

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

March 20, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 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. Cobb who was excused and Rep. Hannah who was absent.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 51:

Rep. Mercer moved that SB 51, BE CONCURRED IN. He moved amendments from the subcommittee. The amendments eliminate the threshold of 25%, less or more, responsibility of fault. They also preserve the 50 or 51% fault as a plaintiff where there would be no recovery, Rep. Mercer explained. Rep. Addy stated that the 25 or 50% negligence is a question of whether or not it is apportioned between the parties or among all persons involved in the fact pattern and that might include an empty chair in the courtroom. He disagreed with the language used in the bill in regard to using the word "persons". He further stated that when it comes to eliminating the 25% threshold that will cause the bill to have rough sailing through the Senate and it would be better to leave the bill the way it is all the way around and then there would not be any reason to argue about the language in the bill with regard to "persons" and "parties". Rep. Miles pointed out that Rep. Addy is correct. She stated that the Senate has hammered this out and they will not compromise. The cities and towns are in support of this bill the way it is because it is a point between two worlds and neither side should get everything.

Rep. Meyers stated that the House should do what they think is best on a bill and not what they think the Senate wants them to do. Rep. Giacometto acknowledged that a person should not have to pay more than they are found libel for by the court and we must think of our cities and towns and protect them.

Rep. Addy questioned Rep. Giacometto in regard to cities and towns being 25% negligent and the plaintiff 74 or 75% negligent, should the defendant have to pay that 25%. Rep. Giacometto stated that he would leave that up to the jury. Rep. Addy commented that that is a good idea and pointed out

that it should be taken out of the bill so the jury can decide that.

Rep. Rapp-Svrcek pointed out that there were a number of people who testified in favor of the bill and some of them talked about changing the threshold to 50% but no one talked about pulling the threshold out of the bill altogether.

Rep. Mercer pointed out that the House does what they think is right and the Senate does what they think is right and that is the purpose of having a House and Senate. If the two cannot agree, then that is where a compromise comes in, he said. Rep. Mercer further stated that the amendments being proposed are correct. The 25% threshold is nothing more than a compromise that is going to be confusing to juries and it really does not have a great deal of basis in theory. He stated that we must think about what our theory of justice is: Is it that a person should be responsible to the extent of their action; then you cannot justify a 25% threshold because you would have a case where someone is 25% responsible and another defendant was 75% responsible and if the 75% defendant had no money then the 25% defendant would pay 25% of the damages and no more. That is the Senate version of the bill. If the defendant was 26% responsible then he would pay the whole thing. The proposed amendments say: If a defendant is 25% responsible then he pays 25%, and if he is 26% responsible then he pays 26%. He stated that Rep. Addy suggests that we follow this through theoretically and be sure and allow a 90% responsible plaintiff to file a law suit to recover 10% against the defendant even though he is 90% at fault. Rep. Mercer further stated that he agrees with that from a theoretical standpoint but from a justice standpoint, he feels, at some point we must tell people that they must be responsible for their own actions. The 50% line has been in Montana for a long time and it has worked well, he said.

Rep. Addy stated that Rep. Mercer's theory is a pretty one-sided theory of justice. He gave an example to the committee of a driver who does not have any insurance and does not have any assets and you can get a judgement against him, but you cannot collect. If there is a dump truck that is 30% negligent and has all kinds of insurance, the dump truck will only have to pay 30%, which means that 70% of the burden then falls on the plaintiff rather than on the parties that were more responsible than they, he said, and that is what we are doing with this amendment. Rep. Bulger pointed out that we are here to be fair and if someone is 1% libel and someone else is 99% libel then it is not fair that the 1% responsible person pay all of the burden. He stated that it appears the Senate was trying to be fair and if this

bill leaves the committee with the proposed amendments, he can't see any compromise.

Rep. Mercer stated that the confusion comes into play when someone without money harms another person, which is unfair but it is also unfair to take that fact of not having money shift it over onto someone else just because they were partially responsible. Rep. Bulger pointed out that we are trying to balance competing interests and it is not a perfect world and if it were, then everyone would have great insurance and no one would get injured by a negligent act of someone else. This is an attempt to come to terms with those two competing interests, he said. Rep. Mercer stated that this is not the test in this bill. As the bill came over from the Senate, it could be 49% your fault as the plaintiff and 26% my fault and 25% someone else's fault and I end up paying 51% of the damages.

Chairman Lory asked if there is an assumption that the injured person must be protected at any cost. If we are talking about fairness, and someone is only 15% responsible the amendments say, that the assumption, is that the injured party is going to be helped at any cost. Rep. Addy stated that the injured party is not going to be able to shift that burden because he is going to always be hurt and the question is whether that burden that has been arbitrarily thrust upon him should not be shifted to others that are more at fault than they are or who are 26% at fault.

Rep. Rapp-Svrcek moved to amend Rep. Mercer's amendments by striking the 25% and inserting 50% because he stated that the 50% is fair and closer to reality since it is a reasonable recovery and it protects the defendant, and to amend striking amendment number 2 in its entirety.

Rep. Daily agreed that 25% is not fair to everyone, 50% is a good compromise and it helps both sides. Rep. Addy stated that he disagrees with Rep. Rapp-Svrcek's amendments. Question was called and a roll call vote was taken on the amendments moved by Rep. Rapp-Svrcek. The motion FAILED 8-10. (Roll Call Vote Attached).

Rep. Miles pointed out that all session we have tried to figure out how we can take the burden off the people, insurance companies and the parties at fault and get them out from under this burden. Rep. Meyers said that he feels this is a compromise bill.

Rep. Addy explained that we have to do something and have to observe a compromise.

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Rep. Rapp-Svrcek pointed out that Rep. Mercer's amendments go too far. Rep. Giacometto stated that this bill does not do anything to help the insurance companies but it does help the people of the state of Montana. Rep. Mercer stated that America is a land of liberty and liberty is based on responsibility for your own actions. The tort system was founded on a concept of being responsible for your own actions and America has shifted from that idea to an idea of a no fault system. America must return to the fault system where a person is responsible for their own action.

Question was called on the amendments. A roll call vote was taken. The motion CARRIED 10-8. (See Roll Call Vote and Amendments attached). Rep. Mercer moved that SB 51, BE CONCURRED IN AS AMENDED. A roll call vote was taken and the motion CARRIED 10-8. (See Roll Call Vote Attached). SB 51, BE CONCURRED IN AS AMENDED.

SENATE BILL NO. 139, Senator Smith, District No. 10, stated that this is an act defining the responsibility and liability of snowmobile area operators and the responsibility and risk borne by snowmobilers. He pointed out that this bill is necessary for the state of Montana if it is to continue to have recreational snowmobiling.

PROPOSERS:

KEN HOOVESTOL, Chairman of the Legislative Committee for the Montana Snowmobile Association, stated that the Snowmobilers Responsibility Act, SB 139, is to make the snowmobiler responsible for his or her own actions and to limit the liability to the snowmobile operator. The bill is patterned after the down hill Skier Responsibility Act.

DICK JOHNSON, presenting testimony on behalf of Jim Flynn, Department of Fish, Wildlife and Parks, stated that as a state agency responsible for the management of snowmobile recreation in Montana, the Department applauds the initiative of the Montana Snowmobile Association in their efforts to bring equity to the distribution of liability responsibility among participants and providers involved with recreational snowmobiling. Passage of SB 139 will help to ensure that unreasonable liability responsibilities will not deprive Montana snowmobilers of land, facilities, and groomed trails upon which to enjoy their sport. He submitted written testimony. (Exhibit A).

DENNIS OGLE, Montana Snowmobile Association, District Director, Helena, explained that Montana currently has approximately 2000 miles of groomed snowmobile trails and many of the miles are on private lands. He stated that they support this bill because it will help to eliminate some

problems that landowners are presently having. He recommended a do pass.

BUD FLATEN, Missoula Snowmobile Club, supports this bill to put a stop to the snowmobilers who prey on the insurance companies. He stated that we must take on our own responsibility. He submitted written testimony. (Exhibit B).

REP. EUDAILY presented testimony from MARVIN HAMMER, Missoula, District Director for the Montana Snowmobile Association, (Exhibit C). He stated that SB 139 is needed to help the Fish, Wildlife and Parks Department, private landowners, snowmobile clubs and grooming operators to continue to maintain the quality snowmobiling and snowmobile trails that we have in our state.

KEN HOOVESTOL presented Minutes from the Senate Fish and Game Committee, dated January 29, 1987, as (Exhibit D). He also presented written testimony from MICHAEL P. LEJEUNE, Missoula, as (Exhibit E).

DOUG ABELIN, Cut Bank Snow Goers, stated that this bill is a fair and good bill and should be adopted as it is currently amended. He presented written testimony as (Exhibit F).

REP. GRADY, went on record in support of this bill.

OPPONENTS:

KARL ENGLAND, Montana Trial Lawyers Association, related the Lesley Ericksen case. He stated that if the bill is passed something that happened to Lesley Ericksen will not be compensated through a liability award. He pointed out that the snowmobilers seem to want the bill, Department of Fish, Wildlife and Parks want the bill, but no one is speaking for people like Lesley Ericksen. He further stated that this bill needs to be looked at seriously from a gross negligence standard as opposed to a willful or wanton standard.

QUESTIONS (or Discussion) ON SENATE BILL NO. 139:

Rep. Eudaily asked Mr. England to explain the difference between gross negligence and willful and wanton misconduct. Mr. England stated that a good way to look at this situation is to take a scale, at the bottom of the scale, look at the idea of negligence, failure to do what a reasonable person would do under the circumstances. Gross negligence would be a gross deviation or a great deviation from what a person would do under the circumstances. Willful and wanton misconduct gets into the area of an intentional act designed to hurt. The standard is above gross negligence. It is aimed at a purposeful act rather than a negligent act.

Rep. Miles asked Mr. England what affect this will have on insurance rates. He stated that it will have 0 to less than 1%.

Senator Smith closed the hearing on SB 139 by stating that the committee has worked with Mr. England on the problems he was concerned about and he hoped the comments made by Mr. England will not cloud the issue. Senator Smith stated that the Senate Judiciary Committee did not have any objections to this bill. He further stated that John Wilson, Director of Tourism for the Department of Commerce came in and testified in favor of the bill when it came up in the Senate. He recommended a be concurred in vote for SB 139 because it is a necessary piece of legislation.

SENATE BILL NO. 226, Senator Halligan, District No. 29, presented a handout which covered the background/problem of this bill. (Exhibit A). He stated that this act revised procedures for youth detention, requiring a probable cause hearing after a youth has been taken into custody, providing detention procedures for youth before a probable cause hearing and allowing release of a youth on bail. The Federal Juvenile Justice and Delinquency Prevention Act of 1984 mandates removal of all juveniles from adult jails. He pointed out that section 5 gives rulemaking authority to the Department of Institutions governing the licensure of juvenile detention facilities. This authority would be transferred to the Department of Family Services if HB 325 is enacted.

PROPOSERS:

TED LECHNER, 13th Judicial District, Director of Services, Yellowstone County, stated that they are currently developing a juvenile detention facility within Yellowstone County and some of the problems addressed in SB 226 are exactly the stumbling blocks that we are running into in developing that facility. He supported this legislation.

DOROTHY MCCARTER, Attorney at the Attorney General's Office, stated that she helped to draft this bill for the Board of Crime Control and pointed out that this legislation is badly needed in Montana.

STEVE NELSON, Department of Crime Control, explained that this legislation will tie up loose ends, it gives counties the statutory tools it needs to address problems of juvenile programs and it is a message to counties and to the state of Montana that at some point in time we will no longer hold juveniles in adult jails but rather have separate facilities for them.

CURT CHISOLM, Deputy Director, Department of Institutions, stated that they support this bill and think it is a good idea. He stated a concern with regard to the licensing procedure going into effect on July 1, 1989. It also gives the Department only two years to license these facilities effective October 1, 1987, and they are not prepared to do this. He pointed out that the Department has not been in the licensing business before. Mr. Chisolm suggested that the facilities should meet the licensing criteria and perhaps this bill should be routed to the Appropriations Committee. He suggested that rather than have the Department as the lead agency perhaps the Board of Crime Control could be the licensing agency.

REP. STRIZICH went on record in support of this legislation.

There were no opponents to SB 226.

QUESTIONS (or Discussion) ON SENATE BILL NO. 226:

Rep. Addy asked Ms. McCarter about page 2, lines 3-6, with regard to compelling the attendance of parents or legal guardians at pain of punishment and he questioned why the state compel their attendance. She stated that they are minors and the legal custodians have to be there on behalf of the child to know what the child's constitutional rights are and what the possibilities of disposition are for the child. Rep. Addy asked Senator Halligan the same question. He stated that this is not done now in youth court proceedings.

Senator Halligan closed the hearing on SB 226 by stating the the Federal standards will be in effect in 1989 and we need to deal with the procedures now.

SENATE BILL NO. 258, Senator Brown, District No. 2, sponsor, stated that this bill revises the law relating to training of justices of the peace. The bill proposes to bring the law into conformity with practice.

PROPONENTS:

BERNARD F. MCCARTHY, Justice of the Peace for Lewis and Clark County and Chairman of the Legislative Committee for the Montana Magistrates Association, stated that SB 258 simply makes the reality of the present situation law. He is former trainer for the Montana Supreme Court. The office has the budget, the expertise and the resources to conduct the training. He submitted written testimony as (Exhibit A).

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There were no further proponents, no opponents and no questions.

Senator Brown closed the hearing on SB 258.

SENATE BILL NO. 257, Senator Thayer, District No. 19, provides a mechanism to reduce rates for single party telephone service. The lower rate will apply to those meeting established medicaid criteria, elderly, blind and disabled. The reason for this bill is because the FCC recently approved a credit of \$2.00 per month on an eligible subscriber's telephone bill.

PROPOSERS:

JIM HUGHES, Mountain Bell, stated that he would like to start by thanking the people who have worked on this bill for the last 18 months. He pointed out that he has been working with the Low Income Coalition, Low Income Senior Citizens, Human Resource Development Council, SRS, Public Service Commission, Social Service, Governor's Office, Montana Telephone Association, Independent Living Project and he feels they have come up with a very complete package for offering a low income telephone assistance bill.

ELMER HAUSKEN, American Association of Retired Persons, urged support of this act because of the good it will do.

J. DRISCOLL, Staff Attorney with the Public Service Commission, supported this bill with one change. He stated that, as the bill is drafted, it establishes a mandatory program for Mountain Bell only and it is the Commission's opinion that the bill would be more effective and a better piece of legislation if it applied to all of the regulated telephone companies. He submitted written testimony and amendments. (Exhibit A).

JAY DOWNEN, Manager of the statewide Association Representing Rural Electric and Telephone, stated that the cooperatives do intend to participate and SB 257 is a delicate balance of interests. They support the lifeline concept. He strongly opposed the PSC's proposed amendments.

WADE WILKISON, Low-Income Senior Citizens Advocates, stated that this bill is clearly a help to the people of Montana.

JIM NOLAN, SRS, supported the bill as passed by the Senate.

JOHN ORTWEIN, Montana Catholic Conference, stated that they support this bill and hope that all other telephone companies in the state of Montana, both regulated and

cooperative, would join in giving aid to the poor with their phone bills. He submitted written testimony. (Exhibit B0.

CHET KINSEY submitted written testimony from the MONTANA LOW-INCOME COALITION, Helena, as (Exhibit C) and written testimony from the MONTANA SENIOR CITIZENS ASSOCIATION, Inc., Helena, (Exhibit D).

JIM PAINE, State of Montana Consumer Council, appeared in support of the concept and the body of the bill.

GENE PHILLIPS, Northwest Telephones Inc., Kalispell, supports the Senate passed bill and is strongly opposed to the PSC's amendments. (They submitted a map as Exhibit E).

LESTER LOBLE II, Attorney, General Telephone Company of the Northwest, supported the present form of the bill without the amendments.

There were no further proponents, no opponents and no questions.

Senator Thayer closed the hearing on SB 257 by stating that this is a good bill and an opportunity to help people. He stated that the amendments were rejected in the Senate. He urged that the amendments be rejected again.

HOUSE BILL NO. 873, Rep. Hannah, sponsor, District No., 87, stated that this bill generally revises and clarifies the homicide laws.

PROPOSERS:

MARC PACICOT, Montana County Attorney's Association, stated that this is one of the most important criminal law bills that has been introduced in this session. He pointed out that all of the states in the union adhere to the felony murder rule in one form or another and, in essence, what the felony murder rule holds is that when a person becomes engaged in the commission of a crime that has a high homicide risk, for instance, kidnapping or robbery, by doing that they create a high homicide risk. He further explained the bill section by section and gave the history related to the homicide laws.

There were no further proponents, no opponents and no questions.

Rep. Hannah closed the hearing on HB 873.

JUDICIARY COMMITTEE
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ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 11:50 a.m.

EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 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)	✓		

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 20, 1987 ^{SENATE} BILL NO. 51

TIME 9:14 A.M.

NAME	EXCUSED	AYE	NAY
JOHN MERCER			✓
LEO GIACOMETTO			✓
BUDD GOULD			✓
AL MEYERS			✓
JOHN COBB			✓
ED GRADY			✓
PAUL RAPP-SVRCEK		✓	
VERNON KELLER			✓
RALPH EUDAILY			✓
TOM BULGER		✓	
JOAN MILES		✓	
FRITZ DAILY		✓	
TOM HANNAH	<u>PROXY</u>		✓
BILL STRIZICH		✓	
PAULA DARKO		✓	
KELLY ADDY		✓	
DAVE BROWN		✓	
EARL LORY			✓

TALLY

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Amelia J. Rapp
Secretary

Earl Lory
Chairman

MOTION: AMENDMENT / REP. RAPP-SVRCEK

DEFEATED

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 20, 1987 ^{SENATE} BILL NO. 51 TIME 9:31 A.M.

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

TALLY

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Annex J. Hall
Secretary

Earl Lory
Chairman

MOTION: MERCER AMENDMENTS

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 90, 1987 ^{SENATE} BILL NO. 51 TIME 9:26 A.M.

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

TALLY

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Spencer J. Adell
Secretary

Earl Lory
Chairman

MOTION: BE CONC. IN AS AMENDED

STANDING COMMITTEE REPORT

FEBRUARY 20,

19 37

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 305

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

1. Title, Line 7.

Following: "ALL"

Insert: "UNINSURED"

2. Page 1, Line 22.

Following: "all"

Insert: "uninsured"

STANDING COMMITTEE REPORT

MARCH 20,

19 67

JUDICIARY

Mr. Speaker: We, the committee on

SENATE BILL NO. 51

report

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Amendments to SB 51
Blue Third Reading copy

Chairman

1. Title, lines 10 and 11.

Following: "PASSENGERS" on line 10

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

2. Title, line 11, following ";"

Strike: "AND"

FOLLOWING: "AND"

Insert: "; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION"

3. Pages 4 and 5.

Following: "gather" on page 4, line 12

Strike: remainder of line 12 through line 1 of page 5

Insert: "(1) In an action involving the negligence of more than one person, the trial of fact shall determine the percentage of negligence attributable to each person whose actions contributed to the damages. Such persons may include but need not be limited to the claimant, injured person, defendants, third-party defendants, persons released from liability by the claimant, persons immune from liability to the claimant, and any other persons who have a defense against the claimant.

(2) Judgment must be entered against each defendant in an amount representing his proportionate share of the claimant's total damages unless the defendant:

(a) has been released by the claimant;

(b) is immune from liability to the claimant; or

(c) has prevailed against the claimant on any other individual defense.

(3) The liability of a defendant is several only, except that one defendant may be responsible for the fault of another if both acted in concert in contributing to the claimant's damages or if one defendant acted as an agent of the other."

THIRD

reading copy (BLUE)

color

REP. MERCER WILL CARRY THE BILL!

2

4. Page 6, lines 5 through 13.

Strike: lines 5 through 13 in their entirety.

5. Page 6.

Following: line 19

Insert: "NEW SECTION. Section 4. Effective date --
applicability." (1) This act is effective July 1, 1937.

(2) This act applies to causes of actions arising on or
after July 1, 1937."

A
3-20-87
SB#139

SB 139
March 20, 1987

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

The department supports this bill including the amendments added in the Senate. As the state agency responsible for the management of snowmobile recreation in Montana, we applaud the initiative of the Montana Snowmobile Association in their efforts to bring equity to the distribution of liability responsibility among participants and providers involved with recreational snowmobiling.

SB 139 is similar in concept and patterned after Section 23-2-736, MCA, the "Skiers Responsibility Law," which was passed in 1979. The bill recognizes the risks inherent in the sport of snowmobiling and requires that participants be responsible for their own acts. The allocation of a greater share of the risks involved in an inherently dangerous sport to the willing participants is sound public policy and is consistent with accepted restraint on tort liability in similar circumstances.

It does not absolve the Department, other agencies, landowners, or providers from responsibility for their acts, but does protect them from unreasonable liability. The standard of liability, willful or wanton misconduct, is the standard applied to landowners under the stream access statutes, Section 23-2-321, MCA, and to landowners who permit recreation on their property without consideration, Section 70-16-302, MCA.

Passage of SB 139 will help to ensure that unreasonable liability responsibilities will not deprive Montana snowmobilers of land, facilities, and groomed trails upon which to enjoy their sport.

WITNESS STATEMENT

B
3-20-87
SB #139

NAME John Flaten BILL NO. 139
ADDRESS West Salem, Oregon DATE 3-20-87
WHOM DO YOU REPRESENT? West Salem
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: I am a member of the
West Salem Chamber of Commerce and
the West Salem Chamber of Commerce
is a very important organization and
the West Salem Chamber of Commerce
is a very important organization and
the West Salem Chamber of Commerce
is a very important organization and

Microfilm

(over) important

Montana**SNOWMOBILE****Association**

Mr Chairman and members of the Judiciary Committee:

My name is Marvin Hammer from Missoula. I am a District Director for the Montana Snowmobile Association. I am here this morning to represent the Snowmobile Clubs in Seeley Lake, Saltese, Ronan, Ovando and Missoula.

Recreational snowmobiling is done on miles of groomed snowmobile trails in Montana on both private and public lands. We as snowmobilers are fortunate to be able to enjoy our recreation during the winter months on these lands.

Senate Bill 139 will help to protect land owners, snowmobile clubs, groomer operators and snowmobile rental agencies. As snowmobilers enjoy snowmobiling and groomed snowmobile trails, it promotes tourism within our state and the local economy of many small resort communities. Snowmobilers bring life and money into these communities that would otherwise have their doors closed during the winter months. Snowmobile clubs and officers are now very concerned about their sponsoring of events in fear of being sued. Some clubs have discontinued their activities because they have tried to get insurance and found it to be expensive.

Everything we do has an inherent risk. As concerned recreational snowmobilers we need to be responsible for actions as we enjoy our sport of snowmobiling.

Senate Bill 139 "Snowmobilers Liability and Responsibility Bill" is needed to help the Fish Wildlife and Parks, Forest Service, private land owners, snowmobile clubs and grooming operators to continue to maintain the quality snowmobiling and snowmobile trails that we have in our state. Thank you.

A
3-20-87
SB#226

INTRODUCED BY HALLIGAN

Background/Problem

1. The Federal Juvenile Justice and Delinquency Prevention Act of 1984 mandates removal of all juveniles from adult jails.
2. An Oregon federal court case (D.B. vs. Tewksbury) condemned the practice of using adult jails for juveniles. The court found that the following conditions among others, are violation of basic rights: (A) failure to provide any form of work, exercise, education, or recreation; (B) failure to provide adequate staff supervision to protect children from harming themselves and/or other children; and (C) failure to train staff to be able to meet the special psychological needs of confined children.
3. Montana statutes currently do not provide a legal definition for secure detention or an agency charged with the responsibility for developing standards for licensure of detention facilities.
4. County jails are the only secure facilities available in Montana to detain youth awaiting court action (preadjudicatory detention). Most of these facilities do not meet nationally accepted standards for adults and are not prepared to meet the special needs of the young people. This places a significant liability on local governments who must provide detention services.

YOUTH JUSTICE COUNCIL - BOARD OF CRIME CONTROL
PROPOSED LEGISLATION:

During 1986, the Juvenile Detention Task Force of the Youth Justice Council met to determine solutions to the detention problem. The Task Force developed the statutory charges reflected in SB 226 to resolve those issues in the following manner.

RECOMMENDATION I: Provide for probable cause hearings for any youth held 24 hours. This ensures both judicial review of the case and determines a point at which a youth must be placed in a juvenile detention facility.

A survey conducted in 1986 indicated that 18 of 20 Judicial Districts currently conduct some form of judicial review for detention.

Section 1 requires a probable cause hearing within 24 hours for purposes of determining further detention. Section 1 also clarifies adult jails can not be used for detention subsequent to the hearing, (with an effective date of July 1, 1989).

RECOMMENDATION II: Define Detention Facilities and allow for regional detention governed by group of counties.

Section 4 Enables the establishment of regional detention facilities and fixes the responsibility for financial liability with the county receiving detention services.

RECOMMENDATION III: Determine the administrative and financial responsibility for the operation of a juvenile detention facility.

Section 11 places the administrative and financial responsibility for operation of a detention facility with the county commissioners. It also calls for inspection of detention facilities by the county commissioners every three months and by the Youth Court Judge once a year.

RECOMMENDATION IV: Establish the responsibility for licensing juvenile detention facilities.

Section 5 Gives rule making authority to the Department of Institutions governing the licensure of juvenile detention facilities. This authority would be transferred to the Dept. of Family Services if HB 325 is enacted.

RECOMMENDATION V: Establish a clear and consistent procedure by which a youth is put into detention.

This is accomplished by expanding the detention criteria in 41-5-305, clarifying the language used to differentiate between "taken into custody" and "placed in detention" the term "apprehend" has been removed from the statute to reduce confusion.

TESTIMONY ON SENATE BILL

258

A
3-20-87
SB # 258

MY NAME IS BERNARD F. MCCARTHY, I AM JUSTICE OF THE PEACE FOR LEWIS AND CLARK COUNTY AND CHAIRMAN OF THE LEGISLATIVE COMMITTEE FOR THE MONTANA MAGISTRATES ASSOCIATION.

WE SUPPORT SB _____ AS A MEASURE THAT SIMPLY MAKES THE REALITY OF THE PRESENT SITUATION LAW. PRESENTLY, THE MONTANA LAW SCHOOL IS CHARGED WITH THE RESPONSIBILITY OF PROVIDING THE TRAINING SESSION REQUIRED EVERY FOUR YEARS FOR JUSTICES OF THE PEACE. HOWEVER, THE LAW SCHOOL HAS NEVER BEEN PROVIDED A BUDGET TO PERFORM THOSE DUTIES. AS FORMER TRAINER FOR THE MONTANA SUPREME COURT I KNOW THAT THE PROPER PLACE FOR THE TRAINING RESTS IN THE OFFICE OF THE MONTANA SUPREME COURT. THAT OFFICE HAS THE BUDGET, THE EXPERTISE AND THE RESOURCES TO CONDUCT THE TRAINING. IN ADDITION, THE COURT CONDUCTS ALL THE OTHER TRAINING REQUIRED IN THE LAW AND SHOULD BE GIVEN THE RESPONSIBILITY FOR THIS SESSION AS WELL. WE URGE YOUR DO PASS RECOMMENDATION FOR THIS BILL.

Bernard F. McCarthy

PUBLIC SERVICE COMMISSION

2701 Prospect Avenue • Helena, Montana 59620
Telephone: (406) 444-6199

Clyde Jarvis, Chairman
Howard Ellis, Vice Chairman
John Driscoll
Tom Monahan
Danny Oberg

A
3-30-87
SB#257

March 20, 1987

Written testimony of the Public Service Commission on SB 257.

The Public Service Commission supports SB 257 because a telephone discount to Medicaid recipients furthers the statutory goal of maintaining universal availability of basic telecommunication service at affordable rates. The PSC proposes four amendments to make the discount available from all regulated telephone companies, not just Mountain Bell.

SB 257 as drafted provides a \$4 discount to Mountain Bell customers who receive Medicaid. The \$4 comes from two sources -- Mountain Bell receives \$2 from an increase in the rate for basic residential service and \$2 is a waiver of the Medicaid recipient's end user access line charge imposed by the FCC. Funding for the FCC waiver comes from the federal carrier access line charge. Business basic service rates will not be increased by this program.

As drafted, SB 257 establishes a mandatory program for Mountain Bell only; other regulated telephone companies may choose to participate and the program does not apply to unregulated cooperatives. The attached map shows telephone service areas in Montana. Mountain Bell serves the green area. Other regulated companies serve the area shaded yellow and would be included

in the program by the PSC's amendments. The white area is either served by a cooperative or has no telephone service. The PSC has no jurisdiction over cooperatives and is not proposing amendments that affect them.

The PSC proposes to make this bill apply to all regulated telephone companies for two reasons. One, this is a program to keep telephone service available to low income citizens. If the Legislature determines that Medicaid recipients need financial help, then all telephone customers who receive Medicaid should receive the help, not just Medicaid recipients who are Bell customers. Two, as drafted this bill will cause considerable consumer confusion. Receiving Medicaid is the eligibility criteria and all Medicaid recipients will be informed of the discount, but only Bell customers will receive it. Also, the legislature is requiring Mountain Bell's residential customers to pay for a program to help Medicaid recipients, but it is not requiring other regulated telephone companies' customers to participate. Also, the federal carrier access charge, which provides half the discount, is paid by the customers of every telephone company, not just the Bell customers.

Until the program is established the PSC does not have the data to calculate how much monthly residential rates will increase, but we estimate the increase will be in the range of 6 to 9 cents. The Department of Social and Rehabilitation Services estimates that there are 25,800 Medicaid recipients. Assuming all Medicaid recipients lived in Mountain Bell service areas and received the discount, both very unlikely assumptions, the

charge for basic residential service could increase 17 cents per month to fund this program.

AMENDMENTS:

The PSC proposes four amendments to make this program apply to all regulated utilities:

1. Insert "of a regulated telephone utility" after the word "subscriber." This will prevent the other amendments the PSC proposes from applying to the cooperatives. The PSC does not regulate the cooperatives and does not express an opinion on whether they should participate in this program.

2. Strike Section 3 parts 2 and 3. These sections require the PSC to adjust rates on a company by company basis. The rate increase will vary from company to company depending on the number of customers a company has and the percentage who receive Medicaid. For example, Company A's customers could pay 9 cents per month and Company B's pay 6 cents per month to fund the program. The PSC prefers flexibility to chose whether to recover costs on a state wide or a company by company basis.

3. & 4. Strike the portions of Section 7 that make SB 257 mandatory for telephone companies with more than 50,000 lines and voluntary for those with fewer.

A
3-20-87
SB# 257

Approximate	Rate For
No. of	Basic
Residential	Residential
Lines	Service*

Telephone Company

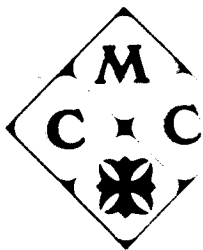
Included in the bill as drafted	Mountain Bell	300,000	\$ 13.11
Included in the bill under PSC amendment	Northwestern Tele.	32,000	7.38
	General Tele. of the NW	6,500	9.30
	Project Tele. Co.	2,400	10.00
	Ronan Tele. Co.	1,800	8.00
	Lincoln Tele. Co.	600	9.00
	Southern Mont. Tele. Co.	600	5.45
	Hot Springs Tele. Co.	600	2.50

Telephone Cooperatives**

Not included under either version of the bill	Blackfoot	4,400	8.50
	Interbel	700	10.00
	Mid-Rivers	5,600	12.65
	Nemont	2,300	6.50
	Northern	1,400	6.25
	Range	2,600	10.65
	Three Rivers	7,100	7.00
	Triangle	7,900	7.00
	Valley Rural	700	8.50

* This rate is for one party service in a basic rate area, some companies add zone charges for service beyond the basic rate area. Multi-party service is generally available at a lower rate. In some areas Mountain Bell offers local measured service at a lower flat rate. In addition, all consumers are charged \$2 for the federal carrier access line charge.

** The PSC does not regulate the cooperatives. This information is accurate to the best of our knowledge and is provided for comparative purposes.



Montana Catholic Conference

March 20, 1987

12
3-20-87
SB# 257

CHAIRMAN LORY AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE:

I am John Ortwein representing the Montana Catholic Conference.

Catholic Social teaching throughout the centuries has stressed the concept of distributive justice. Simply put, distributive justice requires that the allocation of income, wealth and power in society be evaluated in light of its effects on persons whose basic material needs are unmet. This is a duty of the whole of society and it creates particular obligations for those with greater resources. These duties call not only for individual charitable giving but also for a more systematic approach by all groups that shape economic life.

The Montana Catholic Conference supports S.B. 257 and would hope that all other telephone companies in the State of Montana both regulated and cooperatives would join in giving aid to the poor with their phone bills.

MONTANA LOW INCOME COALITION



P.O. Box 1029
107 West Lawrence
Helena, Montana 59624
(406) 449-8401

Supporters: MONTANA ALLIANCE FOR PROGRESSIVE POLICY
MONTANA INDUSTRY EMPLOYERS ASSOCIATION
MONTANA LEGAL SERVICES EMPLOYERS
LOW INCOME MONTANA CITIZENS ADVOCATES
MONTANA SENIOR CITIZENS ASSOCIATION
MONTANA HOUSING ACTION GROUP
Helena: LAST CHANCE HOUSING COALITION
Missoula: LOW INCOME GROUP FOR HUMAN TREATMENT
NATIVE AMERICAN SERVICES AGENCY
Great Falls: CONCERNED CITIZENS COALITION
Butte: BUTTE COMMUNITY UNION
Bozeman: BOZEMAN HOUSING COALITION

EXHIBIT 10

DATE 9-20-87

NO 504 257

Cherrie Krining testifying for Montana Low
Income Coalition on H.B. 257

We are in record supporting the bill.
We have had members working with the
telephone companies on lower rates for the
poor and disadvantaged.

Phones are a necessity for many
disadvantaged people to protect their lives.
Necessary for the men, project to find work.

D
3-20-87
SB # 257

Montana Senior Citizens Assn., Inc.

WITH AFFILIATED CHAPTERS THROUGHOUT THE STATE

P.O. BOX 423 - HELENA, MONTANA 59624



(406) 443-5341

20 March 1987

Mr Chairman and Members of the Committee

Good Morning, I am Chet Kinsey, and I represent MSCA. We urge your support on SB 257, the telephone low income assistance program. Senior citizens as well as all eligible subscribers need a discount in the monthly charge for the local exchange service in the telephone network. Seniors are often isolated and extremely dependent on the telephone for outside communication, and having a telephone could make the difference of whether they live or not, in the case of an emergency. Thank you for considering seniors in this issue.

A detailed map of Montana showing county boundaries and names. The map is oriented with North at the top. County names are written in all caps. Some counties are shaded with diagonal lines. The map includes labels for major cities and towns, as well as geographical features like rivers and lakes. The map is a black and white line drawing.

Approved by Reserve Requirements - 5100 for
Proctor 10.4

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE

BILL NO.

258

DATE _____

March 20, 1987

SPONSOR

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE

BILL NO. 226

DATE march 20, 1987

SPONSOR _____

[illegible]

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VISITORS' REGISTER

JUDICIARY

COMMITTEE

HOUSE
~~SENATE~~

BILL NO.

873

DATE _____

March 20, 1987

SPONSOR

[illegible]

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VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE
BILL NO.

257

DATE

March 20, 1987

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
AGGY Miller	PSC	✓	
Jim Miller	SCD	✓	
John H. [unclear]	MTA, BELL	✓	
John [unclear]	mt Cath Conf.	✓	
Jim [unclear]	the [unclear] Council	✓	
Robert [unclear]	CCRP	✓	
Albert [unclear]	MSCA	✓	
"	MLIC	✓	
Jay Downson	MTA	✓	
Charles [unclear]	State Aging Coordinator	✓	
Gene Phillips	NTS	✓ with [unclear] PSC [unclear]	

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

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JUDICIARY

COMMITTEE

92

DATE _____

March 19 1987

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE
BILL NO.

DATE _____

SPONSOR

[illegible]

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE
BILL NO.

DATE _____

SPONSOR

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.