

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

February 19, 1985

The thirty-fourth meeting of the Senate Judiciary Committee was called to order at 10:08 a.m. on February 19, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senators Galt and Yellowtail who were excused.

CONSIDERATION OF SB 406: Senator J. D. Lynch, sponsor of SB 406, testified this is merely a housekeeping bill. He then submitted proposed amendments prepared by Mr. Petesch, which were also housekeeping in nature (Exhibit 1).

PROPOSERS: Larry Majerus, Administrator, Motor Vehicle Division of the Department of Justice, testified this bill contains language which would replace specific divisions within the department with the words "Department of Justice." They define these things in terms of function. Mr. Majerus also proposed amendments to the bill (Exhibit 2).

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked Mr. Petesch to explain the amendments. Mr. Petesch replied the proposed amendments are housekeeping in nature. They deal with the forensics division. Mr. Majerus commented he agreed with the amendments proposed on Exhibit 1.

CLOSING STATEMENT: None.

Hearing on SB 406 was closed.

CONSIDERATION OF SB 381: Senator Cecil Weeding, sponsor of SB 381, testified this bill was requested by the Treasure County Attorney and was originally drafted by Senator Manning. It provides an additional category of an offense for driving under the influence of alcohol and imposes two new penalties for that offense. It creates the offense of aggravated driving under the influence. It's designed to cover that extremely irresponsible person who is a major menace on the highway.

PROPOSERS: Gary Ryder, Treasure County Attorney testified in support of the bill (see witness sheet attached as Exhibit 3). He stated this

bill arose out of an incident in his county relating to an habitual alcoholic--the person who is drinking and drives in a reckless manner. As far as a plea bargaining tool, it is necessary. Apparently others have a couple problems with the bill. Mr. Ryder thinks the differences can be worked out. Kim Kradolfer, Assistant Attorney General, testified in support of the concept of the bill, although she stated they have some problems with it. The blood alcohol concentration seems to be an arbitrary figure. This bill does not lock in cleanly with the existing DUI bill we have. The factors which have been set forth as aggravating circumstances cause problems. They see the potential for lesser-included offenses in those factors. The language requires he must be violating these charges. There is no clear indication if he must be found guilty. The penalty section is somewhat lower than a regular DUI offense. On page 8, the Division of Motor Vehicles is given the authority to revoke licenses. The division prefers to have it laid out for a mandatory revocation and directions as to whether it can be reinstated. Jeannette Buchanan, Chairman of the Missoula County DUI Task Force, spoke in favor of the bill (see written testimony attached as Exhibit 4). David Lackman, Lobbyist for the Montana Public Health Association, testified in support of the bill (see witness sheet attached as Exhibit 5).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock asked Mr. Ryder where he came up with the .23 blood alcohol concentration. Mr. Ryder responded by reviewing different cases where serious accidents occurred. That was the level where the extremely reckless driving was occurring. There seems to be a lack of research in this area as to what level of alcohol causes accidents. His research was done by reviewing newspaper articles. Chairman Mazurek asked Ms. Kradolfer if she had proposed amendments which would make this satisfactory. She replied no. Chairman Mazurek then stated he would appreciate it if they wanted those concerns addressed, they please propose amendments to that effect.

CLOSING STATEMENT: Senator Weeding stated his suggestion would be that Mr. Ryder and the Attorney General's office get together and that their concerns be given a little thought. He believes they can work these differences out and come back in a day or two with something.

Hearing on SB 381 was closed.

CONSIDERATION OF SB 322: Senator Tom Towe, sponsor of SB 322, stated this bill takes care of an area that has been in very serious need for a long time. Senator Towe proposed amendments to the bill (Exhibits 6 and 7). He testified interest alone can be a great deal of loss, and there is no way under present law that someone can be compensated for that

loss. He believes this is one of the major reasons we have seen a growth in punitive damages, because that is the one way juries can get back at that situation. This bill allows in a modified way interest on claims prior to judgment. Interest would be awarded on any claim for damages that could be made certain by calculation. That is in effect special damages. It would not under this bill be awarded on any future damages until such damages were incurred, and it does not apply for the damages listed. He has worked the amendments out with the insurance companies. All of those damages are not capable of specific determination. He has no problem in allowing interest on those damages. We will leave it up to the jury to award what they think is appropriate. But for those specific damages that are capable of determination, there is no excuse for not allowing interest on damages. The interest is not awarded from the date of the accident or the date the claim is incurred. Interest commences only after you make a written statement of claim to the defendant or his agent and then give him 30 days to respond. If he doesn't pay, interest starts from that date. The judge will figure out the interest. New subsection (4) is to encourage payments in advance of trial. He has been asked to add the following words to that subsection: "and shall not be made known to the jury." It is his understanding that some of the insurance companies' independent agents will support the bill.

PROPOSERS: Roger McGlenn, Executive Director, Independent Insurance Agents Association of Montana, testified they have opposed virtually every prejudgment bill in previous legislative sessions. However, the Independent Insurance Agents Association of Montana supports SB 322. They feel SB 322 will ensure appropriate indemnification of claimants' out-of-pocket expenses. Karl Englund, representing the Montana Trial Lawyers Association, testified 22 states and the District of Columbia have some form of prejudgment interest which runs from a flat 15% in Oklahoma to Virginia where juries decide when interest will commence running. The federal courts have moved toward prejudgment interest based on the theory of unjust enrichment. Interest is not a duplication of any other damage award. It is merely a recognition that the defendant owed some money to the other party. The system, therefore, as it presently exists, encourages delay. If the defendant owes a claim, there is no incentive to pay early, because he is holding money which he can invest. This bill presents a reasonable compromise between their concerns and those of the insurance companies. John Hoyt, a lawyer from Great Falls, testified some insurance companies are better than others (see witness sheet attached as Exhibit 9). Even a good insurance company sometimes takes a bad stance. This bill is a step in the right direction. The insurance company would have to pay his damages or pay interest on them. The time for prejudgment interest has arrived. The old days are gone. Court congestion is a terrible problem. Bonnie

Tippy, representing the Alliance of American Insurers, testified they are in strong support of Senator Towe's bill. Senator Towe announced most of the amendments were proposed by Bob James, of State Farm, who couldn't be here but has asked that they be recorded as supporting the bill.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Crippen pointed out you are going to give 10% interest on the claim. Proposed subsection (4) states any payment by an insurance company or interest thereon shall not be an admission of liability. He questioned what happened if you went to court and it were determined the insurance company is not liable. He asked if you would get your money back. Senator Towe replied he didn't know how that would work out, and he hadn't thought that through. Senator Crippen asked if they got 10% interest on the money they paid. Senator Towe answered he was not sure they could get their money back. If it were paid in good faith, at that point the company would probably be obligated to continue and would not be liable for that. Mr. Englund stated this provision tries to encourage settlement. They can fight over such things as pain and suffering, but they have gone ahead and settled the special damages part. If they think they don't owe that, they don't pay it. Senator Crippen said suppose they went ahead to avoid any charges of bad faith. Mr. Englund replied their obligation to settle cases in good faith only arises once they feel their liability is reasonably clear. Senator Mazurek asked if we needed to address that and say one way or the other. He assumes no one would expect it be paid back, but felt we might need to address that possibility. Senator Towe asked about third party liability. Senator Mazurek asked if we needed to say he does not have to pay it back or remain silent and let someone else decide. Mr. Hoyt stated he has yet to try a lawsuit where the insurance company did not have competent counsel. He could not conceive under this bill the insurance company's making a gratuitous contribution, but if they did, God bless them. He proposed an amendment that the jury not be advised of prejudgment interest at any time, as that is a matter for the judge. Glen Drake spoke addressing the issue of advising the jury on prejudgment interest. He felt the reason for that is to reach fairness. You will get an argument whether the time delays are considered. All we are doing is instructing the jury you find the amount of damages and the judge will award the interest, so he disagrees. Senator Mazurek asked if you would run the risk of instructing along those lines by inferring there has been something paid in advance. Mr. Drake responded no.

CLOSING STATEMENT: Senator Towe addressed the notion that there is a concern raised about the last part of subsection (4) where it should not

be revealed to the jury and should not be considered an admission of liability. Most often that is an agreement and is generally entered into by counsel. It is usually stipulated out of the case, so it usually doesn't come up. It is not an issue that should happen or should concern us. He thinks we should leave the language alone. He has worked on this bill with the insurance agents. The bill originally came out of a meeting with the agents in Billings. The insurance companies have worked on it. He is pleased they are all trying to work for the common goal, and that is to improve justice in our courts.

Hearing on SB 322 was closed.

CONSIDERATION OF SB 332: Senator Tom Towe, sponsor of SB 332, testified this bill provides for confidentiality of library records. This was presented to him by the librarian in Billings. It has been discussed and is generally supported by libraries throughout the country. The issue has arisen regarding whether or not a librarian should disclose to law enforcement the library records of individuals who have checked out books. This matter was addressed some ten years ago in the 1975 and 1977 sessions when he proposed a comprehensive privacy bill. That bill did not pass, and we are now doing it on a piecemeal basis. This is one of the pieces. An individual himself should always be able to get his own information. Senator Towe then asked that the committee consider an amendment (Exhibit 10) which addresses the matter of turning the records over to the county attorney or someone else for collection. Senator Towe believes the problem is when an over-zealous law enforcement officer is trying to find out if some person is guilty of blowing up a building, he goes to the library to find out if he has checked out a book relating to that type of matter. The problem is everyone that has checked out a similar book immediately becomes suspect. That is what we are talking about. We cannot allow open dissemination of these records. It may not be the county attorney. It may be some local person. That has a chilling effect on reading and literature that we want to avoid.

PROPOSERS: Sara Parker, State Librarian, presented written testimony in support of the bill (Exhibit 11). Barbara Rudio, President of the Montana Library Association, presented written testimony in support of the bill (see witness sheet attached as Exhibit 12). Paul Dunham, University of Montana System and Montana Library Association, testified they have three concerns with the bill: (1) Its effect on overdue book fining policies. (2) The effect on libraries with manual card check-out systems. (3) The effect on academic plagiarism. He suggested amending page 2, line 3, to read willful disclosure. He testified all librarians are in support of the bill. Deborah Schlesinger, Legislative Chair of the Montana Library Association, presented written testimony in support of the bill (see witness sheet attached as Exhibit 13). Brenda Schye,

representing the Montana Arts Advocacy, presented written testimony in support of the bill (see witness sheet attached as Exhibit 14). Judy Meadows, State Law Librarian, presented written testimony in support of the bill (see witness sheet attached as Exhibit 15).

OPPONENTS: Mike Meloy, on behalf of the Montana Press Association, testified the bill as presented does not provide any sweeping confidentiality. There are some conceptual problems and one drafting problem. The Press Association is opposed and has been opposed to any blanket approach to confidentiality. Article II, section 10, of the constitution affords the individual the opportunity to assert confidentiality. What this bill does is it doesn't really care what the individual wants. If you wanted to conform this bill to the constitution, he thinks the individual has to assert the right. If the individual doesn't want anybody to look at his records, then he thinks that would conform to the spirit of the constitution. Mr. Meloy felt page 2, subsection (b), is backwards from the constitution's saying the public has a right to examine all documents in public agencies unless the merits of public rights exceed the merits of privacy. He does not believe that will withstand a constitutional challenge. The constitution says everything is open unless it affects individual privacy. He asked how many times lawyers have gone to a law library to look at a book, and the book was not there. The librarian would say he couldn't tell you who has it because the checkout list is confidential. He asked that the committee consider some amendments to let the individual assert the right of privacy.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault addressed Ms. Parker and stated it is his initial impression we are stepping on mice and watching the elephants go by. He asked how long she had been in the business. Ms. Parker responded 22 years. Senator Pinsoneault then asked how many times she had someone come in who she thought was really up to some mischief. Ms. Parker replied maybe five or six times a year. The question of who has the book checked out comes up three or four times a day. She has seen some actual harassment of one user over another who wants to use the book. Senator Mazurek addressed the penalty provision and asked Senator Towe why it was necessary to provide for attorneys' fees. Senator Towe answered the proposal is for a small fine, but attorneys' fees if you have to pressure the matter. That was a suggestion, but he has no strong feelings on it one way or the other. Senator Mazurek then asked Senator Towe to address Mr. Meloy's testimony. Senator Towe first addressed the individual's asserting the position and not the other way around. He pointed out the next section of the constitution says the individual rights of privacy are protected. The very next section says the right of the individual to privacy shall be protected unless there is an overwhelming governmental interest in

disclosure. He questioned whether we would want to use the same system with regard to police records. They are open to everybody unless the individual comes forth and says don't let my records out. He had no problem with using the constitutional language that the judge shall find a compelling state interest in allowing disclosure. He is happy because when you go to the law library to find a book, you can ask the librarian to tell the person who has checked out the book someone else wants it. Senator Towe felt Mr. Meloy's problems were easily solved, and the committee did not need to avoid confidentiality on those bases. Senator Pinsoneault asked if they had an incidence where a police officer came in and wanted to see someone's records. Ms. Schlesinger answered in a case of arson and murder, a sheriff asked to see the records. She explained the Lewis and Clark County Library has a confidentiality policy, but had the sheriff pursued the matter, she would not have been protected by law. Senator Mazurek questioned whether they wanted to involve the court system in matters of plagiarism. Senator Towe responded he didn't think that was a problem. If it is that serious, he believes maybe the university system should take a look at it. Senator Mazurek questioned whether they were then elevating that to a criminal proceeding when it would generally be handled through the university system. Senator Towe replied it does not have to be a criminal proceeding. Senator Mazurek asked if he needed a book, would the librarian call the person who has it and ask them to return it. Ms. Schlesinger replied they have a procedure for recall of books, but they do not tell the requesting person who has the book.

CLOSING STATEMENT: Senator Towe stated he thinks section 10 of the constitution is a good one and should be followed. What we are dealing with is a matter of privacy until there is a showing of compelling state interest.

Hearing on SB 332 was closed.

ACTION ON SB 406: Senator Pinsoneault moved adoption of the amendments contained on Exhibits 1 and 2. Senator Mazurek explained this makes the Attorney General the head of the Department of Justice and puts the Division of Motor Vehicles under the Department of Justice. The motion carried unanimously. Senator Pinsoneault moved SB 406 be recommended DO PASS AS AMENDED. The motion carried unanimously.

ACTION ON SB 322: Senator Brown moved SB 322 be recommended DO NOT PASS. Senator Mazurek commented he felt this was a good bill this year. Senator Towe moved as a substitute motion that the amendments contained on Exhibits 6 and 7 be accepted as modified thereon. The motion carried unanimously. Senator Towe moved SB 322 be recommended DO PASS AS AMENDED. The motion carried with Senators Crippen and Shaw voting in opposition.

ACTION ON SB 332: Senator Shaw stated he has no real reservations about this bill, but he has a problem about locking a public place up like this. He is concerned that you have to get a court order. Senator Towe explained you have to show compelling interest. Senator Mazurek stated he thinks in the example (murder investigation), you could have gone to the court on the basis of probable cause and obtained a subpoena to get a list of the books checked out. Senator Brown stated he thinks what occurs is how would a cop have known what someone would have done that may make him think looking at his library records might help. Senator Pinsoneault asked Ms. Schlesinger if the records were now becoming so sophisticated and computerized they could tell how many books he had checked out for the last 16 months. She replied yes. Senator Crippen pointed out that in section 6, any person who violates section 3 is guilty of a misdemeanor. Senator Mazurek stated he would like to strike everything after "disclosed" or at least strike the attorneys' fees. If you have damages, it is worth going after, but you don't want to encourage them to do it. Senator Towe commented that if you take out attorneys' fees, you might as well take out the \$100. He believes it does improve the enforcement considerably. Senator Towe moved adoption of the amendment contained on Exhibit 10. The motion carried unanimously. Senator Towe then moved SB 332 be recommended DO PASS AS AMENDED. The motion carried with Senators Pinsoneault and Shaw voting in opposition.

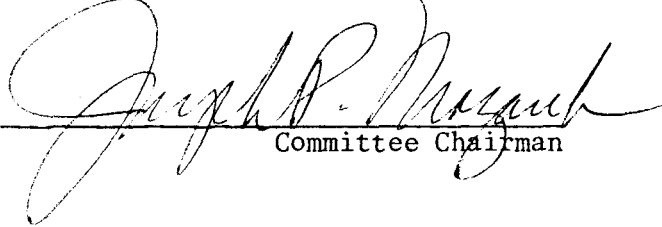
FURTHER CONSIDERATION OF SB 217: Senator Towe announced Mike Abley, Administrator of the Montana Supreme Court, was present to make some comments on the fiscal note. Mr. Abley explained this turned out to be a complicated fiscal note. He worked on an estimate which would run \$112,000 per court. That would run about \$78,500 to the community and \$33,600 to the state. He believes the revenues generated will far exceed the cost of the court. The city generating the least amount of revenue (Missoula) is generating about \$69,000. When you add the expanded jurisdiction, that goes up to \$100,000. Senator Mazurek asked what the impact would be on the district court. Mr. Abley responded there would be a decrease in district courts and some justice courts. Senator Towe asked if the revenues that would be collected at the lower level will more than offset the cost to the cities. Mr. Abley responded yes. Senator Towe asked if the cities would come out with a net gain. Mr. Abley responded yes. He also explained 70% of the expenses of the court are remitted to the state. They make \$1 million, but they are only remitting \$78,000. The ones that are coming out ahead are the municipal courts. The outlying counties will have a decrease in revenue. Senator Mazurek questioned whether it were fair that the city court will collect the fine for the offense which occurred in the county. Senator Towe replied they are also paying for that court system. He also felt



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70% might not be the correct figure. Senator Towe said he has asked Dave Hunter to look it over and he also wanted to talk further with Mr. Abley.

There being no further business to come before the committee, the meeting was adjourned.

  
Committee Chairman



February 19, 1985

## Judiciary

## NAME \_\_\_\_\_

REPRESENTING

BILL #

## Check One

## Support

Oppose

BRENDA SCHYE	MONTANA ARTS ADVOCACY	SB332	X	
DEBORAH SCHLESINGER	MONTANA LIB ASSOC	SB332	X	
Barbara Rudis	Montana Lib Assoc.	SB332	X	
Marnie Kuntz	Montana Lib Assoc	SB332	X	
Paul Tunbar	MT-UNIV. System	SB332		
Judy Meadows	State Law Library	SB332	✓	
Brenda Drasnick	State Law Library	SB332	✓	
Gary Ryder	① Treasure County	SS381		
Bonnie Lippy	alliance of American Insurers	SB322	X	
ROGER McLENN	INDEPENDENT INSURANCE AGENTS ASSOC. OF MT	SB322	X	
DAVID LACKMAN	MT Public Health Assn	SB381	X	
Kim Kradel	Attorney General	SB381 SB400	X	X
Kara Lucker	State Library	SB332	X	

PROPOSED AMENDMENTS TO SB 406:

1. Title, line 10.

Following: "44-2-111,"

Insert: "44-3-104 THROUGH"

2. Page 3, line 12.

Following: line 11

Insert: "Section 6. Section 44-3-104, MCA, is amended to read:

"44-3-104. Functions of division department. The forensics functions of the division department of justice include operation of:

(1) a laboratory of criminalistics; and

(2) an office of forensic pathology."

Section 7. Section 44-3-105, MCA, is amended to read:

"44-3-105. Authority of accept grants. The ~~division of~~ forensic science department of justice is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this chapter."

Renumber: subsequent sections

3. Page 6, line 4.

Following: line 5

Insert: "NEW SECTION. Section 14. Code commissioner instructions.

(1) Wherever the terms "division of motor vehicles," "motor vehicle division," or "division" meaning division of motor vehicles appear in legislation enacted in the 49th legislative session, the code commissioner is instructed to change the term to "department of justice" or "department" meaning the department of justice.

(2) Wherever the terms "bureau of criminal investigation" or "bureau" meaning the bureau of criminal investigation appear in legislation enacted by the 49th legislative session, the code commissioner is instructed to change the term to "department of justice" or "department" meaning the department of justice.

(3) Wherever the terms "fire marshal bureau" or "bureau" meaning the fire marshal bureau appear in legislation enacted by the 49th legislative session, the code commissioner is instructed to change the term to "department of justice" or "department" meaning the department of justice.

(4) Wherever the terms "division of forensic sciences" or "division" meaning the division of forensic sciences appears in legislation enacted by the 49th legislative session, the code commissioner is instructed to change the term to "department of Justice" or "department" meaning the department of justice."

Renumber: subsequent section

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 1  
DATE 02/19/85  
BILL NO. SB 406

PROPOSED AMENDMENT TO SB 406, INTRODUCED COPY:

1. Page 4, line 21  
Following: "the"  
Strike: "division"  
Insert: "department"
2. Page 5, line 10  
Following: "this"  
Strike: "chapter"  
Insert: "title, unless otherwise provided"
3. Page 5, line 18  
Strike: "chapter"  
Insert: "title"

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 02/19/85

BILL NO. SB 406

(This sheet to be used by those testifying on a bill.)

NAME: Gary Ryder DATE: 2-19-85

ADDRESS: P.O. Box 215

PHONE: 342-5546

REPRESENTING WHOM? Treasure County

APPEARING ON WHICH PROPOSAL: SB 381

DO YOU: SUPPORT? X AMEND? X OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 02/19/85

BILL NO. SB 381

Feb. 19, 1985

Before the Senate Judiciary Committee

SB 381 proponent

I am Jeannette Buchanan, Chairman of the Missoula County DUI Task Force.

I support SB 381 creating aggravated offense.

I do wish to speak specifically of section 61-8-401 (2) (b) which refers to a BAC of 0.23 and ask for amendment.

I am not sure how 0.23 was established, however it will further confuse the question of "What is drunk"? Alcohol and other drugs impair judgement, vision, and reaction abilities. It is known that impairment worsens as the blood concentrations elevate.

0.1 has been identified as a BAC sufficient to impair driving abilities significantly enough to create unsafe conditions on our roadways.

Therefore I urge amendment to use the already established levels of 0.1 or deletion of (b) from paragraph 61-8-401 (2).

Thank you.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 02/19/85

BILL NO. SB 381

NAME: DAVID LACKMAN DATE: 2/19/85

ADDRESS: 1400 Winne Ave, HELENA

PHONE: 443-3494

REPRESENTING WHOM? MT Public Health Association

APPEARING ON WHICH PROPOSAL: SB 381 Create offense of aggravated driving under the influence.

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENT: on the basis of  
Testifying ~~from~~ experience as an  
expert witness in early days  
of Implied Consent.

Difficulty & lack of specific  
provisions in the codes.

We are working for anything  
which we feel will help to  
reduce the carnage on  
Highways.

Level too high 0.23

0.1 OK.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 02/19/85

BILL NO. SB 381



*Senate* BILL NO. 322  
*State*

1 INTRODUCED BY \_\_\_\_\_  
2  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING INTEREST ON A  
5 TORT TO ACCRUE BEGINNING FROM THE DATE 30 DAYS AFTER THE  
6 CLAIMANT PRESENTED A WRITTEN STATEMENT TO THE OPPOSING PARTY  
7 STATING THE CLAIM."  
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
10 Section 1. Interest on torts. (1) Subject to  
11 subsection (2), in an action for recovery on an injury as  
12 defined in 27-1-106, a prevailing claimant is entitled to  
13 interest at a rate of 10% on any claim for damages that are  
14 capable of being made certain by calculation, beginning from  
15 the date 30 days after the claimant presented a written  
16 statement to the opposing party <sup>ON HIS AGENT</sup> stating the claim and how  
17 the specific sum was calculated.

18 (2) The interest provisions of subsection (1) do not  
19 apply to damages not capable of being made certain by  
20 calculation, including but not limited to <sup>FUTURE</sup> ~~DAMAGES~~ <sub>UNTIL SUCH DAMAGES ARE INCURRED AND DAMAGES</sub> for:

- 21 (a) pain and suffering;  
22 (b) injury to credit, reputation, or financial  
23 standing;

24 (c) mental anguish or suffering; ~~and~~  
25 (d) <sup>EXEMPLARY OR</sup> ~~punitive~~ damages.

- (e) loss of established way of life;  
(f) loss of consortium; and  
(g) attorney fees

1 Section 2. Codification instruction. Section 1 is  
2 intended to be codified as an integral part of Title 27,  
3 chapter 1, part 2, and the provisions of Title 27, chapter  
4 1, part 2, apply to section 1.

-End-

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 6  
DATE 02/19/85  
BILL NO. SB 322

(3) THE JURY IS TO BE ADVISED BY THE COURT THAT THE COURT WILL DETERMINE THE AMOUNT OF PREJUDGEMENT INTEREST DUE, IF ANY, ON ANY JUDGEMENT RENDERED.

(4) ANY PAYMENT BY A PARTY OF ANY CLAIM OR INTEREST THEREON AS SET FORTH ABOVE SHALL NOT BE AN ADMISSION OF LIABILITY, AND SHALL NOT BE MADE KNOWN TO THE JURY

INTRODUCED BILL  
SB 322

AMENDMENTS  
SENATE BILL 322

1. Page 1, line 16.

Following: "party"

Insert: "or his agent"

2. Page 1, line 20.

Following: "to"

Insert: "future"

Following: "damages"

Insert: "until such damages are incurred and damages"

3. Page 1, line 25.

Following: "(d)"

Insert: "exemplary or"

Following: "damages."

Insert: "(e) loss of established way of life;  
(f) loss of consortium; and  
(g) attorney fees

(3) The jury is to be advised by the court that the court will determine the amount of prejudgement interest due, if any, on any judgement rendered.

(4) Any payment be a party of any claim or interest thereon as set forth above shall not be an admission of liability."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 02/19/85

BILL NO. SB 322

(This sheet to be used by those testifying on a bill.)

NAME: ROGER MCGLENN DATE: 2-19-85

ADDRESS: BOX 5593 HELENA, MT. 59601

PHONE: 442-9555

REPRESENTING WHOM? INDEPENDENT INSURANCE AGENTS ASSOC. OF MT.

APPEARING ON WHICH PROPOSAL: SB-322

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENT: ATTACHED

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 8  
DATE 02/19/85  
BILL NO. SB 322

REGARDING SENATE BILL NO. 322

TO: THE SENATE JUDICIARY COMMITTEE  
FROM: THE INDEPENDENT INSURANCE AGENTS ASSOCIATION OF MONTANA  
DATE: FEBRUARY 19, 1985  
RE: SUPPORT OF SENATE BILL NO. 322

The Independent Insurance Agents Association of Montana has opposed virtually every prejudgement interest bill in previous Montana legislative sessions. Our concern with previous bills has been the broad manner in which they have been drafted. We felt that in many cases these bills have gone past the principle of indemnification and created additional unnecessary cost that the insurance companies would pass along to the Montana insurance consumer.

The Independent Insurance Agents of Montana do support SB-322. We feel that SB-322 is a responsible bill that properly indemnifies claimants and does not create unnecessary costs for Montana insureds. The Independent Insurance Agents of Montana strive for fair, equitable and prompt claims settlement. We feel that SB-322 will insure appropriate indemnification of a claimants out-of-pocket expenses.

We would also like to thank Senator Towe for the opportunity to provide many of our thoughts in regard to this issue and for his efforts on this bill.

We ask that you give a do pass recommendation on SB-322.

Respectfully submitted by:

Roger McGlenn Independent Insurance Agents Association of Montana

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

DATE 02/19/85

BILL NO. SB 322

(This sheet to be used by those testifying on a bill.)

322

NAME: John C Hoyt DATE: 2-19-85

ADDRESS: Great Falls

PHONE: 761-1960

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: SB 322

DO YOU: SUPPORT? ✓ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENT: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 02/19/85

BILL NO. SB 322

AMENDMENTS  
SENATE BILL 332

1. Page 2.

Following: line 17

Insert: "(3) Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines."

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 10  
DATE 02/19/85  
BILL NO. SB 332

# MONTANA STATE LIBRARY



TED SCHWINDEN, GOVERNOR

1515 E. 6TH AVENUE

## STATE OF MONTANA

(406) 444-3115

HELENA, MONTANA 59620

This is testimony on SB332 concerning the confidentiality of library records. My testimony is to speak to the nature of American libraries. You will remember our founding fathers put together this nation on belief in freedom of thought, freedom of speech and freedom of the press. It was the belief of those men that an educated and informed people could govern themselves, and when we look at the history of those ideas and the American Revolution from which they came, it is known to us that the tolerance for a wide variety of political views was an inherent part of the beginnings of this nation. When libraries began to be established in the late 18th century, and certainly with the beginning of public libraries in the 1840's and 1850's, these freedoms and these tolerances were used as the basis for building American libraries, whether they be school, academic or public libraries. We have, in this country, a 150-year tradition of libraries and library collections which contain all political viewpoints and all writings. We have both truth and fiction. We have in libraries the crackpot theories, the scholarly research and the creative endeavors of poets, writers, filmmakers and artists. With this tradition of library collections and with the basic beliefs in freedom of speech, freedom of the press and tolerance for the views of others, the ability to use libraries must be as broad as the libraries themselves. This means people need to be able to use libraries without fear and without infringement upon the freedom to read. No reader wants to see their list of books printed in a newspaper or discussed over the backyard fence. One of the library statements of rights says each person has the right to a library which gives full and prompt access to all recorded fact, opinion and creative effort in whatever physical form he feels is most useful to him and the books, films, works of art and music he wants to see and hear, an opportunity to encounter the new material and creative works of which he may not be aware.

The State Library Commission and I support SB332 and ask you to recommend its passage.

Thank you.

A handwritten signature in cursive script that reads "Sara Parker".

Sara Parker  
State Librarian  
February 19, 1985

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 11  
DATE 02/19/85  
BILL NO. SB 332

EXHIBIT NO. 12DATE 02/19/85BILL NO. SB 332NAME Barbara Rudio BILL NO. SB 332ADDRESS 1119 Lincolnwood, Missoula DATE 2-19-85WHOM DO YOU REPRESENT Montana Library AssociationSUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Comments:

On behalf of the almost 600 members of the Montana Library Association I urge a positive recommendation from this committee for SB 332. The bill offers necessary protection for the privacy of library patrons, including students, & legal protection of librarians.

It very clearly states that library records that identify patrons will only be released under court order or at the request of the patron himself. This eliminates the necessity for each individual demand for information to have to be interpreted by an attorney. Recently Montana libraries of all types have been subject to requests or demands for names of persons who read particular books or particular types of books. As the law is now written, librarians are unclear as to how they should respond to such demands, & sometimes put themselves into a position that is open to suit. The material a person chooses to read reveals a great deal about his personality, his problems & worries, his health &



economic status, his hopes & dreams.  
To allow these revelations to be open.  
to public scrutiny would be an  
extreme infringement on that  
patron's right to privacy.

Barbara Budio

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 12  
DATE 02/19/85  
BILL NO. SB 332



**CITY OF BILLINGS**  
**PARMLY BILLINGS LIBRARY**  
**JOINT CITY - COUNTY LIBRARY**  
**510 NORTH BROADWAY**  
**BILLINGS, MT 59101**  
**PHONE (406) 657-8257**

February 14, 1985

TO: BARBARA RUDIO, ACTING DIRECTOR  
FROM: ELLEN NEWBERG, LIBRARY DIRECTOR *en*  
RE: TESTIMONY FOR LIBRARY CONFIDENTIALITY BILL

Convinced of the value of intellectual freedom in a democracy, I would support a confidentiality bill like this one in any case. The following experience made me even more aware of the need for Montana citizens to be guaranteed the right and freedom to read whatever they choose with the assurance that their choice of reading material will not be used against them without due process.

In early 1983, I received a letter from an attorney for Bechtel Corporation requesting a list of all library materials used by a former employee. The employee was claiming disability for a back injury, and Bechtel was attempting to prove that the employee was malingering. In a telephone conversation with the attorney, the gist of the conversation was that if it could be proved that the employee had read up on back injuries, it could be inferred that it had been done to accurately fake an injury.

This is a classic example of why I, along with the library community, believe Montana citizens' right to read in privacy has to be protected. Many people come into our library to read up on illnesses and disabilities in an effort to learn about and cope with their health problems or those of loved ones. To subject them to the casual inquiries of others free to draw whatever assumptions they like to support their purposes is not in keeping with the spirit of the first and fourth Constitutional amendments.

I therefore respectfully request that the greatest and most serious consideration be given to this bill which will guarantee Montanans the right to read what they want without fear of reprisal without due process. Thank you.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 12  
DATE 02/19/85  
BILL NO. SB 332

NAME: DEBORAH SCHLESINGER DATE: 2-19-85

ADDRESS: LEWIS + CLARK LIBRARY, HELENA, MT

PHONE: 442-2373

REPRESENTING WHOM? MONTANA LIBRARY ASSOC.

APPEARING ON WHICH PROPOSAL: SB 332

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENT: My name is Deborah Schlesinger, legislative chair of the Montana Lib. Assoc. We support SB 332 as amended, as leg. chair I have travelled far & wide in Montana & I am delighted to report that the library community enthusiastically supports the Confidentiality of Lib. Records Bill. This bill will not change the way libraries do business, it will <sup>afford</sup> ~~afford~~ protection of the loans to libraries & patrons, Academic, special, school & public libraries I have talked to, enthusiastically support both the concept & SB 332. The Montana Lib. Assoc. is aware of the need for protection & due process both for libraries & for library patrons.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

LIBRARIANS & PATRONS PRESENTLY DO NOT HAVE THE PROTECTION OF THE LAW EVEN THOUGH MANY INDIVIDUAL LIBRARIANS DO HAVE CONFIDENTIALITY POLICIES.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 13

DATE 02/19/85

BILL NO. SB 332

NAME BRENDA SCHYE BILL NO. SB 332  
ADDRESS NORTH STAR RTE, GLASGOW DATE 2-19-85  
WHOM DO YOU REPRESENT MONTANA ARTS ADVOCACY  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I represent the Montana Arts Advocacy, a cross-section of Montanans who are committed to the development of Montana's cultural resources.

Particularly in rural areas, libraries tend to be the cultural heart of the community. They are centers for information and research, recreation, and life-long learning. As we evolve into an information-based society, the role of libraries will become even more vital.

In order to encourage full utilization of library services, it seems only logical that library patrons should be entitled to rights of privacy. What you read, whether for recreation or information, should not be subject to public scrutiny. <sup>Unencumbered</sup> Accessibility to the types of information available in libraries is critical to a democracy.

We urge your support of SB 332 with Sen. Jowis' amendment regarding retrieval of materials.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 14  
DATE 02/19/85  
BILL NO. SB 332

(This sheet to be used by those testifying on a bill.)

NAME: Judy Meadows DATE: 2/19/85

ADDRESS: \_\_\_\_\_

PHONE: x3660

REPRESENTING WHOM? State Law Library

APPEARING ON WHICH PROPOSAL: SB 332

DO YOU: SUPPORT? ☒ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENT: \_\_\_\_\_

Testifying on support of  
concepts of privacy & intellectual  
freedom. The State Law Library's  
policy is to not divulge  
circulation records to anyone.

If an attorney, judge, or  
other patron requires library  
material that has been checked  
out, the librarians will contact  
the borrower & recall the  
requested material.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 15

DATE 02/19/85

BILL NO. SB 332

# STANDING COMMITTEE REPORT

Page 1 of 2

February 19..... 19... 85

MR. PRESIDENT

We, your committee on..... **JUDICIARY** .....

having had under consideration..... **SENATE BILL** ..... No. **322**

first reading copy ( white )  
color

## ALLOWING INTEREST ON A TORT FROM PRESENTING WRITTEN CLAIM

Respectfully report as follows: That..... **SENATE BILL** ..... No. **322**

be amended as follows:

1. Page 1, line 16.

Following: "party"

Insert: "or his agent"

2. Page 1, line 20.

Following: "to"

Insert: "future"

Following: "damages"

Insert: "until such damages are incurred and damages"

3. Page 1, line 24.

Following: "suffering;"

Strike: "and"

~~ISSUED~~

~~ISSUED~~

CONTINUED

.....  
Chairman.

Page 2 of 2

SENATE BILL NO. 322

4. Page 1, line 25.

Following: "(d)"

Insert: "exemplary or"

Following: "damages."

Insert: "(e) loss of established way of life;

(f) loss of consortium; and

(g) attorney fees

(3) The jury is to be advised by the court that the court will determine the amount of prejudgment interest due, if any, on any judgment rendered.

(4) Any payment by a party of any claim or interest thereon as set forth in subsection (1) shall not be an admission of liability and shall not be made known to the jury."

AND AS AMENDED

DO PASS

Senator Joe Mazurek

CLERICAL

Date: 2/20/85

Senate Bill 322

Time: 5:37 PM

In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

Judiciary Rep. of 7/19  
Amendment 4 following "damages"

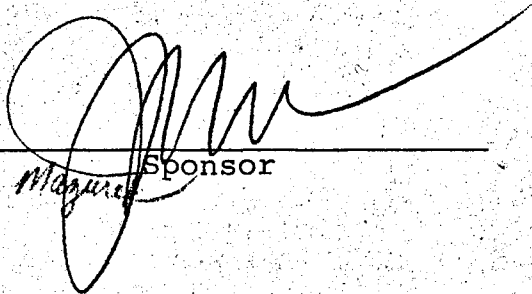
Strike: ". "

insert: "; (e)... "

(outline form)

"(g) attorney fees"

2/22/85  
2:20 p.m.

  
Maguire

Sponsor

DS

Secretary of Senate  
or  
Chief Clerk

Legislative Council



# STANDING COMMITTEE REPORT

February 19..... 19 85

MR. PRESIDENT

## JUDICIARY

We, your committee on.....

## SENATE BILL

having had under consideration..... No. 332

first reading copy ( white )  
color

## LIBRARY CONFIDENTIALITY ACT

## SENATE BILL

Respectfully report as follows: That..... No. 332

be amended as follows:

1. Page 2.

Following: line 17

Insert: "(3) Library records may be disclosed to the extent necessary  
to return overdue or stolen materials or collect fines."

## AND AS AMENDED

DO PASS

~~XXXXXXXXXX~~  
DO NOT PASS

Senator Joe Mazurek

Chairman.

# STANDING COMMITTEE REPORT

Page 1 of 2

February 19 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 406

first reading copy ( white )  
color

## REVISING LAWS RELATING TO INTERNAL ORGANIZATION OF JUSTICE DEPARTMENT

Respectfully report as follows: That SENATE BILL No. 36

be amended as follows:

1. Title, line 10.  
Following: "44-2-111,"  
Insert: "44-3-104 THROUGH"

2. Page 3, line 12.  
Following: line 11  
Insert: "Section 6. Section 44-3-104, MCA, is amended to read:

"44-3-104. Functions of division department. The  
forensics functions of the division department of justice include  
operation of:

- (1) a laboratory of criminalistics; and
- (2) an office of forensic pathology."

Section 7. Section 44-3-105, MCA, is amended to read:

"44-3-105. Authority to accept grants. The division-of  
forensic-science department of justice is authorized to accept  
federal and other moneys which may be made available to accomplish  
the purposes of this chapter."

Renumber: subsequent sections

3. Page 4, line 21.  
Following: "the"  
Strike: "division"  
Insert: "department"

~~XXXXXX~~

~~XXXXXXXX~~

CONTINUED

Chairman.

Page 2 of 2

SENATE BILL NO. 406

4. Page 5, line 10.

Following: "this"

Strike: "chapter"

Insert: "title, unless otherwise provided"

5. Page 5, line 18.

Strike: "chapter"

Insert: "title"

6. Page 6, line 4.

Following: line 5

Insert: "NEW SECTION. Section 14. Code commissioner instructions.

(1) Wherever the terms "division of motor vehicles," "motor vehicle division," or "division" meaning division of motor vehicles appear in legislation enacted in the 49th legislative session, the code commissioner is instructed to change the term to "department of justice" or "department" meaning the department of justice.

(2) Wherever the terms "bureau of criminal investigation" or "bureau" meaning the bureau of criminal investigation appear in legislation enacted by the 49th legislative session, the code commissioner is instructed to change the term to "department of justice" or "department" meaning the department of justice.

(3) Wherever the terms "fire marshal bureau" or "bureau" meaning the fire marshal bureau appear in legislation enacted by the 49th legislative session, the code commissioner is instructed to change the term to "department of justice" or "department" meaning the department of justice.

(4) Wherever the terms "division of forensic sciences" or "division" meaning the division of forensic sciences appears in legislation enacted by the 49th legislative session, the code commissioner is instructed to change the term to "department of Justice" or "department" meaning the department of justice."

Renumber: subsequent section

AND AS AMENDED

DO PASS

Senator Joe Mazurek, Chairman

CLERICAL

Date: 2/20/85

Senate Bill 406

Time: 5:27 PM

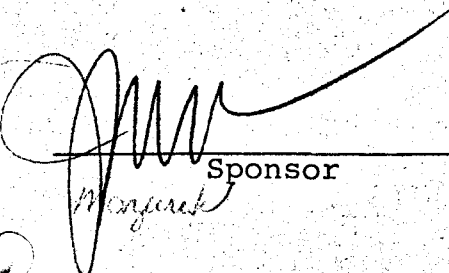
In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

Judiciary Rep. of 3/19

Amendment 4 insert: "title, unless otherwise provided"  
(dependent clause) 5

Amendment 6 insert: "(1) Wherever the terms "division  
of motor vehicles," "motor vehicle division," or... "(code for  
"(4)... "department of Justice" or... "(1.c.)"

2/22/85 10 p.m.

  
Sponsor

Secretary of Senate  
or  
Chief Clerk

Legislative Council

85