

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 20, 1985

An executive session of the Judiciary Committee was called to order by Chairman Tom Hannah on Wednesday evening, February 20, 1985 at the hour of 7:30 p.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Bergene, Darko, Gould, Grady and Miles who were excused to attend other committee hearings.

ACTION ON HOUSE BILL NO. 95: Rep. O'Hara moved that HB 95 DO PASS. The motion was seconded by Rep. Keyser.

Rep. Brown moved to adopt the amendments proposed by Rep. Ramirez during the January 16th hearing. The motion was seconded by Rep. Rapp-Svrcek and carried unanimously.

Rep. Hannah moved to amend the bill to include "health service corporations" as proposed by the Blue Cross of Montana at the January 16th hearing. The motion was seconded by Rep. O'Hara.

Rep. Addy made a substitute motion for a DO NOT PASS. The motion was seconded by Rep. Krueger. Rep. Addy feels that insurance companies should not be treated any differently in bad faith claims.

In response to a comment made by Rep. Keyser, Rep. Addy stated that if he wanted to file both causes of action (the underlying cause of liability and the bad faith claim) or follow through with the discovery procedure in both cases, the judge can then determine whether the tort claim should be tried at the same time as the bad faith claim.

Rep. Keyser stated that he totally disagrees with that because he felt that what Rep. Addy was saying is that no person may commence an action against an insurer for lack of good faith in handling the settlement of a claim until the underlying claim has been settled. He feels that a detriment is being placed on the insurance company, but no detriment is being placed on the person suing the company.

Rep. Mercer spoke in opposition to the bill because he thinks it is an anti-punitive damages bill. He doesn't feel that someone should have to wait to receive his or her compensatory damages if he or she has a honest to goodness compensatory damages case due to the settlement of an underlying tort action. He doesn't believe it is fair,

but he would be open to changing the bill somehow.

Chairman Hannah stated that he doesn't understand why a person should be forced to lay everything out on the table.

Rep. O'Hara feels something needs to be done in this area, and he further feels that it should be adequately addressed.

Rep. Addy said that as far as a great number of the businesses go, this only concerns one group -- insurance companies. Secondly, there are all types of cases that go to trial with two or more theories of liability.

Rep. Brown made a substitute motion to amend the bill by separating the two actions. The motion was seconded by Rep. Hannah, and it failed on a voice vote.

Rep. Addy had made a previous substitute motion for a DO NOT PASS. The motion was seconded by Rep. Krueger. The question was called, and the motion carried 10-7. (See roll call vote.) (Those not present at the meeting left their proxy votes with the chairman.)

ACTION ON HOUSE BILL NO. 511: Rep. O'Hara moved that HB 511 DO PASS. The motion was seconded by Rep. Hannah and discussed.

Rep. O'Hara spoke in favor of the bill saying that this bill will apply not only to insurance companies but other business people in the state of Montana. While the big insurance company can stand the loss in punitive damages, the little company will not be able to stand the loss. He feels that a limit must be placed on this so that the small businessman will be somewhat protected and be able to obtain insurance against it.

Rep. Rapp-Svrcek feels that by placing a limit on the amount of punitive damages awarded, there will be no incentive for companies to act in good faith.

Rep. Keyser feels that if there isn't limit placed on punitive damages awarded, it may force small insurance companies out of business. Rep. Addy, however, feels that no limit on punitive damages may help keep bad companies out of business.

Rep. Krueger doesn't think a limit can be placed on the amount awarded in punitive damages.

Rep. Mercer moved to amend the bill by placing a cap on the amount of punitive damages that may be awarded. His amendment would be to on line 17 following "an amount" strike "equal" through "but" on line 19. He feels the amendment will do three things: 1) It will provide a cap;

2) since there has been a tremendous amount of concern from people who testified at the hearing with regards to limiting one million, two million, and five million dollar punitive damages judgements, this should have some calming effect;
3) it will provide a limit.

The motion was seconded by Rep. Keyser. Rep. O'Hara again pointed out that the testimony at the hearing was overwhelming in favor of placing some sort of limit on punitive damage awards. He feels that anything that can be done to help business people stay in business should certainly be the priority.

Rep. Addy pointed out that Montana is not a large product-manufacturing state. He said the deterrent effect that punitive damages produce is needed to discourage the marketing of unsafe products.

Rep. Keyser stated that the punitive damages being requested in some of these lawsuits are getting larger all the time.

The question was called on Rep. Mercer's amendment, and it carried unanimously.

Rep. O'Hara moved that HB 511 DO PASS AS AMENDED. The motion was seconded by Rep. Keyser, and the motion failed 8-9.
(See roll call vote.)

Without objection the vote was reversed and HB 511 was passed out of committee with a DO NOT PASS AS AMENDED recommendation.

ACTION ON HOUSE BILL NO. 400: Rep. O'Hara moved that HB 400 DO PASS. The motion was seconded by Rep. Keyser. Rep. Hannah asked the committee if they feel whether or not there is anywhere an agreement can be reached regarding these punitive damage bills.

It was Rep. Rapp-Svrcek's opinion that because of the press of time, he doesn't see where anything can be worked out. Rep. Mercer feels the committee should work through each of these bills dealing with the subject.

Rep. Keyser said the thing the opponents of the bill are trying to say is that actual malice is the only thing being considered. That is not what HB 536 says. The bill has at least set forth a little bit of standard that will give the little businessman a bit of a break.

The question was called on the do pass motion, and it failed 8-10. (See roll call vote.) Without objection, the vote was reversed, and the bill left the committee with a DO NOT PASS recommendation.

ACTION ON HOUSE BILL NO. 533: Rep. Keyser moved that HB 533 DO PASS. The motion was seconded by Rep. O'Hara and discussed.

It was Rep. Keyser's opinion that HB 533 is a good approach to be taken.

Rep. Mercer moved to amend the title of the bill by striking on line 5 the words "A PORTION OF AWARDS" and inserting "ONE-FOURTH OF EACH AWARD". Also on page 2, line 3, following "defendant." strike "One-fourth of the damage award must". The motion was seconded by Rep. Brown, and it carried unanimously.

Rep. O'Hara further moved that HB 533 DO PASS AS AMENDED. The motion was seconded by Rep. Keyser. The question was called, and the motion failed. Without objection the vote was reversed and HB 533 left the committee on a DO NOT PASS AS AMENDED recommendation. (See roll call vote.)

ACTION ON HOUSE BILL NO. 536: Rep. Keyser moved that HB 536 DO PASS. The motion was seconded by Rep. O'Hara.

Rep. O'Hara feels the language needs to be tightened up. He doesn't see why a higher standard can't be placed on awards.

Rep. Addy stated that the law says that implied malice is outrageous. That is the policy question remaining.

Rep. Hannah stated that he is troubled with this whole issue. This bill is not attempting to define any conduct that is prohibited. He feels that the standard is awfully light, and that this applies to a pretty broad band of people.

The question was called and the do pass motion failed 7-11. (See roll call vote.) Without objection, the vote was reversed, and the bill left the committee with a DO NOT PASS recommendation.

ACTION ON HOUSE BILL NO. 363: Rep. Brown moved that HB 363 DO NOT PASS. The motion was seconded by Rep. Hammond and discussed.

Rep. Mercer moved to amend HB 363 starting on line 19 of page 1 by striking ":" and by further striking lines 20, 21, 22 and the "(c)" on line 23. Furthermore, on page 2, strike all the material beginning on line 8 through line 24. Rep. Mercer feels this amendment would get us down to the reasonable doubt question. Also, this provides that financial affairs could not be disclosed until the judge determines who is involved in the case. The motion was seconded by Rep. Brown and the motion carried with Rep. Keyser dissenting.

Rep. Brown moved that HB 363 DO PASS AS AMENDED. The motion was seconded by Rep. Addy.

Rep. Addy suggested that the material on line 25, "which is the same burden of proof that a prosecutor has in a criminal case" be deleted because it doesn't add to the clarity or concept. He further commented by saying there is a burden of proof between preponderance and beyond a reasonable doubt and that is clear and convincing evidence. He feels the bill would be in better shape, before dragging it out to the floor of the House, if "clear and convincing evidence" were adopted as the standard rather than beyond a reasonable doubt.

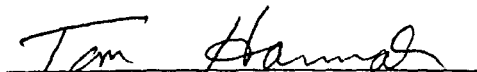
Rep. Mercer moved to amend the newly adopted amendment by changing on line 23 following "proved" by inserting "by clear and convincing evidence". Also, on line 25, following "doubt" insert ", too" and delete "which is the same burden of proof that a prosecutor has in a criminal case". The motion having been seconded, the motion to amend carried unanimously.

Rep. Keyser moved that HB 363 DO PASS AS AMENDED. The motion was seconded by Rep. O'Hara.

Rep. Brown made a substitute motion for a DO NOT PASS AS AMENDED. The motion was seconded by Rep. Krueger.

The question was called on the DO NOT PASS AS AMENDED motion, and it carried 10-8. (See roll call vote.)

ADJOURN: A motion having been made and seconded, the executive session adjourned at 9:15 p.m.


TOM HANNAH, Chairman