

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 10:20 a.m.

REP. ANDERSON moved the committee request a committee bill concerning immunity for state employees or employees of governmental agencies. Schoolboard trustees are not as individuals acting as a board of trustees. That goes way beyond actual damages. There is insurance to cover damages. Trustee members are being sued for punitive damages.

The committee was in favor of the motion.

HOUSE BILL 676 REP. DAILY moved the committee hold this bill until people from the state treasurer's office could answer a few questions. The committee agreed.

HOUSE BILL 546 REP. BROWN moved do pass. The subcommittee minutes were handed out. EXHIBIT 7. REP. BROWN said this bill basically rejects the concepts of the other two bills. No recommendation was made on this bill because of the card provision.

REP. MATSKO moved on page 4, line 10 following "61-3-604" insert: "punishable as provided in 46-18-212". The motion carried.

REP. MATSKO moved the bill be passed as amended. The motion passed unanimously.

REP. HANNAH moved the committee reconsider their actions on House Bill 546. REP. HANNAH stated Larry Magerus of the Department of Justice indicated that the department was interested in seeing that the law allow officers to ask people for insurance cards. It creates problems because they have to produce cards for everything. It will not accomplish anything.

REP. BROWN stated this will not bother the insurance companies. Under the present system if you are stopped for a moving violation they can ask you about insurance. REP. EUDAILY stated the effective date on his card never changes. It would be better to have a receipt than a card. Other committee members did not see that as a problem.

REP. HANNAH withdrew his motion.

HOUSE BILL 165 REP. SEIFERT moved do not pass.

REP. MATSKO made a substitute motion of do pass. REP. MATSKO moved to amend page 1, line 19 and 20. Following "misdemenaor" plan a "."

and strike through "\$1,000" on line 20.

REP. YARDLEY was against the amendment. What if a parked car were involved?

The amendment carried unanimously.

REP. CURTISS made a motion on line 23, page 1 to strike "is" and insert "may be".

REP. KEEDY felt that amendment would not solve the problem. He made a substitute motion to strike "involved in" on line 22 and insert "responsible for". On page 2, line 2 following "bodily injury" insert "to another" and in the title and line 5 following "for" insert "person who causes an accident while". REP. KEEDY withdrew part of the motion leaving the amendment to read: Page 1, line 12 following "is" strike "involved in" and insert "responsible for".

REP. YARDLEY opposed the amendment. Bodily injury might be made to the passenger of the car. REP. HUENNEKENS questioned what bodily injury is. It is a bump on the head or close to death?

The amendment passed unanimously.

REP. SEIFERT made a substitute motion of do not pass as amended.

REP. HANNAH felt there are too many problems with the bill. He was in favor of the substitute motion.

A roll call vote resulted. Those voting yes for do not pass were: KEYSER, SEIFERT, BENNETT, EUDAILY, HANNAH, ANDERSON, ABRAMS, HUENNEKENS, TEAGUE, YARDLEY and BROWN. Those voting no were: CURTISS, MATSKO, MCLANE, DAILY, and KEEDY. The motion of do not pass carried 11 to 5.

HOUSE BILL 226 REP. HUENNEKENS moved do not pass.

The motion passed with only REP. KEEDY voting no.

HOUSE BILL 284 REP. MCLANE moved do pass.

REP. SEIFERT read a letter concerning the original bill. EXHIBIT 8. REP. BROWN moved the amendments as attached to the subcommittee minutes do pass.

JIM LEAR stated that he felt chapter 23, part 2 on the last two lines of the amendment should be stricken. REP. BROWN made a substitute motion to strike chapter 23, part 2 and have the amendment

pass.

The amendment passed.

REP. BROWN moved do pass as amended.

REP. EUDAILY was not sure of the wording under "C". REP. BROWN said subsection c is intended to allow stacking.

JIM LEAR stated it does not use the same language. REP. HANNAH stated the intention was to prohibit stacking in one company and this would cover it. JIM LEAR replied only in this section.

The motion of do pass as amended resulted in a roll call vote: Those representatives voting yes were: SEIFERT, BENNETT, EUDAILY, DAILY, ABRAMS, HUENNEKENS, TEAGUE and BROWN. Those representatives voting no were: CURTISS, KEYSER, HANNAH, IVERSON, MATSKO, MCLANE, ANDERSON, KEEDY and YARDLEY. The do pass as amended motion failed 9 to 8.

REP. MCLANE moved to reverse the vote to do not pass as amended. Those voting no were: SEIFERT, BENNETT, EUDAILY, DAILY, ABRAMS, HUENNEKENS, TEAGUE and BROWN. Those representatives voting yes were: CURTISS, KEYSER, HANNAH, IVERSON, MATSKO, MCLANE, ANDERSON, KEEDY and YARDLEY. The motion passed 9 to 8.

REP. HANNAH moved to reconsider the bill for the purpose of clarification. REP. HANNAH made a substitute motion to table the bill. The motion passed with the following representatives voting no: EUDAILY, BENNETT and DAILY.

HOUSE BILL 71 REP. KEEDY made a motion to take House Bill 71 off the table. A roll call vote resulted. Those voting yes were: BENNETT, MATSKO, ANDERSON, HUENNEKENS, KEEDY, YARDLEY, and BROWN. Those voting no were: KEYSER, SEIFERT, CURTISS, EUDAILY, HANNAH, IVERSON, MCLANE, DAILY, ABRAMS and TEAGUE.

REP. KEEDY objected to the vote because the original purpose of tabling the bill was to wait on a senate bill.

REP. SEIFERT moved to reconsider the action. All were in favor.

All were in favor of bringing the bill off the table.

The meeting adjourned at 11:15 a.m.


KERRY KEYSER, CHAIRMAN

Carroll C. Blend
2323 3rd Avenue South
P.O. Box 1052
Great Falls, Montana 59403

Exhibit 1

January 16, 1981

Honorable Members of the Judiciary Committee:

Please find attached a proposed bill relating to use immunity in criminal prosecutions, an explanation of the bill and an analysis of it.

I apologize for bringing this bill to you late. While I as a deputy county attorney should realize that ignorance of the rules is no defense, I did not know that the deadline for introduction of bills was Thursday, January 15, 1981, and believed that I could ask for this bill's introduction when I was in Helena to attend a commission meeting on the 16th.

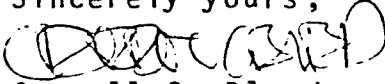
I realize that you have enough legislation proposed for your consideration to keep you in session for a year. However, I would earnestly ask your consideration of this proposed bill and your support of it in the interest that those guilty of a crime are convicted and those innocent are acquitted.

The proposed bill is not designed to assist in the prosecution of any criminal action in Cascade County now pending. It is not suggested by an organization. It is merely the suggestion of a private person, who is also a prosecutor, based on my experience and knowledge.

I hope that the explanation and analysis are helpful in understanding the purpose of the bill. When I first discovered the difference between transactional immunity and use immunity three years ago, I had to think about it to see it. I hope that what I have written is as clear as a lawyer can be about this sort of thing.

Thank you.

Sincerely yours,


Carroll C. Blend

ANALYSIS OF THE BILL

The bill is patterned very closely after the federal statutes providing for use immunity which are found in Title 18 of the United States Code Annotated in Sections 6001 et seq. Thus, much of the case law which has developed under federal law can provide guidance in the application of this law.

Very broadly, the bill allows the prosecutor or defendant's attorney in a court proceeding, either house of the legislature or a committee thereof or an executive branch agency with the power to subpoena witnesses and documents to apply to a district court for an order granting a person subpoenaed immunity from the use of incriminating testimony against him and so requiring the person to testify without taking the Fifth Amendment.

Section 1 defines the terms used in the bill. The term "agency of the state" is given the same meaning as is found in Section 2-15-102, M.C.A. The definition of "court of the state" is that found in Section 3-1-101, M.C.A. with a slight change to ensure that all courts established in the future are included.

Section 2 generally defines and explains what is meant by the word "immunity", that is, use immunity. It is the same as the federal law.

Section 3 deals with immunity before a court and sets out the procedure for obtaining the order. Notice that either the prosecutor or the defendant's attorney may seek an immunity order which is consistent with present law. Under the federal law, only the U.S. District Attorney may seek immunity.

Section 4 deals with grants of immunity to witnesses appearing before administrative agencies of the executive branch. Under present law, there is no provision for an executive agency obtaining any kind of immunity for a witness. This would be limited to agencies that have the power to subpoena witnesses and records.

Section 5 deals with grants of immunity to witnesses subpoenaed to appear before houses of the legislature or committees. Under present law, such a witness can be granted immunity but the immunity is full or transactional. Of course, the legislature is the grand inquisition and entitled to obtain information so that it may enact legislation and raise revenue however immunizing a witness from any prosecution for crimes committed is a very high price to pay for that information. Under the bill, the price would be much lower.

Because no rules had been adopted when this bill was drafted, the requirement that a majority of those present and voting approve a subpoena from the House or Senate and that two-thirds of the full membership of a committee approve the subpoena is purely arbitrary. If the legislature feels that simple majorities are sufficient or wishes to impose a two-thirds requirement for all, it certainly may do so.

EXPLANATION OF THE BILL

To understand this bill and its implications, it is helpful to use an actual incident. On September 22, 1978, a gunman robbed the Crossroads truckstop and obtained about \$5,000. In their investigation, the police arrested John Grissom who admitted that he had driven the getaway car and identified Charles Dolan as the gunman. Other than Grissom's statement, there was very little to connect Dolan with the crime. However, Dolan was charged with robbery and theft and Grissom was granted immunity so that he would testify against Dolan at Dolan's trial. Dolan was convicted of theft. See State v. Dolan, 37 St. Rep.1860 (1980).

As the above indicates, it happens that where there are two or more persons involved in a crime it is often necessary to obtain the testimony of one of the defendants in order to convict the primary culprit. Under the present law, Section 46-15-311, M.C.A., the prosecutor applies to the district court for an immunity order and, if granted, this order immunizes or protects the defendant who must testify from being prosecuted for any crime arising out of the transactions to which he testifies. This is called "transactional" or full immunity. Without such immunity, calling a codefendant to the stand in another defendant's trial would be useless because the codefendant would take the Fifth Amendment. Unfortunately, with transactional or full immunity, the codefendant who testifies "walks away" and gets off scot free.

What this bill proposes is to abolish transactional immunity and substitute what is called "use" immunity. What this means is the codefendant must testify against the defendant when called to do so but that his testimony and any evidence obtained as a result of testimony cannot be used against him at his trial. Thus, the codefendant can be charged and convicted with the crime if there is sufficient other evidence than his testimony at the other defendant's trial.

Providing for use immunity rather than transactional immunity satisfies three conflicting goals in the criminal justice system. One is that a jury should hear the testimony of all persons connected with an offense. The other goal, which is in conflict, is that no person should be compelled to testify against himself or give testimony which can be used against him. Finally, "deals" to "buy" testimony which result in one criminal getting off scot free lower the level of the criminal justice system to that of a bargain basement.

You should note that a defendant's attorney as well as the prosecutor can ask the court for use immunity to permit a codefendant to testify. This is provided in the present law and serves a very clear purpose. No matter how against crime one is, it would be a crime to convict a defendant who might have been exonerated by the testimony of a co-defendant. This may seem strange coming from a deputy county attorney but it is the function of a prosecutor to see that justice is done to the citizens in the courts, not merely to convict everyone charged.

Amendments to HB 644

1. Page 3, lines 15 and 16.

Following: "random."

Strike: remainder of line 15 and line 16 in their entirety.

2. Page 4, line 14.

Following: "~~\$100~~"

Strike: "\$500"

Insert: "\$200"

3. Page 4, lines 19 and 20.

Following: "approval of"

Strike: remainder of line 19 through "election" on line 20.

Insert: "the local governing body"

4. Page 5, following line 4.

Insert: "NEW SECTION. Section 6. Incorporated cities option--
electronic games. An incorporated city may, upon approval of the
local governing body, authorize the use within that incorporated city
of any machine, apparatus, electronic device, or other instrument
that purports to simulate a gambling activity that is lawful under
this chapter."

5. Page 5, following Section 6, above.

Insert: "NEW SECTION. Section 7. Incorporated cities licensing.
An incorporated city approving the use of simulated games pursuant
to (section 6) may require such machine, apparatus, electronic
device, or other instrument to be licensed. License fees collected
under this section shall be deposited in the incorporated city
general fund."

6. Renumber following sections.

7. Page 5, line 5.

Following: "Sections 5 and 6"

Insert: "and 7 and 8"

Poker machine

is a county option

By RICK FOOTE
Standard Staff Writer

Questions about gambling continue in Montana. It seems that no matter what the Legislature does to the gambling laws, the loopholes create problems.

When Butte District Judge Arnold Olsen was Montana's attorney general, he raided numerous bars and confiscated hundreds of slot machines. After "losing 25 of 25 cases" in district court, Olsen said, he appealed "all 25 to the state Supreme Court" and got "25 of 25 convictions. That ended slot machines."

That move, considered by some to be the end of Olsen's political

career, proved to be a central part of his future that led to 10 years in Congress.

But, the gambling question wasn't over. When Montanans approved their new constitution in 1972, the gambling question was added as a side issue. A majority of residents approved regulated gambling.

Again a question arose when then-District Judge James Freebourn of Butte dismissed a punchboard case against a bar owner on the grounds that the people had approved gambling. It took the Supreme Court only one day to overturn Freebourn's decision and rule that the Legislature has the right to regulate gambling.

The Montana Standard news analysis

The laws have been written and re-written since. Now a new question faces particularly county attorneys — the chief law enforcement officers in the counties.

Slot machines traditionally have been mechanical devices into which coins are stuffed with the gamblers' hopes of matching "three cherries" and hitting a "jackpot" paid directly from the machine. However, some new twists have

appeared over the years.

For a time in Butte, machines were in the bars which accepted nickles or dimes and a lever was depressed to produce a series of numbers which could match to "make a jackpot." The credits were tabulated by the machine and cash was paid from the bar.

It didn't take long for the law's long arm to put those "slots" out of business in the 1960s.

Following the advent of legalized poker games in the state, electronic poker machines have sprung up. They accept quarters, display a poker hand and give the gambler the option of "staying" or "drawing" up to five cards. The payoff is, in the

form of credits — in theory to be played back into the machine. The real payoffs come as money from the bar.

Some county attorneys, Duke Gilbert in Beaverhead County for example, contend the poker machines are illegal. Gilbert has charged a number of bar owners with violations of gambling laws for having the poker machines.

But, the law isn't clear enough to mandate outlawing the machines across the state, according to Attorney General Mike Greely.

Olsen, for example, contends the machines are illegal because they take away the human element. "There is nobody to bluff when you

are playing a machine."

Greely said a number of county attorneys have pressed him for a formal opinion about the legality of the poker machines.

The present law says, "A slot machine is defined as 'a machine' and goes on to describe the various ways of inserting money and collecting a "payoff." Since poker is legal, the law, in Greely's view, doesn't specifically bar the poker machines.

Greely said he issued an advisory opinion — which doesn't carry the weight of law — saying that the application of the gambling laws to poker machines is "up to the

POKER Page 8

Poker machine option . . .

(Continued from Page 1)
individual county attorneys."

That opinion, in effect, has created a "county option" situation — in which what is legal in one county might not be legal in the next county — depending on the philosophy of the county attorney.

That has a number of people upset. For example:

- The county attorneys' association has convinced a number of legislators to introduce Senate Bill 227. It defines a slot machine as:

"Any machine, apparatus or device that is operated by inserting or depositing or by placing with another person, any coins, token, chip, trade check, or paper currency" The key word is "any." The proposed law is broad enough to cover almost any machine that could be used for games of chance.

- The Southwest Montana Tavern Owners Association wants Madison County Attorney Loren Tucker to

rule whether poker machines are legal there. Tucker says state law currently bans the machines.

The tavern owners are to meet Thursday in Virginia City with Tucker. According to Rick LaBlue, the association's business chairman, if Tucker doesn't issue a formal ruling, the association may take legal action. LaBlue contends Tucker's opposition is unrealistic since there is no organized opposition to gambling in Madison County.

Judge Olsen has a different view. "People aren't going to raise a ruckus about something which doesn't affect them directly. The majority of the people want the law enforced uniformly," Olsen said.

Butte-Silver Bow Deputy County Attorney Pat Fleming observed that if SB 227 passes, it will end the question of what kind of machines are legal.

Olsen disagrees. "There will always be questions raised," he

said.

It's probably a safe bet that SB 227 will face stiff opposition from tavern owners in committee hearings. But, with the backing of the county attorneys and traditional anti-gambling forces, it's also a safe bet that any committee won't hear just one side of the question.

There has been no move by Butte-Silver Bow County Attorney Bob McCarthy against the gambling machines. That is one thing that worries LaBlue. He thinks that potential visitors to Madison County might opt for Butte because of the more lenient gambling enforcement.

It isn't likely the full question will be resolved Thursday in Virginia City. The real battle will come in legislative halls.

Meanwhile, Montana has informal county-option gambling — at least as far as poker machines are concerned.

House

██████ BILL 644

OPPOSITION ... from the Yellowstone Conference of the United Methodist Church,
by Rev. George Harper, St. Paul's United Methodist Church, Helena .

The nose of the gambling camel has been under the tent for several years. With recent court decisions, and the failure to pass some bill like Senate Bill 227 to define clearly the kind of machine gambling which a majority of Montana citizens do not want, the neck and the front legs of the camel slipped inside.

██████ Bill 644 would allow the camel to come inside and set up housekeeping. And the whole Montana tent will before long be a home that is having to work around the smelly visitor whose intruding nose we petted in 1974.

Turn mechanical bingo and keno loose with \$200 cash prizes, and allow county option to bring in any kind of machine that "purports" to stimulate any gambling activity (which means that all it needs is a name or statement) and you have in effect wide open gambling.

Anybody who reads the bill knows that. And anybody who has read the will of the people of Montana knows that we do not want Las Vegas in Butte or on the Flathead Lake.

We strongly urge this ██████ Committee to bury this bill alongside other local option and open gambling attempts of the past.

George Harper

George Harper

MONTANA

PENALTY PROVIDED

ACTUAL

SENTENCE 8

AMOUNT

PERCENT OF SENTENCE

JUDGES

v.

BY LAW

SENTENCE

OF POSSIBLE

SUSPENDED

SUSPENDED

SIGNATURE

FINE CONFINE

CONFIDENTIAL

FINE CONF

FINE CONFINE

FINE CONFINE

FEINE CONFINE

DISTRICT COURT NO.

COURT CLERK SIGNATURE

MINUTES OF THE SUBCOMMITTEE MEETING - LIABILITY INSURANCE
February 7, 1981

HOUSE BILL 165

REP. SEIFERT moved to recommend to the committee do not pass.
The motion passed unanimously.

HOUSE BILL 226

REP. BROWN moved to recommend to the committee do not pass.
The motion passed unanimously.

HOUSE BILL 284

REP. SEIFERT moved to accept the amendments as attached.
The motion passed unanimously.

HOUSE BILL 546

REP. SEIFERT moved to bring this back to the committee to discuss
the matter of carrying the insurance card. The motion passed
unanimously.



REP. CARL SEIFERT

mr

Attachment

1. Title, line 7.

Following: "INSURANCE POLICY"

Strike: "; AMENDING SECTION 61-6-103, MCA"

Insert: "."

2. Pages 1 through 7.

Strike: all of the bill following the enacting clause

Insert: "NEW SECTION. Section 1. Limitation of liability under motor vehicle liability policy. (1) Unless a motor vehicle liability policy specifically provides otherwise, the limits of insurance coverage available under any such policy, including the limits of liability under uninsured motorist coverage, shall be determined as follows, regardless of the number of vehicles insured under the policy:

(a) the limit of insurance coverage available for any one accident shall be the limit specified for the vehicle involved in the accident;

(b) if no vehicle insured under the policy is involved in the accident, the limit of insurance coverage available for any one accident shall be the highest limit of coverage specified for any one vehicle insured under the policy; and

(c) the limits of coverage specified for each vehicle insured under the policy shall not be added together to determine the limit of insurance coverage available under the policy for any one accident.

(2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions, or reductions of coverage which are designed to prevent:

(a) duplicate payments for the same element of loss; or

(b) providing insurance coverage for a vehicle owned by a policyholder but not insured under the same policy.

Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 33, Chapter 23, part 2, and the provisions of Title 33, chapter 23, part 2, apply to section 1."

-END-

JAMES, GRAY & McCAFFERTY

AREA CODE 406

TED JAMES
ORVILLE GRAY
DENNIS C. MC CAFFERTY
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RANDALL H. GRAY
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P. O. BOX 2685
FOURTH FLOOR (430)
NORTHWESTERN BANK BUILDING
GREAT FALLS, MONTANA 59401

February 12, 1981

Amendment to HB 284

Mr. Jay Fabrega
House of Representatives
State Capitol
Helena, Montana 59620

Dear Jay:

We represent State Farm Mutual Automobile Insurance Company.
I forwarded a copy of House Bill 284 to the Company.

You may be interested in the comments made by the Chief Counsel
of the Company.

This is what he wrote to me:

"While this is an attempt to prevent stacking, there is far too much language in subsection (11) on page 6. It is suggested that that subsection be amended to delete much of the language. It could be argued that the last sentence of that subsection gives back the right to stack. Below is the suggested language for that section:


(11) Any policy of insurance providing coverage under the provisions of this chapter may provide that if the insured has coverage available to him under more than one policy or provision of coverage, including uninsured motorist coverage, any recovery or benefits may equal ~~but not exceed~~ the higher of the applicable limits of the respective coverages. ~~in the proportion that their respective limits bear to the aggregate of their limits.~~ Any provision that limits benefits pursuant to this subsection must be in clear language and be prominently displayed in the policy, binder, or endorsement. --Any

~~limiting-provision-is-void-if-the-named-insured-has
purchased-separate-coverage-on-the-same-risk-and-has
paid-a-premium-calculated-for-full-reimbursement-under
that-coverage.~~

Best personal wishes.

Sincerely,

JAMES, GRAY & McCAFFERTY



Ted James

TJ/ld

VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL 644

Date 2/17/81

SPONSOR PAVLOVICH, ET AL.

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Bob Durken	Helena	MONT TAVERN ASSN	X	
Jan Brown	Helena	Mt Assn Churches		X
Gary Jensen	"	Mt. Conference of		X
George Harger	"	SDA		
George Harger		Yellowstone Conf. V. M. Church		X
John Perini	Boz	Perini's	X	
Russ Anderson	Boz	BY & Church	X	
Billie McIlwain	Boz	Wilson	X	
Jim Baptista	Moore	Abbio	X	
J.R. Callan	Agay Lodge	BFB Dist Co	X	
Paul Lee Bellack	Boz	Montana Teachers	X	
Bill Clegg	Missoula	City of Msia	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL 689

Date 2/17/81

SPONSOR KEYSER, ET AL.

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL 690

Date 2/17/81

SPONSOR KEYSER, ET AL.

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL 729

Date 1/17/81

SPONSOR HARRINGTON

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.