

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
March 9, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Conn, who was absent and Rep. Huennekens and Rep. Sheldon, who were both excused. Jim Lear, Legislative Council, was present.

SENATE BILL 174 SENATOR HAGER, sponsor, stated this bill is to subject insurance companies to misdemeanor penalties for noncompliance with disposal of motor vehicle laws.

WILLIAM L. ROMINE, representing the Wrecking Yards, supported the bill. EXHIBIT 1.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. KEEDY asked why on line 12, 75-10-520 is to be removed yet it is not on line 16. ROMINE replied if the car is sold to a wrecking yard it must be a licensed wrecking yard. It was crossed out on line 12 because anyone can violate that section. It is not crossed out on the next line because that is referring to the orders of the Solid Waste Division. A fine of \$50 a day would be given. The second section would exclude the insurance company.

REP. HANNAH asked how many licensed wrecking yards there are in Montana. ROMINE replied almost all of them are licensed, approximately 125. REP. HANNAH asked if they are all licensed what is the need for the bill. ROMINE responded some of the yards do not renew their license from year to year. The basic purpose is to try to ensure the people would be licensed. If a body shop over the years collected junk cars in the back for spare parts that would be considered as a wrecking yard under the statutes.

ROMINE further stated they have had a problem with the manpower available. The Wrecking Yard Association tried to get laws passed to find a way to give an incentive to become licensed. If this is passed, we will have local control.

SENATE BILL 159 SENATOR ANDERSON, sponsor, stated this bill is to amend 87-4-101 to define the scope of liability for outfitters. EXHIBIT 2, an amendment to the bill, was handed out. This bill parallels very closely with other western states, and it follows

the Idaho law.

This bill would not allow outfitters or guides to be liable in grossly negligent actions committed by the participant.

JIM FLYNN, Department of Fish, Wildlife & Parks, supported the bill. EXHIBIT 3.

There were no further proponents.

MIKE MELOY, Montana Trial Lawyers Association, opposed the bill. This bill enacts the same provisions as the ski area operations bill. It that bill there were certain duties imposed upon the skier and the operator. A duty of the ski area operator was to mark hazards skiers might not see. This bill does not place any restrictions on the outfitter, but the participant has a list of items he may not do. This bill relieves the outfitter of any liability where the participant has not complied with one of the duties in Section 4. The amendment relieves the outfitter of all liability unless he is grossly negligent. This would return us back to the days of contributory negligence. The public recognizes there are certain risks with these activities.

There were no further proponents.

In closing, SENATOR ANDERSON stated there are many people who will not follow orders that go on these activities. This bill will protect the outfitter.

REP. SEIFERT asked what percentage of outfitters are working within the state that are not licensed. FLYNN presumed all were licensed.

REP. CURTISS asked how many liability cases there are per year. MELOY did not know. FLYNN also did not know.

REP. EUDAILY asked why guides were in the bill. FLYNN replied guides work under the jurisdiction of the outfitters. REP. EUDAILY stated some guides work on a one-to-one basis. FLYNN replied it was his understanding this was just on a permission basis.

REP. HANNAH asked if outfitters were being sued. SENATOR ANDERSON replied yes.

SENATE BILL 170 REP. KEYSER, presenting the bill for SENATOR TOWE, stated this bill is to amend 70-22-109 to remove the filing fee for filing the complete corner record under the Corner Recordation Act.

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WILLIAM ROMINE, Clerk & Recorders, supports the bill. EXHIBIT 4.

JOANNE MCFARLANE, Clerk & Recorders, supports the bill. It seems to be a matter of jealousy. This will help to determine who is a legal surveyor.

There were no further proponents.

There were no opponents.

REP. DAILY asked when a surveyor finds a corner marker must it be reported. MCFARLANE stated the problem is they cannot always find the original corner. It must be available for the public record. They all start at the same corner. The records are coming in so fast the office does not have time to check it out.

SENATE BILL 171 REP. KEYSER, presenting the bill for SENATOR TOWE, stated this bill is to amend 71-1-211 to prohibit the method of entering a release of a mortgage in the margin of the record.

WILLIAM L. ROMINE, Clerk & Recorders, supported the bill. EXHIBIT 5.

JOANNE MCFARLANE, Clerk & Recorders, supported the bill. Twice she has been required to release mortgages by reference in the margin.

There were no further proponents.

There were no opponents.

No questions were asked.

SENATE BILL 173 REP. KEYSER, presenting the bill for SENATOR TOWE, stated this bill is to amend 71-3-403 to remove the specific fee for filing farm laborers' liens.

WILLIAM ROMINE, Clerk & Recorders, supported the bill. EXHIBIT 6. This places it all under the general fee section.

JOANNE MCFARLANE, Clerk & Recorders, supports the bill.

There were no further proponents.

There were no opponents.

REP. DAILY asked what is a farm laborers lien. MCFARLANE stated it allows the farm laborer who does not get paid to file a lien on the crop.

EXECUTIVE SESSION

SENATE BILL 89 REP. BROWN moved do not pass as amended. The motion carried with KEYSER, CURTISS and EUDAILY opposing the motion.

SENATE BILL 112 REP. KEEDY moved do pass.

REP. KEEDY moved the amendments be adopted. EXHIBIT 7.  
The amendments carried.

REP. KEEDY moved do pass as amended. The motion carried.

SENATE BILL 119 REP. BROWN moved do pass. The motion carried.

SENATE BILL 145 REP. MCLANE moved do pass. The motion carried.

SENATE BILL 149 REP. SEIFERT moved do not pass.

REP. HANNAH agreed with the motion as he felt it did not accomplish the intention. The motion carried with YARDLEY, BROWN, BENNETT, and TEAGUE opposing.

SENATE BILL 159 REP. MCLANE moved do pass.

REP. YARDLEY did not like the assumption of risk involved. There is not a need for this type of legislation.

REP. HANNAH stated he likes the intent of the bill but felt it was too broad. It seems it lets the outfitters out of their responsibility.

REP. BROWN made a substitute motion of do not pass.

REP. MCLANE expressed there is a need for protection of the outfitters. REP. SEIFERT stated there is a problem with people who are not licensed.

REP. KEEDY moved on page 4, line 6 following "participant" to strike the rest of the line through "he" on line 8. Following "receive" insert "permission" and strike "sufficient and construction". Following "guide" insert "." and strike the rest of line 9 and line 10.

The motion carried with EUDAILY and BROWN opposing.

REP. KEEDY moved on page 3, line 1 following "act" insert "or omission". The amendment passed unanimously.

REP. KEEDY moved on page 2, line 7 following "D" add "for consideration". The motion carried with YARDLEY and EUDAILY opposing.

REP. KEEDY moved on page 4, line 17 following section 4 to insert "except where he has committed gross negligence or an intentional tort". The motion carried with REP. EUDAILY opposing.

The motion of do not pass as amended resulted in a roll call vote. Those voting yes were: EUDAILY, ANDERSON, DAILY, TEAGUE, YARDLEY, and BROWN. Those voting no were: KEYSER, SEIFERT, BENNETT, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, ABRAMS and KEEDY. The motion failed 10 to 6. The vote was reversed to do pass as amended. Those voting yes were: KEYSER, SEIFERT, BENNETT, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, ABRAMS, and KEEDY. Those voting no were: EUDAILY, ANDERSON, DAILY, TEAGUE, YARDLEY and BROWN.

SENATE BILL 174 REP. IVERSON moved do not pass.

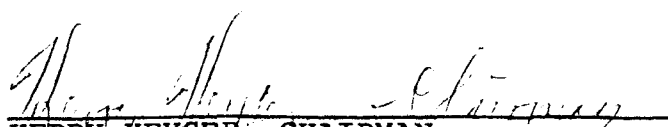
The motion carried.

SENATE BILL 159 REP. KEEDY moved to reconsider action on Senate Bill 159 for the purpose of further amendments. The motion carried.

REP. KEEDY moved to strike on page 4, line 11 subsection c and to insert "to himself or any other person thereto". The amendment carried.

The bill was held for further action at the next executive session.

The meeting adjourned at 11:00 a.m.

  
KERRY KEYSER, CHAIRMAN  
mr

NAME William L. Remine BILL No. S.B.174

ADDRESS P.O. Box 1691 Helena DATE 3-9-81

WHOM DO YOU REPRESENT Mont. Automotive Disassemblers & Recyclers Assn.

SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: The problem with the present Law is the fact that the only recourse now available is to complain to the insurance commissioner. This is a relatively small area of the insurance commissioner's duties. It seems unfair to threaten an insurance company with having its license revoked over what is a misdemeanor. If this Bill passes, if a problem arises, it can be taken care of locally by the county attorney's office. It does not seem fair to treat one violator differently from another.

AMENDMENT FOR SENATE BILL 159

1. Page 4, lines 17 through 21.

Following: "[Section 4]" on line 17

Insert: "except where the outfitter or guide has committed gross negligence or an intentional tort"

Following: "." on line 17

Strike: line 17 through "apply" on line 21

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PRESENTED BY: James W. Flynn, Director  
Department of Fish, Wildlife & Parks  
Before the House Judiciary Committee

SB159

Mr. Chairman, members of the committee: My name is Jim Flynn. I appear today on behalf of the Montana Department of Fish, Wildlife, and Parks, and I speak in support of SB159.

The department receives complaints each year regarding the performance of some outfitters. Some of these complaints are relative to areas covered by SB159. The language of this bill, as it is presented, would assist the department to clarify some of the areas which are currently difficult to determine. For example, SB159 provides for duties of outfitters and guides, as well as duties of their clients.

I recommend a "do concur" on SB159. Thank you.



NAME: William L. Rowe DATE: 3-9-81

ADDRESS: P.O. Box 1691 Helena

PHONE: 442-2220

REPRESENTING WHOM? Mont. Clerk & Recorder

APPEARING ON WHICH PROPOSAL: S.B. 170

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: The small fee for filing the coroner record should be  
repealed. Although it is small, it has prevented some filing the  
coroner record. It is necessary that complete records be kept,  
and since the fee is very small, it would be wise to repeal the fee.

3-9-81

NAME: William L. Romine

DATE: 1-22-81

ADDRESS: P.O. Box 1691 Helena

PHONE: 442-2220

REPRESENTING WHOM? Mont. Clerks & Recorders

APPEARING ON WHICH PROPOSAL: S.B. 171

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: At one time, mortgages were released by a notation being made in the margin of the mortgage itself. However, for many years, a formal satisfaction of mortgage has been used. In addition, mortgages are, in this day and age, are microfilmed. It is impossible to make a release by a notation in the margin on a microfilm. Therefore, this obsolete law should be repealed.

NAME: William L. Romaine

DATE: 3-9-81  
4-27-81

ADDRESS: P.O. Box 1691 Helena

PHONE: 442-2220

REPRESENTING WHOM? Mont. Clerk & Recorder

APPEARING ON WHICH PROPOSAL: S. B. 173

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: this bill merely consolidates the filing fee structure. Rather than having a separate section, under the Laborer's Lien statute, concerning liens, it is easier to have the filing fees codified in one section of the law.

Amendments to Senate Bill 112

1. Title, line 5.

Following: "TO"

Strike: "REQUIRE"

Insert: "ALLOW"

2. Title, line 6.

Following: "RIGHTS"

Strike: "PRIOR TO"

Insert: "OR THE"

3. Title, line 7.

Following: BRINGING"

Insert: "OF"

4. Title, line 8.

Following: "DISCRIMINATION"

Insert: "BUT NOT BOTH SIMULTANEOUSLY"

5. Page 1, line 14.

Following: "may"

Strike: "SHALL"

Insert: "may"

6. Page 1, lines 19 through 22.

Following: "." on line 19

Strike: remainder of line 19 through end of line 22

7. Page 1.

Following: line 25

Insert: "(2) The complainant may pursue a complaint in district court without filing a complaint before the human rights commission but may not then pursue the complaint before the commission."

Renumber: subsequent subsection











