

49TH LEGISLATURE, SECOND SPECIAL SESSION
MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 28, 1986

The Business and Industry Committee meeting was called to order on the above date, in Room 410 of the State Capitol Building at 11:00 a.m., by Chairman Mike Halligan.

ROLL CALL: All members present.

CONSIDERATION OF HB 13: Senator J. D. Lynch, co-sponsor of HB 13, said this bill simply tries to address a ridiculous ruling of the Montana Supreme Court last year that hardly anyone thinks makes sense. This bill tries to rectify that ruling which said if a person gets intoxicated at a saloon, the saloon is responsible in case there is an injury further down the line. Some of the editorials in the paper said we can carry that even further. The State sold the saloon the alcohol so therefore the State can also be liable in case there is an accident down the road. You can carry it further even yet, as far as the farmer is concerned, by saying he sold the barley and on and on it goes. The basic concept here is in fact whether the drinker is liable for his own actions. There is a provision for protection from gross negligence. Universally in Montana we have heard that this is a ruling that should be rectified and the Supreme Court says the only way we can do that is with this statute.

PROPONENTS: Karl Englund, representing the Montana Trial Lawyers Association, referred to the Supreme Court decision in Lacounte which said there is a statute in Montana that says it is wrong to sell alcohol to someone who is actually, obviously, or apparently intoxicated. Then the Supreme Court said the Legislature is the one who has the right to define what conduct is acceptable and what conduct is unacceptable in the State of Montana. When the Legislature passed that statute, then it set that standard. If a bar owner violated that statute then he was potentially liable for the injuries of his patrons. The statute is too broad for the issue of liability. The word "actually intoxicated" in that statute would mean that there is potential liability for everybody who is at a blood alcohol level of .10, or legally intoxicated. That would mean a bar owner would have to put a breathalyzer at every chair.

He explained that Representative Brown, in consultation with the Tavern Association and in consultation with him, put this bill together as a way to eliminate the problem the Supreme Court created in the Lacounte case. We will have a balance here so when a hypothetical situation comes up where you have someone who serves a person who is really intoxicated, then the server may be potentially liable or if someone serves a minor

and doesn't make a reasonable attempt to find out if that person is a minor. It takes care of a real grievous situation. It strikes a good balance, is a good bill and is constitutional.

COMMITTEE QUESTIONS: Senator Neuman asked about the language struck by the House on page 2, lines 19 and 20. If a fellow came into a tavern and was drinking all night, shouldn't the tavern owner reasonably know that guy is drunk. Mr. Englund answered that they felt it was redundant because you have (b) on line 19 that says "visibly intoxicated". He didn't think the stricken language would add any more to it.

Senator Neuman asked if a person sits in a tavern all night and is able to walk out and isn't visibly drunk then the tavern isn't responsible. Mr. Englund answered that was correct if there isn't some outward manifestation that the guy is drunk, then the tavern owner hasn't any liability because he doesn't really know whether or not that person is or isn't drunk. Your point is that the owner has been serving him drinks and he knows he has had 27 drinks. In Missoula most of the taverns have several bartenders and not any one bartender knows how many drinks any one guy has had, and yet you are going to hold them all liable for something like that? It really creates a mess. They worked very hard at defining "visibly". They talked about "obviously", "grossly", "gross negligence". They decided "visibly" was the best word to use because what that means is, "can you see that this guy is drunk." Then the jury is going to have to decide if that person was drunk enough to pose liability.

Senator Thayer wanted to know if this bill protected an individual who serves someone in his home. He was told yes, by Mr. Englund.

Senator Thayer was concerned about the word "consumer". Did it mean consumption or purchaser. Mr. Englund thought it meant a person who consumed. Senator Thayer said that won't be stretched out to mean the one who furnishes the drinks then. He didn't want to have to charge for drinks in his home. Mr. Englund didn't think so. As a matter of legislative record, Senator Thayer wanted to make this clear as far as the Senate Business and Industry Committee is concerned.

Senator Weeding wondered where the redundancy before the House amendment was that takes care of this "reasonably should have known". Mr. Englund said that is the standard that is always in the law on that kind of situation. There was some concern in Committee that by repeating it in the bill you would gum the whole thing up and make it a lot less clear than just a straight statement from the Legislature that the only time the tavern owner will be liable in this

type of situation is when the person is visibly intoxicated.

Senator Fuller said several Senators were asking whether this would immediately be litigated. Mr. Englund said he would characterize first the argument people would use as to why it would be immediately litigated. They are saying there is some language in the Pfost decision that is quite expansive which says that anything the Legislature does that deals with personal injury affects the full rights of legal redress and could potentially violate the Constitution. But you have the authority to say a bar owner is liable only under these conditions, and a homeowner is liable only under these conditions for "slip and falls", employers are liable only under these conditions for wrongful discharge, etc. Once you do that you cannot deny someone under our current Constitution the right of full legal redress for that injury.

Senator Kolstad asked since this decision has been made, how many bar owners and bartenders have been found liable. Mr. Englund said it was his understanding in terms of cases in front of the Supreme Court, no bar owners have been found liable. One important point he wanted to stress was that the Supreme Court in Montana has never finally ruled on a case and said, yes, bar owner you are liable. What they did in the case that brought us here was say that the person who filed a lawsuit against a bar had the right to take that case in front of a jury. It actually wasn't that individual, it was that individual's insurance company that joined the bar in the Lacounte case.

Senator Christiaens asked if this bill is drafted so there will be no Constitutional problems. Every attorney he had talked to has given him different opinions. Mr. Englund's opinion was yes. If this bill can't pass constitutional muster under the Pfost decision, then what the court would be saying in that case is that no bill could pass constitutional muster and you would need to amend the Constitution which you are going to propose this time anyway.

Senator Goodover wanted to know how this law would apply to him as a bar owner if he was not in his bar but vacationing in Phoenix. Karl Englund said he thinks you go back to the doctrine respondent superior, ie, an employer is responsible for the acts of his employees.

FURTHER PROPONENTS: Representative Bob Pavlovich, also a co-sponsor of the bill, said he appeared on behalf of Representative Brown who was in another hearing and presented the summary of the bill, Exhibit #1.

He then went on to say he has been in the business for 35 years and would like to retire. After the last case, he felt this could be impossible. He could end up losing his whole livelihood and everything he has worked for. As it is

now, come April 4, he will have no liability insurance. There is a possibility he can buy some from a company in Italy. About 1500 other tavern owners are facing the same problem. The taverns are going to be closed up or someone else is going to own them. There is only one other solution and that is they may have to incorporate themselves if they can legally, and try to get out of this mess or take their chances and hope they won't have anything left to lose. If they don't get some relief, he said the main streets of Montana were going to be pretty dark.

Roger Tippy, counsel and secretary of the Montana Beer and Wine Wholesalers Association, said they are in strong support of the bill. He said this affects not only the tavern owners but the softball association will not be able to have a beer stand this summer and will lose that revenue. Rodeos throughout the region who sell beer under a special permit probably won't be able to get insurance. The scope and impact is far wider than just the on premise license.

Donald W. Larson, registered lobbyist for the Taverns Association and chairman of their legislative committee wished to address two points. Number one, this concerns 100% of the alcohol consumed, not just what is consumed in our establishments. It concerns all the alcohol consumed throughout the state. Their industry spends more money telling people not to consume their product than they do telling them to consume it. They have on-going programs such as The Techniques of Alcohol Management, All Abroad Program, TIPS Program, and Gain Program. These programs try to teach their people, the managers and servers of alcoholic beverages, how to identify and handle these situations. It is going to continue no matter what happens. Secondly, he has taken tests on how much you can consume before you become visibly intoxicated and with each person it is a different situation. They try to adapt their people to the fact that if someone happens to be sitting there all day long, that bartender in his establishment knows about how many drinks that person has had.

Roland D. Pratt, Executive Secretary of Montana Restaurant Association said their association, in conjunction with the Tavern Association and both their national organizations are highly involved in the training of their servers. It doesn't do their establishments any good at all to have an individual become intoxicated and then go out and be involved in an accident. He cited a suit that is pending in another state where an individual was intoxicated prior to entering the establishment. He was refused service. The individual left, was involved in an accident and the bar was sued, when in fact, they were not liable.

liable.

Senator Richard Manning said he isn't an attorney and doesn't own a bar but he does know this law is protection for everyone in this room who is old enough to drink because, without this protection, somebody else will be responsible for the drinkers' actions. When he was growing up he was taught you are responsible for your own actions. He gave the Committee a cutout from an article found in a Great Falls Highschool paper written by a young lady whose father had a slight drinking problem. Exhibit # 2. He said this article gives you an idea that young people today realize who has to be responsible for their own actions. He asked the Committee to recommend a do pass.

OPPONENTS: None.

COMMITTEE QUESTIONS: None.

DISPOSITION OF HB 13: Senator Goodover moved HB 13 BE CONCURRED IN. Motion seconded. Senator Halligan called for the vote and the motion carried. Senator Halligan will carry the bill on the Senate floor.

There being no further business, the meeting adjourned.



SENATOR MIKE HALLIGAN, Chairman

ROLL CALL

BUSINESS AND INDUSTRY

COMMITTEE

48th LEGISLATIVE SESSION -- 1986

Date 3/26/86

SENATE
SEAT

#

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HALLIGAN, Chrmn.	✓		
SENATOR CHRISTIAENS, V. Chrmn	✓		
SENATOR BOYLAN	✓		
SENATOR FULLER	✓		
SENATOR GAGE	✓		
SENATOR GOODOVER	✓		
SENATOR KOLSTAD	✓		
SENATOR NEUMAN	✓		
SENATOR THAYER	✓		
SENATOR WILLIAMS	✓		
SENATOR WEEDING	✓		

Each day attach to minutes.

DATE _____

MARCH 28, 1986

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretariat)

SUMMARY OF REP. DAVE BROWN'S BILL TO SET CRITERIA FOR LIABILITY OF PERSONS
FURNISHING ALCOHOLIC BEVERAGES

This bill provides a statutory alternative to the two recent Montana Supreme Court decisions finding that those who furnish alcoholic beverages may be found liable to a consumer of the beverages and other persons injured by an intoxicated consumer of the beverages for injuries suffered by the consumer or the other persons.

Subsections (1) and (2) of section 1 of the bill are intended to make it clear that the Legislature wishes section 1 and only section 1 to govern liability and that no other section of the Montana Code Annotated may be used to find liability, including 16-3-301, 16-6-304, and 16-6-305, MCA, the sections used by the court in its two recent cases to find that liability may be imposed.

Subsection (3) of section 1 is a compromise approach stating the criteria for liability. The opening paragraph is a basic non-liability provision and is followed by three exceptions, (3)(a), (3)(b), and (3)(c), to the general non-liability rule. Liability may be imposed under each of the three exceptions. Each exception is now the law in one or more states. Exception (3)(a) is commonly found in the states. The idea behind this exception is that minors are not mature enough to handle alcohol and thus the theory that the consumer of alcohol is and should be solely responsible for injuries he causes to himself or other persons does not apply.

Exception (3)(b) is now the law in at least five states. If a person is visibly drunk it is obvious to the person furnishing him an alcoholic beverage, or it should be obvious, that he is no longer capable of acting responsibly and may be a danger to himself and others.

Exception (3)(c) was enacted in Wisconsin in late 1985. If a person is forced, coerced, or tricked into consuming an alcoholic beverage the provider of the beverage may be held liable for injury to the consumer and persons injured by the consumer.

The general non-liability rule and each of the three exceptions apply to "social hosts" (private parties and other instances in which alcohol is not furnished for profit) as well as to taverns and other entities (or persons) furnishing alcohol for profit.

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Tavern Owners Held Responsible For Drunk Drivers?

By Tami Winjum

Isn't it only obvious that a drunk driver is at fault if he hurts someone while he is driving? I thought so, too. On January 22, the Montana Supreme Court overturned a 1979 law which stated that an intoxicated person is liable for the injuries he causes, and also that a bar owner is liable only if he serves a customer who is in a "helpless condition." Now, tavern owners are legally responsible for injuries caused by their drunk customers.

First of all, an owner of a bar is trying to run a business. Serving customers is their job. Their job is also wanting to make sure no one else is going to drive drunk. How are they to determine if the customer is even driving? Maybe they walked or got a ride there! When the bar is packed to the capacity and everyone is drinking, what are they supposed to do? "Okay, I can't serve anyone again until I check to see who's 'helplessly intoxicated' and who's not. Those that are I'll take your keys!" Most people go to the bar to drink. Even after one drink they shouldn't be driving. If they are, it is their responsibility, not the bar owners. They aren't paid to babysit. They're paid to serve their customers.

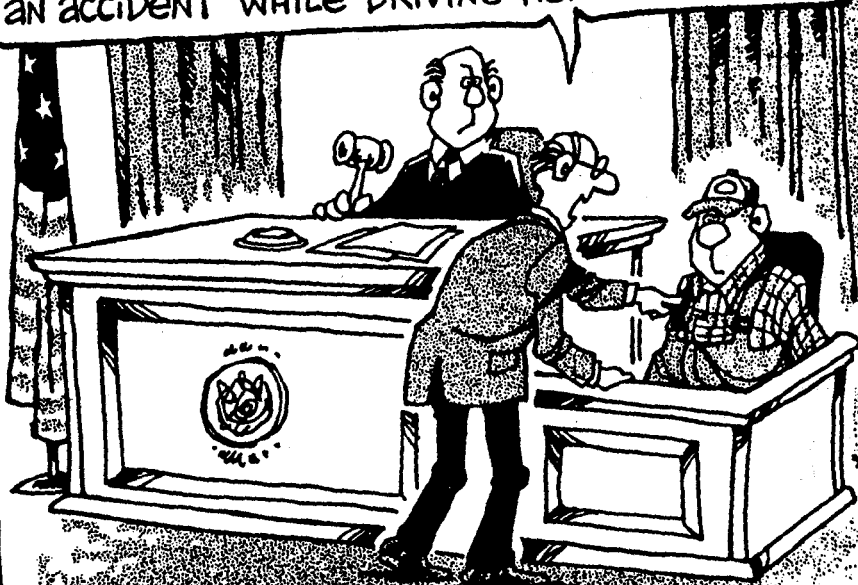
Then there's the fact that liquor stores and grocery stores sell alcohol. A host at a party serves it. Now if tavern owners are held responsible, why not make liquor store and grocery store owners held responsible? If it got right down to that, the bars and selling of alcohol may as well be illegal. People will still find the alcohol — and still drive drunk. Then who is to blame? The drunk drivers mother?

Also, if there's a case that comes upon trying to determine who's at fault — the drunk driver or the tavern owner — the authorities are going to look at whether or not the customer was "helplessly intoxicated" while being served. Who's to determine that? Of course the bar owner is going to say the customer wasn't helplessly drunk. The drunk driver is going to say he didn't even know he wanted the alcohol.

A drunk driver chooses to drink, and he chooses to drive, therefore he's responsible for his actions. Drunk driving is illegal! Why make that simple statement complicated by putting exceptions on it?

Cutting classes is against school rules. "Well, my best friend made me do it." Is it their fault now? And do they get the punishment?

SO YOU ADMIT IT: **YOU** PLANTED THE CORN USED BY THE DISTILLERY TO MAKE THE WHISKEY SOLD TO THE BAR THAT SERVED MY CLIENT, CAUSING HIM TO HAVE AN ACCIDENT WHILE DRIVING HOME DRUNK!



STEIN '85
POCKET PITH
NEWS - NEA

STANDING COMMITTEE REPORT

March 28

19.86

MR. PRESIDENT

We, your committee on **BUSINESS AND INDUSTRY**

having had under consideration..... **HB** No. **13**

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color

D. Brown (Halligan)

EXEMPT THOSE WHO FURNISH ALCOHOLIC BEVERAGES FROM LIABILITY TO CONSUMERS

Respectfully report as follows: That..... **HB** No. **13**

BE CONCURRED IN

DOCKET

DOCKET

SENATOR MIKE HALLIGAN,

Chairman.