

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
MARCH 13, 1981

The forty-second 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 HOUSE BILL 284:

TO AMEND THE MOTOR VEHICLE INSURANCE
LIABILITY LAWS IN CASES WHERE THERE IS
MORE THAN ONE VEHICLE COVERED UNDER A
SINGLE INSURANCE POLICY.

Rep. Fabrega, District 44, Great Falls, presented the bill.

Roger McGlenn, supporting for the Independent Insurance Agents Association of Montana, presented written testimony, which is attached to these minutes.

Pat Melby, representing the Alliance of American Insurers, supported the bill because he felt it was not the intent ever to stack coverage so that an individual could recover more uninsured motorist coverage than from his own insurance. He said that if people want more benefits they can add to their own uninsured motorist coverage.

Jess Starnes supported the bill for the reasons given by previous supporters.

Bob James, representing State Farm, agreed with previous testimony in supporting the bill.

Paul Keller, representing American Insurance Association, pointed out that many mutual companies have to live on their underwriting because they do not have large reserves built up. He said that the lower-income persons' insurance should be kept affordable, and that this bill would make the law more like what it was intended in the first place by the legislature.

Bob LaDow, of Northwestern National Insurance Company, also supported the bill.

Speaking in opposition was Mike Meloy, representing the Trial Lawyers Association. He said the bill was ill-conceived, poorly drafted, and probably unconstitutional, and went far

beyond the original bill. He added that the Supreme Court has found against a limitation such as the one proposed in this bill, referring to the case of Chaffee v. USF&G, where the Supreme Court decided that it would be against public policy and would result in a windfall for the companies to permit them to collect premiums for the uninsured cars and then to pay on only one of the limits.

Senator Mazurek asked if there were three vehicles involved in a massive collision, under 100/300 coverage, under this bill what would the limit of coverage be? Pat Melby said \$100,000 on each vehicle in each accident, for a total of \$900,000. Tom Harrison said that he thought under this bill it would be a total of \$300,000.

CONSIDERATION OF HOUSE BILL 99:

PROHIBITING DEFERRAL OF IMPOSITION
OF SENTENCE IN A FELONY CASE FOR A
DEFENDANT CONVICTED OF A FELONY ON
A PRIOR OCCASION.

Rep. Daily presented the bill and said that its purpose is to prevent a judge from issuing a second deferred sentence to any individual with a prior felony conviction.

Curt Chisholm, of the Department of Institutions, commented that the bill as currently worded would have virtually no impact on the prison population.

Senator Crippen voiced concern because the degree of seriousness of a felony involved is not defined more clearly.

Rep. Daily agreed that this was somewhat of a problem with him as well, but said that the bill's intention is to discourage crime and to protect the general public. He pointed out that a suspended sentence could be issued in place of a second deferred sentence, and would stay on the person's record.

Senator Mazurek established from Mr. Meloy that deferred sentences are never expunged from the NCIC records.

Karen Mikota, representing the League of Women Voters, said that the meaning of "convicted" may be affected through this bill, and that would affect having deferred sentences on a person's record.

In closing, Rep. Daily said that a judge legally cannot use first felony convictions in sentencing a person on his second felony conviction.

CONSIDERATION OF HOUSE BILL 213:

TO BROADEN THE DISCOVERY OF WITNESSES
AND DEFENSES IN CRIMINAL CASES.

Rep. Keedy, District 18, Kalispell, presented the bill, saying that it broadens the scope of pretrial discovery by making known all witnesses to both sides in the interest of getting at the truth.

Tom Honzel supported the bill on behalf of the County Attorneys Association.

Senator Mazurek asked if this bill represented an effort to include all the affirmative defenses, and if so, did it accomplish that purpose. Rep. Keedy replied affirmatively.

Senator O'Hara asked for a definition of "affirmative defense". Rep. Keedy said that it is the kind of defense a defendant would use when there is no argument over the commission of the act, but to show that there is a defense to what he did.

Senator Anderson asked if other states have done this same thing. Rep. Keedy did not know; David Niss said that he felt that some of them probably had done so.

CONSIDERATION OF HOUSE BILL 215:

TO PROVIDE DISTRICT COURTS AND
JUSTICES' COURTS WITH CONCURRENT
ORIGINAL JURISDICTION IN ALL CRIM-
INAL CASES AMOUNTING TO MISDEMEANOR.

Rep. Keedy presented the bill as a solution to jurisdictional problems regarding crimes involving both a felony and a misdemeanor.

Tom Honzel supported the bill on behalf of the County Attorneys Association because of the added efficiency in conducting trials of this nature.

Mike Meloy supported the bill for the Trial Lawyers Association, and submitted amendments (attached Exhibit A) which would give district courts jurisdiction only in certain cases.

Tom Harrison, representing the Montana Judges Association, supported the bill only with Mr. Meloy's amendments.

Rep. Keedy accepted the amendments.

DISPOSITION OF HOUSE BILL 215:

Senator S. Brown moved that House Bill 215 be amended as

shown on the attached Committee Report. His motion passed unanimously. Senator S. Brown then moved that the bill BE CONCURRED IN AS AMENDED, and this motion passed unanimously.

CONSIDERATION OF HOUSE BILL 214:

TO REMOVE THE AUTHORITY OF DEFENSE
COUNSEL TO REQUEST IMMUNITY FROM
PROSECUTION FOR A PERSON IN EXCHANGE
FOR TESTIMONY.

Rep. Keedy presented the bill and described its intent as being that described in the title. He said that in his opinion the section of law affected by this bill would be repealed if House Bill 689 is passed. He stated that the defense lawyer should not have the right of granting immunity -- that it should be the prerogative of the prosecution -- and asked that this concept be included in HB 689 if it passes this committee.

Tom Honzel supported the bill on behalf of the County Attorneys Association, saying that on line 15 it states that the court "may require", and that he prefers this language to the "shall require" which appears in HB 689.

Speaking in opposition to the bill, Karen Mikota, representing the LWV, said that defendants should continue to be viewed as innocent until proven guilty, and that therefore defense lawyers should have the right to grant immunity.

In closing, Rep. Keedy said that a defense attorney's sole purpose is to exonerate his client -- not to find the truth -- and because of that fact he should not have the power of granting immunity.

Senator Mazurek pointed out that in any event the defense attorney can only suggest the granting of immunity, and that he would not like to see his right to make this suggestion removed.



Mike Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date March 13, 198

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: Roger McGLENN DATE: 3-13-81

ADDRESS: P.O. Box 4848 HELENA, MONT. 59604

PHONE: 442-9555

REPRESENTING WHOM? INDEPENDENT INS. AGENTS ASSOC. OF MT.

APPEARING ON WHICH PROPOSAL: HB-284

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

COMMENTS: ATTACHED.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Independent Insurance Agents of Montana

INCORPORATED



REGARDING HOUSE BILL NO. 284

To: The Senate Judiciary Committee
From: Independent Insurance Agents' Association of Montana
Date: March 13, 1981
Re: Support for House Bill No. 284

Stacking of benefits when there is more than one vehicle on an insurance policy was not intended. This is one reason there is a multicar discount given when there is more than one vehicle.

High limits of section one coverages, liability, medical, and uninsured motorist, are available from most insurance companies. The companies and agents strongly encourage the purchasing of these high limits.

Stacking of these benefits was not figured in the premium computations nor was stacking intended. If stacking is allowed, then the premiums to the consumer will increase.

The Independent Insurance Agents' Association of Montana urges the Senate Judiciary Committee to give a be concurred in recommendation to House Bill No. 284.

Roger McGlenn.

NAME: FAT MELBY

DATE: 3-13-61

ADDRESS: P.O. Box 1144

PHONE: 442-7450

REPRESENTING WHOM? Alliance of American Insurers

APPEARING ON WHICH PROPOSAL: U.B. 284

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Tess Starus DATE: 3-15-61

ADDRESS: 814 Gilbert

PHONE: 442-9446

REPRESENTING WHOM? Employed by United Pacific Marine Ins. Co.
but here as citizen

APPEARING ON WHICH PROPOSAL: H.B. 2641

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: This Bill is a matter of cost
for Insurance. with this change
Insurance cost can remain as is
(percentage to other cost)
Coverage is available (higher limits) for
those insureds who wish to it.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ADDRESS: 430 Row Bk

REPRESENTING WHOM? State Farm

APPEARING ON WHICH PROPOSAL: HB 284

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Paul J. Keller DATE: 3/10/81

ADDRESS: Helena, Mont

PHONE: 442-0230

REPRESENTING WHOM? American Horsemen Assoc

APPEARING ON WHICH PROPOSAL: Horse Bill 298

DO YOU: SUPPORT? V AMEND? OPPOSE?

COMMENTS: This bill prevents taking
in increased horseists in the

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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NAME: Robert M. LADow DATE: 3/13/81

ADDRESS: 626 S. Sanders

PHONE: 442-8302

REPRESENTING WHOM? Northwestern Natl. Ins Co.

APPEARING ON WHICH PROPOSAL: HB 284

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

AB

NAME: CURT CHISHOLM

DATE: 3/3/01

ADDRESS: 1539 11th - Green

PHONE: 442-3930

REPRESENTING WHOM? INSTITUTIONS

APPEARING ON WHICH PROPOSAL: 13 99

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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NAME: Karen Mikata DATE: 3/13/81

ADDRESS: 406 N. Ewing

PHONE: 43-6287

REPRESENTING WHOM? LNV of Montana

APPEARING ON WHICH PROPOSAL: 214, 215, 99

DO YOU: SUPPORT? _____ AMEND? 215 OPPOSE? 214/99

COMMENTS: 99/ dealing with definition of convicted - possible
changes to what a diffused sentence really is -
now it's used against defend.

214/ takes rights to prove innocence out of
defense counsels hands - can be very
important to case.

215 - need to be sure court loads do not
increase

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS :

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE March 13, 1981

COMMITTEE ON JUDICIARY

HB 284 HB 215

HB 213 HB 214

HB 99

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Annalee Erickson	observing			
Sam W. Keller	Amer Bus Assoc	284	✓	
Robin	observing			
C. H. Harrison	MT. Trial Law Assoc.			
J. Paedburg	NW NATL INS.	284	X	✓
J. W. Hill	North Dakota	284	✓	
Bob James	State Farm	284	—	
Connie Drake	Observing			
Tom Hamilton	self	284	neutral	

AMENDMENTS TO HB 215

1. Amend page 1, lines 17, 18 and 19, by reinstating the stricken material
2. Amend page 1, line 22, by striking "in all criminal cases" and inserting "in the following criminal cases"
3. Amend page 1, line 22, by striking the "." and inserting:

":

(a) Misdemeanors arising at the same time as and out of the same transaction as a charged felony;

(b) Misdemeanors resulting from the reduction of a felony offense charged in the district court; and

(c) Misdemeanors resulting from a jury finding of a lesser included offense in a felony case."

STANDING COMMITTEE REPORT

March 13, 1981

MR. **PRESIDENT:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **215**

KEEDY (O'HARA)

Respectfully report as follows: That **HOUSE** Bill No. **215** ,
third reading copy, be amended as follows:

1. Page 1, lines 17 through 18.

Following: line 16

Insert: **stricken language**

Reletter: the subsequent subsection.

2. Page 1, line 22.

Following: **"in"**

Strike: **"all"**

Insert: **"the following"**

3. Page 1, line 23.

Following: **"misdemeanor"**

Insert: **":**

(a) **misdemeanors arising at the same time as and out of the same transaction as a charged felony;**

(b) **misdemeanors resulting from the reduction of a felony offense charged in the district court; and**

DOX:ASX

continued

March 13, 1981

(c) misdemeanors resulting from a jury finding of a lesser included offense in a felony case."

And, as so amended,
BE CONCURRED IN