

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
March 20, 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. Rep. Eudaily and Rep. Hannah were excused from the meeting. Jim Lear, Legislative Council, was present.

SENATE BILL 253 SENATOR REGAN, chief sponsor, stated this bill is to amend the laws relating to child abuse/neglect and protective services. This bill eliminates limited custody but leaves intact temporary or permanent custody. Page 1, line 25 is language that defines Child Care Agency. Page 4, line 12 after sexual purposes an "or" should be inserted.

The heart of the bill is subsection (d) on page 4, line 19 concerning the abandonment of the child. Since the enactment of the Child Abuse and Neglect Act several cases have been tried. Case law prevailed, and sections (d) and (e) will govern the case law. Page 6, line 9 deals with supervision authority granted by a youth court concerning the placement of children.

JOHN MUDSEN, SRS, was in support of the bill. As the bill now reads the department is not able to protect children when dealing with child prostitution. Adding the "or" on page 4, line 12 allows the department a lee way to use language in the statute or in the criminal code language. The department cannot get at the child prostitute as a sexual offense without it. As it now stands there is no clear definition on how the department can proceed. At this point it is unclear and unconfidential to go before the judge.

There were no further proponents.

There were no opponents.

SENATOR REGAN closed the bill.

REP. KEEDY asked if a six month waiting period would prevail before a determination of the child's welfare could be made. The answer was yes, a minimum of six months.

REP. KEEDY asked about the legal importance of "harm to a child's health or welfare". MUDSEN replied it is consistent with social service. When the department finds harm done to a child then they take the appropriate action. The department may petition the court for temporary or permanent custody.

SENATOR REGAN stated when a child is abandoned a 90 day period must occur while the department makes an effort to determine the parents. It is determined abandonment after the 90 days.

REP. CURTISS asked if a neighbor would be required under law to report to the SRS cases of abuse or neglect. The Senator replied this has been done. Teachers must report suspected abuse or neglect.

This does not mean the whole state will come down on the parents. There are some avenues provided for the child to be protected.

REP. ANDERSON asked about page 4, line 12. SENATOR REGAN replied that takes it into the criminal code. Section 45-5-625 deals with using a child for pornography purposes.

REP. KEEDY asked what was limited custody. It was replied limited custody is the same as permanent custody.

There was no further discussion on the bill.

SENATE BILL 238 SENATOR STORY, chief sponsor, stated this bill's purpose is to provide court costs and attorney's fees to a successful plaintiff in action involving vehicle ownership. This would permit an individual to obtain attorney fees in fender-benders where there was no personal loss or bodily injury. If the party at fault could not give the individual a satisfactory settlement and the individual prevails at trial, the plaintiff would be able to recover his attorney's fees and costs. Occasionally an individual deals with an insurance company that knows if the individual has \$800 worth of damage and the company offers him \$400, he will likely accept the money instead of going to court where it will cost him more.

WILLIAM ROMINE, representing the Wrecking Yards, was in support of the bill. EXHIBIT 1. ROMINE stated last session there was a similar bill that needed much work and modification.

If your car is damaged \$1,200 to \$1,500 the insurance company offers you whatever they want to. Most lawyers will not take the case for \$200-\$300 and you are still out the money. You are supposed to be made whole by this but it just does not happen. As a general matter, the policy covers only so much. The theory of insurance is to spread the risk of loss. If I am at a stop sign and someone rearends my car, I should be able to have my car fixed and not pay anything. I could sue but I should not be required to go to court to get the money and then have to pay a lawyer. The purpose of the bill is to stop lawsuits and policy holders' dissatisfaction. If this bill will require increased premiums it will be worth it.

There were no further proponents.

PAUL KELLER, American Insurance Association, was opposed to the bill. This will put the adjuster in a position to pay damages that are not fair. The insurance companies hire people that know this. Estimates are received from garages. The insurance companies are required to pay the market value of the car, which is what it should be. If an individual put in a new motor he would want to get paid an increased amount. It is hard to say the car is worth \$2,000 when the market value is only \$900. It is the

same situation with a new car. The moment it is driven off the lot it is worth less. Most of the losses insurance companies experience are from fender-benders. KELLER gave out EXHIBIT 2.

The law requires everyone to carry insurance. People have to buy insurance that is affordable for their income. A State Farm Insurance vice-president told KELLER if they could save \$1.00 on every fender-bender they would not have lost money. Most insurance money goes towards this.

BOB JAMES, State Farm Insurance, was opposed to the bill. He felt it was a "one-edged sword". The defendant is not entitled to attorney's fees. This will discourage litigation if that is the case. Courts presently do award attorney's fees to the winner in many cases. This bill is in the middle of the road as it only allows attorney's fees to the plaintiff if he is successful. Two lawsuits will result from each case, one to determine whether an offer was made.

JAMES stated if he were the plaintiff's attorney he would call the insurance company and tell them he received an estimate. He would want an offer by 5:00. There would be no way the agent could respond in that short of time. The plaintiff would then go to court and sue that afternoon for attorney's fees. Sometimes the liability is not clear as to which party is at fault. There are present laws on the books. The Unfair Trade Act is to settle cases for what they are worth. Punitive damages are intended to punish someone. This bill is unfair because it enriches the plaintiff and punishes the defendant.

BOB PETERSON, United Pacific, was also against the bill. The existing law can govern any individual practice as they might occur. This attorney's relief act is not necessary when other tools are available. PETERSON's company handles a number of plaintiff cases. This bill will unduly confuse those costs. The solution is to go through the commissioner's office.

Most policies cover \$10,000 property damage liability. Thirty percent have a market value in excess of that. The price of cars is getting so high it does not cover the damages.

There were no further opponents.

ROMINE was allowed to close for SENATOR STORY, who was at another hearing. ROMINE stated presently the plaintiff has no choice but to accept the offer from the insurance company. This will encourage settlements. The insurance companies have always advertised that it is the "bigshots" that make the premium rates go up, and now they say it is the fender-benders.

REP. MATSKO asked the difference between market value and the actual value of a car. ROMINE stated it should be the same. To obtain blue book all the cars in that class are taken and divided to receive a price. KELLER stated it would be whatever price it would sell in that particular community. The average is not used to determine the settlement. The car might be in extra good or poor condition. Mileage comes into effect also. If a new engine were placed in an older car, that would make the car worth more.

REP. DAILY asked if insurance companies have attorneys on their staff to handle these cases. JAMES replied most companies do not have attorneys on their staff; they instead hire from private firms. Many times, however, these cases are in small claims court and the insurance companies cannot hire attorneys for that.

REP. DAILY asked if the attorneys have a retainer basis with the insurance companies. JAMES replied it is usually a case-by-case basis. REP. DAILY further asked if the attorney's fees are paid by the insured motorist through premiums. JAMES did not know, but felt it was an expected cost. REP. DAILY felt the single-edged sword was on the insurance company's side because of the cost of the premium.

REP. CURTISS asked if her car is insured and it is hit would she have to go to court to collect. ROMINE stated if she knew who hit the car the insurance company would tell her to try to collect it on her own first. If she could not then the insurance company would try. If the insurance company does not pay what is a sufficient amount, you would have to sue someone.

REP. SHELDEN asked about the deductible. KELLER replied a reduced premium is given the higher the deductible. It is used now but it does not correct the problem. The physical damage will depend on the value of the car. Most family people do not want to have a big deductible. REP. SHELDEN asked if the difference in premiums is enough to make people interested in deductibles. KELLER did not have an answer.

REP. MATSKO asked if it is difficult for the plaintiff to collect more than he could demonstrate damages. JAMES stated no. You cannot recover more damages than you have asked for in the complaint. REP. MATSKO stated the last written offer prior to taking the person to court were used he would deflate the cost as to a lower amount or increase the cost of the damages when he goes to court. JAMES replied it is a factual determination of what the car is worth. REP. MATSKO stated if in good faith an offer is made for the cost of repair and it is turned down he will have to inflate that cost in order to receive attorney's fees. JAMES stated if

one party was 60% at fault and the other party 40% at fault comparative negligence would be used.

REP. YARDLEY stated in condemnation cases attorney fees are automatically paid for. Is that unfair? JAMES did not know. REP. YARDLEY stated some insurance companies offer 80% payment. JAMES stated he has not seen that in any insurance company since he has been in practice. If a client had a parked car that was hit, he could sue for punitive damages and report this to the commissioner. The insurance company would pay immediately and go after the insurance company of the party that struck the car. The victim would not have to go after him.

REP. CONN asked how many cases that go to court are won. ROMINE replied he had no way of knowing. PETERSON stated he has lost one case in ten years, but 99% of the cases had some type of bodily injury.

REP. CURTISS asked how many cases are settled out of court. ROMINE felt most of them are. REP. CURTISS asked what the minimum cost of suing would run. ROMINE felt it would be at least \$500.00.

REP. TEAGUE asked about estimates from repair shops. PETERSON stated most repair estimates are not firm. Normally the method is to take care of the part price. The adjustors work with the firm price. REP. TEAGUE stated that repair damages would increase if the damages were not paid at the time of the accident. ROMINE stated the law presumes the damage as of the time of the accident.

REP. KEEDY asked if it was necessary to plead and prove the last best offer. ROMINE responded yes, and that is why there should be only one lawsuit. REP. KEEDY stated page 3 does not provide the defendant or his agent reasonable time. ROMINE agreed the defendant should be given time to respond. REP. KEEDY asked how realistic it is to expect the insurance commissioner's office to be brought into every case. ROMINE stated not from his experience would it be realistic.

REP. KEEDY asked what has to be shown to prove punitive damages. It was replied by ROMINE that fraud or a malicious intent. The state commissioner would not be able to take on the big insurance companies. If the plaintiff could prove that the best offer by the insurance company was lower than what the damages were they could sue.

REP. DAILY asked how many complaints the commissioner's office gets a year. Although the exact figure was not known, it is over 2,500. The commissioner does encourage the public to come to them prior to suing. About 800 are resolved in favor of the plaintiff.

SENATE BILL 240 SENATOR ANDERSON, presenting the bill for SENATOR HAZELBAKER, stated the purpose of Senate Bill 240 is to establish standards for collection, use and disclosure of information gathered in insurance transactions. EXHIBIT 3 was read to the committee by SENATOR ANDERSON.

JOSEPHINE M. DRISCOLL, Montana Insurance Department, was in support of the bill. The Department has had several instances where a group of insurance companies may be writing policies at reduced rates by other companies. Whenever the department learns about this they go to the company, which is fully cooperative. This restricts the companies. A company might go to a person's neighbor, and because of the neighbor's remarks the person might be denied insurance.

LESTER LOBLE, American Council of Life Insurance, supports the bill. It regulates the information that can be relayed.

BOB JAMES, State Farm Insurance, was in favor of the bill. Members of a recent task force also support the bill. JAMES felt this is a pro-consumer bill and urged the committee's support.

There were no further proponents.

There were no opponents.

In closing, SENATOR ANDERSON stated this sets up a mechanism to enable natural persons to ascertain what information is being or has been collected about them. A person may not understand why their doctor has said something to the insurance company. This allows access to the consumer.

REP. TEAGUE asked about page 24, lines 22-23. SENATOR ANDERSON responded the bill addresses insurance support organizations, such as Equafact, which is federally controlled.

REP. HUENNEKENS questioned the striking of material on page 35 if this is a uniform act. VALENCIA LANE, Montana Insurance Department, replied all the amendments were drafted by the legislative council. All language that is stricken is already in the Montana law elsewhere.

REP. KEYSER asked about page 15, line 11 which states "insurance institution or agent may in certain circumstances be disclosed to third parties without authorization". LANE replied that is covered in section 15 beginning on page 28 of the bill. Only certain times insurance companies could provide information. A notice is required which would allow applicants to disclose information as in section 13 of the bill. There are certain situations when the information is not

that critical.

REP. KEEDY asked if personal information as defined on page 10, line 18 included medical records. It was replied the physician maintains such information. Section 10 of the bill provides a person to the right of access. An individual can submit to an insurance agent a request for the information. The insurance company would, therefore, have to report in writing the material or allow the person to view his records and make copies if he wishes. Subsection 3 of the bill allows the insurance company to refer the questions over to a medical professional and not allow the person access to the records. LANE stated the insurance company has the option to supply medical records to the individual or direct the questions to the doctor. A situation this might involve would be if the individual had a disease he was not aware of. It would be more appropriate for the doctor to discuss the records and findings with the individual than for the individual to discover his having a disease while reviewing his own files. The insurance company may not want to have the responsibility of informing the individual, so it will be up to the doctor.

REP. KEEDY stated then it is not always the case to let the individual review his records. LANE replied as a whole they do have the right to the information. SENATOR ANDERSON stated an individual might have a high blood pressure. His doctor might have told him he is in good shape. The insurance company has to accept the person the way he is, and charge him the rate based on his health. This will make it nice for the insurance company to go to the doctor. The consumer will have a method for this information.

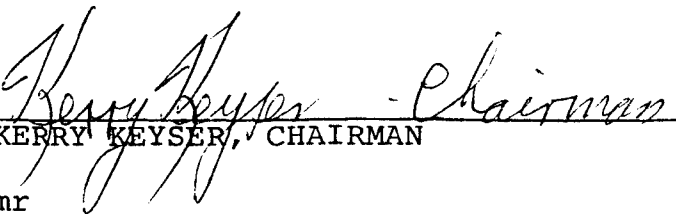
REP. KEEDY asked about the wording "the insurance institution or agent is not required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the applicant, policyholder, or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation, or material nondisclosure". LANE replied that refers to privileged information concerning the anticipation of gathering information about a crime. Something such as arson would not be disclosed. REP. KEEDY asked if there was some potential for abuse. LANE did not think so.

REP. KEEDY asked if it was appropriate to have the information given orally as stated in subsection 4, page 27. LANE replied it gives the insurance company the same privilege as the consumer has. The insurance company can be held responsible for something that is a casual inquiry under any sort.

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That ended the discussion on Senate Bill 240.

The meeting adjourned at 9:55 a.m.

 - Chairman  
KERRY KEYSER, CHAIRMAN  
mr



NAME William L. Romine BILL No. 5.B. 238  
ADDRESS P.O. Box 1691 Helena DATE 3-20-81  
WHOM DO YOU REPRESENT working folks  
SUPPORT x OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: This bill will require that the insurance company give reasonable settlements in vehicle accidents. People can not afford to hire a lawyer in the small fender bender case. However, under this bill, the insurance company will be more realistic, since it could be faced with attorney fees if a suit is filed. This bill is designed to prevent, not encourage suits.

We're doing what has to be done.

# Auto Safety.

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Crashes kill. They maim and cripple. And they are costly to Society. That's why Property-Casualty insurance companies support safer automotive engineering.

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It's nine o'clock at night. Visibility is poor and rain is turning to sleet. You're driving home after an unusually hard day. Preoccupied, you don't realize the road is icy until, suddenly, you reach a curve. You struggle to maintain control, but you can't. You skid off the road at 40 miles an hour and smash head-on into a large tree. The sound of the crash is thunderous.

Then—silence. And you open the door and walk away. Impossible? In today's car, yes. But not in tomorrow's.

Today, automobile accidents injure more than five million people a year... and kill over 50,000. A national tragedy and a national problem.

Many serious accidents involve drinking drivers, youthful drivers, or tired drivers. Human error can never be eliminated. But a great many deaths and

crippling injuries can be avoided by stressing safety in automotive design and engineering.

That's why Property-Casualty insurance companies support the Insurance Institute for Highway Safety. IIHS is an independent scientific organization that studies the causes of highway crashes and injuries and then suggests what can be done to reduce them.

IIHS has found that automobile design is a major contributor to crashes and injuries. In frontal crashes, for example, some designs allowed the hood to slash through the windshield and invade the passenger compartment. Partly because of IIHS investigations, the Federal Government in 1977 adopted a performance standard to prevent this.

Another example: after a crash,

many car fuel tanks were prone to rupture or leak, heightening the chance of lethal post-crash fire. Again, IIHS research ultimately led to action: Congressional hearings and adoption of a corrective safety standard.

The Research Safety Vehicle (RSV) is a prototype automobile that demonstrates today's "state of the art." When all cars embody RSV's features, a 40-mph, head-on crash won't have to mean death or even serious injury. That's why IIHS and insurers strongly support the RSV program.

The RSV is stylish, seats 4 comfortably, gets good gas mileage (City 27, Highway 37), would cost approximately \$7,000 to mass produce—and can thoroughly protect driver and passenger in ways no contemporary auto can.

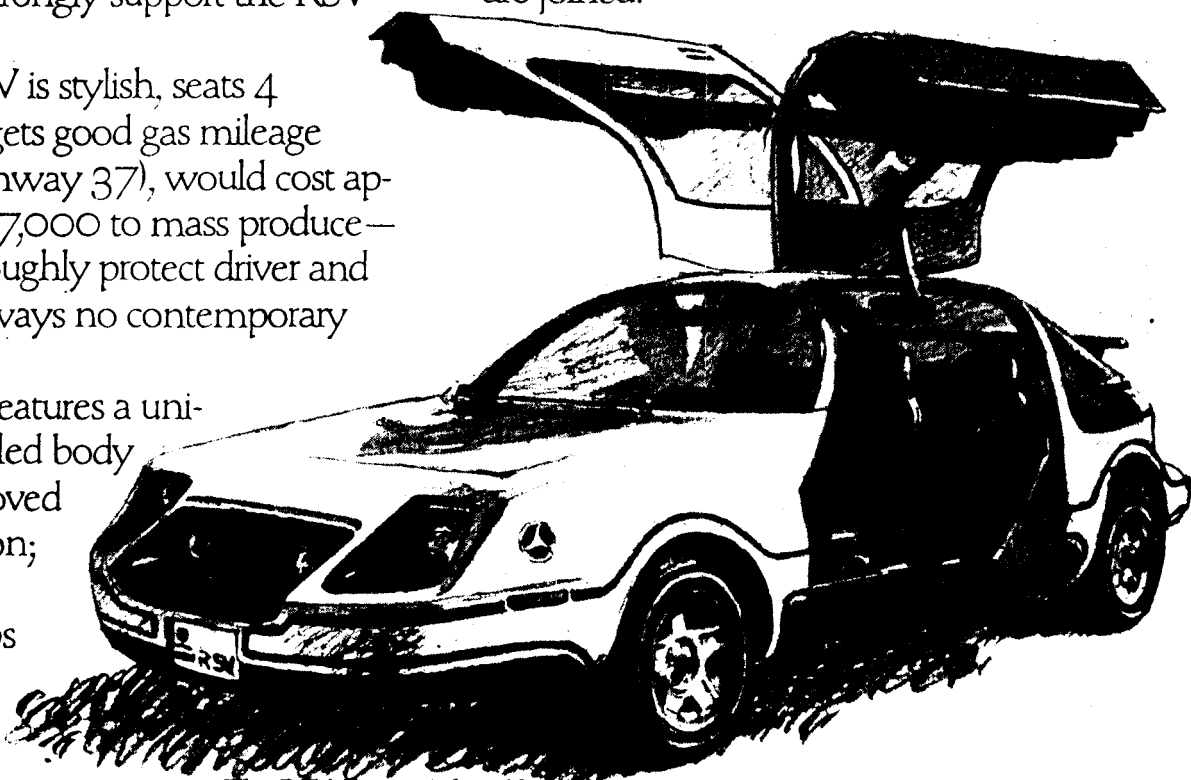
The RSV features a unitized, foam-filled body shell for improved crash protection; an interior 'clean' of knobs and gadgets that can injure and maim; improved protection in a side-impact crash or rollover; plus, seat belts and an automatic air-bag protection system. (The RSV also includes such amenities as air conditioning and citizens' band radio/AM-FM stereo cassette combination.)

You can't buy the RSV today. But

we hope that tomorrow, these improvements in auto safety will be standard in automotive designs.

The IIHS research program and the RSV are positive efforts. They show that tomorrow's cars—the ones being designed right now by the world's auto manufacturers—could be much, much safer than those on the road today.

Obviously, for Property-Casualty insurance companies, auto safety is an area where social responsibility and self-interest are joined.



The RSV. Designed and built for the Government by private industry contractors.

Our primary concern is to save lives and reduce injuries, wherever possible. But we also realize that the fewer claims we receive and the lower the cost of medical bills, the more policyholders will benefit—both from improvements in auto safety, and from positive effects auto safety features have on auto insurance costs.

## We're working to keep insurance affordable.

This message presented by the **American Insurance Association**, 85 John Street, NY, NY 10038

SB 240

Exhibit 3

LC 477

INSURANCE INFORMATION AND PRIVACY PROTECTION ACT

The purpose of this act is to establish certain standards for the collection, use and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents or insurance-support organizations.

The act applies to life, health, disability, property or casualty insurance.

This act endeavors to maintain a balance between the need for information and fairness in information practices, including the need to minimize intrusiveness.

Establishes a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them and have access to such information for purposes of verifying or disputing its accuracy.

The act limits the disclosure of information collected and enables insurance applicants and policyholders to obtain reasons for any adverse underwriting decisions.

*R. J. [Signature]*

# VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 240

Date 3/20/81

SPONSOR Hazelbaker

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 253

Date 3/20/81

SPONSOR     Regan

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE

BILL 238

Date 3/20/81

SPONSOR      Story

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.