

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 19, 1981

Page 1.

The eighth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 111:

AN ACT TO AMEND THE DRIVING UNDER
INFLUENCE LAWS BY PROVIDING THAT
QUALIFIED PERSONS ACTING UNDER THE
SUPERVISION AND DIRECTION OF A
PHYSICIAN OR A REGISTERED NURSE MAY
WITHDRAW BLOOD FOR THE PURPOSE OF
DETERMINING ALCOHOL CONTENT UNDER THE
IMPLIED CONSENT LAW; BY EXTENDING
PROTECTION FROM CIVIL OR CRIMINAL LIABILITY
TO SUCH PERSONS; AND BY CHANGING "INTOXICATING
LIQUOR" TO "ALCOHOL".

Senator Stimatz, District 43, Butte, introduced the bill at the request of the Department of Justice. Beer and wine are currently excluded from the definition of "intoxicating liquor", which is why he feels the term should be changed to "alcohol." Additionally, he suggests that qualified persons, such as laboratory technicians, be allowed to take blood samples to determine alcohol level of the blood. Senator Stimatz offered an amendment to the bill to amend the title on Page 1, line 11, by adding "by changing the reference to the rule-making body" after "persons"; and also to amend line 3 on page 6 after "the" by deleting "state board of health and environmental sciences" and inserting "Division of Forensic Sciences".

Speaking briefly in favor of the bill were Captain Walt Miller, of the Montana Highway Patrol; Chad Smith, of the Montana Hospital Association; Tom Honzel, for the County Attorneys Association; and David Lackman, lobbyist for the Montana Public State Health Association. Mr. Lackman presented written testimony (marked Exhibit A and attached to these minutes).

Senator Mazurek asked if even broader language in determining

who was qualified to draw a blood sample might be helpful. Larry Majerus, from the Montana Department of Justice, stated that the main intent was to allow the medical technicians to be included, not to take the process out of the hospital environment where such qualified persons would not be available. He added that in an "on the highway" situation away from a hospital there were other techniques available, such as breath analysis.

CONSIDERATION OF SENATE BILL 112:

AN ACT TO AMEND SECTION 49-3-303, MCA,
TO REQUIRE EXHAUSTION OF ADMINISTRATIVE
REMEDIES BEFORE THE COMMISSION FOR HUMAN
RIGHTS PRIOR TO BRINGING SUIT IN DISTRICT
COURT FOR ALLEGED UNLAWFUL DISCRIMINATION.

Senator Tveit, District 27, presented the bill on behalf of the School Board Association. He distributed copies of his testimony (marked Exhibit B and attached to these minutes) which he read aloud.

Chad Smith, representing the Montana School Boards Association, also spoke on behalf of the bill, stating that there has been a number of charges filed before the Human Rights Commission, only to find that they were also being filed independently in district court. This is a duplication of proceedings and a waste of effort, as well as a form of harrassment against some small entity which is forced to defend itself against two proceedings at the same time. This means double cost to the taxpayers.

John Frankino, Chairman of the Human Rights Commission, said that their concern with this area of the law has been registered in Senate Bill 56, also under consideration. A fact sheet relative to this bill was submitted (marked Exhibit C, and attached to these minutes).

Karen Townsend, a four-year member of the Human Rights Commission said that SB 112 conflicts with SB 56, which in her opinion is a better bill because it does not preclude the plaintiff's filing in district court if the administrative proceeding has not progressed adequately at the end of six months.

Senator S. Brown suggested that this committee hold this bill and that Senate Bill 56 be referred to the Senate Judiciary Committee, so the two bills can be studied together.

DISPOSITION OF SENATE BILL 63:

Senator S. Brown recommended DO PASS, with the understanding

that the Committee Report not be filed on it until Senator Mazurek clears it with the secretary of this committee.

DISPOSITION OF SENATE BILL 76:

Following brief discussion of the bill, Senator Berg recommended DO NOT PASS. The vote was eight to two in favor of the motion.

DISPOSITION OF SENATE BILL 10:

Senator Anderson mentioned that Senator Stevens commented that four people had signed the minority report coming out of the Interim Committee handling this matter. Following discussion of the bill, Senator O'Hara recommended that it receive a DO NOT PASS vote, a motion which carried six to four.

DISPOSITION OF SENATE BILL 83:

Senator Mazurek moved to amend Section 1, paragraph 2, line 20, striking everything after the word "false", all of line 21, and the word "identification" on line 22. Senator O'Hara recommended that the bill DO PASS AS AMENDED, and his motion carried unanimously.

DISPOSITION OF SENATE BILL 45:

Senator Crippen recommended that the bill DO NOT PASS, and the motion carried unanimously.



ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date _____

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

SENATE _____ COMMITTEE _____

BILL SB

VISITORS' REGISTER

DATE 1/19/81

Please note bill no.

(check one)

NAME

REPRESENTING

BILL #

SUPPORT

OPPOS

Sam Brown

Mt. Carmel of Churches

SB 111

Jim Nelson

Legislative Auditor

SB 112

Rich Sherwood

Human Rights Commission

SB 112

Larry Masenius

Mt. Dept. of Justice

SB 111

X

CHAD SMITH

Mt. Hosp. Assn

SB 111

X

CHAD SMITH

Mt. Sch. Bldg. Assn

SB 112

X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

2

NAME: Walt Miller, Captain DATE: 19 Jan. 1981

ADDRESS: 903 Roberts Helena

PHONE: 449-3000

REPRESENTING WHOM? Mont. Hwy. Patrol

APPEARING ON WHICH PROPOSAL: SB 111

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: David B. LACKMAN DATE: Jan. 19, 1981

ADDRESS: 1400 Winne Ave. , Helena 59601

PHONE: 443-3494

REPRESENTING WHOM? Lobbyist - Montana Public Health Assn.

APPEARING ON WHICH PROPOSAL: SB 111 Blood Alcohol - drawing

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: Copy of Testimony attached.

E Secretary

NAME: Tom Horzel DATE: 1-15-81

ADDRESS: HELESA

PHONE: 443-555-4

REPRESENTING WHOM? County Attorney

APPEARING ON WHICH PROPOSAL: 32 111

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Karen Townsend DATE: 1/19/81

ADDRESS: 1450 Patter Canyon Rd

PHONE: 549-9083 (hm) 449-3816 (wk)

REPRESENTING WHOM? Montana Human Rights

APPEARING ON WHICH PROPOSAL: SB 112

DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENTS: The provisions conflict w/ **SB** 56
which the Commission has requested
be introduced. The position of the Commission
is that although the administrative
route ought to be encouraged, we do
not feel court access should be completely
precluded. We believe the solution in
SB 56 is more appropriate which
gives the Human Rights Div 6 mos to
resolve the complaint. At that point,
the complainant could go to court.
SB 112 would not prevent Federal litigation,
the kind of litigation which would result from
most of our cases - ~~100~~ 75%.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Senate Bill No. 111 " An act to amend the driving under influence laws by providing that qualified persons acting under the supervision and direction of a physician or a registered nurse may withdraw blood for the purpose of determining alcohol content under the implied consent law; by extending protection from civil or criminal liability to such persons; and by changing "intoxicating liquor" to "alcohol" ; amending sections 61-8-402, 61-8-403, 61-8-404, and 61-8-405, MCA."

After the implied consent law was on the books , I had the responsibility of organizing the testing program. Although medical technologists have always drawn blood, there was no mention in the law of other than physicians and nurses to take blood samples for alcohol determination . Suggested amendment of the codes to include other qualified persons is another thing I didn't get around to before I retired. We urge your favourable consideration of Senate Bill 111 .

David B. Lackman

David B. Lackman , Lobbyist ,
Montana Public Health Association
January 18, 1981

P.S. Pg. 6 - line 3, change "board" to
department

DBL.

STATEMENT IN SUPPORT OF SENATE BILL NO. _____

This bill amends Section 49-3-303, M.C.A. which relates to Chapter 3 entitled "Governmental Code of Fair Practices" and is a part of Title 49, M.C.A. dealing with human rights. The section to be amended deals with the procedure for enforcement of any violation by authorizing dual and simultaneous procedures which are an obvious and unnecessary duplication. The complaining party may file a complaint with the Commission for Human Rights to have his complaint determined by the administrative agency and may, in addition, petition the district court in the district where the complainant resides to have the matter judicially determined at the same time.

The general law dealing with administrative remedies is that a complainant must exhaust available administrative remedies before proceeding to court. The reason for the rule is that the administrative agencies specialize in the particular field of law that they administer and the courts are not burdened with the adjudication of matters that can be resolved by administrative hearing and appeal. The general law provides that if either party is unsatisfied with the administrative decision after all administrative remedies have been exhausted, the aggrieved party may then appeal the decision to the courts.

Not only are the dual proceedings redundant and wasteful, but actually could result in conflicting decisions because the ultimate administrative decision could be appealed to the district court in Helena, while another district court proceeding was pending in the district where the complainant resides.

The duplication in simultaneous proceedings serves no purpose but it does force the defending party to defend both proceedings at double the cost. Such financial burden merely amounts to a means of harassment of the governmental entity that is being charged with some alleged violation.

FACT SHEET

SB 56 Introduced by Senator Bob Brown at the request of the Montana Human Rights Commission.

A bill for an act entitled:

"AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO HUMAN RIGHTS BY SHOWING THE INTERRELATIONSHIP OF CHAPTERS 2 AND 3 OF TITLE 49, MCA; BY PROVIDING A METHOD OF APPOINTING AN ACTING COMMISSIONER TO REPLACE AN ABSENT COMMISSIONER; BY CLARIFYING ADMINISTRATIVE CONTESTED CASE PROCEDURES; AMENDING SECTIONS 49-2-101, 49-2-202, 49-2-204, 49-2-301, 49-2-401, 49-2-402, 49-2-501, 49-2-502, 49-2-505, 49-2-601, 49-3-101 THROUGH 49-3-104, 49-3-202, 49-2-204, 49-3-205, 49-3-302, AND 49-3-303, MCA."

1. "The laws administered by the commission are phrased in such a way that the legislative intent is not clear concerning three issues. The confusion arises because the commission administers two acts which contain contrasting language in specific sections." Page 45, State of Montana, Report to the Legislature, Sunset Review, Commission for Human Rights; Office of the Legislative Auditor, 1980.
2. The first issue is whether complaints filed under the Fair Practices Act, Chapter 3 of Title 49, MCA, should have the same 180 day statute of limitations as complaints filed under the Human Rights Act, Chapter 2 of Title 49, MCA. This bill states that the statute of limitations is the same for complaints filed under either Act.
3. Secondly, there is a question whether or not a complainant under the Human Rights Act can also immediately file in district court without exhausting administrative remedies, as can a person with a complaint under the Code of Fair Practices. This bill provides equal access to the court system for persons filing against either private or governmental respondents. However, the bulk of discrimination claims will continue to be resolved by the commission.
4. Finally, it is presently unclear whether private employers can make use of all of the defenses to a discrimination claim which are available to governmental employers under the Fair Practices Act. This bill makes those defenses equally available to all employers, and makes clear that the Commission should read the two acts together in performing its duties.

STANDING COMMITTEE REPORT

January 19, 19 81

MR. **PRESIDENT**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **45**

Respectfully report as follows: That **SENATE** Bill No. **45**

~~XXXXXX~~

~~DO NOT PASS~~

STATE PUB. CO.
Helena, Mont.

He

Mike Anderson
Mike Anderson

Chairman.

(2)

STANDING COMMITTEE REPORT

January 19 19 81

MR. **PRESIDENT**

We, your committee on **JUDICIARY**

having had under consideration **Senate** Bill No. **83**

Respectfully report as follows: That **Senate** Bill No. **83**

be amended as follows:

1. Page 1, lines 20 through 22.

Following: "false"

Strike: "or not current as to name, address, place of employment,
or other items of identification"

XXXXXX
DO PASS
And, as so amended,
DO PASS

G.A.

SENATE COMMITTEE JUDICIARY

Date January 19, 1981 Senate Bill No. SB 76 Time _____

NAME	YES	NO
Anderson, Mike	✓	
O'Hara, Jesse A.	✓	
Olson, S. A.	✓	
Brown, Bob	✓	
Crippen, Bruce D.		✓
Tveit, Larry J.	✓	
Brown, Steve	✓	
Berg, Harry K.	✓	
Mazurek, Joseph P.		✓
Halligan, Michael	✓	

Dorinda Campbell
Secretary

Mike Anderson
Chairman

Motion: Recommend DO NOT PASS

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

STANDING COMMITTEE REPORT

January 19

19 81

MR. **PRESIDENT**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **76**

Respectfully report as follows: That **SENATE** Bill No. **76**

~~XXXXX~~
~~DO NOT PASS~~

STATE PUB. CO.
Helena, Mont.

Mike Anderson

Chairman.

SENATE COMMITTEE JUDICIARY

Date Jan. 19, 1981 Senate Bill No. SB 10 Time _____

NAME	YES	NO
Anderson, Mike	✓	
O'Hara, Jesse A.	✓	
Olson, S. A.	✓	
Brown, Bob		✓
Crippen, Bruce D.		✓
Tveit, Larry J.	✓	
Brown, Steve	✓	
Berg, Harry K.		✓
Mazurek, Joseph P.		✓
Halligan, Michael	✓	

Robin Campbell
Secretary

Mike Anderson
Chairman

Motion: Recommend DO NOT PASS

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

STANDING COMMITTEE REPORT

January 19

19 81

MR. **PRESIDENT**

We, your committee on **JUDICIARY**

having had under consideration **SENATE**

Bill No. **10**

Respectfully report as follows: That **SENATE**

Bill No. **10**

~~FOR PASS~~

DO NOT PASS

H.C.

STATE PUB. CO.
Helena, Mont.

Mike Anderson

Chairman.

(8)

STANDING COMMITTEE REPORT

..... January 19 19 31

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 63

Respectfully report as follows: That SENATE Bill No. 63

DO PASS

..... Mike Anderson
Chairman.

Q.A.

(8)