

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
49th LEGISLATIVE SESSION -- SPECIAL SESSION II
HOUSE OF REPRESENTATIVES

March 26, 1986

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Wednesday, March 26, 1986 at 1:30 p.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Rapp-Svrcek.

CONSIDERATION OF HOUSE BILL NO. 13: Rep. Dave Brown, House District #72, chief sponsor of HB 13, stated that this bill is totally consistent with the drunk driving legislation that society has seen fit to adopt both in Montana and nationwide. It places the responsibility for one's actions back on the individual where it belongs and from where the supreme court chose to take it. This bill provides a statutory alternative to two recent Montana Supreme Court decisions finding that those who furnish alcoholic beverages may be found liable to the consumer of the beverages and another person injured by an intoxicated consumer of the beverages for injuries suffered by that consumer or other persons. It is essentially a third party liability restriction. Rep. Brown explained the sections of the bill. He said the basic part of the language dealing with limiting the third party liability comes from the Wisconsin law. He chose to adopt this language primarily because of its brevity and pointedness. Rep. Brown pointed out that not only are bar and tavern owners having problems with the recent supreme court decision, but private parties who serve alcoholic beverages are affected as well.

PROPOSERS: Rep. Budd Gould, also a co-sponsor of this bill, House District #61, testified. He said that HB 14 which deals with liquor stores, the agency liquor stores are now being considered by the insurance companies to be no different than a tavern. Many of these agency liquor stores have had their insurance go up by as much as 600%. He said this legislation is vitally important for that interest as well.

Sen. Richard Manning, Senate District #18, said that a few tavern owners in his district are facing crucial insurance costs because consumers are not being made responsible for their own actions. He said that he is 150% in support of this bill and feels it is time something is done.

Phil Strobe, representing the Montana Taverns Association, stated that the association is an industry that is finding it either impossible to obtain coverage; or for those who can obtain coverage, it is extremely costly or is offered

1:30 p.m.

with so many exceptions in it that it looks like swiss cheese. For those who are in the businesses in which the primary economic activity is the sale of liquor by the drink or by the package, it is almost impossible to find anyone who can get coverage in 1986. For those who have additional lines of income and substantial amounts of additional lines of income and the liquor is just one of the exposures they have in a small share of their total, they are still finding it impossible to buy some kinds of insurance coverage. In most cases, they are getting limits put on the coverage that are almost valueless to them. The limits are being put on at such a low level that their excess exposure puts them in the position that rather than paying the premium, they put it in a savings account and assume all the risk. Mr. Strobe continued by saying many of those who are finding the premiums excessive or the coverage non-available are doing the next best thing: They are segregating their assets in a series of ownerships with the idea of segregating out their homes, their cars, etc from the business they are in.

Mr. Strobe said the he has to assume that when the supreme court rendered these two decisions, it didn't refer to the constitution; but it merely referred to what it felt was its right to find in the common law a theory of law that would hold those who are purveyors of goods and services liable to someone because of the way in which the consumer used the product. Mr. Strobe said he hoped the committee would take the optimistic view that the supreme court, if confronted with the opportunity to hold this unconstitutional, would say that if they had wanted to hold that theory of law unconstitutional or the prohibition against it, they would have done so when they rendered their opinion within the same month in which they rendered the liability opinion.

Mr. Strobe submitted a few amendments which was marked Exhibit 1. He also stated his support for Rep. Brown's proposed amendment which was marked Exhibit 2.

Ernie Krassesch, a tavern owner from Black Eagle, said if he is unable to obtain liquor liability insurance, it is doubtful he will remain in business. His recent insurance premium -- which does not include any liquor coverage for liability -- cost him \$5,092 this year compared to his last year figure of \$2,500.

John Hoyt, a lawyer from Great Falls representing the United Transportation Union, strongly agrees with the theme of the

bar and tavern owners emphasizing individual responsibility. He feels there may be a problem if the bill isn't further amended, however. He suggested the bill be amended on page 2, line 7 by deleting all of the material following "Intoxicated". It is his feeling that the additional language could get someone in trouble down the line.

Al Staley, tavern owner from Billings, said his position is that he presently has no liquor liability insurance. He told the committee that if he is hit with a massive suit, he will have to hand in his keys to his tavern. He feels that the individual should be responsible for his own deeds.

Roland D. Pratt, executive director of the Montana Restaurant Association, voiced his support for this bill because of the increasing cost of insurance premiums. He further supports the proposed amendments.

Roger McGlenn, representing the Independent Insurance Agents Association of Montana, feels there needs to be statutory guidelines established on this issue. He feels that if the guidelines for insurance companies to assess their exposure and the risk potential of this type of liability are established, the availability of the product will increase.

Glen Drake, representing the American Insurance Association, stated that legislative guidelines are a necessity. We need this bill now because the law has changed recently regarding the liable party.

Rep. Paul Pistoria, House District #36, stated that 10,000 people in this state are employed some way or another by the purveyors of alcohol industry. Something has to be done for these people, and this is our opportunity to help them.

Rick DeJanna, an attorney from Kalispell, said the bill is good and the amendments make sense. However, he said the committee members should ask themselves if they view this bill as constitutional. He said the legislature is a co-equal branch of this government. He advised the committee not to allow the supreme court to usurp their power as has been happening over the last four or five years. Mr. DeJanna said he doesn't know what to tell his tavern owner clients on how to protect themselves, because he doesn't know where the supreme court is going to leave us. He feels it is the duty of the legislature to spell out what the policy of the state of Montana is.

Roger Tippy, representing the Montana Beer and Wine Wholesalers Association, urged the committee to give this bill favorable consideration. A copy of his written testimony was marked Exhibit 3 and attached hereto.

There being no further proponents or any opponents, Rep. Brown closed. He said he has a few problems with some of the amendments previously suggested which he said he would comment on during executive action.

QUESTIONS ON HB 13: In response to a question asked by Rep. Addy, Ernie Krassesch feels that passage of this bill will lower insurance premiums and make insurance more available. Rep. Addy requested Mr. Krassesch and other tavern owners to inform him this fall as to whether or not their premium rates do drop and whether or not insurance is made more available.

Rep. Spaeth said he had a problem with page 2, line 7 section (b) of the bill with the "visibly intoxicated" language. He said he could spend a lot of his client's money litigating that type of question. He asked the question, "Are we really going to be helping the barowner that much by leaving this particular paragraph in the bill?" Mr. Strobe said that if this whole subsection were eliminated, the criminal statute concerning an intoxicated person still remains. Mr. Englund also commented on this language.

Rep. Cobb wanted to know that if this legislation passes, will it hold up under the current supreme court ruling? Mr. Englund replied, "absolutely." He said the supreme court decision regarding the liquor liability cases that this bill is designed to deal with states very clearly that the legislature has the authority to prescribe conduct, and that once they do so, a violation of that conduct gives rise to liability. Mr. Englund sees absolutely no constitutional problem with this at all. Rep. Cobb further asked Mr. Englund if he meant that as long as the legislature in any kind of case delineates conduct, then are we going to override any supreme court ruling as it pertains to any liability? Mr. Englund stated that he believes the legislature can do that. He continued by saying under the Pfost case, the thing the legislature cannot do is that once they have recognized that an injury is recognized under the statutes as one for which someone can receive damages, the injured must receive full legal redress for those damages or the legislature can deny them full legal redress only upon a showing of a compelling state interest.

There being no further questions, hearing on HB 13 closed.

ACTION ON HB 13: Rep. Brown moved that his proposed amendments (Exhibit 2) be adopted. The motion was seconded by Rep. Keyser and carried unanimously. Rep. Brown commented on the other proposed amendments to HB 13. He stated that he didn't have any strong feelings about subsection (c) in the bill. However, he does feel that subsection (b) should be left alone, and he would resist any amendments to remove it. He said that this particular language is already in the Montana statutes. He thinks more "reasonably should have known" is a consistent standard and is applied in a number of other areas. He further believes the court's ability to make a decision may be hampered if this subsection (b) is removed. However, Rep. Spaeth said he doesn't feel that we are doing very much to change the present law with the LaCount decision by leaving (b) in the bill because he feels it codifies what the LaCount decision says. He doesn't think this language will do a great deal for the tavern owners, but rather it will actually spur a great deal more litigation by leaving it in there.

On that basis, Rep. Spaeth moved to delete subsection (b) in its entirety. The motion was seconded by Rep. Cobb and further discussed. Rep. Krueger resisted the motion by saying he feels under the supreme court language, this bill would be able to fall into the categories of establishing a standard.

Rep. Hannah asked Rep. Addy if we are just codifying what the supreme court said. Rep. Addy said it change the language, and he doesn't know how much it changes the standard of liability. He said HB 13 absolutely clarifies that if the tavern owner or their employees cannot reasonably tell that the person is intoxicated, they are not held liable. The bill clarifies it a bit even though Rep. Addy isn't sure that it changes the standard.

Rep. Spaeth asked Rep. Brown that if (b) is deleted, will it present problems as to whether or not the bill will get through the Senate. Rep. Brown said he wasn't sure what the Senate will end up doing.

Rep. Keyser wanted to know why Rep. Brown would want to leave subsection (b) in the bill which perhaps may leave

the possibility of raising at least three questions in an attorney's mind if it is already taken care in another statute. Rep. Brown said that by passing this legislation, the other statute would be eliminated. Unless it is kept in the bill that standard would not be addressed.

The question was called on Rep. Spaeth's motion to amend by deleting section (b) in its entirety, and said motion FAILED 3-13. (See roll call vote.) Rep. Brown further moved that HB 13 DO PASS AS AMENDED. The motion was seconded by Rep. Darko and carried unanimously.

ADJOURNMENT: Upon motion of Rep. Keyser, the meeting adjourned.



REP. TOM HANNAH, Chairman

STANDING COMMITTEE REPORT

March 26

1986

JUDICIARY

Mr. Speaker: We, the committee on _____

HOUSE BILL NO. 13

report _____

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

REP. TOM HANNAH

Chairman

EXEMPT THOSE WHO FURNISH ALCOHOLIC BEVERAGES FROM LIABILITY TO CONSUMERS

BE AMENDED AS FOLLOWS:

1. Page 1, line 21
Following: "Title 16"
Strike: "or any other title"
2. Page 1, line 22
Following: "Annotated"
Strike: ", except this section"

FIRST

WHITE

reading copy (_____)
color

DAILY ROLL CALL

JUDICIARY

COMMITTEE

SECOND SPECIAL 49th LEGISLATIVE SESSION -- 1986

Date March 26, 1986 (1:30 p

NAME	PRESENT	ABSENT	EXCUSED
Rep. Tom Hannah, Chairman	✓		
Rep. Dave Brown, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. John Cobb	✓		
Rep. Paula Darko	✓		
Rep. Ralph Eudaily	✓		
Rep. Budd Gould	✓		
Rep. Edward Grady	✓		
Rep. Kerry Keyser	✓		
Rep. Kurt Krueger	✓		
Rep. John Mercer	✓		
Rep. Joan Miles	✓		
Rep. John Montayne	✓		
Rep. Jesse O'Hara	✓		
Rep. Bing Poff	✓		
Rep. Paul Rapp-Svrcek		✓	
Rep. Gary Spaeth	✓		
Rep. Charlotte Neill	✓		

ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE March 26, 1986 BILL NO. HB 13 NUMBER 2:45 p.m.

NAME	AYE	NAY
BROWN, Dave (Vice-Chairman)		✓
ADDY, Kelly		✓
COBB, John	✓	
DARKO, Paula		✓
EUDAILY, Ralph		✓
GOULD, Budd		✓
GRADY, Ed		✓
KEYSER, Kerry		✓
KRUEGER, Kurt		✓
MERCER, John		✓
MILES, Joan		✓
MONTAYNE, John		✓
O'HARA, Jesse		✓
POFF, Bing		✓
RAPP-SVRCEK, Paul		✓
SPAETH, Gary	✓	
NEILL, Charlotte		✓
HANNAH, Tom (Chairman)	✓	

TALLY

3 13

Marcene Lynn
Secretary

Tom Hannah
Chairman

MOTION: Rep. Spaeth moved to delete subsection (b) on page 2,
beginning on line 7 in its entirety. The motion was seconded by
Rep. Cobb and failed 3-13.

WITNESS STATEMENT

Name Phil Strope Committee On Judiciary
Address Box 874 Date 3-26-86
Representing MTA Support
Bill No. HB 13 Oppose _____
Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

- Amend
1. page 1 - line 15+16 - delete "person who consumed the beverage" insert "consumer".
 2. " - line 21 - delete "or any other title"
 3. page 2 - line 8 - delete "or reasonably should have known"

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

Exhibit 2
3/26/86
HB 13
D. Brown

AMENDMENTS TO HB 13, FIRST READING WHITE COPY

1. Page 1, line 21.

Following: "Title 16"

Strike: "or any other title"

2. Page 1, line 22.

Following: "Annotated"

Strike: ", except this section"



Exhibit 3
3/26/86
HB 13
R. Tippy

March 26, 1986

The beer and wine wholesalers of Montana support HB 13. Although wholesalers do not sell or furnish beer or wine directly to consumers, they find the high cost or unavailability of liquor liability insurance affects the number of retailers to whom the wholesalers can sell.

We are not just talking about taverns when we refer to retailers. Softball tournaments, rodeos, and similar events often take out special permits to sell beer or wine on a one-time basis. They need an insurance package which often in the past has included liquor liability. Such coverage is now becoming unavailable and causing these organizations to cancel plans for beer stands and the like. The Great Falls Softball Association has announced they will not sell beer this summer without insurance, and the loss of revenue from this concession will cut into their program.

The bill before you is a moderate approach. It preserves the "visibly intoxicated" standard in the Nehring decision, restating that standard in terms of the server's duty. We have reviewed the proposed amendment to delete "or any other title" on page 1, line 21 and are in accord with that change. We understand that the bill does not need a codification instruction section, that Legislative Council would codify it in Title 27 without a formal instruction.

Please give this bill your favorable consideration.

WITNESS STATEMENT

NAME LARRY McRAE BILL NO. HR-13
ADDRESS KALISPELL, MT 59901 DATE 3/2
WHOM DO YOU REPRESENT? OUTLAW INN, KALISPELL, MT
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: ~~to~~ I would urge the passing of HB-13.

I manage a convention facility in Kalispell. I have correspondence from the Montana Business Association, indicating they will no longer ~~be~~ sponsor nor have hosted cocktail parties at any MBA convention nor any other meeting.

I think this policy has a ripple effect it will mean hundreds of thousands of dollars in lost revenues to hotels and motels meeting convention in Montana.

This will have a great effect on the economy of our State. Lost revenues mean lost employment, lost taxes and lost revenues to all ^{other} businesses who are located in communities meeting convention.

As an operator for over 25 years, I have never seen such low revenues as we have seen in the last year, especially in the last four months.

Insurance is nearly impossible for us to secure. We saw our rates double at renewal this year. Besides the rate increase, we saw our liability coverage decrease by 70%. We were fortunate to receive coverage, indeed until one week prior to our policy's expiration it appeared coverage would not be available.

WITNESS STATEMENT

NAME Joe Flynn BILL NO. 13
ADDRESS PO Box 2152 Redondo Beach DATE 3/24/86
WHOM DO YOU REPRESENT? SNAE Bar
SUPPORT OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Rich LYNDE BILL NO. 13
ADDRESS 124 S. BROADWAY RED LODGE, MT DATE 3/26/86
WHOM DO YOU REPRESENT? Snow Creek Saloon
SUPPORT OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Phil Markin BILL NO. _____
ADDRESS P.O. Box 366 Joliet Mt. DATE 3/24/66
WHOM DO YOU REPRESENT? Joliet Bar + Grill
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HB 13

DATE March 26, 1986

SPONSOR Rep. Dave Brown

NAME (please print)	RESIDENCE REPRESENTING	SUPPORT	OPPOSE
John Kay	Plover Bar Cat Bank	✓	
Dick Stuntz	Honey Pizza Shop	✓	
Martina Brummond	Key Bar Hotel	✓	
Walt Miller	Key Bar Hotel	✓	
Harold Bruce	May on Bluff	✓	
Samuel Johnson	Longbranch Silan - Ennis	✓	
John W. Hooper	Key - A - Way Long B	✓	
Diane L. Hooper	Little Johns Bay	✓	
Ed Spassich	Berries	✓	
Harold & Ramona Winkler	Anderson Inn	✓	
Burt & Maria Conant	Wazy B. Inn	✓	
Anthony E. Juntunen	Bobs Bar Meikart	✓	
Dick & Mary Bush	Fish Inn Kama	✓	
Clara Spang	Halfway House Tray	✓	
Walter Spang	Halfway House Tray	✓	
Robert F. Bryan	Calouse Rest	✓	
Jim Bepko	OFFICE BAR	✓	
EW Canture	Other Place	✓	
Norma Canture	Other Place	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HB 13

DATE March 26, 1986

SPONSOR Rep. Dave Brown

NAME (please print)	RESIDENCY REPRESENTING	SUPPORT	OPPOSE
BAY TRUDEL	UFCW #13		
Gordon Morris	MAAC	✓	
Phil Strape	MTA	✓	
ART STELLINGMA	CORNER BAR HELENA	✓	
Berry Jankel	MTA	✓	
Jay Kaso	MTA	✓	
Fonda & Holt	MTA	✓	
Patricia H. Keld	MTA	✓	
Judy Keith	Red Rooster	X	
Lyle Johnson	CRYSTAL BAR	✓	
Harold Shubert	Shackley Tavern	✓	
Murray Hyslop	Stegibach	✓	
Harold Smith	Bangs Club 109	✓	
Betsy Steinhilch	The Circle Inn	✓	
Dr. Duffin	Cocle	✓	
Senator Richard Manning	Senate Dist 18	✓	
Mike Hellesy	Piggly Wiggly Grocery	✓	
BUTCH WEDDER	Corridor Bar	✓	
Thelma Rhine	Clear Creek Bar	✓	

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VISITORS' REGISTER

JUDICIARY COMMITTEE

HB 13

March 26, 1986

Bob DeLore	Bowman Corner	
Gordon DeLore	Buck Horn	Augusta
Ellen Drake	American Inns in Helena	Support
Eoger Williams	Independent Ins. Agents of MT	HB-13 Support
Jon Thoma	Western Bank	Augusta MT
Fred Lynde	Snow Creek Saloon	Red Lodge
Duke J. Hensley	Buck, Wolf Creek, MT.	
L. L. Murphy	Murphy's Club TAVERN	Dutton, Mont.
Coland W Pratt	MT Restaurant Assoc.	Helena
Aaron M. Seckman	Soudaoules mt	
Pete Olson	Angels Bar	Helena
John + Hank Mentzer	Stuckman Bar	Helena
Phil Mankin	Joliet Bar	Joliet Mt.
	Red Lodge	
Walter J. Thomas	Western Bar	Augusta Mt.
Red and Billie M. Williams	Wicker Bar	Boulder mt
Stacey Crosby	Stacey's Bar	Galathea Bessy
John Resovich	Little John's Bar	Bozeman mt.
R. Budd Gould	Rep. Dist 61	Missoula MT
John DeTienne	Bank Plaza Hotel	Helena
Jim. Barkell	Moose Bar	DeLore
Don Strogovich	DeLore Bar	"

VISITORS' REGISTER

JUDICIARY COMMITTEE

HB 13

March 26, 1986

Alma's Baracca	KLBR'S
Marie Hansen	PONDOSA CLUB
Gene Dain	Sequoia
Mauna Dain	Stubborn Ln.
Van Dunning	Pastime Ln.
Howard Buelch	Park County TA
Reck DeJana	Kalispell, mt
Stephen Carney	Kalispell, mt
Sandy McRae	Kalispell
Mike Sullen	Kalispell
Larry Mate	Kalispell
Franker Buelch	Basin
Chester Buelch	"
Ron Larson	Helena
Ken Purley	Belt
Bill & Marda Drybice	Clyde Park
Donald J. Dooey	Helena
Grace Sillette	Borders Lounge
Henry Borman -	Whitehall
W L Ewison	Bears Arm - Whitehall
Bob DeLone	Whitehall Tavern
Bill Foster	Borley Whitehall
John C. Hunt	Joshua Helena
	UTU
	Get Ball

Hank Wentz's Stockman Bar Houlton Mt.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HB 13

DATE March 26, 1986

SPONSOR Rep. D. Brown

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
HARVEY C. LEE	BOZEMAN	✓	
Bobby Bar.	Dillon	✓	
Don Hamilton	Dillon	✓	
Lynn Miller	Helena	✓	
Don Lytle	Helena	—	
William J. Lu	Livingston	✓	
GINGER NELSEN	BOZEMAN	✓	
Beverly Humphrey	Dillon	✓	
Rodney Lee	LIVINGSTON	✓	
Roger W. Young	Cot Falls Chamber of Commerce	X	
Allen P. Lanning	Helena	✓	
DAN Anderson	Billings	✓	
WARRIN W. RAE	KALISPELL	✓	
Martin Janda	Grand Falls	✓	
Marc Hamilton	Butte	✓	
Alvin Dagen Baracca's	Butte	✓	
Geoffrey Wilson	Blgs	✓	
Nick Berg	Blgs	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HB 13

DATE March 26, 1986

SPONSOR Rep. D. Brown

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Ken Vogel	Prick City	✓	
Ann Lown	Abbeville	✓	
Bonnie L. Miller	Abbeville	✓	
Pauline L. Linn	Abbeville	✓	
Ivan Curran	Waynes	✓	
Reginald L. Linn	Waynes	✓	
John Blair	Ballinger	✓	
Bob L. Linn	Fish Tail	✓	
Neal LaFever	Virginia City	✓	
Paul M. Linn	Ballinger	✓	
Wally R. Linn	Halls Gap	✓	
Bonnie L. Linn	Abbeville, NY	✓	
Pat Linn	Ballinger	✓	
June Linn	Ballinger	✓	
Mary E. Linn	MTA - Helena	✓	

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