

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 12, 1987

The twenty-seventh meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 12, 1987, by chairman Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All members were present with the exception of Senator Brown, who was excused.

CONSIDERATION OF HOUSE BILL 77: Representative Jan Brown, House District 46, Helena, introduced HB 77. (Exhibit 1)

PROPOSERS: John McRae, Child Support/DOR, said in the last legislative session, the DOR asked to get rid of the statute of limitation in this area. He said the bill allows the department to have paternity, but limits the liability in separate session. He said in this bill, the state will be able to follow the federal mandate on this subject.

OPPOSERS: There were no opposers.

DISCUSSION ON HOUSE BILL 77: Senator Halligan asked what specific language the federal agencies would want us to adopt. Mr. McRae said the federal agencies want us to establish paternity at anytime until the child is 18 years of age.

Representative Brown closed the hearing on HB 77.

CONSIDERATION OF HOUSE BILL 79: Representative Jan Brown, House District 46, Helena, introduced HB 79. (Exhibit 2)

PROPOSERS: John McRae, DOR, said the federal agencies have asked us to enforce the health insurance policy issue which involves children that should be covered. He said this enforcement policy makes the department go to district

court. He said the department only has 3 staff attorneys and 56 counties where these health insurance cases could exist. He stated the department would like to use an administrative law process instead of the district court process. He felt it will save time and money. He said it also keeps the department out of court. He also said if an individual doesn't pay the health insurance policy for his children and has been notified of it, then he can be assessed \$100 a month until he pays it. The individual would have an administrative hearing before the assessment starts to determine if the individual has paid or not.

Sandy Chaney, Women's Lobbyist Fund, supported both, House Bill 77 and House Bill 79. (Exhibit 3)

OPPONENTS: There were none.

DISCUSSION ON HOUSE BILL 79: Senator Yellowtail asked when the \$100 assessment would start. Mr. McRae said the fine starts at the time the notice order is sent out.

Senator Halligan asked if this meant the department's order or the insurance company's order. Mr. McRae said it is the department order that would start it. He said if the person can show he has paid the insurance, then the \$100 fine and proceedings is dropped.

Senator Beck asked if the \$100 is for each child. Mr. McRae said it is just \$100 for an order. Senator Beck asked if a family has 5 children, would it be cheaper for them to pay this \$100 fine than an insurance policy for 5 children. Mr. McRae said an insurance policy at a place of employment is usually less than \$100 for a large family because it is fairly inexpensive to add dependents to a policy. Senator Beck questioned if the children are dependents of mothers and not the fathers, does the father get out of this. Mr. McRae said a father does not divorce his children, they are always dependents of his.

Representative Brown closed the hearing on HB 79.

CONSIDERATION OF HOUSE BILL 81: Representative Jan Brown, Helena, introduced HB 81 and presented amendments. (Exhibits 4 and 5)

PROPONENTS: Mr. John McRae, DOR, said the amendments were established after the House passed the bill. He explained the federal government passed a bill called the Omnibus Budget Reconciliation Act of 1984. He said this Act has caused the state of Montana to amend its law so it will comply with the federal law. He said sending an

order out of state could become modified because the order was not a final order. He said the amended bill will make each child support order or decree a final order or decree, so sending an order out of state will not be subject to modification.

OPPONENTS: There were none.

DISCUSSION ON HOUSE BILL 81: Senator Pinsoneault questioned how this would work in general. Mr. McRae said if someone was going to modify a support obligation, they would prepare a motion and that motion would have to be served on the opposing side. He said in present practice, a motion is served by mail and it is considered effective on mailing. He said the new bill would have the modification become effective when the individual receives the notice.

Senator Mazurek asked who has jurisdiction over a Montana decree if one party lives out of state. Mr. McRae responded there is an administration process for state-to-state child support, but the order must be a final order. Senator Mazurek asked how an order could be final when either party can go to court on the grounds that the order was unconscionable on either side. He said this would not be a final judgment. Mr. McRae said a child support obligation in Montana by district court cannot be modified retroactively. The federal law will stop all states from modifying orders retroactively.

Representative Brown closed the hearing on HB 81.

CONSIDERATION OF HOUSE BILL 82: Representative Jan Brown, Helena, introduced HB 82. (Exhibit 6)

PROPONENTS:

John McRae, DOR, explained what the law does now and explained what the bill would do. He said a problem right now is the state has the burden of collecting an unreduced child support payment. He said because the burden is on the state to collect, the recipient does not care about the case because the recipient is getting her money. The recipient, then, usually enters an agreement with the paying parent for certain things, like a material item, or just friendship. He said what results is these agreements terminate or limit the child support obligation. He stated this reduces the amount the state can collect to reimburse the AFDC that is paid out. He said this bill will correct this problem. He said if there is a modification in child support payments between the two parents, the parents have to, by this bill, inform the department. He said the bill will clarify the payment process to the recipients.

OPPONENTS: There were none.

DISCUSSION ON HOUSE BILL 82: Senator Blaylock asked if the bills presented today will fix all the problems. Rep. Brown said the bills will help, but there will be more problems to come she is sure.

Senator Mazurek asked if this bill gives the department the right to compromise child support payments. Mr. Mc Rae said it's not unusual to compromise, but the department can't compromise any money portion that comes to the mother or AFDC from payments because the department doesn't represent these groups.

Rep. Brown closed the hearing on HB 82.

EXECUTIVE ACTION

ACTION ON SENATE BILL 51: Senator Mazurek explained what the subcommittee did at the 9:00 a.m. meeting this morning.

Senator Brown showed the committee the gray bill they worked with at the 9 o'clock meeting. (Exhibit 7) Senator Brown moved to reconsider the committee's previous action on the bill. The motion carried. Senator Brown then moved to strike all amendments made in earlier meetings on SB 51. The motion carried. The bill is now the introduced bill.

Senator Mazurek said amendments were attached to the gray bill. He said on page 1, the plaintiff's negligence will be compared to all defendant's negligence. He said the plaintiff's negligence has to be 51% before he cannot recover.

Senator Mazurek explained what (1) and (2) on page 4 of the gray bill are. He said any party who is 25% negligent, or less, will be responsible for his part of the negligence. He said anyone who is above 25% is jointly/severally liable. He said if a defendant who is 30% negligent, and two other defendants are each 15% negligent, and the 30% defendant is insolvent, then the plaintiff can only recover from the two defendants that are each 15% negligent.

Senator Mazurek explained sub 3 of the gray bill. He said the formula we will use is: a plaintiff is 40% negligent, defendant is 30% negligent, and defendants each are 15% negligent. He said "acting in concert", is two employees of a city are working together and are 15% each at fault.

He said a plaintiff could not increase the "acting in concert" total over 30% in this case to just one of the 15% defendant because if the plaintiff asked for the "act in concert" percentage to go to one of the defendants, it makes his fault double and causes him to be jointly and severally liable. He explained the bill will allow one of the defendants "acting in concert" to take the full amount of the two combined but that defendant will not be liable for the full amount.

Senator Crippen asked if "acting in concert" is in the bill now. Senator Mazurek said no. Senator Crippen asked where two street cleaners are "acting in concert" if they are cleaning a street together about 1/2 hour apart.

Senator Halligan said if an indivisible injury happens after two guys hit you, they were "acting in concert". He said one looks on the injury issue besides the conspiracy issue.

Senator Crippen asked to describe unauthorized acts and an authorized act when "acting in concert". Mr. Karl Englund, Montana Trial Lawyers Assn., said there may be situations where something wasn't technically authorized, but yet in the course of the work, it must be done. He said it depends on the nature of the work. Mr. Englund said the "acting in concert" deals with the responsibility of one person to pay the judgment on behalf of the other.

Senator Yellowtail asked what the rationale for treating concert the accumulative liability as severally liable. Ms. Lane said it treats it jointly liable, not severally liable. Ms. Lane said it is strictly a policy decision.

Senator Mazurek discussed sub 4 of the gray bill. He used the same example of the plaintiff being 40%, defendant 30%, and two defendants 15% each. He said on line 17 of page 5 of the gray bill, it tells who will be part of the "fault pie". He explained both sides don't care for the "empty chair" issue. He said if you cannot compare defendant 2 (15%) because he is not in the trial, the introduced bill would split the 15% up between the other two defendants. He said the "empty chair" doesn't allow the plaintiff to get full compensation. He felt the subcommittee thought it was unfair to the two defendants to split negligence they did not commit. Senator Yellowtail asked if the gray bill doesn't allow the split of the "empty chair's" fault, then the plaintiff will have to bring in all defendants who had any fault, to be fully compensated.

Senator Mazurek said on page 5, lines 2-5, the subcommittee took that language and moved it to subparagraph 5 on page 6. He said the committee also deleted the words on page 6, line 11 "who are jointly liable". He said they did this because they moved the other language.

Senator Mazurek said there were significant things done: 1) clarified who negligence is compared against the plaintiff's negligence; 2) eliminated joint/several liable when a defendant is 25% or less at fault; and 3) who the jury looks at when assigning negligence, which is everyone.

Senator Crippen asked what happened to product liability. Senator Mazurek thought it "bogged down" the bill so the subcommittee decided against it. Senator Crippen gave an example of going to visit Senator Yellowtail's ranch and he has been drinking and hits a cattleguard and is injured. Senator Crippen said there could be a lawsuit with negligence on Senator Yellowtail, the cattleguard manufacturer, the person that installed the guard, and being a county road, the county is in it too. He said the court finds me 49% negligent. He said Senator Yellowtail is 15% negligent and still, even though my negligence is 3 times more than Senator Yellowtail, I can still collect from him. Senator Mazurek said that is the way the bill came in.

Senator Brown moved that the committee adopt the gray bill as amendments for Senate Bill 51 with the changes the subcommittee made in the 9 o'clock meeting. Senator Yellowtail thought the "acting in concert" defendants should be held jointly liable if their percentage together exceeds 25%.

Senator Crippen commended the subcommittee. Senator Pinsonneault asked what it will do to insurance rates. The committee didn't really know. The motion carried.

Senator Brown moved Senate Bill 51 DO PASS AS AMENDED. The motion carried unanimously.

Senator Halligan moved to have a committee bill drafted for a products liability bill. The motion carried.

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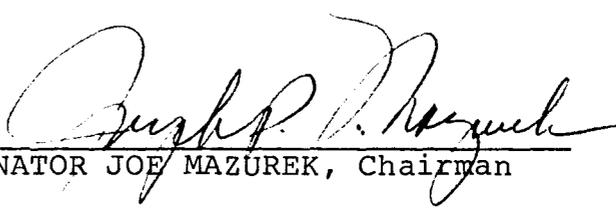
ACTION ON SENATE BILL 249: Senator Blaylock suggested sunsetting the bill after 4 years.

John Maynard, Tort Claims, said it would help the bill.

Senator Blaylock presented the committee with amendments to the bill. (Exhibit 8) Senator Blaylock moved the amendments. The motion carried.

Senator Blaylock moved the bill DO PASS AS AMENDED. The motion carried.

ADJOURNMENT: The meeting adjourned at 12:15 p.m.



SENATOR JOE MAZUREK, Chairman

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SUMMARY OF HB77 (J. BROWN)

(Prepared by Senate Judiciary Committee staff)

HB77 is by request of the Department of Revenue and amends the Uniform Parentage Act (Part 1 of chapter 6, Title 40) as it relates to the state's ability to bring a paternity action. Under current law, the state can bring a paternity action (for purposes of recouping public assistance payments) only for 2 years after the first application is made for public assistance. This bill indefinitely expands that time period by allowing the state to bring such actions at any time after first application until the child reaches the age of majority. The bill also limits recoupment of past public payments to the 2-year period prior to the commencement of the action.

COMMENTS: Apparently this bill is proposed to make Montana law comply with federal requirements for federal AFDC payments [1984 Child Support Amendments to the Social Security Act, P.L. 98-378].

C:\LANE\WP\SUMHB77.

SENATE JUDICIARY

EXHIBIT NO. 2

DATE FEB 12, 1981

BILL NO. HB 79

SUMMARY OF HB79 (J. BROWN)

(Prepared by Senate Judiciary Committee staff)

HB79 is by request of the Department of Revenue and proposes a new section to be codified in the provisions of law relating to administrative enforcement of child support. These statutes are administered by the Department of Revenue. This bill allows the Department to require parents who are obligated to pay child support to secure and maintain health insurance coverage for each dependent child if such health insurance is available through their employment.

COMMENTS: None.

C:\LANE\WP\SUMHB79.

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



SENATE JUDICIARY

EXHIBIT NO. 3

DATE FEB. 12th

BILL NO. HB 79

February 12, 1987

Testimony for HB 77 and 79

Mr. Chairman and members of the Senate Judiciary Committee:

My name is Sandy Chaney and I am here today on behalf of the Women's Lobbyist Fund to offer general remarks in support of House Bills 77 and 79. These bills address the serious problem of non-payment of child support orders.

In 1985 Montana passed legislation enforcing the collection of child support payments. As a result, the amount of court ordered payments increased. (Great Falls Tribune, 6/13/86) Nevertheless, the inability to collect child support still plagues the custodial parent, usually the mother of the children. National statistics reveal that ninety percent of the time, custody is granted to the mother. (Newsweek, "Divorce American Style," 1/10/83)

With this increased responsibility to the child(ren) is often a decreased standard of living. In the first year after divorce, the standard of living of many women—and consequently of the children—plummets 73%; the standard of living of some men rises 42%. (The Divorce Revolution, Lenore Weitzman, 1985)

As is the case nationally, in Montana, single women who head the household frequently find themselves in a distressing financial situation. The latest census statistics for Montana report that women earn \$.53 for every dollar that a man earns. Furthermore, the median income of female-headed households with children under six is a mere \$5,173.

Exacerbating the woman's disparaging financial situation is her inability to collect child support. The court orders child support in only 59.1% of the divorce cases involving children. Of these, approximately 23% obtain partial payment, and 28% receive no payment at all. (Capitol: Women, "Poverty: the effects of nonsupport," 10/83. A newsletter of the House Committee on Constitutional Revision and Women's Rights. For more conservative figures, see Working Mother, 2/83.)

Clearly women as heads of the family cannot alone bear the responsibility of meeting the financial needs of the children. Responsibility must be share by both parents. House Bill 77 would help the state to enforce child support payments. The children, for whom the allowance is designed, will benefit.

An additional responsibility in the care of children is health insurance. The cost of providing adequate health insurance coverage, however, is prohibitive for women with only poverty-level incomes. In Montana approximately 38% of all civilian workers receive employer-sponsored health coverage--the second lowest in the nation. (Employee Benefit Research Institute Current Population Survey, 5/83) Women, many of them in low-paying jobs that offer no medical benefits, cannot afford health insurance for their children. House Bill 79 will help to guarantee needed health insurance for children in child support cases. House Bills 77 and 79 are designed to help the state to enforce child support obligations. Women's Lobbyist Fund urges you to pass these bills.

SENATE JUDICIARY

EXHIBIT NO. 4

DATE FEB. 12, 1987

BILL NO. HB 81

SUMMARY OF HB81 (J. BROWN)

(Prepared by Senate Judiciary Committee staff)

HB81 is by request of the Department of Revenue and revises the laws relating to administrative enforcement of child support. The bill clarifies that child support orders may not be retroactively modified. The bill is requested to conform Montana law to federal requirements.

COMMENTS: The Department has requested an amendment that will be presented at the hearing.

C:\LANE\WP\SUMHB81.

Proposed Amendments to HB 81
(Proposed by Department of Revenue)

1. Title, lines 5 through 8.

Following: "AN ACT" on line 5

Strike: the remainder of line 5 through "MODIFIED" on line 8

Insert: "TO CONFORM MONTANA LAW WITH THE OMNIBUS BUDGET RECONCILIATION ACT OF 1984 BY PROVIDING THAT CHILD SUPPORT ORDERS, WHETHER ESTABLISHED BY ADMINISTRATIVE OR JUDICIAL PROCESS, MAY ONLY BE PROSPECTIVELY MODIFIED; PROVIDING THAT A MODIFICATION OF SUPPORT MAY BE EFFECTIVE ONLY FOR INSTALLMENTS ACCRUING SUBSEQUENT TO ACTUAL NOTICE OF THE MOTION FOR MODIFICATION"

2. Title, line 8.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 40-4-208 AND"

3. Page 1, line 12.

Following: line 11

Insert: "Section 1. Section 40-4-208, MCA, is amended to read:

"40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1)

Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(ii) upon written consent of the parties.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just

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revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."

Renumber: subsequent sections

4. Page 2, line 6.

Following: "after"

Insert: "actual notice to the parties of"

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SENATE JUDICIARY

EXHIBIT NO. 6

DATE FEB. 12, 1987

BILL NO. HB 82

SUMMARY OF HB82 (J. BROWN)

(Prepared by Senate Judiciary Committee staff)

HB82 is by the request of the Department of Revenue and amends the laws relating to administration of public assistance. This bill amends the section of Montana law relating to assignment of support rights. The bill prohibits a recipient or former recipient of public assistance from enforcing delinquent support payments through court order without notifying the state. The bill also provides for distribution of such support payments to assure that the state is reimbursed for public assistance which has been paid. THE bill also prohibits recipients or past recipients of public assistance from modifying or agreeing to modify, settle, or release any past, present, or future support obligation unless the state is notified and given an opportunity to participate.

COMMENTS: None

C:\LANE\WP\SUMHB82.

1 50th Legislature

3 SENATE BILL NO. 51

4 INTRODUCED BY B. BROWN

5 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

6 ON LIABILITY ISSUES

7

8 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
9 LAWS RELATING TO LIABILITY; ~~SUBSTITUTING--THE--DOCTRINE--OF~~
10 ~~COMPARATIVE--FAULT--FOR--THE--DOCTRINE--OF--COMPARATIVE~~
11 ~~NEGLIGENCE;~~ ELIMINATING JOINT LIABILITY; ~~PROVIDING--FOR--THE~~
12 ~~APPORTIONMENT--OF--FAULT--AMONG--JOINT--TORTFEASORS~~ IN CERTAIN
13 CASES; AND AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA."

14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1 . Section 27-1-702, MCA, is amended to
17 read:

18 "27-1-702. Comparative negligence ~~fault~~ NEGLIGENCE --
19 extent to which contributory negligence ~~fault~~ NEGLIGENCE
20 bars recovery in action for damages. ~~(1)~~ Contributory
21 negligence ~~fault~~ NEGLIGENCE shall not bar recovery in an
22 action by any person or his legal representative to recover
23 damages for ~~negligence--resulting--in~~ NEGLIGENCE RESULTING IN
24 death or injury to person or property if such negligence
25 ~~contributory--fault~~ NEGLIGENCE was not greater than the
26 negligence ~~fault~~ NEGLIGENCE of the person or the combined
27 ~~fault~~ NEGLIGENCE of all persons against whom recovery is

1 sought, but any damages allowed shall be diminished in the
 2 proportion to the amount of negligence fault NEGLIGENCE
 3 attributable to the person recovering or-for-whose-death-or
 4 injury-to-person-or-property-recovery-is-made.

5 (2)--"Fault"--includes-acts-or-omissions-that-are-in-any
 6 measure-wrongful,-unlawful,-negligent,-or-reckless-or-that
 7 subject-a-person-to-strict-tort-liability.-The-term-also
 8 includes:-

9 (a)--breach-of-warranty,-

10 (b)--assumption-of-risk,-

11 (c)--misuse-of-a-product,-and-

12 (d)--failure-to-avoid-or-mitigate-an-injury,-including
 13 failure-to-use-safety-devices."

14 Section 2 . Section 27-1-703, MCA, is amended to
 15 read:

16 "27-1-703. Multiple defendants jointly-and-severally
 17 liable---right-of-contribution ---apportionment-of-fault
 18 -- DETERMINATION OF LIABILITY. (1)-Whenever-the-negligence
 19 of-any-party-in-any-action-is-an-issue,-each-party-against
 20 whom-recovery-may-be-allowed-is-jointly-and-severally-liable
 21 for-the-amount-that-may-be-awarded-to-the-claimant-but-has
 22 the-right-of-contribution-from-any-other-person-whose
 23 negligence-may-have-contributed-as-a-proximate-cause-to-the
 24 injury-complained-of--

25 (2)--On-motion-of-any-party-against-whom-a-claim-is

1 asserted-for-negligence-resulting-in-death-or-injury-to
 2 person-or-property, any-other-person-whose-negligence-may
 3 have-contributed-as-a-proximate-cause-to-the-injury
 4 complained-of-may-be-joined-as-an-additional-party-to-the
 5 action.--Whenever-more-than-one-person-is-found-to-have
 6 contributed-as-a-proximate-cause-to-the-injury-complained
 7 of, the-trier-of-fact-shall-apportion-the-degree-of-fault
 8 among-such-persons.--Contribution-shall-be-proportional-to
 9 the-negligence-of-the-parties-against-whom-recovery-is
 10 allowed.--Nothing-contained-in-this-section-shall-make-any
 11 party-indispensable-pursuant-to-Rule-19, M.R.Civ.P.--

12 (3)--If-for-any-reason-all-or-part-of-the-contribution
 13 from-a-party-liable-for-contribution-cannot-be-obtained,
 14 each-of-the-other-parties-against-whom-recovery-is-allowed
 15 is-liable-to-contribute-a-proportional-part-of-the-unpaid
 16 portion-of-the-noncontributing-party's-share-and-may-obtain
 17 judgment-in-a-pending-or-subsequent-action-for-contribution
 18 from-the-noncontributing-party.

19 (1)-In-an-action-involving-the-fault-of-more-than-one
 20 person, the-trier-of-fact-shall-determine-the-percentage-of
 21 fault-attributable-to-each-person-whose-actions-contributed
 22 to-the-damages.--Such-persons-may-include-but-need-not-be
 23 limited-to-the-claimant, injured-person, defendants,
 24 third-party-defendants, persons-released-from-liability-by
 25 the-claimant, persons-immune-from-liability-to-the-claimant,

1 and any other persons who have a defense against the
 2 claimant.

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

6 (a) has been released by the claimant;

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

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

10 (3) The liability of a defendant is several only,
 11 except that one defendant may be responsible for the fault
 12 of another if both acted in concert in contributing to the
 13 claimant's damages or if one defendant acted as an agent of
 14 the other. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND
 15 (3), WHENEVER THE NEGLIGENCE OF ANY PARTY IN ANY ACTION IS
 16 AN ISSUE, EACH PARTY AGAINST WHOM RECOVERY MAY BE ALLOWED IS
 17 JOINTLY AND SEVERALLY LIABLE FOR THE AMOUNT THAT MAY BE
 18 AWARDED TO THE CLAIMANT BUT HAS THE RIGHT OF CONTRIBUTION
 19 FROM ANY OTHER PERSON WHOSE NEGLIGENCE MAY HAVE CONTRIBUTED
 20 AS A PROXIMATE CAUSE TO THE INJURY COMPLAINED OF.

21 (2) ANY PARTY WHOSE NEGLIGENCE IS DETERMINED TO BE 25%
 22 OR LESS OF THE COMBINED NEGLIGENCE OF ALL PERSONS DESCRIBED
 23 IN SUBSECTION (4) IS SEVERALLY LIABLE ONLY AND IS
 24 RESPONSIBLE ONLY FOR THE AMOUNT OF NEGLIGENCE ATTRIBUTABLE
 25 TO HIM, EXCEPT AS PROVIDED IN SUBSECTION (3). THE REMAINING

1 PARTIES ARE JOINTLY AND SEVERALLY LIABLE FOR THE TOTAL LESS
2 THE AMOUNT ATTRIBUTABLE TO THE CLAIMANT. A PARTY FOUND TO BE
3 25% OR LESS NEGLIGENT FOR THE INJURY COMPLAINED OF IS LIABLE
4 FOR CONTRIBUTION UNDER THIS SECTION ONLY UP TO THE
5 PERCENTAGE OF NEGLIGENCE ATTRIBUTED TO HIM.

6 (3) A PARTY MAY BE JOINTLY LIABLE FOR ALL DAMAGES
7 CAUSED BY THE NEGLIGENCE OF ANOTHER IF BOTH ACTED IN CONCERT
8 IN CONTRIBUTING TO THE CLAIMANT'S DAMAGES OR IF ONE PARTY
9 ACTED AS AN AGENT OF THE OTHER.

10 (4) ON MOTION OF ANY PARTY AGAINST WHOM A CLAIM IS
11 ASSERTED FOR NEGLIGENCE RESULTING IN DEATH OR INJURY TO
12 PERSON OR PROPERTY, ANY OTHER PERSON WHOSE NEGLIGENCE MAY
13 HAVE CONTRIBUTED AS A PROXIMATE CAUSE TO THE INJURY
14 COMPLAINED OF MAY BE JOINED AS AN ADDITIONAL PARTY TO THE
15 ACTION. FOR PURPOSES OF DETERMINING THE PERCENTAGE OF
16 LIABILITY ATTRIBUTABLE TO EACH PARTY WHOSE ACTION
17 CONTRIBUTED TO THE INJURY COMPLAINED OF, THE TRIER OF FACT
18 SHALL CONSIDER THE NEGLIGENCE OF THE CLAIMANT, INJURED
19 PERSON, DEFENDANTS, THIRD-PARTY DEFENDANTS, PERSONS RELEASED
20 FROM LIABILITY BY THE CLAIMANT, PERSONS IMMUNE FROM
21 LIABILITY TO THE CLAIMANT, AND ANY OTHER PERSONS WHO HAVE A
22 DEFENSE AGAINST THE CLAIMANT. THE TRIER OF FACT SHALL
23 APPORTION THE PERCENTAGE OF NEGLIGENCE OF ALL SUCH PERSONS.
24 HOWEVER, IN ATTRIBUTING NEGLIGENCE AMONG PERSONS, THE FINDER
25 OF FACT MAY NOT CONSIDER OR DETERMINE ANY AMOUNT OF

1 NEGLIGENCE ON THE PART OF ANY INJURED PERSON'S EMPLOYER OR
 2 COEMPLOYEE TO THE EXTENT THAT SUCH EMPLOYER OR COEMPLOYEE
 3 HAS TORT IMMUNITY UNDER THE WORKERS' COMPENSATION ACT OR THE
 4 OCCUPATIONAL DISEASE ACT OF THIS STATE, OF ANY OTHER STATE,
 5 OR OF THE FEDERAL GOVERNMENT. CONTRIBUTION SHALL BE
 6 PROPORTIONAL TO THE LIABILITY OF THE PARTIES AGAINST WHOM
 7 RECOVERY IS ALLOWED. NOTHING CONTAINED IN THIS SECTION SHALL
 8 MAKE ANY PARTY INDISPENSABLE PURSUANT TO RULE 19, M.R.CIV.P.

9 (5) IF FOR ANY REASON ALL OR PART OF THE CONTRIBUTION
 10 FROM A PARTY LIABLE FOR CONTRIBUTION CANNOT BE OBTAINED,
 11 EACH OF THE OTHER PARTIES WHO ARE JOINTLY LIABLE SHALL
 12 CONTRIBUTE A PROPORTIONAL PART OF THE UNPAID PORTION OF THE
 13 NONCONTRIBUTING PARTY'S SHARE AND MAY OBTAIN JUDGMENT IN A
 14 PENDING OR SUBSEQUENT ACTION FOR CONTRIBUTION FROM THE
 15 NONCONTRIBUTING PARTY.

16 NEW SECTION. SECTION 3. SEVERABILITY. IF A PART OF
 17 THIS ACT IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM
 18 THE INVALID PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS
 19 INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS
 20 IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM
 21 THE INVALID APPLICATIONS."

Proposed Amendments to SB 51

25% THRESHOLD

1. Title, lines 7 through 9.
Following: "LIABILITY;" on line 7
Strike: the remainder of line 7 through "NEGLIGENCE;" on line 9
2. Title, lines 9 through 10.
Following: "LIABILITY" on line 9
Strike: the remainder of line 9 through "TORTFEASORS" on line 10
Insert: "IN CERTAIN CASES"
3. Page 1, line 15.
Following: "negligence"
Strike: "fault"
Insert: "negligence"
4. Page 1, line 16.
Following: "negligence"
Strike: "fault"
Insert: "negligence"
5. Page 1, line 17.
Following: "damages."
Strike: "(1)"
Following: "negligence"
Strike: "fault"
Insert: "negligence"
6. Page 1, line 20.
Following: "in"
Insert: "negligence resulting in"
7. Page 1, line 21.
Following: line 20
Strike: "contributory fault"
Insert: "negligence"
Following: "negligence"
Strike: "fault"
Insert: "negligence"
8. Page 1, line 22.
Following: "combined"
Strike: "fault"
Insert: "negligence"
9. Page 1, line 25.
Following: line 24
Strike: "fault"
Insert: "negligence"

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10. Page 1, line 25 through line 10, page 2.

Following: "recovering" on line 25

Strike: the remainder of lines 25 through line 10, page 2 in their entirety

11. Page 2, line 13.

Following: "contribution"

Strike: "-- apportionment of fault"

Insert: "-- determination of liability"

12. Page 3, line 14 through line 9, page 4.

Strike: subsections (1) through (3) in their entirety

Insert: "(1) Except as provided in subsections (2) and (3), whenever the negligence of any party in any action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) Any party whose negligence is determined to be 25% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the amount of negligence attributable to him, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the amount attributable to the claimant. A party found to be 25% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to him.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of 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. The trier of fact shall apportion the percentage of negligence of all such persons. However, in attributing negligence among persons, the finder of fact may not consider or determine any amount of negligence on the part of any injured person's employer or coemployee to the extent that such employer or coemployee has tort immunity under the Workers' Compensation Act or the Occupational Disease Act of this state, of any other state, or of the federal government. Contribution shall be

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proportional to the liability of the parties against whom recovery is allowed. Nothing contained in this section shall make any party indispensable pursuant to Rule 19, M.R.Civ.P.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties who are jointly liable shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party.

NEW SECTION. Section 3. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

7033c/L:JEA\WP:jj (rev. 7034)

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SB249 is amended to read:

1. Title, line 4.

Following: " "AN ACT"

Strike: "REMOVING"

Insert: "EXTENDING"

2. Title, lines 6 and 7.

Following: "ACTIONS;" on line 6

Strike: the remainder of line 6 through "LIMITATION;" on line 7

3. Title, lines 8 and 9.

Following: "1986;" on line 8

Strike: the remainder of line 8 through "1986;" on line 9

4. Page 1, line 15.

Following: "date"

Insert: "- - termination date"

5. Page 1, line 17.

Following: "1987"

Strike: "."

6. Page 1, line 18.

Following: "1987-"

Insert: ", except that section 3 is effective July 1, 1991.
Sections 1 and 2 of this act terminate on June 30, 1991."

7. Page 1, lines 19 and 20.

Strike: section 2 in its entirety

Renumber: subsequent sections

C:\LANE\WP\AMDSB249.

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DATE 2-12-87

BILL NO. S. B. 249

STANDING COMMITTEE REPORT

February 12

1957

19.....

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on.....

SENATE BILL

51

having had under consideration..... No.....

first reading copy (white)
color

Substituted "comp. Fault" for "comp. negligence" and eliminate joint liability.

SENATE BILL

51

Respectfully report as follows: That..... No.....

1. Title, lines 7 through 9.
Following: "LIABILITY;" on line 7
Strike: the remainder of line 7 through "NEGLIGENCE;" on line 9
2. Title, lines 9 through 10.
Following: "LIABILITY" on line 9
Strike: the remainder of line 9 through "TORTFEASORS" on line 10
Insert: "IN CERTAIN CASES"
3. Page 1, line 15.
Following: "negligence"
Strike: "fault"
Insert: "negligence"
4. Page 1, line 16.
Following: "negligence"
Strike: "fault"
Insert: "negligence"
5. Page 1, line 17.
Following: "damages."
Strike: "(1)"
Following: "negligence"

~~XXXXXX~~
DO PASS

CONTINUED

~~XXXXXXXXXX~~
DO NOT PASS

SENATE Mazurek (Senator)

Chairman.

Senate Judiciary

Strike: "fault"
 Insert: "negligence"

6. Page 1, line 20.
 Following: "in"
 Insert: "negligence resulting in"

7. Page 1, line 21.
 Following: line 20
 Strike: "contributory fault"
 Insert: "negligence"
 Following: "negligence"
 Strike: "fault"
 Insert: "negligence"

8. Page 1, line 22.
 Following: "combined"
 Strike: "fault"
 Insert: "negligence"

9. Page 1, line 25.
 Following: line 24
 Strike: "fault"
 Insert: "negligence"

10. Page 1, line 25 through line 1, page 2.
 Following: "recovering" on line 25
 Strike: the remainder of line 25 through "made" on line 1, page
 2

11. Page 2, lines 2 through 10.
 Following: line 1
 Strike: subsection (2) in its entirety

12. Page 2, line 13.
 Following: "contribution"
 Strike: "-- apportionment of fault"
 Insert: "-- determination of liability"

13. Page 3, line 14 through line 9, page 4.
 Strike: subsections (1) through (3) in their entirety
 Insert: "(1) Except as provided in subsections (2) and (3),
 whenever the negligence of any party in any action is an
 issue, each party against whom recovery may be allowed is
 jointly and severally liable for the amount that may be

awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) Any party whose negligence is determined to be 25% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the amount of negligence attributable to him, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the amount attributable to the claimant.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of 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. The trier of fact shall apportion the percentage of negligence of all such persons. However, in attributing negligence among persons, the trier of fact may not consider or determine any amount of negligence on the part of any injured person's employer or coemployee to the extent that such employer or coemployee has tort immunity under the Workers' Compensation Act or the Occupational Disease Act of this state, of any other state, or of the federal government. Contribution shall be proportional to the liability of the parties against whom recovery is allowed. Nothing contained in this section shall make any party indispensable pursuant to Rule 19, ~~Montana~~ Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A

party found to be 25% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to him.

NEW SECTION. Section 3. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.*

7033c/L:JEA\WP:jj (rev. 7034)

AND AS AMENDED
DO PASS

February 12 87
..... 19.....

7. Page 1, lines 19 and 20.
Strike: section 2 in its entirety
Renumber: subsequent sections

**AND AS AMENDED
DO PASS**

.....
Senator Mazurek