

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 11, 1981

The fortieth meeting of the Senate Judiciary Committee was called to order by Senator O'Hara, in the absence of Chairman Anderson, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 93:

PROVIDING INTEREST FOR DAMAGE
RESULTING FROM INJURY, ETC., AND
COMPUTING THE INTEREST FROM THE
DATE OF THE INJURY.

The bill was presented by Rep. Bennett, District 15, Flathead County, who said that the intent is to make an injured party whole, and to settle cases before they go to court. He said that by delaying payment of claims, insurance companies can make more money on their investments, so the interest on payment of claims should begin to accrue from the date of injury rather than from the date of settlement.

Mike Meloy, representing the Montana Trial Lawyers Association, spoke in support of the bill, saying that the effect would be to permit the injured party to collect interest on his judgment from the date of injury. He suggested, however, that the committee might want to amend the bill to specify that the interest would apply only on compensatory damages, as described on attached Exhibit A.

Opposing the bill was Pat Melby, representing the Alliance of American Insurers, who said the settlements were not being deliberately delayed by the insurance companies; that the bill does not encourage the plaintiff to settle earlier; that it would wrongly include interest on damages for future losses and would still calculate the interest from the date of injury; that it would place the onus on the defendant to bring it to trial as soon as possible rather than negotiating a settlement; and that it would mean higher insurance premiums to the consumer.

Paul Keller opposed the bill on behalf of the American Insurance Association, saying that the insurance companies do not make the high interest rates on their investments that people think they do. He added that there is no

provision in this bill for credit of interest on advance payments made, which is unfair.

Bob James, representing State Farm Insurance Companies, opposed the bill, saying that it would cause more uninsured and underinsured motorists on the road. He pointed out that only Alaska has this type of legislation, and it also has the highest premiums of any state in the union. He felt that there are already remedies available for bad faith in claim settling. He presented a proposed amendment (attached Exhibit B).

Roger McGlenn, representing the Consumer Government Affairs Information Council Independent Insurance Agents Association of Montana, opposed the bill because it would increase the premiums, and for the other reasons given by previous opponents.

Jess Starnes, representing United Pacific/Reliance Insurance Company, opposed the bill and cited a case in Butte where the insured refused the settlement offered by the insurance company, but ended up being awarded that identical amount in court -- but he got to keep less of it because of legal fees.

Mike Donahy, local manager with the USF&G, opposed the bill as shown on his attached testimony sheet, and cited the example of malpractice claims where the injury may not surface for several years, and that charging interest during the intervening years in this situation would be unfair.

Senator Mazurek said that in the case of future damages being allowed for, the plaintiff has no right to expect damages to accrue in the intervening years, before the damages even develop. Rep. Bennett agreed that this possibility should be eliminated.

Senator Crippen asked whether in cases where the insurance company is not notified of damages for several years following the injury they should be assessed interest from the time of injury. Rep. Bennett replied that the plaintiff should be given time to determine the extent of his injuries.

Senator Anderson cited a case in Bozeman where a man was accused of setting fire to his own home, and charged with arson. Even though the insurance may have been willing to settle the claim, the county attorney took it to court, thus delaying the payment until the man was found innocent. He felt that under such circumstances the insurance company should not be assessed interest retroactively. Rep. Bennett said that he was not sure how this might be handled under this bill.

Senator Anderson then asked how many claims are paid every year in Montana, and how many of these would be a problem needing the solution offered by this bill. Rep. Bennett and Mike Meloy insisted that the bill is needed.

CONSIDERATION OF HOUSE BILL 96:

TO REQUIRE THE SRS TO DRAFT RULES TO
SPECIFY WHEN PUBLIC ASSISTANCE MAY BE
DENIED TO A PERSON WHO HAS TRANSFERRED
PROPERTY FRAUDULENTLY.

Judith Carlson, representing the SRS, presented the bill in place of Rep. Feda, who could not make the meeting. Her testimony is shown on the attached testimony sheet.

Senator Halligan said that the term "less than market value" does not appear in this bill, even though it was mentioned in her testimony; and Ms. Carlson agreed that it should be put into the bill.

Senator O'Hara asked her to bring the committee an amendment to this effect, and it is shown as attached Exhibit C.

CONSIDERATION OF HOUSE BILL 212:

TO CLARIFY PROCEDURE WHEN MENTAL COM-
PETENCY OF THE ACCUSED IS AT ISSUE.

Rep. Keedy, District 18, Kalispell, presented the bill, saying that it represents an attempt to clarify ambiguities in three areas of the criminal code which came out of the 1977 session.

Tom Honzel supported the bill on behalf of the County Attorneys Association, and said that he felt that the changes would have much practical value.

Senator Mazurek asked how this bill would mesh with HB 403, and was told by Rep. Keedy that there was no conflict with, and little relation to, that bill.

CONSIDERATION OF HOUSE BILL 300:

TO ENACT THE PROVISIONS OF THE MODEL
DRUG PARAPHERNALIA ACT.

Rep. Matsko presented the bill, saying that while it is currently illegal to use dangerous drugs in Montana, the selling and advertising of equipment necessary to the use of the drugs is commonly done. He showed the committee a

magazine called HIGH TIMES, which he described as a magazine printed to promote the drug trade. He said that to outlaw the act, while allowing the same act to be promoted in this fashion, is incomprehensible.

Captain Obresley, of the Cascade Sheriff's Dept. in Great Falls, testified in support of the bill, pointing out the conflict in outlawing the act but allowing that act to be promoted. He demonstrated various objects of drug paraphernalia and said that the mark up on these items runs from one hundred to three hundred percent. He said that many booths at the state fairs offer drug paraphernalia as prizes, and that this law would hopefully eliminate this.

Karen Strickler, speaking for the American Academy of Pediatrics, supported the bill, and presented the letter attached to her testimony sheet.

Gloye Brown, mother of a former drug addict, testified in support of the bill, saying that her daughter started buying drug paraphernalia at the age of fifteen, and now feels that part of the reason she did so was because drugs were glamorized in the various "head shops".

Skip Wilcox, representing the Department of Institutions, Division of Alcohol & Drug Abuse, in supporting the bill, said that eliminating the open sale of paraphernalia would not eliminate the drug problem. He said that on page 3, lines 5 through 8, "opiates and PCP" should be included; on line 15 of page 3 a further definition of "roach clips" may be needed; and that on page 6, under "NEW SECTION", the language about an eighteen-year-old selling to someone three years his junior could be a loophole that should be closed.

Jackie Strosnider supported the bill, saying that each week she hears of additional children being damaged by drug usage, and feels that she must speak out against the situation.

Pastor Gary Jensen, representing the Seventh-day Adventist Church, strongly supported the bill and said that he hoped it would help curb drug use.

Also speaking briefly in support of the bill were Tom Honzel, representing the County Attorneys Association; John Scully, representing the Sheriffs and Peace Officers; Jerome Loendorf, representing the Montana Medical Association; Mike Murray, of the Department of Institutions, who supported it with the amendments mentioned by Mr. Wilcox; Senator Hager, from District 30, who made the point that legitimate medical supplies carried by diabetics should not be included within the reach of this bill; Ed Sheehy, Jr., who said that his insulin syringe, under this bill, would be considered drug

paraphernalia, and this portion of the bill should be amended; and Senator Steve Brown.

Mike Meloy spoke as an opponent of the bill on behalf of the Press Association because of section 6, page 7, which prohibits advertising the paraphernalia. He felt this would be an unconstitutional provision which might possibly invalidate the rest of the bill.

In closing, Rep. Matsko suggested possibly amending page 3, lines 5 through 8, by adding "or other dangerous drugs" to eliminate the need for further amending in the future; that lines 15 through 17 on page 3 were adequately expressed; that the portion designating that an eighteen-year-old seeking to a person "three years or more his junior" is designed to serve as a protection to children in the "borderline" age; and that the definition of paraphernalia is based upon the attempt to grow, sell or use the dangerous drug in violation of the Dangerous Drug Act, and would thus eliminate medical supplies necessary for a diabetic from coverage by this law. He added that solicited use of illegal objects is not protected specifically under the Constitution, and cited cases to back up his statement. Therefore, forbidding such advertising would not cause a constitutional problem with this bill. Rep. Matsko said that eleven federal district court cases have upheld the Model Drug Paraphernalia Act against challenges. He stated that we should quit allowing people to make billions of dollars a year through this illegal sale.

Senator Halligan asked if there was any indication that the use of drugs has decreased in states where this law has been approved. Rep. Matsko said that statistics are hard to come up with on how many people did not start using drugs because of passage of the law. Senator Halligan then said that in his opinion, once the sale of this paraphernalia is made illegal it will go underground and will be headquartered in a seedy part of town, where the worst kind of people hang out, with dirty, possibly contaminated products being sold, subject to absolutely no police supervision. He said at least now it is possible for police to keep an eye on the situation. Rep. Matsko replied that far less profit is involved in an underground operation, and that by passing this bill the present double standard would be eliminated.

Senator Mazurek expressed some concern relative to how diabetics would fare under this law. He said that while they would definitely not be convicted, they still might have to prove in court that their possession of medical supplies was legitimate. Rep. Matsko said that a similar situation already exists when a diabetic goes to another state where such proof is necessary in order to obtain a syringe.

CONSIDERATION OF HOUSE BILL 534:

TO CLARIFY THE LAWS RELATING TO ADMIN-
ISTRATIVE ENFORCEMENT OF SUPPORT FOR
DEPENDENT CHILDREN.

Rep. Huennekens presented the bill, explaining briefly the reasons behind the proposed changes incorporated in it.

There were no further proponents, no opponents, and no questions from the committee.

A handwritten signature in cursive script, reading "Mike Anderson", written over a horizontal line.

Mike Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date *March 11, 1981*

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.

NAME:

Mike May

DATE:

3/11/81

ADDRESS:

Seniors B2D2 D2N

PHONE:

442 9430

REPRESENTING WHOM?

MTCA on HB 93
(SUPPORT)

MPA on HB 200
(OPPOSE)

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

48

NAME :

DATE: 3-11-81

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU :

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bob James

DATE: 3/11/81

ADDRESS: 430 New Bank g. Falls

PHONE: 727-2311

REPRESENTING WHOM? State Farm

APPEARING ON WHICH PROPOSAL: HB 93

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE: 3-11-81

HELENA, MONTANA 59604

PHONE: 442-9555

CONSUMER GOV. AFFAIRS INFORMATION COUNCIL
REPRESENTING WHOM? INDEPENDENT INS. AGENTS ASSOC. OF MONT.

APPEARING ON WHICH PROPOSAL: HB-93

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Jess Starnes DATE: 3-11-81

ADDRESS: 814 Gilbert Helms MIT

PHONE: 442-9666

REPRESENTING WHOM? United Pacific Ruminator Trs. co.

APPEARING ON WHICH PROPOSAL: HB 95

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

COMMENTS: What about Partial Payments? is
interest due on these.

When cost of Print and labor is paid
Should someone be allowed to deliver
again of Payment in order that
may collect interest?

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: M.B. Donahy DATE: 3-11-81

ADDRESS: 1635 11th Ave. Helena, MT

PHONE: 442-1220

REPRESENTING WHOM? M.B. Donahy & Guaranty Co.

APPEARING ON WHICH PROPOSAL: HB 93

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

COMMENTS: _____

- 1) Claims cannot be paid until the facts are determined
- 2) Insurers have not contacted Clinton to find the insured
- 3) Insurers who would use consumers would ultimately pay the bill
- 4) Prompt and fair claim settlements are now controlled by competition & regulated by the Motor Vehicle Practices Act
- 5) Claims would not be made "whole". They would reap the interest in many cases

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

- 6) Revised claims result in higher judgments due to inflation
 - 7) Fair rates
 - 8) Less p.d. - Insurers would pay the interest
- M.B. Donahy*

NAME: JUDITH H CARLSON DATE: 3/11/81

ADDRESS: 1823 FLOWERREE

PHONE: 9-5622

REPRESENTING WHOM? SRS

APPEARING ON WHICH PROPOSAL: HB 96

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

COMMENTS: attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(45)

~~CONFIDENTIAL~~ 3/11/81

Testimony on H.B. 96 - An Act
to Specify when Public Assistance may be Denied to a Person Who Has
Transferred Property Fraudulently

The Department of Social and Rehabilitation Services supports passage of this bill. It is a companion bill to H.B. 127 which is being heard by the Senate Public Health Committee today. They were originally intended for two purposes: 1) to clarify our laws so that SRS can legally deny public assistance to persons who dispose of property at less than market value in order to qualify for public assistance, particularly Medicaid, and 2) to allow the state an option to determine its own eligibility for Medicaid by SSI recipients or to have the Social Security Administration determine it for us.

At the present time, Montana is what is called a Sec. 1634 state. That means that we contract with the federal government, as authorized by Section 1634 of the Social Security Act to automatically grant Medicaid eligibility to anyone who qualifies for SSI, Supplemental Security Income, the program for needy, disabled and elderly. SSI is totally a federal program administered by the Social Security Administration. However, since the eligibility criteria are similar, we have been saving ourselves some administrative costs by accepting SSI eligibility determinations. Up until last December, when Congress changed the law, the federal law did not allow taking into account the transfer of property for the purpose of receiving assistance.

The federal law change reads that persons who dispose of property for less than market value for a period of time within two years of their application for assistance are presumed to have done it for purposes of receiving public assistance. With this law in place, we should be able to continue to utilize the SSA as our agent for determining eligibility for the SSI recipients.

(40)

Exhibit C

The section of our law which is before you today for amendment deals with this issue of transfer of property, but it is considered to be constitutionally weak. It says that if you transfer property 5 years prior to applying for assistance, you are presumed to have transferred it for the purposes of receiving assistance. This is considered to be a "non-rebuttable presumption"--that is, there is no argument nor extenuating circumstances allowed. HB 96 would make this a valid constitutional law.

With this change and with the changes proposed under HB 127, Montana will be able to insure that persons, particularly those who face major medical expenses, e.g., nursing home care, will not be able to sign over property to children or other relatives just to be eligible for Medicaid.

Facing major cutbacks at the federal level in the coming year, SRS is determined to bring before you ways of tightening our program to insure that public funds are spent for those most in need. Your support of this bill will help us do that.

Judith H. Carlson
Deputy Director, SRS

40

NAME: Tom Honyo DATE: 3-11-81

ADDRESS: Helen

PHONE: 443-5554

REPRESENTING WHOM? County Attorney

APPEARING ON WHICH PROPOSAL: AD 212 - 300

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: G-241d OBRESLEY DATE: MAR 11, 1981

ADDRESS: 229 15th ST. BLACK EAGLE, MONT.

PHONE: 453-6713

REPRESENTING WHOM? CASCADE Co Sheriff's Dept

APPEARING ON WHICH PROPOSAL: HB 300

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Karen Strickler DATE: 3/11/81

ADDRESS: 1500 Jerome Pl

PHONE: 442-3796

REPRESENTING WHOM? Montana Chapter American Academy of Pediatrics

APPEARING ON WHICH PROPOSAL: HR 20

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: - see written testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Helena Medical Clinic, P.S.C.

1930 9TH AVE.
HELENA, MONTANA 59601
TELEPHONE 442-9523

INTERNAL MEDICINE:
J.B. SPAULDING, M.D.
D.R. HIESTERMAN, M.D.

March 9, 1981

DAN SMELKO
Business Manager

OBSTETRICS AND
GYNECOLOGY:
J.J. DRYNAN, M.D.
J.E. NICKEL, M.D.
R.M. BROWNING, M.D.

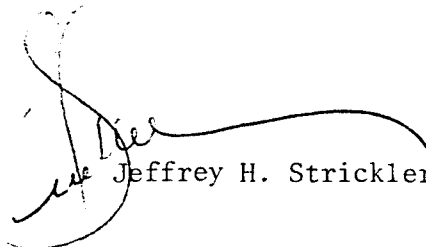
PEDIATRICS:
E.P. GUNDERSEN, M.D.
B.C. RICHARDS, M.D.
J.H. STRICKLER, M.D.

SURGERY:
W.J. HOOPES, M.D.
K.J. WRIGHT, M.D.

Chairman Anderson and Members of the Senate Judiciary Committee:

The Montana Chapter of the American Academy of Pediatrics representing physicians caring for children and adolescents in this state is in favor of House Bill 300 regarding drug paraphernalia.

On a national level, the American Academy of Pediatrics is concerned about the access to the "drug cult" and the life style represented by the use of drug paraphernalia. The easy access to such materials does not set a good example for our children, and makes control of this major health problem difficult. We were pleased when Representative Matsko introduced this bill, and we urge a do pass recommendation.



Jeffrey H. Strickler, M.D. F.A.A.P.

JHS:bjl

NAME: Alaya Kiro DATE: 3-11-21

ADDRESS: 1008 14th Ave So (N. Falls)

PHONE: 408-555-1111

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: HB 1111 HB 1111

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: Very important

for the city and the

the city and the

and the city and the

it is a very important

statement

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: DH Skip Wilcox

DATE: 3-11-81

ADDRESS: 1539 11th Ave

PHONE: 449- 2827

REPRESENTING WHOM? Dept of Institutions Alcohol & Drug Abuse Div.

APPEARING ON WHICH PROPOSAL: HB 300

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John A. Strickland DATE: 3-11-81

ADDRESS: 5111 13th Ave So. Gt Falls

PHONE: 702-5555

REPRESENTING WHOM? Concerned Parents / SCLF

APPEARING ON WHICH PROPOSAL: H13300

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

COMMENTS: why are the things inhibiting drug
use available when drug use is
illegal?

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Pastor Gary Jensen DATE: 3-11-81

ADDRESS: 1067 Cheyenne Rd., Helena

PHONE: 458-5797

REPRESENTING WHOM? Seventh-day Adventist Church

APPEARING ON WHICH PROPOSAL: HB 300

DO YOU: SUPPORT? ☒ AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John Sully DATE: 3/11

3/11


ADDRESS: Box 1165

PHONE: 587-1365

REPRESENTING WHOM? Sheila Lee Oliver

APPEARING ON WHICH PROPOSAL: H.B. 300

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



AMEND? OPPOSE?

OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Proposed amendment to HB 93

1. Page 1, line 20.
Following: "recover"
Insert: "compensatory"
2. Page 1, line 23.
Following: "recover"
Insert: "compensatory"

HOUSE BILL 93

State Farm Insurance Company requests the Bill be amended by adding a new section as follows:

"(4) Subsections (2) and (3) shall not apply in cases where a judgment is entered in an amount equal to or less than an amount of money previously offered to the person entitled to recover damages as set forth under this statute."

This amendment is requested by State Farm Insurance Company. State Farm opposes this Bill. It also opposes the Bill with the proposed amendment. The amendment is requested in the event this committee looks favorably upon House Bill 93.

p. 1, line 23, INSERT AFTER
"OF PROPERTY"

"FOR LESS THAN FAIR
MARKET VALUE"

Robin —

These are from J.
Carlson for HB 96 —

Please prepare our
committee report

LSN

8-11-81

DATE March 11, 1981

COMMITTEE ON JUDICIARY

HB 534 HB 212

HB 93 HB 300

HB 96

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Carol Jones	self-concerned parent	HB 300	X	
Karen Mikota	LWR of Montana	HB 300 HB 212		
Karen Strickler	MT. Chapter American Academy Pediatrics	HB 300	X	
Michael L. Foster	concerned citizen	HB 300	X	
Valencia Lane	Insur Dept	HB 93		
	"	HB 93		
Carol Hanson	Mont Jial Lawyers	HB 93	X	
Mike Murray	Dept. of Inst	HB 300	X	
Belen Myeray	citizen	HB 300		
Mike Langley	USF+G	HB 93		X
R. L. Adams	Northwestern Natl	HB 93		X

(Please leave unnumbered statements in this area)