

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 23, 1981

The House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser. All members were present except Rep. Huennekens, who was excused. Jim Lear, Legislative Council, was present.

HOUSE BILL 813 REP. ANDERSON, chief sponsor, stated the purpose of this bill is to clarify that employees of governmental entities are immune from exemplary and punitive damages.

CHAD SMITH stated this bill would enact what people think is the present law. Not only governmental entities would be exempt but also school boards. The difference between punitive damages and actual damages is punitive is something awarded as punishment. Actual damages is court-awarded money to compensate the person directly.

There were no further proponents.

There were no opponents.

In closing, REP. ANDERSON stated an amendment should be made on line 13 striking "and the employees". ANDERSON felt it is a broad interpretation. The wording should be "elected or appointed officials only".

REP. IVERSON asked if this would cover a school board employee. SMITH said yes. REP. IVERSON further stated a school board member is not an employee. Why was that not covered before? SMITH replied it is listed in the definition of employee, EXHIBIT 1.

There was no further discussion on House Bill 813.

HOUSE BILL 809 REP. MANNING, chief sponsor, stated this bill is to license and regulate persons who purport to be able to detect deception, verify truthfulness, or provide a diagnostic opinion with the use of polygraph and to create a Board of Polygraph Examiners.

MIKE STOTTS, Montana Association of Polygraph Examiners, supported the bill. EXHIBIT 2 was given. The main purpose of the bill is to establish the regulations that a person should have to become a polygraph examiner. There has been instances in the state where examiners have come in from out of state who have not gone to school for this. That person basically does it for the money.

There were no further proponents.

There were no opponents.

In closing, REP. MANNING stated the bill is listed to be under the Board of Occupational Licensing, if passed. The association does not have the financial backing to afford this. It would be preferred to have it under the Department of Regulations.

REP. CURTISS questioned the number of members in the association. STOTTS stated there are about 20 members. REP. CURTISS further asked if there is much abuse. STOTTS stated the abuse is usually falsified information.

REP. DAILY asked if information received from the tests could be used in court. STOTTS replied they cannot be used in court unless stipulation by the county attorney and the prosecuting attorney allows it.

REP. SEIFERT asked what percentage is determined accurate. The answer was 95%. There is always room for human error.

HOUSE BILL 817 REP. MATSKO, chief sponsor, moved this bill be tabled. The motion carried unanimously.

HOUSE BILL 815 REP. KEYSER, substituting for sponsor REP. KEMMIS, stated this bill is to provide procedures and guidelines for terminating the legal relationship between parent and child.

BURT ANNIN, Social Rehabilitation Services, stated the bill requires the Department to make certain steps quite clear before the legal relationship between parent and child can be terminated. In those cases, family rehabilitation is kept in tact. This bill would provide the procedures to do that. Prior to the termination of rights a plan would have to be followed and shown it was not completed successfully. This would provide consistency throughout the state. Section 6 of the bill requires if the relationship is terminated the court review the placement of the child within six months. That way the child will not be transferred from foster home to foster home.

There were no further proponents.

There were no opponents.

REP. CURTISS asked if children of certain ages were difficult to place. ANNIN stated section 6 of the bill would help that. If adoption, because of the child's age, is not feasible, they need to be placed in a permanent environment.

REP. KEEDY asked if this would be determined by the county attorney.

ANNIN replied the county attorney signs the petition when the state starts action. Before the parent-child relationship can be terminated the petition is signed by the county attorney. REP. KEEDY asked about page 2, line 17. ANNIN stated that wording should be "petitioned". Also, line 11, page 2 should be 41-3-401. ANNIN said this bill is derived from a Colorado statute where a task force met over a year to discuss this subject.

That ended the discussion on House Bill 815.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 8:40 a.m.

HOUSE BILL 809 REP. SEIFERT moved to table the bill.

The motion passed unanimously.

HOUSE BILL 813 REP. SEIFERT moved do pass.

REP. SHELDEN moved to amend line 13, page 1 after "entitled" to strike "employees" and to insert "elected or appointed officials when acting in their official capacity".

JIM LEAR felt that "when acting in their official capacity" was redundant.

It was decided to hold action on this bill until the sponsor, REP. ANDERSON, was back in committee.

HOUSE BILL 729 REP. DAILY moved do pass.

REP. SHELDEN felt this bill was a simple thing that would allow people to form a corporation to prepay money and get legal assistance when needed. REP. CURTISS felt this was already available. REP. KEYSER stated the plan cannot be adopted without the bill being passed.

A roll call vote resulted. Those voting no were: KEYSER, SEIFERT, BENNETT, CURTISS, IVERSON, MATSKO, and MCLANE. Those voting yes were: CONN, DAILY, ABRAMS, SHELDEN, KEEDY and BROWN. The motion failed 7 to 6. The vote was reversed to do not pass. Those voting yes were: KEYSER, SEIFERT, BENNETT, CURTISS, IVERSON,

MATSKO and MCLANE. Those voting no were: CONN, DAILY, ABRAMS, SHELDEN, KEEDY and BROWN.

The motion of do not pass carried 7 to 6.

The meeting recessed at 9:00 a.m.

The meeting reconvened at 12:50 p.m.

HOUSE BILL 813 REP. ANDERSON moved do pass.

REP. ANDERSON stated he would make an amendment on the House Floor to strike "employees" and insert "elected or appointed officials when acting in an official capacity". REP. ANDERSON stressed it does not apply just to school board, but would affect members of commissions also.

REP. BENNETT stated JIM LEAR felt "when acting in an official capacity" was not needed. After a brief discussion, REP. ANDERSON was happy to accept that language.

REP. DAILY stated it would seem that punitive is the only type of damages they could sue for. REP. ANDERSON replied they could be sued for actual damages.

REP. IVERSON stated some school boards in California have been sued for malpractice suits.

REP. DAILY stated that actual damages could be proven and punitive damages are awarded.

The motion of do pass carried. Representatives BROWN, DAILY, BENNETT, KEEDY and IVERSON voted against the motion.

HOUSE BILL 815 REP. BROWN moved do pass.

REP. DAILY moved to amend line 11, page 2 striking 41-3-3401 and inserting 41-3-401. The amendment carried unanimously.

REP. DAILY moved on page 2, line 8 to strike "motion" and insert "petition" and to place it throughout the bill as needed. The motion carried unanimously.

REP. DAILY moved do pass as amended.

REP. HANNAH was concerned with who decides the answers to whether the parents are doing the job. REP. KEYSER replied the SRS and

courts decide.

REP. HANNAH stated page 5 sections D-E-G lets the SRS take the child away. There is no jury trial. REP. BROWN stated section 5 is what the courts can use and not the SRS. The bill will protect the children to help make them stabilized in a good environment.

REP. CURTISS stated the reason the bill is introduced is to prevent children from going from home to home. She did not feel that was consistent with some of the work of the Department.

REP. KEYSER told the committee present law 41-3-401 deals with abused, neglected and dependency proceedings.


The motion of do pass as amended carried with HANNAH, CURTISS, and MCLANE voting no.

HOUSE BILL 824 REP. KEYSER went over the bill with the committee. This was a committee bill to include in the crime of aggravated assault the infliction of bodily injury upon a person who is responsible for the care of custody of a prisoner; amending section 45-5-202, MCA.

REP. MATSKO moved do pass. The motion carried unanimously.

A suggestion was made to let REP. BRAND carry the bill since it dealt with his original bill concerning prison guards. It was agreed that REP. BRAND would sign the bill.

The meeting adjourned at 1:20 p.m.


KERRY KEYSER, CHAIRMAN
mr

STATEMENT IN SUPPORT OF HOUSE BILL NO. 813

This bill would extend immunity from exemplary and punitive damages to employees of governmental entities. At present, Section 2-9-105, M.C.A. provides immunity from exemplary and punitive damages to the state and other governmental entities but makes no mention of the officers and employees who actually conduct the business of the governmental entity. The word "employees" as used in the bill, is defined in Section 2-9-101(b), M.C.A. as follows:

"(b) 'Employee' means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim."

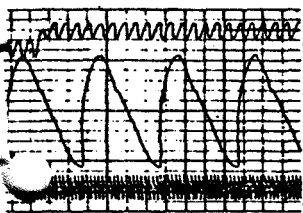
The reasoning behind Section 2-9-105, M.C.A. which presently exempts governmental entities from exemplary and punitive damages is that the government would not experience any gain by the abuse of its citizens and that therefore the protection offered by possible exemplary or punitive damages is not necessary. The same reasoning applies to the employees of the governmental entity because the employees would not have any incentive to abuse the public for personal gain and if they did, government could respond by discharging the employees or refusing to return the elected official to office.

The possibility of being sued for exemplary or punitive damages serves to intimidate public officials and it has been noticed recently that claims for punitive damages are brought or threatened in an attempt to coerce an official in the course of his performance of public duties. This bill would not absolve the government entity or the employee from actions for actual damages. In other words, the individual would still be liable for the amount of injury or damages that he actually caused to any individual by his wrongful or negligent acts. Under present law, school district officials, for example, may be sued individually for punitive damages by reason of actions that they took in their official capacity. The trustee's actions may not be malicious at all but there is a fine line of determination between what is malicious and what is not and the trustee is still put to the burden of defending against such an action and at great risk to his personal possessions. Investigation has revealed that it is not possible to purchase insurance protection for punitive damages and therefore there is no protection that the school district can afford to its trustees who serve without compensation.

It is certainly most unreasonable for a government to expect volunteer service which involves a great deal of personal sacrifice and further expose the public servant to risks that could cause great personal loss. The intimidation that is possible from such suits can affect the freedom of consideration which government

officials should apply in deciding matters of public concern.

The net result from this is that quality citizens who have been willing to serve without pay in public office will turn from such responsibility, greatly to the detriment of government in general.



Montana Association of Polygraph Examiners

February 23, 1981

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Great Falls, MT 59401

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Glasgow, MT 59230

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Missoula County Sheriff's Office
Missoula, MT 59801

Duane Peterson
Five Police Dept.
Five, MT 59330

Honorable Kerry Kiser
Chairman, House Judiciary Committee
Montana House of Representatives
Helena, Montana 59601

Dear Chairman Kiser:

The Montana Association of Polygraph Examiners strongly recommends passage of House Bill 809 dealing with the establishment of a license procedure for polygraph examiners in the state of Montana. The MAPE is currently comprised of active law enforcement officials in the state of Montana. Our goal with the license procedure is to promote professionalism within the ranks of polygraph examiners within the state. We have established our Code of Ethics and By-Laws from those of the American Polygraph Association and I would quote their purpose which is the same as ours.

"The standards of conduct of the society in which we live, derived from ethical concepts of right and wrong, exert a powerful influence on every man to do what he believes to be right. So strong and so deeply inbred are those forces that our very physiological processes rebel against deceit and dishonesty, thus providing a technique for scientifically determining truth.

Fortunate indeed is he who, being accused or suspected of misconduct, is able to produce credible witnesses to attest to his innocence.

Now therefore, and be it known henceforth, it shall be the primary responsibility of The American Polygraph Association to foster and to perpetuate an accurate, reliable and scientific means for the protection of the innocent.

To verify the truth--fairly, impartially and objectively--shall be our purpose."

In conclusion, once again, we strongly urge you support in the passage of House Bill 809.

Sincerely yours,

Dick Stotts

DICK STOTTS

President

Montana Association of Polygraph Examiners

VISITORS' REGISTER

HOUSE Judiciary COMMITTEE

BILL 809

Date 2/23/81

SPONSOR Manning

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Judiciary

HOUSE

COMMITTEE

BILL 813

Date 2/23/81

SPONSOR Keyser, Anderson

[illegible]

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

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VISITORS' REGISTER

HOUSE Judiciary COMMITTEE

BILL 815

Date 2/23/81

SPONSOR Kemmis

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