSE BILL 783:

Senator Towe moved that this bill be amended by inserting, "This act does not apply to any benefits payable under a policy of life insurance or group life insurance, a contract of disability insurance, or an annuity contract or to pension benefits payable under a qualified pension plan." The motion carried unanimously.

Senator Towe moved that the bill do pass as amended.

Senator Turnage made a substitute motion that on page 2, lines 21 through 23, strike subsection 3 in its entirety. The motion carried unanimously.

Senator Turnage moved that the bill be concurred in, as amended. The motion carried unanimously.

#### RECONSIDERATION OF HOUSE BILL 774:

Joan Mayer from the Legislative Council stated that because it is a definition it also applies to the other sections of law, in such things as financing, contracts, education, etc.

Senator Olson questioned how can cohabitation be considered under marital law. Senator Lensink said that

if you don't do anything with it, then it affects all other areas and wondered if they want to discriminate against people in areas of education, loan applications, employment, etc., because they are cohabiting.

Senator Brown questioned what would happen if a man is cohabiting with a woman who is not of age and he stated that there are so many problems that go along with this.

Senator Anderson moved that the bill do not pass. Senator Turnage stated that he is going to have to vote against this as the people don't like it. Senator Brown stated that in small communities it makes a whole world of difference and in communities like Bozeman and Missoula, he did not feel that they care.

Senator Olson asked if we are not trying to legislate morals and he stated that if the school boards don't like it, let them take care of it. Senator Turnage said that they can't - they have no control. Senator Anderson questioned if they should have. Senator Turnage said yes, they teach by example too, and he stated that this isn't South Berkley, California yet. Senator Lensink stated that it makes a difference in a community of 300 and a city of 50,000 and in a community of 300, 90 per cent of the people just do not like it.

Senator Brown stated that it bothered him about the Hutterite case and he thought eventually they held they could not dismiss her. He wondered if they could hold this bill over and think about it. Senator Anderson withdrew his motion.

Senator Turnage said if we could define cohabitation and Senator Brown said how does a person do it. Senator Olson questioned how are the school boards going to determine that they are having a sexual relationship and not married. Senator Turnage answered that he did not know. Senator Van Valkenburg suggested that they might say something like there is a compelling state interest in the matter of teachers.

It was agreed to hold this matter over and give it some thought.

DISPOSITION OF HOUSE BILL 775:

Senator Brown stated that Carl was going to get us some information and Senator Lensink said it depends on if we need the information. Joan Mayer said that this really is a bill on attorneys' fees.

Senator Turnage questioned what does this amendment do and Chad Smith answered that it adds that if an individual is forced to defend against the powers of the state and he prevails, he should be able to collect his attorneys' fees from the state. If the state leans on him and he is wrong, he should have some practical way to collect his attorney's fees.

Senator O'Hara gave an example of a colored family in Great Falls that their children were always in trouble and the father filed charges under the human rights act.

Senator Turnage moved that the amendments offered by Chad Smith be adopted. Senator Lensink stated that he is not going to vote for it in any event as his philosophy is that he does not like to see people sue the government, as he felt that we have it in our power to change the government.

Senator Brown stated that we see a big trend for this and he said that the problem he sees is the disparity of what the state is going to spend and what someone in private practice is going to pay. He said that he felt that this was going to end up costing a lot of bucks. Senator Turnage stated that they would be more circumspect about trying the case. Senator Brown said they can do that already.

A vote was taken on the motion to adopt the amendments and the motion carried with Senator Van Valkenburg voting no.

Senator Turnage moved that the bill be concurred in, as amended. A roll call vote was taken and it was noted that Senator Towe, who was excused, would be allowed to vote on this bill. The vote came out 5 nos and 4 yeses. Senator Towe, when he returned voted yes, which made it a tie vote and the bill will stay in committee.

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Senate Judiciary Committee  
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DISPOSITION OF HOUSE BILL 797:

Senator Van Valkenburg moved that the bill be amended on page 2, line 24, following "court" by inserting "for good cause". The motion carried unanimously.

Senator Turnage moved that the bill be concurred in, as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 156:

Senator Turnage moved that the bill be tabled. He stated this could be taken care of in SB65. The motion carried.

DISPOSITION OF HOUSE BILL 747:

It was noted that SB 256 repeals the section that this bill deals with. Senator Turnage moved that this bill be tabled. The motion carried unanimously.

RECONSIDERATION OF HOUSE BILL 338:

Joan Mayer from the Legislative Council passed out some amendments and it was suggested that people take a look at this and action be taken later.

DISPOSITION OF HOUSE BILL 719:

Senator Brown moved that this bill be not concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 749:

Joan Mayer worked up some amendments and it was suggested that they be considered later.

DISPOSITION OF HOUSE BILL 559:

Senator Turnage wondered if they should fund an association in that manner and if so, why raise the fee to \$4.00. He said the clerks and recorders raise is \$1.00 so they can have \$1.00 for their association and he said that he was skeptical about raising funds for an association.

Senator Brown moved that the bill be not concurred in.



Senator O'Hara stated that he was assigned to carry this bill when it came out of state government and although he had no great feelings about it, he could offer some information that the sheriff's and peace officer's association had to say about it. He stated that they support the Yellowstone Boys Ranch, state law academy, the teletype system, the Montana Canine Training, standards and training for peace officers, fund to attend college - these are some of the things their association does. He stated that this is the only entity that does not get money from the county and 70 per cent of their money comes from a magazine they put together and he stated that they feel they have to do some arm twisting to get these books sold.

Senator Turnage stated that almost all those things have big federal bucks in it, plus there is state money in it. He stated that this is going to cost the state taxpayers and in upgrading law enforcement, they are funded in other ways. He moved that the bill be not concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 708:

Senator Turnage said the alternatives are you don't drive, you drive and go to jail, or you drive and buy the insurance. He moved that the bill be not concurred in and then later withdrew the motion.

Senator Brown suggested that they get Estrin from the Highway Department to give us some information on this bill.

DISPOSITION OF HOUSE BILL 712:

Joan Mayer from the Legislative Council stated that she had to get the amendments worked up on this bill.

DISPOSITION OF HOUSE BILL 737:

Senator Turnage stated that where they want to amend it is definitely aggravated assault and he said that under the old law, they had fairly decent criminal code and under the new law, it makes everybody more apt to commit

a crime, but it does not lessen the penalty. He stated that in third degree there was the penalty of a misdemeanor; in second degree, inflicted some bodily harm but not likely to cause death, such as a broken arm; and in first degree, likely to kill and a stiffer penalty. He stated now there are only two degrees - aggravated and simple; they destroyed second degree assault and what they are trying to do is make it easier to convict someone of aggravated assault. He stated that he did not know if this is the right application and another thing is that this law applies to teenagers and he said that you can try teenagers for aggravated assault as an adult; and he wondered about a school yard fight and some kid gets a scar on his forehead; and he further stated that if we give the county attorneys the power to do this, we can't assume that they won't.

Senator Lensink stated that they should all read Crowley's report. Senator Turnage said that we should never have destroyed the three levels of assault. It was agreed to hold this over until tomorrow.

There was no further business, and the meeting was adjourned at 11:26 a.m.

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SENATOR EVERETT R. LENSINK, Chairman  
Senate Judiciary Committee

Date 2/13/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

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

Each Day Attach to Minutes.



HOUSE BILL NO. 775  
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I move to amend the third reading copy of House Bill No. 775 on page 2 by deleting lines 12 through 17 and by inserting in lieu thereof the following:

"(4) The prevailing party is entitled to a reasonable attorney's fee from the other party, and a party successfully defending against a complaint is entitled to a reasonable attorney's fee from the commission, and in either case such parties may bring an action in district court for determination and collection of the attorney's fee."

*John F. [unclear]*  
1/1/1934

HB 783

1. Page 2, lines 21 through 23.

Strike: subsection (c) in its entirety

Remember: subsequent subsection

2. Page 4, line 1.

Following: "applicable."

Insert: "(1)"

3. Page 4.

Following: line 4

Insert: "(2) [This act] does not apply to any benefits payable under a policy of life insurance or group life insurance, a contract of disability insurance, or an annuity contract or to pension benefits payable under a qualified pension plan."

HB 797

1. Page 2, line 24.

Following: "court"

Insert: "for good cause"

#58

SENATE COMMITTEE JUDICIARY

Date \_\_\_\_\_ Bill No. 775 Time 10:40

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)	✓	

Alice Amory  
Secretary

Everett R. Lensink, Jr.  
Chairman

Motion: Bill removed by agreement

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



# STANDING COMMITTEE REPORT

March 13, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 559

Respectfully report as follows: That House Bill No. 559

BE NOT CONCURRED IN

*E.R.*

DO PASS:

March 9, 1979

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 559 be amended as follows:

1. Page 1, line 6.  
Strike: 4  
Insert: 3
2. Page 1, line 7.  
Strike: 25  
Insert: 33 1/3
3. Page 1, line 10.  
Strike: 75  
Insert: 66 2/3
4. Page 1, line 18.  
Strike: 4  
Insert: 3
5. Page 2, line 15.  
Strike: Twenty-five  
Insert: Thirty-three and one-third
6. Page 2, line 18.  
Strike: 25  
Insert: 33 1/3
7. Page 2, line 22.  
Strike: Seventy-five  
Insert: Sixty-six and two-thirds

STANDING COMMITTEE REPORT

March 13, 1973

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 719

Respectfully report as follows: That House Bill No. 719

BE NOT CONCURRED IN

*ELL*

DO NOT PASS

March 13

19 79

MR. PresidentWe, your committee on Judiciaryhaving had under consideration House Bill No. 783

Lory (Anderson)

Respectfully report as follows: That House Bill No. 783,

third reading bill, be amended as follows:

1. Page 2, lines 21 through 23.

Strike: subsection (3) in its entirety

Renumber: subsequent subsection

2. Page 4, line 1.

Following: "applicable."

Insert: "(1)"

3. Page 4.

Following: line 4

Insert: "(2)" [This act] does not apply to any benefits payable under a policy of life insurance or group life insurance, a contract of disability insurance, or an annuity contract or to pension benefits payable under a qualified pension plan."

And, as so amended,  
BE CONCURRED IN~~EVERETT~~

# STANDING COMMITTEE REPORT

March 13

19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 797

Unde (Tarnage)

Respectfully report as follows: That House Bill No. 797,

third reading bill, be amended as follows:

1. Page 2, line 24.  
Following: "court"  
Insert: "for good cause"

And, as so amended,  
BE CONCURRED IN

RELEASE

*(Handwritten signature/initials)*