

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

March 23, 1987

The forty-ninth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. in Room 325 of the state Capitol by chairman Joe Mazurek

ROLL CALL: All members were present with the exception of Senators Beck and Crippen, who were excused.

CONSIDERATION OF HOUSE BILL 353: Representative Budd Gould, House District 61, Missoula, introduced HB 353. The bill includes dentists in the doctor-patient privilege provisions so that a dentist could not be examined in court in a civil action, without the patient's consent, as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient. He stated the bill came about because of a Missoula case that just assumed dentists were under this privilege, but found they were not in the statute, so this clarifies they are under this.

PROPOSERS: Roger Tippy, Montana Dental Association, testified that the statutory context is the rules of privilege for various professions do not exist in common, but exist in statute. He said the dentists always felt they were defined in the word physician, but the judge in Missoula wanted it clearly stated they were underneath this statute. He said there were other states with a lot of medical practitioners, like Minnesota, who have added this to their statutes.

OPPOSERS: There were no opposers.

QUESTIONS BY THE COMMITTEE: None.

Representative Gould closed the hearing on HB 353.

CONSIDERATION OF HOUSE BILL 309: Representative Joe Quilici, District 71, Butte, introduced the bill, which is by request of the Department of Labor and Industry

and the Board of Crime Control and revises the Crime Victims Compensation Act. He said the Crime Control Board is getting funds from the federal government for the victim assistance program. He stated that rather than duplicate the funding for these programs and add to the administrating costs, we transferred the programs over to the Crime Control Board. He explained that in 1976 the Association of Churches and other entities came up with the Victim's Compensation Program for victims, and we really did not know where to put it, so it ended up in the Workers' Compensation Division, for the reason Worker's Comp. helps the injured person, so they could help this group. He pointed out though that many who were victims are not Worker's Compensation people. He said in House Bill 2, the House built in the funding for this from the Worker's Compensation Division and put it in the Crime Control Division.

PROPONENTS: Mike Lavin, Crime Control Division, supported the bill. He said Cheryl Bryant of Crime Victims Unit and himself had a meeting a year ago about their two departments. He stated they talked about their functions and funding programs in both, and found the two programs were in alignment. He explained they then met with Gene Huntington, Commissioner of Labor, and he urged us to consolidate the two programs. He said the kind of programs he can fund and the kind of programs she can fund need each other. He gave an example of the Horizon Home in Billings for sexually abused little girls, which has the staff paid by his program and the medical treatment is paid by her program. He explained these are special revenue money accounts and it doesn't affect the General Fund. He said if you combined the two it will create a "one-stop shopping" for the victims of crime in this state.

Cheryl Bryant, Crime Victims Unit, supported the bill because it consolidates functions, reduces administrative costs, and makes it easier for victims and the general public to find the program. She said the small increase in wage loss and funeral benefits in HB 309 will allow payment more in keeping with the current economics. She said the original and only rate was set in 1977.

Tom Harrison, Sheriffs and Peace Officers Association, supported the bill.

Lenore F. Taliaferro, Friendship Center of Helena, Inc., supported the bill and presented written testimony.  
(Exhibit 1)

OPPONENTS: There were no opponents.

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL 309: Senator Halligan asked if the identity of a victim's name is available under the current program and the amount of award they have. Cheryl Bryant answered the identity is available, but in certain cases with a juvenile we have to take into consideration the age and severity of the crime. Senator Halligan inquired if the \$125 that goes to half of the state's average weekly wage is an increase or decrease. Cheryl Bryant said it was an increase, which makes it \$149.50. Senator Halligan asked if the stricken language on page 8, lines 10-13 about the compensation pay not exceeding \$20,000, was anyplace else in the bill, or doesn't it apply anymore. Cheryl Bryant replied it applies for the victim who is employable but unemployed, and she said by removing that maximum, it leaves the only maximum of \$25,000, which will apply to all cases, regardless of the victim's employment status.

Senator Pinsonneault inquired if there is enough flexibility in the bill so victims can still receive compensation or counseling when there is a charge brought, but is then acquitted.

Rep. Quilici responded there is enough flexibility in the bill and he felt it has worked well in the past.

Senator Mazurek asked about section 3 and the disclosure of records. He asked why the amendment makes this kind of information all go under criminal records. Cheryl Bryant said the stricken language on page 5, lines 1 and 2, because 39, 77, 221 and 224 are references to Workers' Compensation law and gives the division's administrator authority to release or not release. She stated the bill transfers to the Crime Control Board, then the Crime Control administrator should have that power. Senator Mazurek questioned why they narrowed the protection that was there before. Cheryl Bryant replied any records we get from the Criminal Justice Agency goes in accordance with the Criminal Justice Privacy Act. She said they have trouble getting information because of the nature of the case and Criminal Justice Agencies are very protective of their records and we need those records to make a decision. She explained it doesn't change the Crime Victims unit's records into Criminal Justice records because it only pertains to the records we get from the Criminal Justice Agency. She said the other privacy

protection for what the victim sends us still pertains. Senator Mazurek asked where it pertains because he felt they took it out. Cheryl Bryant stated they were just taking out the reference to Workers' Compensation law. Senator Mazurek felt it was a policy change and he felt her program had no authority to protect anything that should be private. He pointed out the privacy provisions were in the Workers' Comp. and he suggested it stay in there because there are some things that should remain private. Cheryl Bryant responded that they rely on doctor/patient privilege right now, but we don't have the authority to give it out. She said it was not meant to destroy the confidentiality of the records.

Representative Quilici closed by stating he understood Senator Mazurek's concerns and it would be fine to change it.

CONSIDERATION OF HOUSE BILL 367: Representative Ron Miller, House District 34, Great Falls, introduced the bill, which grants immunity to tissue banks from liability for injuries resulting from transplanting human tissue, organs, or bones.

PROPONENTS: Kay Crull, Transplantation Service Coordinator for the American Red Cross, supported the bill.  
(Exhibit 2)

Nadine Langan, representing herself, testified in support of the bill because she had three retina transplant operations, and she had to go out of state to have them. She hoped that this bill would allow the transplant operations to take place in the state.

Annie Bartos, Montana Medical Association, supported the bill because it legally treats bones, organs and tissue as blood. Blood is known as a service, and with this bill, bones, organs and tissue transplants will be a service. She explained in section 2 of the statute, it would request the facility to do what it can to the best of its capability, and that is to test those tissues in its latest testing procedure known to the American Bank Association for the protection of the public. The public is still protected because there is still a cause of action in any event the bank is negligent.

Dr. Paul Holley, from the St. Vincent Hospital and Health Center in Billings, Montana, testified that since 1984 St. Vincent's has had a bone bank. He said blood is a tissue and when you get a transfusion, you are getting a

tissue transplant. He felt there is no reason bones, organs, and tissue cannot be treated like blood. He said hospitals treat bone donors just like blood donors.

Bill Leary, Montana Hospital Association, testified for House Bill 367, because along with Senate Bill 6, it will make all donations of organs a "service" to the public instead of "sale" in the state.

Deborah Hanson-Gilbert, Director of Technical and Transplantation Services, supported the bill. (Exhibit 3) She also distributed written testimony from John Salisbury, Medical Director of the Montana Eye Bank. (Exhibit 4)

OPPONENTS: There were no opponents.

QUESTIONS FROM THE COMMITTEE: There were none.

Representative Ron Miller closed the hearing on HB 367.

CONSIDERATION OF HOUSE BILL 207: Representative Kelly Addy, House District 94, Billings, introduced the bill, which regulates lawsuits against the state and local government, so a person has to first file a claim with the state, and the claim is either granted or denied by the state when the person wants to sue. He said presently the statute does not state clearly a claim has to be in writing or that a claim in writing will improve your filing of suit. He said on page 1, line 18 through page 2, line 5, it clarifies that settlement should be brought up first before the court, and that is the main reason for the claim in writing.

John Maynard, Tort Claims Administration, testified that one of the frustrations he has is that there is a provision that states claims shall be presented to the Department of Administration, but there is no direction as to what manner the claim should be presented.

Karl Englund, Montana Trial Lawyers, echoed Mr. Maynard's statement about the bill. He pointed out a change in the bill on page 2, line 7. (Exhibit 5) He felt it could be a trap for the unwary in terms of the tolling of the Statute of Limitations. He wanted the tolling of the Statute of Limitations at 120 days because the department will probably answer the claim close to 60 days, but the 120 gives the plaintiff time to evaluate the department's response. He said people do wait for an indefinite

period of time before doing some claims, so it would be appropriate to have a set time limit on when a claim can be filed. He felt to short a time frame would cause mistakes in the area of whether there is a valid claim or not.

OPPONENTS: There were no opponents.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked Rep. Addy what he thought of Mr. Englund's change. Rep. Addy thought it was fine.

Senator Halligan questioned how a plaintiff will know if the department received the claim. Mr. Maynard explained the bill stated upon the department's receipt of the claim, the Statute of Limitations is tolled, so it is the date the office receives it. Karl Englund pointed out the smart thing to do is to send it certified.

Senator Mazurek asked what happens if the department loses a claim and doesn't respond in the 60 days. He wondered if this lack of response would make it an exception from the department. Mr. Maynard answered under the original bill, if the plaintiff did not get a response in 60 days, the claimant knew he no longer would have a claim, but this was amended out, which would make more work for their department. He said the House Judiciary committee thought it was an appropriate burden.

Senator Mazurek asked Rep. Addy if this was really discussed in the House committee. Rep. Addy said no, but he agreed with Mr. Maynard. Senator Mazurek said it is stricken from the bill and he asked Rep. Addy if the committee should look at this. Rep. Addy felt it should be looked at. Karl Englund felt it was not the intention of the department or the bill, that after 60 days the claim was deemed accepted, but if the committee does that, the department still goes about the process of not responding. He believes the department should respond so they won't be racing off to court.

Senator Pinsoneault asked if it would be prudent to put in words to the effect that the period can be extended by mutual agreement between the state and the claimant. Rep. Addy said he liked an absolute cut-off, at which time people will know when they are going to court. Karl Englund believed it was applied in the bill already that one would agree to give additional time and put it in writing.

Senator Mazurek asked if there was a provision that you had to make demand upon the governmental entity, which the court threw out because you can't make a tort claimant come against one entity and not against another. Rep. Addy replied that Senator Mazurek is talking about the unusually short statute of limitations there was for filing suits against the state. He said what this bill does is state what one must do prior to filing the claim.

Representative Addy closed the hearing on HB 207.

CONSIDERATION OF HOUSE BILL 554: Representative Fritz Daily, House District 69, Butte, introduced the bill, and stated the bill would prevent people like Don and Dan Nicoles from benefiting from their crime in profit, or like the men convicted of murdering Patrick Duffy's parents. He said the Montana Standard in Butte received offers up to \$20,000 for a picture of Patrick Duffy with his parents. He explained any profit or royalty they might receive would be deposited in the Victims of Crime Compensation Account and it can be used by the victim's dependents or the victims themselves or for paying attorney fees. He said on page 3 it requires the Workers' Compensation Division to do this.

PROPOSERS: Marc Racicot, County Attorney Association, testified this is not a frequent occurrence, but it has been applied in Montana in the last two years. He said it will pay for court appointed counsel and then the victim or the dependents of a deceased victim is entitled to recover his actual and unreimbursed damages of all kinds, or \$5,000, whichever is greater. He said the bill makes all provisions mentioned mandatory.

Hiram Shaw, Insurance Compliance Bureau Division of Workmen's Compensation, supported the bill. (Exhibit 6)

OPPOSERS: There were no opposers.

QUESTIONS FROM THE COMMITTEE: Senator Halligan asked if the language about a victim should be tighter. He felt it should be a direct family member that should be defined as the victim. He thought if there was a loophole someone might drain the fund. Mr. Racicot said the definition of victim is the same as in 53-91-03, Section 3. Senator Halligan asked if the victim's family gets \$25,000, no matter what. The answer was if the victim is employed at the time and has no benefits, and if the family depends on the victim's income, then the family gets the \$25,000.

Senator Pinsoneault questioned what gives the state the right to take this away from certain people. Mr. Racicot replied that this is like a forfeiture right. Senator Pinsoneault asked if on page 1, lines 19 and 20 should be broadened. Rep. Daily felt that section could be broadened.

Senator Mazurek asked if the bill is asking for reimbursement to the county or to the public defender. Mr. Racicot said it is reimbursement to the county first. Senator Mazurek asked why the bill has the \$5,000 figure. Mr. Racicot said it was an arbitrary number. He said the bill follows a similiar statute in Illinois.

Representative Fritz closed the hearing on HB 554.

EXECUTIVE ACTION:

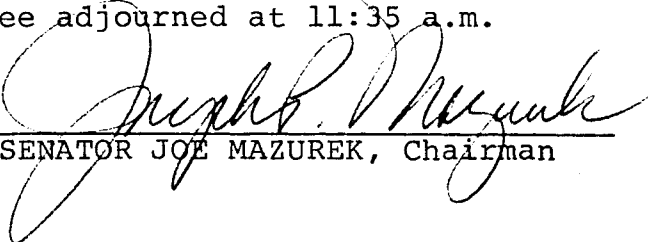
ACTION ON HOUSE BILL 367: Senator Halligan moved House Bill 367 BE CONCURRED IN. The motion CARRIED.

ACTION ON HOUSE BILL 554: Senator Mazurek thought the language in House Bill 554 should be more clear on the type of information the criminal cannot have, and the bill should make sure the counties are the first group to be reimbursed. Valencia Lane said she would look at that language. No action taken.

ACTION ON HOUSE BILL 207: Senator Mazurek felt the 60 day statute of limitations should not be deemed a denial, but an acceptance, if there is no response. Senator Mazurek felt 60 days for an investigation was too short. Senator Blaylock asked if 120 days for an investigation is more reasonable. Senator Mazurek liked 90 days. Senator Halligan said it should be 90 days from when the person mailed the notice. Senator Pinsoneault agreed with the 120 day notice and asked to put it into the amendments Ms. Lane would prepare for the next executive action.

ACTION ON HOUSE BILL 353: Senator Brown moved the bill BE CONCURRED IN. The motion CARRIED.

ADJOURNMENT: The committee adjourned at 11:35 a.m.

  
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SENATOR JOE MAZUREK, Chairman





March 23, 1987

HB 309, Transfer Bill, DL&I to Justice, Victim's Compensation . . .  
Sponsor: Quilici

Position: Support

The Friendship Center of Helena, Inc. is a shelter program for victims and children of domestic violence.

The Center currently receives funding from the Board of Crime Control as partial support for its spouse abuse services.

Part of the responsibility for receiving funds from the Board of Crime Control, Victim's Assistance Program, is to refer victims served by our program to the Victim Compensation Program.

For ease of administration, facilitation, and referral, it seems more than logical to have both of these programs under the Board of Crime Control within the Department of Justice.

I urge you to support passage of this bill.

Thank you for your consideration.



LENORE F. TALIAFERRO  
FAMILY ABUSE SPECIALIST

SENATE JUDICIARY

EXHIBIT NO. 1  
DATE March 23, 1987  
BILL NO. HB 309

Kay Crull, MT (ASCP)  
Transplantation Service Coordinator



## American Red Cross

Blood Services - Montana Region  
1429 So. Higgins  
Missoula, Montana 59801  
(406) 549-6441

would like to share with you a little of the  
ough there was documentation of transplantation  
know it began in the late 1800's. There has  
st 30 years - today there are 15 transplantable  
organs and tissues.

Progress in transplantation has been slowed by several obstacles. Tissue rejection remains the most serious problem. The body's response to foreign tissue is to reject it. It does not differentiate between a deadly bacteria and a life-giving heart. Drugs that suppress this response, especially the use of cyclosporin since 1978, have been responsible for boosting the success rates.

A second obstacle has been the lack of long term preservation. An organ will deteriorate rapidly without oxygen. And although advances now allow a cornea to be preserved up to 2 weeks, a heart-lung combination needs to be transplanted right away.

The shortage of organs and tissues for transplantation is yet another obstacle. The number of donors contributing to transplant surgery needs to be greatly increased if transplantation is to reach its full potential. Although the potential for donors is more than adequate to meet the need, the actual number of donors is well below the number needed. For the many candidates awaiting transplantation, the supply seems woefully inadequate.

The future of transplantation looks very bright. As communities accept the responsibility to meet the need, and researchers continue to unlock the secrets, transplantation in the future will be performed when necessary rather than when a donor is available. Increasing public awareness and support, and continuing professional education will increase the availability of organs and tissues.

In reviewing the miraculous progress of the last 30 years, the future growth of transplantation is a bright hope for the thousands whose life depends on it, and for the tens of thousands whose quality of life will be improved through it. Thank you.

SENATE JUDICIARY

EXHIBIT NO. 2

DATE Mar. 23, 1987

**American Red Cross**

TO: Chairman and Members  
Judiciary Committee

FROM: Deborah Hanson-Gilbert, Director  
Technical and Transplantation Services

RE: Testimony in favor of HB 367

**Blood Services**  
**Montana Region**  
1300 - 28th Street South  
P. O. Box 2406  
Great Falls, Montana 59403  
(406) 727-2212

The American Red Cross, as part of its national effort to increase the supply of human tissue and organs available to health care professionals for medical treatment, is active in organ and tissue retrieval, storage, and distribution as well as in the more well-known area of blood collection. Several Red Cross blood services programs and expertise and our nationally coordinated system, are involved in these important activities.

Montana, like 46 other states, has a statute which defines the collection and processing of blood as the providing of a service, not the sale of a product. This distinction is an important one because it requires any one who claims to have been injured by the blood, for example, by contracting viral hepatitis, to prove that the blood bank or the hospital was in some way negligent in screening donors, testing the blood, or processing it.

Before those statutes were passed, some states allowed recovery, under breach of warranty or strict liability theory, even though the blood bank or hospital had done nothing wrong. This type of no-fault liability, borrowed from the contract or product liability areas of law, is not appropriate for the determination of liability in a medical services context. No human BODY PART is completely free of impurities, like the viruses which transmit many diseases, nor can it be made completely pure by state of the art technology.

SENATE JUDICIARY

EXHIBIT NO. 3

DATE 3-23-87

BILL NO. H.B. 367

In order to make them as safe as possible, tests are performed on BLOOD and OTHER BODY PARTS before they are transfused or transplanted to ensure that they are not contaminated with syphilis, HTLV-III (the AIDS virus), or other viruses causing certain types of hepatitis. The Red Cross, like other blood banks, follows strict standards to ensure that the HUMAN BODY PARTS are as safe as possible. The steps in that process include careful education of donors (to remove from the pool of prospective donors those individuals who are at high risk for AIDS), screening of donors through health history (to eliminate, for example, potential donors who have been overseas where they might have been exposed to malaria or who may have been exposed to hepatitis), and serological testing of the donor (to eliminate, for example, blood, tissue, and organ donations from donors infected with the AIDS virus).

Although all of these procedures make the BODY PART as safe as possible, they cannot, nor can anyone, guarantee that it is completely safe. Under the law of all states except one (Vermont has not yet considered the issue), a claimant must show not only that he contracted a disease from blood, but also that the blood bank made some mistake, was in some way negligent. Of the 47 states with medical services statutes, 33 also cover OTHER BODY PARTS in addition to blood. Montana, however, is one of 14 whose statute is limited to blood or blood derivatives and this is why I stand before you today. For the most part, these statutes were passed during the 60's and 70's when the transplanting of BODY PARTS, other than blood, was still uncommon.

The public policy considerations which led to the passage of the blood medical services statutes in 47 states apply with equal force to OTHER BODY PARTS.

These considerations include the following:

- \* Blood itself is a tissue. There is no reason to treat it differently from other tissue or BODY PARTS.
- \* Like blood, OTHER BODY PARTS (tissue, organs, bones, corneas, etc.) cannot be made completely safe no matter what safety measures are followed.
- \* Like blood, OTHER BODY PARTS are subject to undetectable contamination by micro-organisms which can cause such diseases as malaria, certain types of hepatitis, and AIDS.
- \* BODY PARTS can be obtained only as a PRESCRIPTION item and are always used by a physician in connection with providing medical services.
- \* Like blood, BODY PARTS are critical to the successful treatment of many people who are seriously ill or who have been seriously injured.
- \* Like blood, many BODY PARTS are life saving.
- \* Within the Red Cross, the collection and processing of BODY PARTS are governed by strict standards similar to those that govern blood collection and processing.
- \* Without the protection afforded by statutes requiring that a claimant show negligence in order to recover for injuries allegedly related to the transplanting of BODY PARTS, such programs will be in jeopardy just as blood services programs were before those statutes were passed.

Therefore, the Red Cross and Rocky Mountain Eye Center request that Montana join the other states which already have extended their blood services legislation to cover OTHER BODY PARTS as well as blood.



John D. Salisbury, M.D.  
Medical Director

Montana Eye Bank  
Montana Eye Research Foundation

SENATE JUDICIARY

EXHIBIT NO. 4

DATE MAR. 23, 1987

BILL NO. HR 367

March 23, 1987

TESTIMONY FOR SENATE HEARING

MONTANA EYE BANK FOUNDATION SUPPORTS HOUSE BILL 367.

We want to see a change in the status of organs and tissue as a "service" rather than a "sale". "Most states have statues declaring blood transfusions to be a service exempt from the general law of sales, implied warranties, and strict liability. In states that have not enacted such statues, the courts have continued to demonstrate willingness to impose liability for breach of implied warranty". JAMA 6/21/85. Volume 253. no.23.

In 1986, Montana Eye Bank Foundation collected # 300 eyes. #233 of those donated were used for transplant purposes. #70 in the state of Montana.

Like blood services, eye banking is used in Montana and would be greatly missed. In today's world, organ & tissue donors are screened by history and AIDS & Hepatitis B Blood testing. In addition, the tissue is cultured for bacteria & examined microscopically before being offered for transplant.

Montana Eye Bank does everything in compliance with the medical standards of the Eye Bank Association of America. We work in an area that with the best quality of assurance & highest standards some tissue will be defective or possibly cause transmission of certain illness to the recipient's eye or body.

Organ and tissue banking are for the good of the collective population. The exposure from strict liability in tort law could threaten the viability of organ & tissue banks in helping far more people than we could potentially harm.

Thank you.

John Salisbury, M.D.  
Medical Director

554 W. Broadway 59802  
P.O. Box 5326 • Missoula, Montana 59806 • Phone (406) 728-2115

PROPOSED AMENDMENT TO HOUSE BILL 207 - THIRD READING COPY

Page 2, Line 7

Following: "for"  
Strike: "60 days or until the department denies  
the claim, whichever is less"  
Insert: "120 days"

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 3-23-87

BILL NO. H.B. 207



## OUTLINE OF TESTIMONY

by

HIRAM SHAW, CHIEF, INSURANCE COMPLIANCE BUREAU  
DIVISION OF WORKERS' COMPENSATION  
DEPARTMENT OF LABOR & INDUSTRY

In Support of House Bill 554 Regarding Payment to  
Crime Victims from the Perpetrator's Proceeds

The Department supports House Bill 554.

Currently, proceeds such as from book sales by an offender are available to the victim or victim's dependents with the remainder returned to the offender.

House Bill 554:

- adds the costs of court-appointed counsel to the offender,
- allows a minimum automatic \$5,000 to each victim or dependent of a deceased victim,
- requires the balance be deposited in the Crime Victims' account

Although the program has not had occasion to obtain such proceeds to date, recent sensational crimes may well make such profits possible. We respectfully recommend your approval of HB 554.

# STANDING COMMITTEE REPORT

March 23

19<sup>87</sup>

MR. PRESIDENT

**SENATE JUDICIARY**

We, your committee on.....

having had under consideration.....

**HOUSE BILL**

No. **353**

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**Including dentists in doctor-patient privilege.  
Gould (Brown)**

Respectfully report as follows: That.....

**HOUSE BILL**

No. **353**

~~DO NOT PASS~~

~~DO NOT PASS~~

**BE CONCURRED IN**

.....  
**Senator Mazurek**

.....  
Chairman.

# STANDING COMMITTEE REPORT

March 23

19 57

MR. PRESIDENT

We, your committee on **SENATE JUDICIARY**

having had under consideration..... **HOUSE BILL** **367** No.....

Third reading copy ( blue )  
color

**Furnishing human tissue as a service and not as a sale.**  
**Miller (Keating)**

Respectfully report as follows: That..... **HOUSE BILL** **367** No.....

~~DO PASS~~

~~DO NOT PASS~~

**BE CONCURRED IN**

.....  
**Senator Mazurek**

.....  
Chairman.

**SUMMARY OF HB207 (ADDY)**

(Prepared by Senate Judiciary Committee staff)

HB207 amends the laws relating to the Tort Claims Act, which regulates lawsuits against the state and local governments. The bill provides that no one can sue the state in court until that person has first filed a claim with the state and the claim has been either granted or denied by the state (Department of Administration). Under the bill, the department has 60 days to act on the claim and the statute of limitation on the claim is tolled for 60 days.

COMMENTS: None.

C:\LANE\WP\SUMHB207.

**SUMMARY OF HB309 (QUILICI)**  
(Prepared by Senate Judiciary Committee staff)

HB309 is by request of the Department of Labor and Industry and the Board of Crime Control and revises the Crime Victims Compensation Act. The bill transfers administration of the Act from the Workers' Compensation Division of the Department of Labor to the Crime Control Division of the Department of Justice.

Section 1. Amends 53-9-103. Definitions. Changes definition of "Division" from "division of workers' compensation" to "division of crime control of the department of justice" [Page 3].

Section 2. Amends 53-9-106. Attorney's fees. Changes references to "workers' compensation judge" to "district court judge" [Page 4].

Section 3. Amends 53-9-107. Public inspection and disclosure of division's records. Provides that confidential criminal justice information obtained by division is subject to confidentiality provisions of Montana Criminal Justice Information Act of 1979 and that information regarding youth court proceedings is subject to the confidentiality provisions of the Youth Court Act [Page 5].

Section 4. Amends 53-9-128. Compensation benefits. Changes maximum of compensation benefits allowed to one-half the state's average weekly wage as determined in 39-51-2201 (attached) from current maximum of \$125 [Pages 5 and 6]. Increases burial expenses recoverable from \$1,100 to \$2,000 [Page 7]. Repeals \$20,000 limitation on recovery [Page 8].

Section 5. Amends 53-9-131. Appeals. Changes appeal procedures (from workers' comp division to workers' comp court) to an appeal from division of crime control to district court [Page 8] and provides that appeal shall be judicial review under Administrative Procedures Act (not a new trial) [Page 9].

Section 6. Amends 53-9-132. Subrogation. Expands the fund's subrogation rights (right to recovery part of payments from the persons receiving payment from the fund). Current law allows subrogation against a judgment or recovery recieved by the claimant against the ofender. This bill also allows subrogation against a collateral source arising from the criminally injurious conduct committed by the offender [Page 9]. (I don't know what this might include.)

COMMENTS: Re: section 3 Public inspection and disclosure of division's records. Current law provides that the workers' comp division records are open to public inspection in accordance with 39-71-221 through 39-71-224, which provide that "information of a personal nature such as personal, medical, or similar information if the public disclosure thereof would constitute an unreasonable invasion of privacy" are exempt from disclosure "unless the public interest by clear and convincing evidence requires disclosure in the particular instance". This reference is deleted from the bill and replaced only with an exemption from disclosure for criminal justice and youth court information.

not payable because of his alien status shall be made except upon a preponderance of the evidence.

**History:** En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(h).

**Cross-References**

"Benefits" defined, 39-51-201.

## Part 22

### Amount and Duration of Benefits

**39-51-2201. Weekly benefit amount — determination of average weekly wage.** (1) For claims filed before July 7, 1985, an eligible individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 50%. The weekly benefit amount, if not a multiple of \$1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount. For claims effective July 7, 1985, and after, an individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 49%. The weekly benefit amount, if not a multiple of \$1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by 52 and the average weekly wage, rounded to the nearest cent, thus determined. Sixty percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year, except that the maximum weekly benefit amount for benefit years commencing on or after July 1, 1984, through January 3, 1987, is the amount calculated under this subsection after January 1, 1984, and on or before May 31, 1984. Such maximum weekly benefit amount, if not a multiple of \$1, shall be computed to the nearest lower full dollar amount.

(3) The minimum weekly benefit amount shall be 15% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of \$1, shall be computed to the nearest lower full dollar amount.

**History:** En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(b); amd. Sec. 2, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 193, L. 1983; amd. Sec. 7, Ch. 371, L. 1985.

**Compiler's Comments**

**1985 Amendment:** In (1) at beginning of first sentence, inserted "For claims filed before July

7, 1985", and inserted last three sentences referring to calculation of claims effective July 7,

**SUMMARY OF HB353 (GOULD)**

(Prepared by Senate Judiciary Committee staff)

HB353 includes dentists in the doctor-patient privilege provisions so that a dentist could not be examined in court in a civil action, without the patient's consent, as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

COMMENTS: None.

C:\LANE\WP\SUMHB353.

**SUMMARY OF HB367 (MILLER)**

(Prepared by Senate Judiciary Committee staff)

HB367 amends the existing law relating to blood banks and the furnishing of blood to include tissue banks and the furnishing of human tissue, organs, or bones. The bill provides that the furnishing of human tissue, organs, or bones is a service and not a sale and grants immunity to tissue banks from liability for injuries resulting from transplanting human tissue, organs, or bones (same as existing law for blood banks and furnishing of blood products).

COMMENTS: None.

C:\LANE\WP\SUMHB367.



**SUMMARY OF HB554 (DAILY)**  
(Prepared by Senate Judiciary Committee staff)

HB554 amends the laws relating to the Crime Victim's Compensation Act to require creation of an escrow fund to pay crime victims from the perpetrator's proceeds of a crime. Current law permits the division to set up such a fund; this bill would require the creation. Current law provides that excess over what is needed to pay the victim is returned to the perpetrator. This bill allows use of the proceeds to pay attorney fees for the perpetrator and allows the victim to recover his actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Any excess is to go to the general crime victim's compensation fund.

COMMENTS: None.

C:\LANE\WP\SUMHB554.