

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 20, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 20, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Joan Miles who was absent and Rep. Fritz Daily who was excused.

HOUSE BILL NO. 163: Rep. Mercer, District No. 50, sponsor, stated HB 163 tries to set a standard for the definition of "driving under the influence". It comes down to a fine line of what the definition is under the statute and what the definition is proposed under the bill. In Montana, for 27 years, the jury instructions given in "driving under the influence of" cases stated that if the ability of the driver has been lessened in the slightest degree by the use of alcohol, the driver is deemed to be "under the influence of" alcohol. The rule of law in jury instructions is, "if the ability to drive safely has been lessened in the slightest degree". Recently, the Montana Supreme Court in the case of City of Helena vs. Davis, decided August 8, 1986, noticed that the statute read, "to a degree which renders him incapable of safely driving a vehicle". In the legal world, the wording could have a tremendous impact on the jury instruction. It is easier to convict someone in "driving under the influence" cases when it could be shown that someone's ability to drive had been lessened to the slightest degree as opposed to saying their ability might be lessened but they can still drive safely. Rep. Mercer stated the main reason he was supporting the bill was that for 27 years, the Montana law had worked well. We should not back off from tough driving under the influence laws.

PROPOSERS: DAVID LACKMAN, Montana Public Health Association, was in support of HB 163 because it provided a definition of "under the influence of", replacing the existing standard. He stated HB 163 was essential legislation and submitted written testimony. (Exhibit A).

KATHY SEELEY, Department of Justice, Assistant Attorney General, stated that standards are needed and HB 163 would help set them.

MARK J. MURPHY, Department of Justice, Assistant Attorney General, representing the Association of County Attorneys,

believed HB 163 was essential legislation. At this point, there was no standard the Association felt comfortable with. DUI cases were presently the most litigated cases in the state and a standard must be set legislatively. In order to continue the strong enforcement of DUI cases, they needed a strong standard and HB 163 provided that standard.

DAVID N. HULL, City of Helena, Assistant County Attorney, stated HB 163 did two things. On the right hand, it restored the Davis case, it did not present a new standard, it merely restored the standard they had used for 27 years. On the left hand, it got rid of a distinction that did not make any sense. He urged support of the bill.

M. E. NELSON, Lewis and Clark County Coroner, Chairman of the Lewis and Clark County DUI Task Force, and representing some of the DUI Task Forces in Montana that were not able to attend the hearing, stated HB 163 was essential legislation and urged support of the bill.

RAYLEEN BEATON, Helena City Commissioner, and representing the local DUI Task Force consisting of 40 citizens, stated they supported the legislation exactly as proposed.

JIM MANION, Montana Automobile Association, agreed with the statement that if Montana was to have strong DUI laws, they needed a strong standard. He stated they support HB 163.

RICHARD E. GILROY, member of the Lewis and Clark County DUI Task Force and a Montana certified chemical dependency counselor, highly recommend the bill.

MIGNON WATERMAN, Montana Association of Churches, took a strong stand in support of strengthening the DUI laws in the state of Montana. She urged support of HB 163.

MIKE MURRAY, representing the Chemical Dependency Programs in Montana, stated they had no objection to the bill as it was proposed.

OPPONENTS: Rep. Dave Brown stated that he went on record in opposition to the bill.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 163: Rep. Gould asked Rep. Mercer about a driver who had an impairment in driving due to taking a prescription drug. If he was found swerving on the road, could he be arrested with the language in the bill, "lessened to the slightest degree". Rep. Mercer asked Mr. Murphy to answer the question. Mr. Murphy stated under that situation, all of the behavior of the individual would be examined in court and the jury would have the ability to look at the behavior and the driving

ability of the individual. If he was an unsafe driver, even under a prescription drug, and was warned ahead of time that the drug may impair his ability to drive, the statute would apply to that situation also. Rep. Mercer stated that this was status quo and that they were not passing new legislation. HB 163 was an attempt to return the law to what they had relied on for 27 years and he closed the hearing on HB 163.

HOUSE BILL NO. 192: Rep. Cobb, sponsor, District No. 42, stated HB 192 simply allocated one-half of the fine for offenses of criminal trespass to property and hunting on private property without permission to the owner of the property. It effected two criminal trespass statutes. The fine could be up to \$500.00 with six months in the county jail. He stated there were about 1500 to 1600 criminal trespass violations across the state. There were about 140 big game trespass violations a year that were actually convicted. The reasons for the bill was that it gave the property owner compensation for his time and expense for bringing a case into action. The court still had to decide the fine.

PROPOSERS: CAROL MOSHER, Montana Stockgrowers and Montana Cattle Women, stated landowners spend a lot of time and money patrolling and checking gates, fences and picking up litter that is left along roads and streams by recreationists. She submitted written testimony. (Exhibit A). She also submitted written testimony from the Montana Cattlemen's Association International. (Exhibit B).

REP. GRADY went on record in support of HB 192 because it addressed a serious situation. The landowner was the one who ended up with damage to his property and this legislation was one way he could get restitution.

OPPOSERS: JIM FLYNN, Department of Fish, Wildlife and Parks, stated that state fish and game wardens had authority to enforce provisions of Section 45-6-203 along with other peace officers (sheriff, police, etc.). The fines collected under this section are not earmarked for the Fish and Game special revenue account. Thus, the financial impact was not with the department, but rather with the city or county. State fish and game wardens also enforce the provisions of Section 87-3-304. Fines or bond forfeitures collected under this section were to be used to partially support the warden retirement system. Presently, out of the \$50.00 fine, \$7.50 was taken by the county for court costs and \$42.50 was remitted to the state treasurer for the fish and game special account for warden retirement. HB 192 seemed to contemplate an enforcement system which would require those

who received the benefits to pay the cost. Mr. Flynn submitted written testimony. (Exhibit C).

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 192: Rep. Addy asked Mr. Flynn how much did it cost to write a ticket and Mr. Flynn stated he just did not have a reasonable estimate to respond to the question. Rep. Addy stated it seemed they were providing a service to the landowner and now they were asking the landowner be paid twice. He asked Rep. Cobb to respond to that and Rep. Cobb explained there must be a warden present in the first place, which is a benefit. The bill allowed compensation in the sense that if they did not give the landowners some compensation for trespass, there would be a time in the future when an enormous fee was charged across the state for access to hunt on private property. Rep. Addy asked Rep. Cobb how much a warden was paid and he answered it was about \$40,000.00 a year. Rep. Hannah asked Mr. Flynn if wardens had the authority to issue citations under Section 45-6-203. Mr. Flynn stated they did have the authority. Rep. Hannah asked him if wardens did that very often and Mr. Flynn stated his assumption was they do not.

Rep. Grady asked Mr. Flynn if the warden could cite the violation but the landowner must press charges. Mr. Flynn said he was not sure if that was accurate. Rep. Eudaily questioned Rep. Cobb on how many landowners had brought actions against trespassers hunting big game. Rep. Cobb stated in 1984-85 across the state of Montana, the actions amounted to 1500. Rep. Eudaily asked him how many of these actions came from landowners without the assistance of a warden. Rep. Cobb stated there were not separate categories for the citations. They were lumped together as criminal trespass and there was no break down statistics. Rep. Eudaily asked Rep. Cobb if wardens are paid through license fees that the hunters pay. Rep. Cobb said there were only 90 wardens in the state and they were paid with license fees but there just were not enough wardens. Rep. Eudaily asked how giving half the fine to the landowner was going to stop trespassing. Rep. Cobb stated currently there was no compensation for the landowner to go to court and the bill gave more protection to the landowner so he could take the time out to go to court on these cases.

Rep. Miles asked Rep. Cobb if there were any other instances where judicial fines were given to people. Rep. Cobb stated the crime victims, under the District Court, were given to private parties.

Rep. Addy pointed out the fine could be doubled so the Department of Fish, Wildlife and Parks would not lose any money and the landowners would get twice as much as the bill

proposes. Rep. Cobb stated he just wanted the landowners to have some compensation but he realized the department must have money for their warden retirement fund. Rep. Addy asked Mr. Flynn what he thought about the doubled fine idea and he stated the department had no problem with increasing the fine but had problems with the approach outline in the bill. Rep. Mercer asked Rep. Cobb if the purpose of the bill basically boiled down to the fact that it was not worth it to the landowner to go to court and get it resolved because of the time and effort. Rep. Mercer then asked if the bill would make a partnership out of the wardens and landowners so that each would have reason to enforce the law so both got something out of it. Rep. Cobb stated that with the bill, both sides would be compensated.

Rep. Cobb closed the hearing on HB 192.

HOUSE BILL NO. 197: Rep. Grady, sponsor, District No. 47, stated HB 197 addressed a very serious situation. It raised the fine for not having liability insurance from \$250.00 to \$1,000.00 or six months in jail or both. He pointed out that one out of ten people are not carrying liability insurance. He submitted a fact sheet showing the cost of insurance which was a random survey he took of three different insurance companies. (Exhibit A). The fact sheet shows that the cost of insurance was almost twice as much as the fine for not carrying liability insurance. He also submitted a letter from Col. R. W. Landon, Montana Highway Patrol, showing that in 1986, 7,413 arrests were made for violations of the insurance statute. (Exhibit B).

PROPONENTS: ALICE L. ARMSTRONG, stated she was a recent statistic of a head on collision with a drunk driver who was not insured. It was his second DUI in about two months. She pointed out that he was fined \$505.00 with \$200.00 suspended and for not carrying insurance, he was fined \$255.00 with \$200.00 being suspended. She strongly urged support for HB 197. She submitted written testimony. (Exhibit C).

BILL LANNAN, stated he was also hit by an uninsured driver in 1986, and incurred over \$13,000.00 in medical expenses. The present law was an economic advantage to the motorist to not have liability insurance and HB 192 provided an economic incentive to carry liability insurance.

GORDON MORRIS, M.D., stated HB 192 was a step in the right direction and suggested it did not go quite far enough because he suggested not only a higher fine, but court ordered restitution in cases of sheer negligence.

KARL ENGLAND, Montana Trial Lawyers Association, said that cases involving uninsured motorists were a mess and anything the legislature can do to encourage people to comply with the mandatory insurance requirements was a step in the right direction.

LARRY MAJERUS, Motor Vehicles Division, stated the department had not taken a position on HB 192 but wanted to impart some information. He explained there were two different types of violations under the mandatory insurance law. One pertains to not having any insurance and the other pertains to not carrying proof of insurance in the vehicle. The statute did say that if you were cited for not carrying insurance in your vehicle and you, in fact, had insurance, you can show that proof at a later time to the judge or the arresting officer and it would be dismissed.

REP. MILES went on record in favor of this bill.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 197: Rep. Addy told Dr. Morris there was a suspension procedure when a judgment was not paid and you could suspend the drivers license.

Rep. Grady stated, in closing, the problem was here and people were put in a serious financial situation. The best way to get everyone to carry insurance was to put a large fine on the violation.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 9:20 a.m.



EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date *January 20, 1987*

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)		✓	
FRITZ DAILY (D)		✓	✓
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

WITNESS STATEMENT

EXHIBIT A
DATE 1-20-87
HB #163

NAME DAVID LACKMAN BILL NO. HB163
ADDRESS 1400 Winne Avenue, Helena, MT 59601 (443-3494) DATE 1/20/87
WHOM DO YOU REPRESENT? Montana Public Health Association
SUPPORT XXXXXX OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY. House Judiciary
8:00 A.M. (Tuesday) 312-D Providing definition of "Under the influence";
Comments: Replacing existing standard.

We consider this bill to be essential legislation.

Together with Mike Harrington, I am the one who got "implied consent" under way by providing testing for blood alcohol concentration. It soon became evident that the standard of 0.1 % was too high for many individuals. During one of our training sessions for the highway patrol, free alcoholic beverages were supplied to the officers. Then they were tested. Only one officer reached 0.1 %. However, there was unanimous agreement that even at .05- 0.1 % , they were not capable of operating a motor vehicle safely. Many jurisdictions world-wide have set the level at .05 %. Also, there are improved physical tests which can be administered by the officer at the scene that are reliable indications of capability to operate a motor vehicle safely.

In the interest of reducing the slaughter on the highways of Montana, we urge your favorable consideration of this bill.

Thank you

(Signature)

EXHIBIT A

DATE 1-20-87

HB #192

WITNESS STATEMENT

NAME Carol Masher BILL NO. HB 192

ADDRESS P.O. Box 1679, Helena^{or} Augusta, Mt DATE 1-20-87

WHOM DO YOU REPRESENT? Mt. Stockgrowers and Mt. Battle Women

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Our state is putting more emphasis on recreation, hunting, fishing and tourism. With this comes people and the chances of them being illegally on private property could be much more likely. On our ranches we spend a great deal of time and money patrolling and checking gates, fences and picking up litter that is left along roads and streams. It would make landowners feel much more co-operative in all of this if we were to benefit in any small monetary amount. It would not be the amount of money involved but instead, this bill would establish much good will between the landowners and the state. The hope you can support this bill

RCV BY: LEGISLATURE ; 1-19-87 2:45PM ; 406444366- 4064443957: # 2
SENT BY: FAXNET LAW LIBRAR ; 1-19-87 2:45PM ; 406444366- 4064443957: # 2
XEROX TELECOPIER 406 443 666- 1-19-87 2:14PM
SENT BY: COLUMBUS ; 1-19-87 2:25PM ; 3225734- 406444366- 4064443957: # 3

EXHIBIT B
DATE 1-20-87
HB # 192



MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Steed" IN MONTANA'S FUTURE

P.O. Box 1834
Helena, Montana 59624

TESTIMONY CONCERNING HB 192
HOUSE JUDICIARY COMMITTEE

Mr. Chairman, too often a wrongdoer may receive adequate punishment under the law, while the transgressed party remains uncompensated for his losses. Representative Cobb's bill seeks to rectify that situation where permission and trespass laws are broken.

There is quite often very real injury when trespass and hunting laws are broken. While ranchers frequently accost trespassers, the cases that result in an arrest nearly always involve some sort of property damage or disturbance. Thus, this committee would certainly be justified in allowing the property owner one-half of the fine imposed.

Several types of losses are often incurred by a landowner in those instances when he finds it necessary to ask for an arrest. Yet obtaining satisfaction for them would be difficult through existing legal avenues. Some examples might include:

- (1) A vehicle being driven through crops and grass.
- (2) Livestock being disturbed while being handled.
- (3) Frequent violations may require the landowner to spend time and money patrolling his property.
- (4) Persons hunting WITH permission may be disturbed.
- (5) Gates may have been left open or fences damaged.

HB 192 brings an added measure of justice to the laws dealing with the disposition of money collected as fines for violation of hunting and trespass laws. The Montana Cattlemen's Association urges a favorable report on this legislation. Thank you for this opportunity to comment.

HB 192
January 20, 1987

EXHIBIT C
DATE 1-20-87
HB #192

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

This bill applies to two sections of law defining trespass. The first is Section 45-6-203 dealing with criminal trespass in which one does "enter or remain unlawfully in an occupied structure or on the premises of another" and Section 87-3-304 "hunting big game without landowner permission."

State fish and game wardens have authority to enforce provisions of Section 45-6-203 along with other peace officers (sheriff, police, etc.). The fines collected under this section are not earmarked for the Fish and Game Special Revenue Account. Thus the financial impact is not with the department, but rather with the city or county.

State fish and game wardens also enforce the provisions of Section 87-3-304. Fines or bond forfeitures collected under this section are to be used to partially support the warden retirement system.

The department recorded the following number of citations issued for hunting big game without landowner permission (Section 87-3-304):

1983 - 96
1984 - 136
1985 - 85

The standard penalty for this violation is \$50. However, a fine is not always collected because of dismissals, suspended sentence, etc. Presently out of the \$50 fine, \$7.50 is taken by the county for court costs and \$42.50 is remitted to the state treasurer for the fish and game special account for warden retirement.

Under the proposed legislation, the affected landowner would get one-half the fine, or \$25. The county would take \$7.50 court costs, leaving \$17.50 to go to the fish and game special revenue account. The impact will result in a loss of \$2,000-\$3,000 annually into the warden retirement account. This would have a negative impact upon that system's financial soundness.

While we recognize the needs of landowners, we must question the appropriateness of a portion of any judicial fine going to a private party. The cost of the enforcement of the law is not apportioned to the landowner, but is borne by the department, supported through license fees. This bill would seem to contemplate an enforcement system which would require those who receive the benefits to be paying the cost.

We would urge that HB 192 do not pass.

Liability Rates
Safes - 3 different
Insurance Co.

Age 21 \circ single
applies to both male & female
\$100,000.00 liability
183.30 every 6 months
300,000.00

450. 214.90 - 6 months

Age 30 -
100,000.00
109.40 - 6 months
300,000.00

300. 122.10 6 months

New & Use cars -
doesn't make any difference

REPORT B
DATE 1-20-87
HD # 197



Col. R. W. Landon, Chief

January 19, 1987

Representative Grady,

Captain Wood told me that you needed some data on liability insurance for automobiles.

During 1986 the Patrol issued 8,440 written warnings and 7,413 arrests for violations of the current insurance statute.

We stopped a total of 156,623 traffic violators. This indicated that one in ten traffic violators has something wrong with his/her auto liability insurance.

If we may be of help to you on any other matters, feel free to call us at 444-3780.

RWL
RWL

EXHIBIT C
DATE 1-20-87
HB #197

2919 Country Club Avenue
Helena, Montana 59601
January 20, 1987

Members of the committee for the record I am Alice L. Armstrong of Helena, Montana.

I am in support of HB 197 to increase penalties for operating a motor vehicle without liability insurance.

I am a recent statistic of a head on collision with a drunken driver who was not insured. This was his second DUI in about two months. His first DUI was not reported to the highway patrol so this offense was not recorded and he was not fined accordingly. For hitting me he was fined \$505.00 with \$200.00 suspended. For not being insured he was fined \$255.00 with \$200.00 being suspended.

The accident did a total of nearly \$2,000.00 damage to my car. My insurance paid all costs except the deductible. The cost of this accident to me was \$200.00 cash and three weeks loss of the use the car.

The uninsured driver should be financially responsible for his negligent behavior. Anyone driving a motor vehicle needs to be insured to absorb the costs of an accident.

Fortunately for me I was not hurt because I was wearing a seat belt. I strongly urge you to support HB 197.

VISITOR'S REGISTER

JUDICIARY

COMMITTEE

AGENCY (S)

DATE January 20, 1987

DEPARTMENT

PLEASE PRINT.....

NAME	REPRESENTING	SUP- PORT	OP- POSE
DAVID LACKMAN	MT Public Health Assn. HB163	X	
Alice L ARMSTRONG	SELF HB197	X	
Larry Majerus	Motor Vehicles HB143	X	
M.E. Micky Nelson	LAC Co. D.U.I. Task Force HB163	X	
Kathy Sealey	Dept of Justice	X	
MARK J MURPHY	DOT HB163	X	
David N Hull	City of Helena	X	
Richard E. Hildner	LAC DWI Task Force HB113		
GORDON MORRIS	HELENA HB197	X	
Rayleen Beaton	City of Helena Commission	X	
Brookes Morin	City of Helena	X	
Carol Mosher	Mt. Stockgrowers HB192 Mt. Cattle Women	X	
Bill Larran	self Helena HB197	X	
Magnor Waters	Mt. Assoc. of Churches HB163	X	
Mike Murray	Chemical Dependency Programs (HB163) OS-Montana	X	
Jo Brunner	Cattlemen HB192	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT.
IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.