

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
February 11, 1985

The twenty-sixth meeting of the Senate Judiciary Committee was called to order by Chairman Mazurek in Room 413/415, State Capitol Building, at 10:02 p.m.

ROLL CALL: All members of the Senate Judiciary Committee were present.

CONSIDERATION OF SB230: Senator Tveit, sponsor of SB230, stated the purpose of SB230 is to exempt public agencies from the Montana Human Rights Act.

PROPOSERS: Mr. Chip Erdmann, representing the Montana School Board Association, informed the committee this bill was introduced because of the 1981 Supreme Court decision Thompson v. Board of Trustees. Mr. Erdmann explained that although two bills were introduced in the 1981 Session to reinstate the neptism provision, the bill which passed was deemed to be invalid by the Attorney General. It was the opinion of the Attorney General the bill was not specific enough. Mr. Erdmann feels SB230 is specific in stating the Montana Human Rights Act does not apply to school boards. Mr. Erdmann further explained the provision would apply only to non-tenure teachers and would not include tenure teachers.

Ms. Tammy Hall, representing the Bozeman School Board, stated the passage of SB230 will be good for education and makes good sense. Ms. Hall's husband, who is a plumber, had to stop performing work for the School Board when Ms. Hall became a school board member. Ms. Hall feels whenever a person is involved with the public's money and children, he must be very conscious of the public's perception of this involvement.

Mr. Leroy Schram, legal counsel for the Board of Regents, testified that SB230 is virtually the same as the bill introduced in the 1981 session. Under SB230, a supervisor would not be able to hire his son or his son-in-law. The bill does not prohibit relatives from working in the same school district and pertains only to hiring decisions. Mr. Schram urged the committee for passage of SB230.

Ms. Alice Tully, a Hellgate School Board member, testified in favor of SB230.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Senator Towe wanted to know what a person would do if they were refused a teaching position because their spouse was on the school board in a town where employment opportunities were limited. Mr. Erdmann replied a decision would have to be made as to whether it was important enough to forfeit an income so one member of the family could be on the school board. Mr. Erdmann stated the bill is meant to only include spouses of board members and superintendents. The spouse of a school principal could be a teacher in the same district. Tammy Hall reminded the committee there are numerous persons in every community qualified to be a member of the school board.

Senator Galt inquired why SB230 was introduced if it is the same as the bill the Attorney General had deemed invalid. Mr. Erdmann explained that although the bill is virtually the same, SB230 is much more specific. SB230 places marital status under the provision of the law where discrimination is proper for valid reasons.

Senator Tveit closed the hearing on SB230 by stating the neptism statute should be included in the law to provide a school system that works well.

There being no further questions from the committee, the hearing on SB230 was closed.

CONSIDERATION OF SB267: Senator Halligan, sponsor of SB267, opened the hearing by stating the purpose of SB267 is to equalize the exemptions allowed a judgment debtor. Senator Halligan pointed out that while there is a long list of exemptions for married persons, the single man is allowed to retain virtually nothing more than the shirt on his back.

PROPONENTS: Mr. Martin Jacobson, representing Chris Daily of Missoula, Montana, testified that passage of SB267 will solve the discrimination and equal protection problems in the current statute. Mr. Jacobson feels it is unjust that an unmarried person is not able to retain the necessary items to enable him to earn a living.

Senator Towe questioned Senator Halligan as to whether it was his intention to allow a single man the same amount of exemptions as a married couple or only half the amount. It was brought to the committee's attention that if a single man received the same amount of exemptions as a married couple, he would be receiving double the amount he is entitled to. Senator Halligan stated that a single man should receive only the exemptions which one judgment debtor would be entitled to.

Senator Daniels stated it was his belief the entire statute regarding judgment debtors was being reviewed for changes and, perhaps, this bill should not be passed, since the entire statute would more than likely be revised.

Senator Halligan closed the hearing by urging the committee to provide equal protection for the single person.

CONSIDERATION OF SB290: Senator Daniels, sponsor of SB290, informed the committee that SB290 would revoke the use of habeas corpus as part of post-conviction relief. Senator Daniels feels that because the Montana State Prison is located in Deer Lodge, the use of habeas corpus puts an unfair burden on the Powell County District Court. Senator Daniels feels that any reconsideration should be done in the court of original jurisdiction.

PROPOSERS: Mr. Rob Smith, representing the Office of the Attorney General, testified that Habeas Corpus is the more traditional remedy sought by persons who believe they were unjustly sentenced. Many of these cases deal with persons who had deferred or suspended sentences revoked.

Mr. Smith believes the proper place for these cases to be reviewed is in the court where the original trial was held. Mr. Smith believes this will also give the trial judge an opportunity to review and correct any mistakes.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Senator Towe questioned Mr. Smith as to how this would affect a person's right to appeal to federal court. Mr. Smith replied that a Defendant would have to exhaust all state remedies before appealing to federal court; however, the same is true under the current statutes.

ACTION ON SB290: Senator Towe moved that Section 3 of SB290 be deleted and the bill DO PASS AS AMENDED. The motion carried.

ACTION ON SB230: Senator Mazurek asked Senator Pineseault if this legislation would create problems in the smaller communities in Montana. Senator Pineseault did not think this would be a problem and moved SB230 DO PASS. Mr. Greg Petesch reminded the committee this bill applies to all government agencies. The motion carried.

ACTION ON SB128: Senator Pineseault suggested an interim committee be appointed to resolve the differences on SB128.

Senator Towe agreed an interim committee would assure some type of action by the next Legislative Session. Senator Crippen moved that SB128 BE TABLED. The motion carried by roll call vote with Senators Blaylock, Shaw and Mazurek voting in opposition.

FURTHER CONSIDERATION OF SB200: Senator Crippen withdrew his motion that SB200 DO PASS in order that the committee could review proposed amendments submitted by Mr. Greg Petesch (Exhibit 1). Senator Towe did not agree with the proposed amendment (2). Senator Towe stated there is no provision to appeal summary judgment once a judge has denied the request. Senator Towe feels an appeal of summary judgment should be allowed. Senator Mazurek disagreed stating the appeal should be from final judgment. The committee agreed they would work on the amendments at a later date.

CONSIDERATION OF SB245: Senator Pinsoneault opened the hearing on SB245 in Senator Story's absence. Senator Pinsoneault informed the committee that SB245 will aid persons trying to collect on a judgment. This legislation will enable a judge to inquire as to the financial status of the debtor and determine whether the debtor can or cannot pay the judgment.

There being no proponents and no opponents, the hearing on SB245 was opened to questions from the committee.

Senator Daniels stated the financial status of the debtor is able to be determined by submitting interrogatories.

ACTION ON SB153: Senator Pinsoneault moved that SB153 BE TABLED. The motion carried.

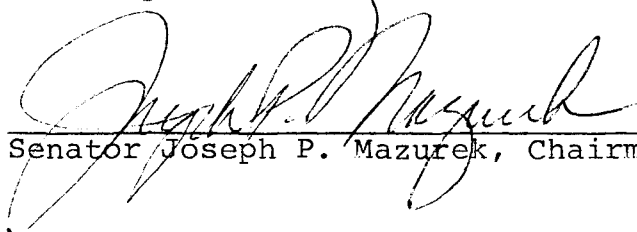
ACTION ON HB52: Senator Pinsoneault moved amendments 1 and 3 of Mike Male's proposed amendments (Exhibit 2) BE ADOPTED. The motion carried. Senator Brown moved that HB52 BE CONCURRED IN AS AMENDED. The motion carried.

cks Further Consideration of
ACTION ON HB103: Senator Towe moved that the word "shall" on page 5, line 4, be changed to "may." The motion carried. Senator Towe moved to strike "sexual intercourse without consent" from the bill. The motion carried with Senators Brown, Pinsoneault and Yellowtail voting in opposition. Senator Shaw moved that HB103 BE CONCURRED IN AS AMENDED. However, because of Senator Blaylock's concerns that a youth of 14 years of age could be sent directly to the Montana State Prison rather than being transferred from a youth home upon 21 years of age, Senator Shaw withdrew his motion.

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FURTHER CONSIDERATION OF SB245: Senator Story told the committee he is sponsoring this bill because of a situation he became aware of where a man could not collect moneys owed him for pasturing cattle for the winter. The debtor moved around so much and his assets changed so frequently, it was impossible to collect. Senator Mazurek felt the law already provides all the remedies needed.

There being no further business to come before the committee, the hearing was adjourned at 12:10 p.m.



Senator Joseph P. Mazurek, Chairman

PROPOSED AMENDMENTS TO SB 200:

1. Page 1, line 11.

Following: "(1)"

Insert: "(a)"

2. Page 1, line 17

Strike: subsection (2) in its entirety

Insert: "(b) In arriving at their decision in awarding exemplary damages, the jury must be convinced beyond reasonable doubt that the defendant's conduct was oppressive, fraudulent, or malicious. If the jury awards exemplary damages for malicious conduct, the plaintiff must prove that the defendant's conduct amounted to actual malice.

(2) If the plaintiff sought exemplary damages in his complaint and this issue were submitted to the jury but the jury did not award exemplary damages, there shall be submitted to the jury the following question: "From the evidence presented, was there any basis in fact for the plaintiff to seek exemplary damages from the defendant?" If the jury answers, "No," to this question, the presiding judge may, in the discretion of the court, assess against the plaintiff a fine which may not exceed an amount determined by the court to be the reasonable attorney fees of the defendant. The decision to assess a fine against the plaintiff shall be made in camera is not a public record and shall be placed under seal in the court file."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 02/11/85

BILL NO. SB 200

PROPOSED AMENDMENTS TO HB 52:

1. Page 2, line 5.

Following: "a"

Insert: "community based"

2. Page 2, line 6.

Following: "course"

Strike: remainder of line 6 through "department" on line 8

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 02/11/85
BILL NO. HB 52

(Type in committee name, secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 021185 Bill No. HB103 Time _____

NAME	YES	NO
Senator Chet Blaylock	✓	
Senator Bob Brown		✓
Senator Bruce D. Crippen		
Senator Jack Galt		
Senator R. J. "Dick" Pinsoneault		✓
Senator James Shaw	✓	
Senator Thomas E. Towe	✓	
Senator William P. Yellowtail, Jr.		✓
Vice Chairman		
Senator M. K. "Kermit" Daniels		
Chairman		
Senator Joe Mazurek	✓	

Secretary _____

Chairman _____

Motion: To remove reference to "sexual intercourse" from bill

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

(Type in committee name, secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 02/18/85 Bill No. SB128 Time 11:10

NAME	YES	NO
Senator Chet Blaylock		✓
Senator Bob Brown	✓	
Senator Bruce D. Crippen	✓	
Senator Jack Galt	✓	
Senator R. J. "Dick" Pinsoneault	✓	
Senator James Shaw		✓
Senator Thomas E. Towe	✓	
Senator William P. Yellowtail, Jr.	✓	
Vice Chairman		
Senator M. K. "Kermit" Daniels	✓	
Chairman		
Senator Joe Mazurek		✓

Secretary _____

Chairman _____

Motion: to table SB128

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

STANDING COMMITTEE REPORT

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February 11

19 85

MR. PRESIDENT

We, your committee on JUDICIARY
having had under consideration HOUSE BILL No. 52
third reading copy (blue)
color

YOUTHS POSSESSING INTOXICATING SUBSTANCE; PARENTAL INTERFERENCE WITH ORDER.

Respectfully report as follows: That HOUSE BILL No. 52

be amended as follows:

1. Title, line 10.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 16-6-314 AND"

2. Page 2, line 5.

Following: "a"

Insert: "community based"

3. Page 2, lines 6 through 8.

Following: "course" on line 6

Strike: remainder of line 6 through "department" on line 8

~~HOUSE~~

~~HOUSE~~

Senator Joe Mazurek

Chairman.

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HOUSE BILL NO. 52

4. Page 3, following line 8.

Insert: "Section 2. Section 16-6-314, MCA, is amended to read:

16-6-314. Penalty for violating code -- revocation of license ~~penalty for violation by underage person. (1) Any A person violating any of the provisions who violates a provision of this code shall, upon conviction thereof, be deemed is guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided in 46-18-212, except as is herein otherwise provided.~~

(2) If any a retail licensee is convicted of any an offense under this code, his license shall be immediately revoked or, in the discretion of the department, such other sanction imposed as may be authorized under 16-4-406.

(3) Further, if any A person under 19 years of age is convicted of an offense under this code he shall be subject to a \$100 fine or 30 days in confinement who violates 16-3-301(3) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2)."

AND AS AMENDED

DO PASS

.....
Senator Joe Mazurek, Chairman

STANDING COMMITTEE REPORT

February 11

1955

MR. PRESIDENT

We, your committee on **JUDICIARY**

having had under consideration **SENATE BILL** No. **230**

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color

MARITAL STATUS A LEGITIMATE CRITERION WHEN REQUIRED BY NEPOTISM LAW

Respectfully report as follows: That **SENATE BILL** No. **230**

DO PASS

~~DO NOT PASS~~

.....
Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

February 11

19. 85

MR. PRESIDENT

JUDICIARY

We, your committee on

SENATE BILL

No. 290

having had under consideration

first

reading copy (white)
color

CLARIFY HABEAS CORPUS & POSTCONVICTION RELIEF LAW.

SENATE BILL

No. 290

Respectfully report as follows: That

be amended as follows:

1. Title, lines 10 and 11.

Following: "MCA"

Strike: remainder of line 10 through "DATE" on line 11

2. Page 2, lines 20 and 21.

Strike: Section 3 in its entirety

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

Senator Joe Mazurek

Chairman.