

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 18, 1987

The thirty-first meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 18, 1987 by Chairman Joe Mazurek in Room 402 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION ON SB 139: Senator Ed Smith of Senate District #10 introduced SB 139 to the committee (see Exhibit 1). He explained the bill had been heard in the Fish and Game Committee, but felt the bill needed to be looked at by the Judiciary Committee, because it dealt with a liability issue. He handed out the minutes of that meeting in Fish and Game Committee (see Exhibit 2).

PROPOSERS: John Maynard, Tort Claims Division, supported the bill and was quoted in the January 29th meeting of the Fish and Game Committee.

John Wilson, representing himself, supported the bill also.

Ken Hoovestall, chairman of the legislative committee for the Montana Snowmobile Association, supported the bill (see Exhibit 3). He asked the committee to read the January 29th minutes to see who testified in support of the bill.

Jim Flynn, Department of Fish, Wildlife, and Parks, testified in support of the bill (see Exhibit 4).

Stew Doggett, Montana Chamber of Commerce, favored the bill.

Bob Bushnell, Montana Snowmobile Association, supported SB 139 (see Exhibit 5).

Dennis Ogl, Montana Snowmobile Association, testified in support of the bill (see January 29th minutes of the Fish and Game Committee).

Bob Didrikson, Lincoln, Montana, said it is terribly difficult to get insurance for such a group and he supported the bill.

Jim Gillispie, Lincoln, Montana, supported the bill also.

OPPOSERS: Karl Englund, Montana Trial Lawyers Association, opposed the bill. He explained a case called Leslie vs Erickson, which involved a

reck on a snowmobile (January 19, 1984). Mr. Erickson was, because of the accident, completely brain dead. The case went to court with a jury and the liability was tried first and the damages were tried second. He explained that Mr. Erickson hit an obstacle on a snowmobile trail and there was no warning sign that this obstacle was there. Mr. Englund explained that is why Mr. Erickson was suing because there should have been a warning. Mr. Englund felt something should be done to section four of the bill because the assumption on the risk part, as it is written, will not help the snowmobile people at all.

DISCUSSION ON SB 139: Bob Lane, attorney for the Fish and Game Department, said the bill, in section 4, could be corrected by just revising the first sentence in the section on assumption of the risk. Senator Pinsoneault asked how a judge would say a person was assuming a risk by just driving a vehicle of some sorts. Karl Englund said if a person is participating in snowmobiling, then he has taken the risk of being hurt. The committee decided that Valencia would look at Karl Englund's proposals and problems with the bill dealing with assumption on the risk and willful and wanton misconduct.

Senator Smith closed on SB 139.

ACTION ON SB 252: Valencia and Karl Englund handed out amendments for the bill to the committee (see Exhibit 6 and 7). Mr. Englund explained a situation dealing with an injured person and subrogation process, which Valencia's amendments and his amendments would create. Senator Blaylock moved the amendments presented by Valencia. The motion CARRIED. Senator Halligan moved the bill DO PASS AS AMENDED. The motion CARRIED.

COMMITTEE BILL ON PRODUCTS LIABILITY (LC 1797): Senator Halligan presented the draft to the committee (see Exhibit 8). The committee wanted Valencia Lane to look over the first draft and report back to the committee.

ACTION ON SB 311: Senator Blaylock asked if one had an initiative that wiped out freedom of speech, would the local community have to wait have the election to get this silly initiative into the courtroom. Senator Crippen said that kind of thing would never get passed by a community, so why worry about taking action against an initiative that was killed at the ballot. Senator Beck felt there will not be that many initiatives that would cause that much problem. Senator Beck moved to TABLE the bill. The motion carried with Senator Halligan voting no.

ACTION ON SB 226: The SRS handed out an amendment for the bill (see Exhibit 9). Valencia explained this amendment will put back a definition that was taken out before. Senator Blaylock moved the amendment. The motion CARRIED. The Board of Crime Control presented amendments (see Exhibit 10). Valencia said the amendments will give the Board some time to react to the bill. Senator Halligan moved the amendments. The motion

CARRIED. Senator Halligan moved the bill DO PASS AS AMENDED. Senator Beck asked if the amended bill was suggesting a youth could not be held in the same building with adults. He explained in his small town the same building is used but there is a separate place for juveniles. The committee felt as long as the youth is not right in with the adults the bill will stand. The motion CARRIED. Senator Halligan moved the STATEMENT OF INTENT to DO PASS. The motion CARRIED.

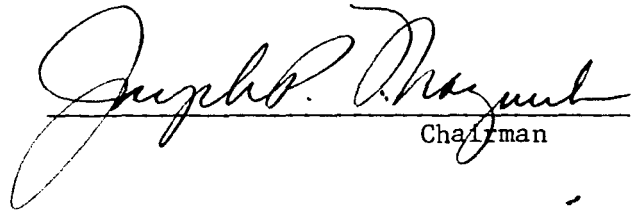
ACTION ON SB 137: Senator Blaylock moved SB 137 be taken from the TABLE. The motion CARRIED with Senator Beck voting no. Senator Yellowtail presented amendments from Pat Driscoll, Attorney General's Office (see Exhibit 11). Pat Driscoll explained that HB 294 and HB 423 are waiting for the passage or end of this bill. Senator Galt asked if the amendments address the Magistrates accounting problems. Mr. Driscoll said no. Mr. Driscoll said the officers are desperate to have this bill. Senator Beck asked if the amendment will reduce the fiscal note. Mr. Driscoll said it would reduce it. Senator Yellowtail moved the amendment. The motion CARRIED with Senator Halligan voting no. Senator Yellowtail moved the bill DO PASS AS AMENDED. Senator Crippen felt the penalties were still way to high for simple traffic violations. Senator Galt said he would vote for the bill if the Magistrates's bill passed. Senator Yellowtail withdrew his motion to DO PASS AS AMENDED until the committee could find out more about the Magistrates's bill in the House.

ACTION ON SB 188: The committee did not hear this bill, but was asked to look at the bill. Kim Schultz of the State Auditor's Office, explained the State Auditor has to subpoena to get all kinds of records including electronic funds transaction. She said this bill will prevent the Auditor's Office from going to court to subpoena someone so the Auditor's Office can get electronic funds transactions. She gave amendments to the committee, which would allow the State Auditor this right and no one else (see Exhibit 12). Senator Mazurek wondered if the State Auditor had the right to do this with criminal records. Ms. Schultz said the Auditor's Office has the only criminal justice authority in the department. She said the information could only be given to another state auditor's office. Senator Crippen asked how the procedure works now. She said an affidavit is typed and given to the judge who then subpoenas the person's records. Senator Crippen asked if the Auditor has been turned down by the judge for a subpoena. Ms. Schultz said no. Senator Crippen asked if there has been any delay in seeing the judge. She replied there has been quite a few times. Senator Pinsoneault asked if the department couldn't just go to a justice of the peace and ask him to subpoena someone. She said the law says it must be a district court judge. Senator Mazurek asked if any other agency has this kind of problem. She felt there were no others who dealt with this kind of situation. Senator Mazurek didn't agree with the idea of not getting the person's consent before getting into his records. He said when the person was subpoenaed to give his records, he had notice of the process and this bill doesn't give him that notice. Ms. Schultz explained the biggest

Judiciary Committee
Minutes of the meeting
February 18, 1987
page 4

problem of all is an affidavit because it takes so much time to write out and get to the judge. Valencia presented amendments to the committee that would help the Auditor's problem, but without giving them to much authority in this area (see STANDING COMMITTEE REPORT). Senator Mazurek suggested the "CRIMINAL JUSTICE AGENCY" instead of "STATE AUDITOR" should be in the bill. The motion CARRIED. Senator Pinsoneault asked why the Auditor doesn't want the person to know that the State Auditor is into his records. Ms. Schultz replied the person might change records if he knows the State is checking on him. Senator Pinsoneault moved the bill DO PASS AS AMENDED. The motion CARRIED with Senators Halligan and Yellowtail voting no.

The committee adjourned at 11:50 a.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 18th

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		X
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

DATE Feb. 13th

COMMITTEE ON Judiciary

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

SUMMARY OF SB139 (E. SMITH)

(Prepared by Senate Judiciary Committee staff)

SB139 defines the responsibility and liability of snowmobile area operators and the responsibility and risk borne by snowmobilers. This bill is based on similar statutes relating to skiers' liability found at 23-2-731 through 23-2-737, MCA (attached). Basically, this bill establishes a willful and wanton standard for liability for snowmobile area operators.

- Section 1. NEW. States the purpose of the bill as establishing areas of responsibility and acts for which snowmobile area operators may be held liable and those risks a snowmobiler expressly assumes or will be presumed to have assumed.

- Section 2. NEW. Definition section. Among other things, defines "snowmobile area operators" as "those persons responsible for the maintenance of snowmobile trails and open areas or those persons providing rental snowmobile equipment". Such persons include "the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

- Section 3. NEW. Establishes duty of snowmobile area operators to mark trail maintenance vehicles. Provides that a snowmobile area operator is liable for death or injury to a snowmobiler or other person or property only for an act or omission that constitutes willful or wanton misconduct.

- Section 4. NEW. Establishes assumption of the risk by a snowmobiler for injuries or death that results from participating in the sport of snowmobiling.

- Section 5. NEW. Establishes duty of a person who rents snowmobiles to another to maintain them in good mechanical condition and to offer renters instructions in the mechanical operation on the rental snowmobile.

- Section 6. NEW. Bars recovery by a snowmobiler from a snowmobile area operator for any injury resulting from any risk inherent in the sport of snowmobiling (almost identical to section 23-2-737 regarding skiers' liability).

- Section 7. Amends 27-1-701. Standard amendment to liability statute put in all bills this session dealing with limitations to liability.

- Section 8. Amends 70-16-302. Section 70-16-302 presently provides that a landowner or tenant who allows others onto his property for recreational opportunities, without compensation, is not liable to such person for any injury to person or property resulting from any act or omission of such landowner or tenant unless such act or omission constitutes willful or wanton misconduct. This bill amends this statute to make its provisions clearly apply to the Department of Fish, Wildlife, and Parks when the Department provides recreational opportunities on private land under an agreement.

(over)

- Section 9. A two-thirds vote of the members of each house is required for passage because both section 3 and section 8 limit governmental liability (Article II, section 18 of the Montana constitution).

COMMENTS: A severability clause would be appropriate for this bill because of its diverse applications.

C:\LANE\WP\SUMSB139.

Department may employ qualified engineers to make such inspections for reasonable fees plus expenses. If, as the result of an inspection, it is found that a violation of the department's rules exists or a condition in passenger tramway construction, operation, or maintenance exists endangering the safety of the public, an immediate report shall be made to the operator whose passenger tramway has received such inspection and to the department for appropriate investigation and order.

History: En. Sec. 11, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6611.

23-2-723. Order for corrective action and compliance. If, after investigation, the department finds that a violation of this part or any of its rules exists or that there is a condition in passenger tramway construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings, the corrective action to be taken, and fixing a reasonable time for compliance therewith. Such order shall be served upon the operator involved in such violation personally or by registered or certified mail at the department's election, and return shall be made as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6612.

23-2-724. Remedies to enforce compliance. If any operator fails to comply with a legal order or rule of the department, the department, at its election, may:

(1) suspend the registration of the affected passenger tramway until the operator complies therewith; or

(2) bring injunctive proceedings in the district court of the judicial district in which the affected passenger tramway is located to compel compliance therewith. In such proceedings the department shall not be required to post bond.

History: En. Sec. 13, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6613.

23-2-725. Judicial review. Any order of the department adverse to an operator may be appealed by the operator to the district court of the district wherein is located his passenger tramway which is the subject of such order, and said district court shall conduct a proceeding, de novo, and the decision of the district court shall be subject to appeal to the supreme court of Montana, as in civil cases.

History: En. Sec. 14, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6614.

23-2-726 through 23-2-730 reserved.

23-2-731. Purpose. It is recognized that there are inherent risks in the sport of skiing that are essentially impossible to eliminate by the ski area operator but that should be known by the skier. It is the purpose of 23-2-731 through 23-2-737 to define those areas of responsibility and affirmative acts for which the ski area operator is liable for loss, damage, or injury and those risks for which the skier expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage and for which there can be no recovery.

History: En. Sec. 1, Ch. 509, L. 1979.

SENATE JUDICIARY

EXHIBIT NO. 1

S.B. 139

DATE

2-18-87

23-2-732. Definitions. As used in 23-2-731 through 23-2-737, the following definitions apply:

(1) "Skier" means any person admitted to a ski area under the control of a ski area operator for the purpose of engaging in the sport of skiing by using the ski slopes, trails, and areas and does not include a person using an aerial passenger tramway.

(2) "Ski slopes, trails, and areas" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing.

History: En. Sec. 2, Ch. 509, L. 1979.

23-2-733. Duties of operator regarding ski areas. A ski area operator shall:

(1) mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(2) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes, trails, and areas;

(3) maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes;

(4) post a notice of the requirement for the use of ski-retention devices;

(5) designate by trail board or otherwise which trails or slopes are open or closed.

History: En. Sec. 3, Ch. 509, L. 1979.

23-2-734. Duties of operator with respect to passenger tramways. A ski area operator shall construct, operate, maintain, and repair any passenger tramway in accordance with the rules of the department of administration. However, nothing in this section relieves an operator from the duty of taking whatever other actions are necessary to properly construct, operate, maintain, and repair a passenger tramway.

History: En. Sec. 4, Ch. 509, L. 1979.

23-2-735. Duties of passenger. No passenger may:

(1) board or disembark from a passenger tramway except at an area designated for such purposes;

(2) throw or expel any object from a passenger tramway;

(3) commit an act that interferes with the running or operation of a passenger tramway;

(4) use a passenger tramway unless the passenger has the ability to use it safely without any instruction on its use by the operator or requests and receives instruction before boarding;

(5) embark on a passenger tramway without the authority of the operator.

History: En. Sec. 5, Ch. 509, L. 1979.

23-2-736. Skier's assumption of responsibility — duties. (1) A skier assumes the risk and all legal responsibility for injury to himself or loss of property that results from participating in the sport of skiing by virtue of his participation. The assumption of risk and responsibility includes but is

not limited to injury or loss caused by the following: variations in terrain, surface or subsurface snow or ice conditions, bare spots, rocks, trees, other forms of forest growth or debris, lift towers and components thereof, pole lines, and plainly marked or visible snowmaking equipment.

(2) A skier is responsible for knowing the range of his own ability to ski any slope, trail, or area and for skiing within the limits of his ability, skiing only on designated slopes and trails, maintaining control of speed and course at all times while skiing, heeding all posted warnings, and refraining from acting in a manner that may cause or contribute to the injury of anyone. The responsibility for collisions with a person or object while skiing is the responsibility of the person or persons and not the responsibility of the ski area operator.

(3) A person who is skiing may not place an object in the ski area or on the uphill track of a passenger tramway that may cause a passenger or skier to fall, cross the track of a passenger tramway except at a designated and approved area, or if involved in a skiing accident, depart from the scene of the accident without leaving personal identification before notifying the proper authorities or obtaining assistance when the skier knows that a person involved in the accident is in need of medical or other assistance.

History: En. Sec. 6, Ch. 509, L. 1979.

23-2-737. Effect of comparative negligence. Notwithstanding any comparative negligence law in this state, a person is barred from recovery from a ski area operator for loss or damage resulting from any risk inherent in the sport of skiing as described in 23-2-736.

History: En. Sec. 7, Ch. 509, L. 1979.

Cross-References

Comparative negligence — extent to which contributory negligence bars recovery, 27-1-702.

CHAPTER 3

ATHLETICS BOXING AND WRESTLING

Part 1 — State Board of Athletics (Repealed. Sec. 1, Ch. 322, L. 1981)

Section

Part 2 — Boxing, Sparring, and Wrestling Matches (Repealed. Sec. 1, Ch. 322, L. 1981)

Part 3 — General

23-3-301. Definitions.

Part 4 — Board of Athletics

23-3-401. Board organization — compensation — meetings — department to keep records.

23-3-402. Enforcement of rules by board member — board designees.

SENATE FISH AND GAME COMMITTEE

January 29, 1987

Page 6

There was no objection from the committee when the amendment was adopted. Senator Jorgeson moved that the committee report the bill with a DO PASS on the amendment to SB 139. The motion passed unanimously.

Senator Jorgeson moved that the committee report the bill AS AMENDED on SB 139. The motion passed unanimously.

DISPOSITION ON SENATE BILL 109:

Senator Jorgeson moved the Statement of Intent to be adopted with SB 109. The DO PASS motion passed unanimously.

CONSIDERATION OF SENATE BILL 107:

Senator William Farrell, Senate District 26, stated that the bill stated the bill's intent is to clarify the law and to adopt adoption of rules. Line thirteen of the amendment reads "the work 'may' and insert 'shall.'" In addition, the bill in restriction of firearms, consideration of population density, type of terrain, nature and extent of the use of the area will be taken into consideration, as well as the interests of public health, safety, and the protection of private property. If the judgment call revealed a need, the people living in the area could establish their needs according to the developed criteria.

PROponents

Alice Austin, 4741 Sundown Road, Missoula, MT, representing a citizen petition group, stated that the group seeks to place a section of the Bitterroot River bottom to hunting and the charge of firearms. The group includes residents of the area and people who use the area for recreation. The effort is supported by the University of Montana, the Missoula Deer and district, the Missoula Country Club, and the Harbortown Municipal Golf Course. Ms. Austin presented written testimony. (Exhibit 7)

David Lackman, Montana Public Health Association, Helena, testified in support of SB 107 as amended. Public safety is of great concern and the association has been concerned at the failure of the Fish, Wildlife and Parks to act in a decisive manner.

Dick Johnson, Deputy Director of the Fish, Wildlife and Parks Department, gave written testimony in support of SB 107. (Exhibit 8)

OPponents

There were no opponents to SB 107.

SENATE JUDICIARY

EXHIBIT NO. 2

BILL NO. SB 139

SENATE FISH AND GAME COMMITTEE

January 29, 1987

Page 7

QUESTIONS FROM THE COMMITTEE

Senator Derjason asked Senator Farrell if the change from "may" to "shall" would constitute a significant departure from the purpose of the bill according to intent. The change would constitute changes to adopt new rules to cover all sorts of circumstances on department land whether they were needed or not. "May" or "shall" when necessary would be language that would be unnecessary to the commission and to the department according to Lane, attorney for the Fish, Wildlife and Parks.

Senator Yellowtail was excused from the committee hearing.

Senator Severson asked the location of the proposed area. The area runs from the Buckhouse bridge to the Miller bridge.

Senator Severson asked if the county could issue a no shooting regulation in the area. County Commissioners have no authority to make regulations concerning a shooting area.

Senator Smith asked how much of the proposed area is private property. Mr. Austin stated that "it is private property within the city." Senator Smith replied that it is "very difficult for the Fish, Wildlife and Parks department to implement any rules concerning property that is privately owned. On August 6, 1987, the Fish and Game Commission declared a 100 foot downstream from the Miller bridge shall be a no-shooting area. Almost all the landowners with property on the river bank signed the petition for the area to be drained.

The hearing on SB 107 was closed.

DISPOSITION ON SENATE BILL 107:

Senator Smith requested the committee report on this bill at a later date due to the absence of Senator Derjason.

ADJOURNMENT:

There being no further business before the committee, Senator Smith adjourned the meeting at 2:15 p.m.

SENATE JUDICIARY

EXHIBIT NO. 1

DATE 1-28-87

BY NO. 3, 8, 17

SENATOR ED SMITH, CHAIRMAN

Testimony in behalf of SB-139

THE SNOWMOBILERS RESPONSIBILITY ACT

For the record my name is Ken Hoover, Chairman of the Legislative Committee for The Montana Snowmobile Association.

SB-139 is ~~pattered after~~, and is ~~designed~~ to make the snowmobiler responsible for his or her own action and to limit the liability to the snowmobile area operator.

This Bill is patterned after, ~~the~~ ~~downhill skier~~ the downhill skier responsibility act presently in the law. - the best in the country - never been challenged.

In other words, if you go skiing and fall down and break a leg, you have no claim against the ski hill operator unless there was an unsignal ditch or fence, etc that constituted willful & wanton misconduct.

This Act would recognize that there are inherent risks in the sport of snowmobiling, just like skiing, and that the participant recognizes these risks and voluntarily accepts these risks.

SB 139

February 18, 1987

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

The Department supports this bill including the amendments offered by the sponsor and the State Snowmobile Association. As the state agency responsible for the management of snowmobile recreation in Montana, we applaud the initiative of the Association in its 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.

AMENDMENTS TO SB 139

1. Page 2, line 10.

Following: "clubs,"

Insert: "landowners,"

2. Page 4, line 6.

Following: "condition;"

Insert: "and"

3. Page 4, line 7.

Following: " in the"

Insert: "mechanical"

4. Page 4, lines 8 through line 10.

Following: "snowmobile"

Strike: remainder of line 8 through "area" on line 10

5. Page 5, line 19.

Following: "department"

Insert: " or the landowner"

SENATE JUDICIARY

EXHIBIT NO. 4

DATE 2-18-81

BILL NO. S.B. 139

MR. CHAIRMAN, MEMBERS

THIS LIABILITY BILL IS NEEDED SO INSURANCE COMPANIES WILL AGAIN MAKE INSURANCE AVAILABLE TO CLUBS OF MONTANA, WHO ARE GROOMING TRAILS IN THEIR AREAS AND TO PROTECT THE INDIVIDUALS OPERATING THE GROOMING EQUIPMENT. IT PLACES THE LIABILITY ON THE INDIVIDUAL OPERATING THE SNOWMOBILE. AT PRESENT WE HAVE MANY CLUBS WHICH CAN NOT EVEN FIND A COMPANY WHICH WILL PROVIDE THE NECESSARY INSURANCE. WE NEED A DO PASS ON THIS BILL.

THANK YOU

Bob Bushnell

BOB BUSHNELL
PRESIDENT
MT SNOWMOBILE ASSN
Box 4732
HELENA, MT 59604

PROPOSED AMENDMENTS TO SB 252, FIRST READING COPY (WHITE)

1. Page 1, line 14.

Following: "entitled to"

Strike: "full"

Following: "subrogation"

Insert: ", as provided for in [section 3],"

2. Page 1, line 23.

Following: "to"

Strike: "full"

Following: "subrogation"

Insert: ", as provided for in [section 3],"

3. Page 2, line 2.

Following: line 1

Insert: "Section 3. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of his intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorneys fees.

(3) An insurer may elect not to participate in the cost of the action. If such an election is made, the insurer waives 50% of any subrogation rights granted to it by [section 1].

(4) The insurer's right of subrogation granted in [section 1] may not be enforced until the injured insured has been fully compensated for his injuries.

Section 4. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the health service corporation reasonable notice of his intention to institute the action.

(2) The insured may request that the health service corporation pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) A health service corporation may elect not to participate in the cost of the action. If such an election is made, the health service corporation waives 50% of any subrogation rights granted to it by [section 2].

(4) The health service corporation's right of subrogation granted in [section 2] may not be enforced until the injured insured has been fully compensated for his injuries."

Renumber: subsequent sections

4. Page 2, line 2.
Following: "(1)"
Strike: "Section 1 is"
Insert: Sections 1 and 3 are"
5. Page 2, line 4.
Following: "chapter 22," in two places
Insert: "and Title 2, chapter 18,"
6. Page 2, line 5.
Following: "to"
Strike: "section 1"
Insert: "sections 1 and 3"
7. Page 2, line 6.
Following: "(2)"
Strike: "Section 2 is"
Insert: "Sections 2 and 4 are"
8. Page 2, line 8.
Following: "to"
Strike: "section 2"
Insert: "sections 2 and 4"

C:\LANE\WP\AMDSB252.

SENATE JUDICIARY

EXHIBIT NO. 6

DATE 2-18-87

BILL NO. S.B. 252

Karl Engstrom

PROPOSED AMENDMENTS OF SB 252 -- INTRODUCED COPY

Page 1, line 14
Following: "entitled to"
Strike: "full"

Page 1, line 14
Following: "subrogation"
Insert: ", as provided for in [Section 3],"

Page 1, line 23
Following: "to"
Strike: "full"

Page 1, line 23
Following: "subrogation"
Insert: ", as provided for in [Section 3],"

Page 2, line 2
Insert: "Section 3. (1) If the insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of his intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third party action, including attorneys' fees.

(3) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by [Sections 1 and 2].

(4) The insurer's right of subrogation granted in [Sections 1 and 2] does not apply until the injured insured has been fully compensated for his injuries.

Renumber subsequent sections.

SENATE JUDICIARY

EXHIBIT NO. 8

DATE FEB. 18, 198

BILL NO. LC 1797

DRAFT

LC1797

BILL NO.

INTRODUCED BY

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW RELATING TO PRODUCTS LIABILITY ACTIONS; DEFINING TWO DEFENSES AVAILABLE IN A PRODUCTS LIABILITY CASE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Strict liability of seller of product for physical harm to user or consumer. (1) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm thereby caused to the ultimate user or consumer or to his property if:

(a) the seller is engaged in the business of selling

such a product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) Subsection (1) applies although:

(a) the seller exercised all possible care in the preparation and sale of his product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(3) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect ~~for~~ in the exercise of ordinary care should have discovered the defect ~~and~~ and was aware ~~for~~ in the exercise of ordinary care should have been aware ~~of~~ of the danger and unreasonably made use of the product and was injured by it.

(b) The product was misused by the user or consumer and such misuse caused or contributed to the injury.

SENATE JUDICIARY

EXHIBIT NO. 8

DATE 2-18-87

(4) The affirmative defenses referred to in subsection (3) mitigate or bar recovery and shall be applied in accordance with the principles of comparative negligence set forth in 27-1-702.

C:\LANE\WP\DLC1797.

SENATE JUDICIARY

EXHIBIT NO. 8

DATE 2-18-87

DLC NO. 1797

AMENDMENT TO SB 226
(Introduced Bill)

PROPOSED BY THE DEPARTMENT OF SOCIAL &
REHABILITATION SERVICES

1. Page 7, Line 24

Following: ~~"institutions."~~

Insert: "Nothing in this definition is intended to include juvenile correctional facilities, evaluation facilities, mental health facilities and services, and aftercare programs operated by the department of institutions."

PROPOSED AMENDMENTS TO SB226
(Proposed by Board of Crime Control)

1. Title, line 11.
Following: "AUTHORITY;"
Strike: "AND"

2. Title, line 13.
Following: "MCA"
Insert: "; AND PROVIDING EFFECTIVE DATES"

3. Page 2, line 12.
Following: "41-5-306"
Strike: ", "
Insert: "["

4. Page 2, line 13.
Following: "adults"
Insert: "]"

5. Page 19, line 25.
Following: line 24
Insert: "NEW SECTION. Section 16. Effective dates. (1) Except as provided in subsection (2), sections 1 through 13 are effective October 1, 1987.
(2) The bracketed language in subsection (5) of section 1 is effective July 1, 1989."

C:\LANE\WP\AMDSB226.

STATEMENT OF INTENT

SB Bill No. 226

A statement of intent is required for this bill because section 5 allows the department of institutions to adopt rules for the licensing of detention facilities.

Currently, Montana statutes make no provision for the licensing of juvenile detention facilities. There are presently two counties in the process of establishing detention facilities who need assurance that their facilities will meet minimum established standards on program operations and environmental conditions.

It is anticipated that the rules developed under this act will establish minimum standards for juvenile detention facilities. These standards should govern such matters as the capacity of the facility, its location, design, construction, equipment and operation, fire and safety precautions, medical services, qualifications and number of personnel, and the quality of services provided to the juveniles.

The rules should contain a procedure for notifying the appropriate officials of compliance or deficiencies. If the facility is found deficient, a procedure for remedying those deficiencies should be included with specific time limitations.

It is anticipated the state will conduct annual inspections of each facility, and may require written reports containing such information as the agency may need to set and enforce its standards.

Amendment to SB 137, Introduced Copy

1. Page 2, lines 1 through 6

Following: "misdemeanor"
Insert: "set forth in Title 45"
Following: "or"
Insert : "any"
Following: "charge"
Strike: remainder of subsection (b)
Insert: "and for any conviction for
violations of 61-7-103, 61-8-301,
61-8-302, 61-8-303, 61-8-401,
61-8-406, and 61-11-213."

The purpose of this amendment is to impose an additional penalty assessment only on fines for crimes under the Montana Criminal Code , Title 45 MCA and on serious traffic offenses contained in title 61 which are specifically listed in the amendment.

Those traffic offenses which are specifically set out in the amendment are as follows:

61-7-103 Hit and run from accidents involving death or personal injuries.

61-8-301 Reckless driving.

61-8-302 Careless driving.

61-8-303 Violation of basic rule - speeding.

61-8-401 Driving under the influence of alcohol or drugs.

61-8-406 "Per Se" DUI - Driving with .10 blood alcohol content.

61-11-213 Habitual traffic offender apprehended operating a motor vehicle contrary to court order.

Amendment to SB 137, Introduced Copy

1. Page 4, line 21 through page 9, line 13

Strike: Sections 3 , 4, and 5 in their entirety
Insert: ~~"New Section.~~ Section 3. Money
from the charges imposed under 46-18-
236(1) (b) shall be forwarded to the
state treasurer and deposited in the
motor vehicle recording account of the
state special revenue fund.

Renumber: Subsequent sections.

The purpose of this amendment is to remove references in the bill to the 55 mile per hour Conservation Speed Limit mandated by federal law. The penalty assessment would not apply to the 55 MPH violations.

This amendment would also change the fund allocation in the bill to the motor vehicle recording account of the state special revenue fund which is dedicated to appropriation by the legislature for motor vehicle registration and enforcement and other law enforcement functions.

SENATE JUDICIARY
EXHIBIT NO. 11
DATE 2-18-87
BILL NO. S.B. 137

2-4-87

DATE

4:30

TIME

188

Senate Bill

MR. CHAIRMAN: I MOVE TO AMEND

No.

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reading copy () as follows:

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SENATE JUDICIARY

EXHIBIT NO. 12

DATE Feb. 18, 1987

BILL NO. SB 188

1. Title, line 9.

Following: "OR"

Insert: "THE STATE AUDITOR ACTING AS A"

2. Page 1, line 22.

Following: "record or by"

Strike: "a"

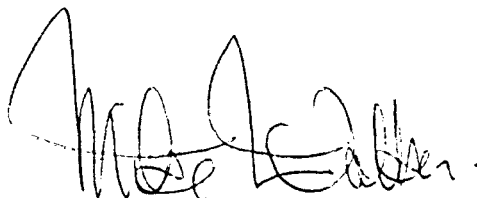
3. Page 1, line 23.

Following: "authority"

Insert: "the state auditor when acting as a"

ADOPT

REJECT



Senator Kolstad

Walker

30-10-304. Investigations and subpoenas. (1) The commissioner in his discretion may:

(a) make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order hereunder or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules and forms hereunder;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal case. Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

History: En. Sec. 19, Ch. 251, L. 1961; R.C.M. 1947, 15-2019; amd. Sec. 1, Ch. 577, L. 1983.

Compiler's Comments

1983 Amendment: In (4), in first sentence after "but no" substituted "compelled testimony" through end of subsection for "individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence

(documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

Cross-References

Examination costs, 30-10-210.
Criminal liabilities, 30-10-306.
Perjury, 45-7-201.

SENATE JUDICIARY

EXHIBIT NO. 12

DATE 2-18-87

FILE NO. 5 B 188

STANDING COMMITTEE REPORT

February 18

87

19.....

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on.....

SENATE BILL

188

having had under consideration.....

No.....

second reading copy (~~yellow~~ yellow)
color

Disclosure of electronic funds transaction pursuant to subpoena.

Respectfully report as follows: That.....

SENATE BILL

188

No.....

XX

BE AMENDED AS FOLLOWS:

1. Title, line 9.

Following: "COURT"

Strike: "OR CRIMINAL JUSTICE AGENCY"

2. Page 1, lines 22 through 24.

Following: "record" on line 22

Strike: the remainder of line 22 through "44-5-103," on line 24

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

Senator ~~MA~~ Mazurek

Chairman.

STANDING COMMITTEE REPORT

February 18

17

19

MR. PRESIDENT

Senate Judiciary

We, your committee on

SENATE BILL

No. 252

having had under consideration

first

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color

Permit disability insurance policies to contain a subrogation clause.

Respectfully report as follows: That

SENATE BILL

No. 252

BE AMM AMENDED AS FOLLOWS:

1. Page 1, line 14.

Following: "entitled to"

Strike: "full"

Following: "subrogation"

Insert: ", as provided for in [section 3],"

2. Page 1, line 23.

Following: "to"

Strike: "full"

Following: "subrogation"

Insert: ", as provided for in [section 4],"

3. Page 2.

Following: line 1

Insert: "Section 3. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of his intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

~~AND AS AMENDED~~
~~DO PASS~~

~~DO NOT PASS~~

CONTINUED

SENATOR Mazurek

Chairman.

(3) An insurer may elect not to participate in the cost of the action. If such an election is made, the insurer waives 50% of any subrogation rights granted to it by [section 1].

(4) The insurer's right of subrogation granted in [section 1] may not be enforced until the injured insured has been fully compensated for his injuries.

Section 4. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the health service corporation reasonable notice of his intention to institute the action.

(2) The insured may request that the health service corporation pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) A health service corporation may elect not to participate in the cost of the action. If such an election is made, the health service corporation waives 50% of any subrogation rights granted to it by [section 2].

(4) The health service corporation's right of subrogation granted in [section 2] may not be enforced until the injured insured has been fully compensated for his injuries."

Renumber: subsequent sections

4. Page 2, line 2.
Following: "(1)"
Strike: "Section 1 is"
Insert: "Sections 1 and 3 are"

5. Page 2, line 4.
Following: "chapter 22," in two places
Insert: "and Title 2, chapter 18,"

6. Page 2, line 5.
Following: "to"
Strike: "section 1"
Insert: "sections 1 and 3"

7. Page 2, line 6.
Following: "(2)"
Strike: "Section 2 is"
Insert: "Sections 2 and 4 are"

8. Page 2, line 8.
Following: "to"
Strike: "section 2"
Insert: "sections 2 and 4"
70491/L:JEA\WP:jj

AND AS AMENDED DO PASS

STANDING COMMITTEE REPORT

February 13 1967

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on

having had under consideration..... SENATE BILL No. 226

first reading copy (white color)

Revising procedures for youth detention.

Respectfully report as follows: That..... SENATE BILL No. 226

BE AMENDED AS FOLLOWS:

1. Title, line 11.
Following: "AUTHORITY;"
Strike: "AND"

2. Title, line 13.
Following: "MCA"
Insert: "; AND PROVIDING EFFECTIVE DATES"

3. Page 2, line 12.
Following: "41-5-306"
Strike: ", "
Insert: "{ "

4. Page 2, line 13.
Following: "adults"
Insert: "}"

5. Page 7, line 24.
Following: "institutions;"
Insert: "Nothing in this definition is intended to include juvenile correctional facilities, evaluation facilities, mental health facilities and services, and aftercare programs operated by the department of institutions."

~~XXXXXX~~
DO PASS

~~XXXXXX~~
DO NOT PASS

CONTINUED

Senator Mazurek

Chairman.

6. Page 19, line 25.

Following: line 24

Insert: "NEW SECTION. Section 16. Effective dates. (1) Except as provided in subsection (2), sections 1 through 13 are effective October 1, 1987.

(2) The bracketed language in subsection (5) of section 1 is effective July 1, 1989."

7049h/L:JFA\WP:jj

AND AS AMENDED
DO PASS