

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

March 23, 1985

The fifty-seventh meeting of the Senate Judiciary Committee was called to order at 12:09 p.m. on March 23, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present with the exception of Senator Jim Shaw who was excused.

Chairman Mazurek announced that although Senator Shaw was absent, he had left voting instructions and his proxy with Senator Galt.

ACTION ON HB 419: Senator Daniels moved HB 419 be recommended BE CONCURRED IN. The motion carried unanimously.

ACTION ON HB 187: Senator Towe asked what kind of violation we were talking about. Senator Mazurek responded discharge and public water supply problems. Senator Towe moved HB 187 be amended (refer to standing committee report for text of amendments). His reason for that is when you are talking about a public water act, the people accused may go to New York and hire a \$100,000 consultant to come and testify. Senator Mazurek questioned whether or not it should be made reciprocal. The motion to amend carried unanimously. Senator Towe moved HB 187 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 95: Proposed amendments from the Montana Trial Lawyers Association were distributed to the committee (Exhibit 1). Senator Towe stated there are some cases where you don't want to try them separate. Karl Englund, of the Montana Trial Lawyers Association, stated the testimony dealt with third party claims. The amendments submitted say the cases cannot be tried together. In the third party situation, it couldn't be tried together, but in the first party case, it is up to the judge. But even in the third party case, if everyone agrees, they can be tried together. Glen Drake, representing the American Insurance Association, stated his amendment asked that the bill be returned partially to its original form and would apply only to third party claims. He thinks that is what Mr. Englund is also doing. You have a problem with the terrible increase in attorneys' fees that are incurred in a bad faith action. It is just used as a means to increase pressure. Mr. Englund stated Mr. Drake's amendment says you cannot even file the other case until the one is settled. They would resist that in the

notion of complete duplication of effort. Senator Mazurek asked them to respond to the fact you force the defense into the position of having two sets of attorneys. Mike Meloy responded this bill won't change that. Senator Towe stated Mr. Drake's amendment doesn't allow for the commencement of a claim where there is not a third party. Mr. Petesch commented it provides you cannot commence an action in a third party claim, so it only applies to third party claims and not the first party claim. Senator Blaylock stated as long as we are going to separate them at trial, why do they object that we sue them at the same time. Senator Towe stated it is a plaintiff versus defendant issue. On the defense side, settlement of the pending bad faith action would be used as leverage for a higher settlement. Senator Towe moved adoption of the amendments on Exhibit 1. Mr. Petesch stated the other thing those amendments do is strike section 2 on accrual because you are allowed to file it at the same time. Senator Towe asked why they struck the codification section. Mr. Englund replied that was a mistake. Senator Mazurek pointed out that also eliminates the effective date. Senator Towe agreed with that. Senator Crippen moved as a substitute motion that Mr. Drake's amendments be adopted. Mr. Petesch stated they provide you cannot commence an action against the third party claim until the underlying claim is settled. The motion failed with Senators Brown, Crippen, Galt, and Shaw voting in favor. The committee then reverted to the motion to adopt the Montana Trial Lawyers' Association amendments. The motion carried with Senators Brown, Crippen, Galt, and Shaw voting in opposition. Senator Towe moved HB 95 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senators Crippen, Galt, Pinsoneault, and Shaw voting in opposition.

ACTION ON HB 517: Mr. Petesch explained the concern was when the payment comes in and it doesn't have the extra \$2, what should the clerk do. Senator Pinsoneault commented this will not have any retroactive application. If its in the decree, then he will pay it. Senator Towe suggested putting an applicability date on it. Mr. Petesch stated the way the bill is written, it doesn't have to be in the decree. It is just like any other handling fee the clerk has now. Senator Towe asked if it would be on the obligor. Mr. Petesch responded line 22 says the payor. It is discretionary with the clerk as written. Senator Towe moved HB 517 be amended as follows:

1. Title, line 8.

Following: "MCA"

Insert: ", AND PROVIDING AN APPLICABILITY DATE"

2. Page 3.

Following: line 1

Insert: "NEW SECTION. Section 3. Applicability. This act shall apply to all court decrees and court orders after the effective date of this act."

The motion carried unanimously. Senator Towe moved HB 517 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 613: Mr. Petesch stated he looked into separation of powers in this bill. The legislature is on safe grounds in providing what grounds are at issue. The court doesn't tell the Secretary of State to change the ballot. It enjoins it and then the Secretary of State decides what to do. Senator Pinsoneault moved HB 613 be recommended BE NOT CONCURRED IN. Senator Crippen stated he realizes we are 90-day wonders while we are here. Even though we figure the court may not go along with what we do, we should not walk away from a bill because of that argument. If we feel it is a good bill, we should go on record and say so; if no, kill it. Senator Towe agreed. He stated he thinks there is a problem that the Secretary of State and the clerks of court have. This may add enough strength to the problem that the courts will leave their hands off. Senator Brown stated it might just hurt one little bit. Maybe it's in the public's interest to find one of these things shouldn't go on the ballot. What purpose is served by putting a statute on the books they can get around? Senator Towe responded the courts are reluctant to interfere. A statute may firm that up. He thinks it is wise we express our opinion on the matter. Senator Daniels stated he thinks it has some political ramifications. He thinks the court will do effectively the same thing it did regardless of this. We shouldn't enact a law that says "no court shall order a change." That is beyond our discretion. Senator Towe commented they do that in injunctions. The motion carried with Senators Crippen, Galt, Shaw, and Towe voting in opposition.

ACTION ON HB 714: Mr. Petesch stated what the testimony presented is an attempt to clarify that you are referring to each claim and not each claimant. Senator Towe moved HB 714 be recommended BE CONCURRED IN. Senator Daniels stated he thinks again we have set the limit on how much you can sue the state of Montana for. You are just limiting them more than you intend to limit. Senator Towe commented on that situation, this is injury or death to a single person. If you have injury to both the husband and wife, you have it doubled anyway. Senator Daniels responded he did not read it as the single person being the unmarried person. Mr. Petesch pointed out there is the qualifier on the end of that release of the number of persons or entities claiming damages thereby are considered one claim. Karl Englund, of the Montana Trial Lawyers Association, stated he understands the idea was that an injury to one person the \$300,000 limit applied irrespective of how many people may have injuries as a result of the injury to that one person. The limit applies to the hospitalization, wrongful death, and survivorship action. The way the statute reads now is each person who could have injuries as a result of the injury to that single person could have

damages up to \$300,000. Senator Towe stated this is to say the \$300,000 applies to each injury, not to each person who might claim from that injury. Mr. Petesch stated the problem is occurrence is never defined anywhere. The occurrence he is assuming would be the wreck. Maybe the bill would be clearer if it said each individual hurt in the wreck can claim it. Senator Towe stated he thinks it is taking it too far to say an individual gets \$300,000 and his heirs also get \$300,000 because that same person was injured. Mr. Petesch pointed a resolution was being introduced to conduct a study on this issue. Senator Daniels did not think it was fair. Senator Yellowtail asked about the interim study proposal. Mr. Petesch explained it would be a study of the matter of governmental immunity and the caps involved. Senator Blaylock commented he hoped they didn't take the caps out entirely. The motion carried with Senators Daniels and Yellowtail voting in opposition.

ACTION ON HB 585: A proposed amendment was distributed to the committee (Exhibit 2). Mr. Petesch explained this was requested by Senator Mazurek and conforms the title of the bill to the bill as amended. Senator Towe moved HB 585 be recommended BE NOT CONCURRED IN. Mr. Petesch stated the rules of the Sentence Review Division require the judge and the prosecution get notice anyway, along with any other person who requests notice. Subject to the rules of the prison on attendance, they can participate. Senator Pinsoneault stated he supported the Sentence Review Board, but thinks this allows expanded participation. Senator Towe pointed out the rules already do that. Senator Pinsoneault did not think that was enough. Mr. Petesch stated currently when the judge gets notice, he is entitled to file anything he wants. It doesn't address participation in the review proceedings by anyone other than the county attorney and the attorney there. The effect of this bill is to say the sentencing judge or any of the interested parties can participate in the actual proceeding. Senator Towe stated any other interested persons includes a sentencing judge. Senator Blaylock stated on all of these bills like this, no other judges came and testified. He didn't see this as a problem in the state of Montana. Chairman Mazurek stated he had talked with Judge Keedy after the committee killed SB 481. Judge Keedy feels the committee reacts to him hostilely. He feels badly about that. He recalls as a legislator judges never came to testify. What he is doing is responding to requests from legislators. We feel he is still trying to legislate. That isn't what he perceives himself as doing. Senator Daniels stated he did not have that feeling toward Judge Keedy. Senator Pinsoneault commented the fact the judge isn't here does not depict a lack of interest. They just can't work it into their schedules. It probably makes attorneys upset if they do. Senator Towe questioned whether the committee wanted to put in the bill that they have the authority to appear and testify because there may be some question at this time. Senator Pinsoneault replied yes. Mr. Petesch

stated the rules don't address participation. You get notice and can show up, but may not be able to participate. Senator Towe moved as a substitute motion to delete all of the new material added in subsection 3. Senator Blaylock moved as a substitute motion that HB 585 be recommended BE NOT CONCURRED IN. The motion failed with Senators Blaylock and Daniels voting in favor. The committee then reverted to Senator Towe's motion to amend. The motion carried unanimously. Senator Towe asked if the committee needed to address the question about any other interested person. Mr. Petesch responded the way he read the phrase, the rules provide anyone who asks for notice is entitled to it, so anyone who writes will get notice. Senator Mazurek asked about the person who wants to show up at every hearing. Senator Galt responded they said the chairman of the Sentence Review Division could control that. Senator Towe moved HB 585 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senators Blaylock, Daniels, and Yellowtail voting in opposition.

ACTION ON HB 541: Proposed amendments were distributed to the committee (Exhibit 3). Senator Daniels moved adoption of the amendments. Mr. Petesch explained the reason for striking "so" is because it is not grammatical. The research of loss was suggested by Judge Holter. Senator Mazurek asked if that were consistent with the federal statute. Mr. Petesch replied no, and neither is the bill before the committee. The federal act only applies to an attorney. Senator Towe stated by rejecting losses, you are broadening that considerably. Senator Towe moved as a substitute motion that amendment No. 1 be adopted. The motion carried unanimously. Senator Towe moved HB 541 be recommended BE CONCURRED IN AS AMENDED. Senator Yellowtail asked if federal law said any attorney. Mr. Petesch responded any attorney or person to conduct cases. Senator Towe said what they wanted to get at is the person representing himself pro se. The motion carried unanimously.

ACTION ON HB 354: Senator Brown moved HB 354 be recommended BE CONCURRED IN. It was presented to the committee the statute has been on the books for 40 years and there was never a request by the airports or the pilots to review it. Because of the Seeley Lake dispute, there is a request that all of them be licensed. This will create a hardship for them. They intend to continue the investigation on Seeley Lake in any event. It has been on the books for 40 years and was never used and must not be needed. Senator Pineseault asked if this law in any way gave you the authority to go between the adversaries and smooth the waters. Senator Mazurek responded this would probably cut off that suit. What do they think this bill will do to them? Will they be able to shut that airport down? Mr. Gysler responded basically, the homeowners filed suit two years ago with the intention of having the airport shut down because no hearings were held. The Department of Commerce has

paid an attorneys' bill for almost \$30,000 because they haven't acted. A statute says airports and seaplane bases are the same thing. He feels the homeowners with the current law on the books have a good case, so that something gets done on seaplane bases on Seeley Lake or wherever anyone would set up one. They hate to see two years go down the tube. Senator Towe commented reading from Keith Colbo's testimony, repeal of the airport licensing law does not abrogate any of the department's responsibility for safety. Senator Mazurek stated that seems to be saying whether you repeal this or not, the department still has to step in and take some action. Senator Daniels stated if it isn't a safe operation point, the state of Montana and the FAA can step in. Senator Blaylock pointed out that specific question was asked of the FAA. All they do is say the airspace is okay. Maybe for good reason the department didn't do what it should have been doing, but it has been remiss. The bulk of their money was coming from Malmstrom AFB and Glasgow and they only have 1¢ gas tax. Do we want to say the state of Montana out of it and now they will not have anything more to say. They don't speak very much of the department or of us. Senator Yellowtail stated it seems Mr. Colbo indicated that there is other statutory authority to intervene and remedy the situation. Senator Towe stated he raised the question if we really have the statutory authority to address the question. Mr. Petesch stated a provision that is not being repealed says the department has rule-making authority to adopt rules to govern public safety. Senator Daniels stated basically there were two innocent parties. Each thought they were conforming to the law. This statute is irrelevant to the argument between the seaplane owners and the homeowners. Senator Pineseault stated if they can go ahead whether or not this is repealed, why do they want to repeal this. Senator Brown responded because all of the airports in the state have to pay a license fee. Senator Pineseault asked if this bill is passed, will this put them in an advantageous position as far as the property owners on Seeley Lake? Mr. Lindemer responded yes. They are regulated on the water. The difficulty is Seeley Lake by court decree has now become an airport. The safety inspection requirements for land airports have been transferred to the lake. He didn't know if it will give them an advantageous position over the homeowners or not. Senator Pineseault stated Washington has lakes all over the place. He took a seaplane all over, and there was never an argument. Senator Crippen stated since the court has ruled Seeley Lake is an airport, if we pass this bill, it shouldn't affect that litigation between the two parties at all. The department has rule-making authority, and it can still go in and determine on the basis of public safety, irrespective of whether this statute is on the books at all. This will keep the other airports out of this mess. Senator Towe moved HB 354 be amended (see standing committee report for text of amendment). Mr. Petesch commented that does affect the suit. The

motion carried unanimously. Senator Brown moved HB 354 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 423: Senator Daniels moved HB 423 be recommended BE CONCURRED IN. Senator Blaylock asked who was liable when the airplane is landing and runs into a car. Senator Mazurek commented that is why we have lawyers and judges, and they can worry about that. Senator Towe asked if this meant they have to go to the local public body and get authority in advance. Senator Mazurek responded they would go to the county commissioners. Senator Daniels suggested putting in something that says no liability will attach. Senator Mazurek suggesting something in the bill to relieve the local governing body from liability in case of a pothole in the road. Senator Galt asked if they carried liability insurance. Senator Daniels moved HB 423 be amended (see standing committee report for text of amendment). The motion carried unanimously. Senator Blaylock moved HB 423 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 722: Proposed amendments were submitted to the committee (Exhibit 4). Mr. Petesch explained the House took out 812 because they felt it involved prior restraint, but taking it out of the bill does not solve that problem for radio stations. 811 and 813 add in television and cable broadcasting. If you want approval of the content in advance, it should be put in for everyone or taken out for everyone. Senator Mazurek responded we should be consistent and allow the same protections and repeal it for both. Senator Towe moved HB 722 be recommended BE NOT CONCURRED IN. Senator Mazurek asked why you should do it for radio but not for TV. Senator Towe responded he was not sure you should do it for radio, but when you expand it to TV, he has some real problems. They can clip it and show it. You can do it for radio, but it is not as invidious. Senator Pinsoneault stated you cannot compare radio and TV. It is like apples and oranges. On radio, you are only listening. On television, you are seeing, listening, and hearing. The motion carried with Senators Brown, Crippen, Mazurek, and Yellowtail voting in opposition.

ACTION ON HB 622: Senator Mazurek commented Senator Van Valkenburg thought this bill was just fine. Senator Daniels stated it is a lousy bill; it is terrible. Judge Loble always said a check is nothing but a promise to pay, so when it bounces, it is a broken promise. Now we are saying a guy writes his name on a check, and he breaks a promise. So when he writes his name on a contract, he breaks a promise. Now we are going to put him in jail. Senator Pinsoneault thought it was a good bill. Senator Mazurek stated you are going after him civilly, but not criminally without this bill. Senator Blaylock stated you come in and say I want that and give him a check and get the thing and the check bounces. You can prosecute. A week later it is on the account and you

can't do it. Senator Towe explained you can do it, but not criminally. Senator Mazurek commented a bad check is a bad check. Senator Pinsoneault moved HB 622 be recommended BE CONCURRED IN. The motion carried with Senators Daniels, Towe, and Yellowtail voting in opposition.

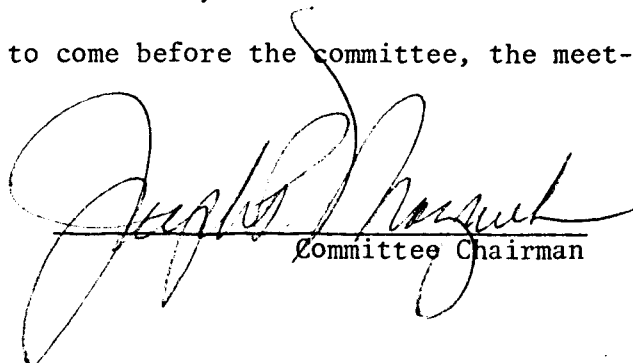
ACTION ON HB 363: A proposed amendment was presented to the committee (Exhibit 5). Senator Crippen moved adoption of the amendment in substitution for the prior amendment No. 1 adopted for this bill yesterday. Senator Towe commented he had problems with "clear and convincing evidence." Steve Brown stated the language proposed was designed to deal with Senator Towe's concern that an executive in the Ford company says don't tell me about this defect because I don't want to know. He thinks that is actual malice. They are trying to deal with that because others do not agree. "Has reason to know" almost gets you back to a negligence standard. Karl Englund stated the whole notion for "reason to know" is to have both an objective and a subjective standard in this particular provision. That is the most difficult thing to prove. That is why that is an important factor in there. This amendment still deals with strictly the subjective things. What did he know? What did he intentionally avoid knowing or what did he intentionally disregard? It is different from a negligence theory. It is the difference between what he had reason to know and what he should have known. Senator Towe stated he thinks there is a point when you are trying to prove what is in somebody's mind that is a very subjective and difficult thing. What we are being asked to do is prove that, and he is a little nervous about that. He would go along with it if he knew that were in with the clear and convincing evidence which seems to have no precedent to it. Senator Yellowtail asked why the "high degree of risk." Mr. Petesch explained the high degree of risk of harm is in the standard definition. The motion to amend carried (see roll call vote attached as Exhibit 6). Senator Towe stated he had problems with "clear and convincing." He moved that the bill be amended by striking "is" and the balance of that sentence and inserting "will produce in the mind of the trier of fact a firm believe or conviction as to the truth of the assertion sought to be established." He stated that is from civil cases. Senator Blaylock asked if we have been getting by without having defined it. Mr. Petesch responded the language "clear and convincing" does not appear in the statutes in Montana at this time. Senator Blaylock asked if we had been using the language at all. Senator Towe responded it is a common law concept. Mr. Petesch stated federal law does. Senator Blaylock asked if we had been using it in court cases. It is not in the statutes, but it is a common law term. Mr. Petesch responded the cases he is aware of are in federal areas where they provide a civil penalty similar to a criminal act. Senator Blaylock asked if it were defined. Mr. Petesch responded not that he is aware of. Senator Blaylock asked if we were getting by with it. Senator Crippen stated it is highly unlikely we



will have any insurance coverage to cover punitive damages in the state. The companies will exclude it. If the courts persist and go beyond, the companies will pull out of Montana. We are not looking at a big insurance company's standing behind that person; we are looking at the person. The Ford Motor Company is one thing, but they have a big, deep pocket. The majority of the people in the state don't have a big, deep pocket. The trend is we are suing everybody and throwing in punitive damages. He is in favor of them in the right circumstances. Intent to harm and actual malice is where it should be. When we are starting to presume, that should be a tough test. Senator Towe moved as a substitute motion that the amendments be amended by stating "Clear and convincing means evidence in which there is no serious or substantial doubt . . . ." Senator Mazurek stated whatever we say, a court will determine what we mean. It is less than beyond a reasonable doubt or we would have said that. He suggested we let the court decide. Mr. Petesch commented the courts have interpreted it as a middle standard. Senator Pinsoneault suggested dropping it. Senator Mazurek read language from Iowa. Senator Pinsoneault moved as a substitute motion that that language be adopted. The motion carried unanimously. Mr. Petesch stated there is a technical change needed on the statement of purpose adopted yesterday and the codification instruction for that section. Senator Towe moved the staff attorney be instructed to make the appropriate technical changes mentioned. The motion carried with Senator Daniels voting in opposition. Senator Towe moved that we insert the same applicability date in this bill as in SB 200. Mr. Petesch stated it affects removing from the effective date claims arising before the effective date which is immediate. Senator Towe moved an immediate effective date and applying to claims arising only after the effective date. Senator Crippen stated he can see where you shouldn't affect any trial in effect, but how do you know what torts are affected? We are not affecting their ability to pursue the case, we are affecting what they can get. The motion carried unanimously. Senator Crippen moved HB 363 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senators Daniels and Yellowtail voting in opposition.

ACTION ON HB 594: Senator Yellowtail moved HB 594 be recommended BE CONCURRED IN. The motion carried unanimously.

There being no further business to come before the committee, the meeting was adjourned at 2:18 p.m.

  
Committee Chairman



PROPOSED AMENDMENTS TO H.B. 95

page 1, line 16, after the word "action":

add: "against an insurer"

page 1, line 19, after the word "claim":

add: "if:

(1) the lack of good faith claim is against a party different from the party against whom the underlying claim is made; and

(2) the parties have not stipulated to consolidation of the trial of the lack of good faith claim and the underlying claim."

page 2, line 3:

delete: page 2, lines 3 through 6

~~page 2, line 11:~~

~~delete: page 2, lines 11 through 12~~

page 2, line 13:

renumber "Section 4" to "Section 2"

page 2, line 17:

delete page 2, lines 17 through 18

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03 23 85

BILL NO. HB 95

PROPOSED AMENDMENTS TO HB 585:

Title, line 6.

Following: "CREATING"

Strike; "A PRESUMPTION"

Insert: "AN ENTITLEMENT TO DEFERENCE"

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 032385

BILL NO. HB 585

PROPOSED AMENDMENTS TO HB 541:

1. Page 1, line 18.  
Following: "losses"  
Strike: "SO"

2. Page 1, line 20.  
Following: "COSTS,"  
Insert: "losses,"

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 032385  
BILL NO. HB 541

PROPOSED AMENDMENTS TO HB 722:

1. Title, line 10.

Following: "MCA"

Insert: "; AND REPEALING SECTION 27-1-812, MCA"

2. Page 2, line 16.

Following: "27-1-811"

Strike: "or 27-1-812"

3. Page 3.

Following: line 9

Insert: "NEW SECTION. Section 3. Repealer. Section 27-1-812, MCA,  
is repealed."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 032385

BILL NO. HB 722

PROPOSED AMENDMENT TO HB-363:

Page 2, line 2.

Following: "EVIDENCE."

Insert: "(3) Presumed malice exists when a person has knowledge of facts, intentionally avoids learning of facts, or recklessly disregards facts, which create a high degree of risk of harm to the substantial interests of another, and either deliberately proceeds to act in conscious disregard of or indifference to that risk, or recklessly proceeds in unreasonable disregard of or in indifference to that risk. Presumed malice as herein defined may be proven by direct or circumstantial evidence.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 032385

BILL NO. HB 363

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

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 032385 House Bill No. 363 Time 2:00

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

Cindy Staley  
Secretary

Mazurek<sup>(7)</sup><sup>(3)</sup>  
Chairman

Motion: amendment to presumed malice

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

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 6  
DATE 032385  
BILL NO. HB 363



# STANDING COMMITTEE REPORT

March 23

19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 95

third reading copy ( blue )  
color

(Senator Mazurek)

## LIMITING TIME WHEN BAD FAITH ACTION AGAINST INSURER CAN BE COMMENCED

Respectfully report as follows: That HOUSE BILL No. 95

be amended as follows:

1. Title, lines 9 and 10.

Following: "PROVIDING" on line 9

Strike: remainder of line 9 through "AND" on line 10

2. Page 1, line 16.

Following: "insurer"

Insert: "against an insurer"

3. Page 1, line 19.

Following: "claim"

Insert: "if:

(1) the lack of good faith claim is against a party different from the party against whom the underlying claim is made; and

(2) the parties have not stipulated to consolidation of the trial of the lack of good faith claim and the underlying claim."

4. Page 2, lines 3 through 6.

Strike: section 2 in its entirety

Reumber: subsequent sections

5. Page 2, lines 17 and 18.

Strike: section 5 in its entirety

~~XXXXXX~~

AND AS AMENDED

~~XXXXXXXXXX~~

BE CONCURRED IN

  
Senator Joe Mazurek

Chairman.

# STANDING COMMITTEE REPORT

March 23

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

having had under consideration

HOUSE BILL

No. 187

third reading copy ( blue )  
color

(Senator Brown)

## RECOVERY OF COSTS FOR ENFORCING PUBLIC WATER SUPPLY LAW

Respectfully report as follows: That

HOUSE BILL

No. 187

be amended as follows:

1. Title, line 8.

Following: "SCIENCES"

Strike: "PREVAILING PARTY"

Insert: "DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES"

2. Title, line 9.

Following: "ABATE"

Strike: "IN INVESTIGATING AND ABATING"

Insert: "BY IT TO INVESTIGATE AND ABATE"

3. Title, lines 10 and 11.

Following: "ACT" on line 10

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

4. Page 1, line 25.

Following: "department"

Strike: "PREVAILING PARTY"

Insert: "department"

5. Page 2, line 2.

Following: "violation"

Strike: "OR IN DEFENDING AGAINST AN ALLEGED VIOLATION"

AND AS AMENDED

BE CONCURRED IN

XXXXXXXXXX

XXXXXXXXXX

Senator Joe Mazurek

Chairman.

# STANDING COMMITTEE REPORT

March 23

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

HOUSE BILL

No. 354

having had under consideration

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(Senator McCallum)

## ABOLISHING STATE LICENSING OF AIRPORTS AND AIR NAVIGATION FACILITIES

HOUSE BILL

No. 354

Respectfully report as follows: That

be amended as follows:

1. Page 2, line 1.

Following: "NCA"

Strike: ", "

Insert: "; and"

2. Page 2, line 2.

Following: line 1

Insert: "WHEREAS, the department has authority to control the safety of persons and property on land or water in connection with the use of aircraft in this state under 67-2-102, NCA."

AND AS AMENDED

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.

# STANDING COMMITTEE REPORT

Page 1 of 3

March 23 1985

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 363

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color

(Senator Towe)

## LIMITING PUNITIVE DAMAGES IN CIVIL ACTIONS

Respectfully report as follows: That HOUSE BILL No. 363

be amended as follows:

1. Page 1, line 10.

Following: line 9

Insert: "NEW SECTION. Section 1. Purpose. The purpose of 27-1-221 is to deter claims for punitive or exemplary damages that are not clearly based in fact and, to that end, the legislature intends for 27-1-221 to be used in combination with early and ready application and granting of motions for summary judgment pursuant to Rule 56 of the Montana Rules of Civil Procedure where such claims are not based in fact, and the application of the sanctions provided for in Rule 11 of the Montana Rules of Civil Procedure against those parties responsible for making such claims."

Remember: subsequent sections

~~XXXXXX~~

~~XXXXXXXX~~

CONTINUED

Chairman.

Page 2 of 3

HOUSE BILL NO. 363

2. Page 2, line 2.

Following: "EVIDENCE."

Insert: "Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence, but less than beyond a reasonable doubt."

(3) Presumed malice exists when a person has knowledge of facts, intentionally avoids learning of facts, or recklessly disregards facts, knowledge of which may be proven by direct or circumstantial evidence, which creates a high degree of risk of harm to the substantial interests of another, and either deliberately proceeds to act in conscious disregard of or indifference to that risk or recklessly proceeds in unreasonable disregard of or indifference to that risk."

Remember: subsequent subsections

3. Page 2, lines 14 and 15.

Strike: lines 14 and 15 in their entirety

Insert: "(6) (a) In cases of actual fraud or actual malice, the jury may award reasonable punitive damages after considering the circumstances of the case.

(b) In all other cases where punitive damages are awarded, punitive damages may be in an amount up to but no greater than \$25,000 or 1% of the defendant's net worth, whichever is greater.

(7) If a plaintiff sought exemplary damages at trial, but such damages were not awarded, the court shall submit to the jury a question concerning whether the jury found in the evidence presented any reasonable basis in fact for seeking exemplary damages. If the response to the question is negative, the court may, in its discretion as a penalty against such party, the party's attorney, or both, assess damages in an amount not to exceed what is determined by the court to be reasonable attorney fees and costs of the defendant incurred in defense of such claims.

(8) In cases where punitive damages may be awarded, the jury shall not be instructed, informed, or advised in any manner as to the limitations on the amount of exemplary or punitive damages as set forth in section (6)(b)."

CONTINUED

Page 3 of 3

HOUSE BILL NO. 363

4. Page 3, line 15.

Following: "any"

Strike: "proceeding begun"

Insert: "claim arising"

Following: "after"

Strike: "or pending on"

5. Page 5, lines 16 and 17.

Following: "act" on line 16

Strike: remainder of line 16 through "act" on line 17

6. Page 3, line 13.

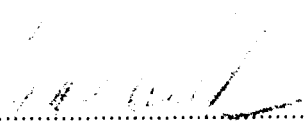
Following: line 17

Insert: "Section 5. Codification instruction. Section 1 is intended to be codified as an integral part of Title 27, chapter 1, part 2, and the provisions of Title 27, chapter 1, part 2, apply to section 1."

Re-number: subsequent section

AND AS AMENDED

BE CONCURRED IN

  
.....  
Senator Joe Mazurek, Chairman

# STANDING COMMITTEE REPORT

March 25

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on.....

HOUSE BILL

No. 419

having had under consideration.....

third reading copy ( blue )  
color

(Senator McCallum)

## ELIMINATING REQUIREMENT FOR AIR INSTRUCTOR LICENSE OR CERTIFICATE

HOUSE BILL

No. 419

Respectfully report as follows: That.....

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

  
Senator Joe Mazurek

Chairman.

# STANDING COMMITTEE REPORT

March 23

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

having had under consideration

HOUSE BILL

No. 423

third reading copy ( blue )  
color  
(Senator Hammond)

## LEGALIZE LANDING AND TAKEOFF OF AIRCRAFT ON PUBLIC WATERS AND ROADS

HOUSE BILL

No. 423

Respectfully report as follows: That

No.

be amended as follows:

Page 2, line 8.

Following: "section."

Insert: "However, the local governing jurisdiction shall incur no liability as a result of an approval under this subsection."

AND AS AMENDED

BE CONCURRED IN

~~XXXXXX~~

DO PASS

~~XXXXXXXXXX~~

DO NOT PASS

Senator Joe Marurek

Chairman.



# STANDING COMMITTEE REPORT

March 23

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on.....

HOUSE BILL

No. 517

having had under consideration.....

third reading copy ( blue )  
color

(Senator Hansen)

## DISTRICT COURT CLERK MAY CHARGE \$5 CHILD SUPPORT HANDLING FEE

HOUSE BILL

No. 517

Respectfully report as follows: That.....

be amended as follows:

1. Title, line 3.

Following: "MCA"

Insert: "; AND PROVIDING AN APPLICABILITY DATE"

2. Page 3.

Following: line 1

Insert: "NEW SECTION. Section 5. Applicability. This act shall apply to all court decrees and court orders after the effective date of this act."

AND AS AMENDED

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Nazarek

Chairman.

# STANDING COMMITTEE REPORT

March 23

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on.....

having had under consideration.....

HOUSE BILL

No. 541

third reading copy ( blue )  
color

(Senator Daniels)

## PARTY MULTIPLYING LEGAL PROCEEDINGS LIABLE FOR INCREASED COSTS

Respectfully report as follows: That.....

HOUSE BILL

No. 541

be amended as follows:

Page 1, line 18.

Following: "losses"

Strike: "50"

AND AS AMENDED

BE CONCURRED IN

~~XXXXXXXX~~

~~XXXXXXXX~~

  
.....  
Senator Joe Mazurek

Chairman.

# STANDING COMMITTEE REPORT

March 23

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

having had under consideration

HOUSE BILL

No. 585

third reading copy ( blue )  
color

(Senator Crippen)

## REVISE SENTENCE REVIEW PROCEDURE

Respectfully report as follows: That

HOUSE BILL

No. 585

be amended as follows:

1. Title, line 6.

Following: "PROCEEDINGS;"

Strike: remainder of line 6 through "IMPOSED;" on line 7

2. Page 2, lines 5 through 9.

Following: "(3)" on line 5

Strike: remainder of line 5 through "imposed." on line 9

AND AS AMENDED

BE CONCURRED IN

~~XXXXXXXX~~

~~XXXXXXXX~~

  
Senator Joe Mazurek

Chairman.

# STANDING COMMITTEE REPORT

March 23

19 85

MR. PRESIDENT

**JUDICIARY**

We, your committee on.....

**HOUSE BILL**

No. **594**

having had under consideration.....

**third**

reading copy (

**blue**

color

**(Senator Galt)**

**FLOODPLAIN MANAGEMENT - NOTICE OF ENTRY AND RELEASE OF NAMES REQUIRED**

Respectfully report as follows: That.....

**HOUSE BILL**

No. **594**

**BE CONCURRED IN**

~~XXXXX~~  
DO PASS

~~XXXXXXXXXX~~  
DO NOT PASS

  
.....  
**Senator Joe Mazurek**

Chairman.

# STANDING COMMITTEE REPORT

March 23 19 85

MR. PRESIDENT

JUDICIARY

We, your committee on .....

HOUSE BILL

No. 613

having had under consideration.....

third reading copy ( blue )  
color

(Senator Mazurek)

## RESTRICT COURT ORDERED CHANGES TO BALLOT AFTER CERTIFICATION

HOUSE BILL

No. 613

Respectfully report as follows: That.....

BE NOT CONCURRED IN

~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~

*Joe Mazurek*  
Senator Joe Mazurek Chairman.

# STANDING COMMITTEE REPORT

March 23

19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 622

third reading copy ( blue )  
color

(Senator Alaylock)

**DELETE PURPOSE ELEMENT FROM BAD CHECK STATUTE**

Respectfully report as follows: That HOUSE BILL No. 622

BE CONCURRED IN

~~XXXXXXXX~~

~~XXXXXXXX~~

  
Senator Joe Mazurek

Chairman.

# STANDING COMMITTEE REPORT

March 23

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

having had under consideration

HOUSE BILL

No. 714

third reading copy ( blue )  
color

(Senator Towe)

CLARIFY DEFINITION OF "CLAIM" UNDER MONTANA'S TORT CLAIMS LAW

Respectfully report as follows: That

HOUSE BILL

No. 714

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

  
Senator Joe Mazurek

Chairman.

# STANDING COMMITTEE REPORT

March 23

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

having had under consideration

HOUSE BILL

No. 722

third reading copy ( blue )  
color

(Senator Mazurek)

IMMUNITY OF TELEVISION BROADCASTER OR CABLECASTER FROM LIBEL

HOUSE BILL

No. 722

Respectfully report as follows: That

No.

BE NOT CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek

Chairman.