

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on January 13,
1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer,
Senator Boylan, Senator Noble, Senator Williams,
Senator Hager, Senator Mclane, Senator Weeding,
Senator Lynch.

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: Governor Stephen's State-Of-The-
State Address at 11:30 a.m. in the House Chambers.

HEARING ON SENATE BILL 87

Presentation and Opening Statement by Sponsor: Senator
Rasmussen, District 22, stated SB 87 dealt with a
specific area of out Motor Vehicle Liability Insurance
Laws. One of his constituents, Mrs. Maynard, brought
the family exclusion problem to his attention. Mrs.
Maynard reportedly was informed she could not exclude a
family member from her insurance policy as long as they
shared a residence.

SB 87, essentially has been designed to allow exclusion
under certain conditions of a family member. Page 2,
line 9 was termed the essence of the bill in that
allowance for exclusion of a family member was
introduced.

Page 3, line 18 was cited as changing \$5000.00 to
\$10,000.00 for destruction of property in any one
accident. Senator Rasmussen said the State Auditor's
office had suggested this change for updating language.

List of Testifying Proponents and What Group They Represent:

Mary Maynard - Montana Families

Oliver Goe - State Farm Insurance

Jacqueline Terrell - American Insurance Association

Gene Phillips - National Association of Independent Insurers

Representative Wm. Boharski - District 4, Kalispell

Roger McGlenn - Independent Insurance Agents

Ron Ashabraner - State Farm Insurance

Wally Jewell - Montana Magistrates of Montana

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Proponents:

Mrs. Maynard stated that last summer her insurance company told her they were cancelling her car insurance. Their reason being, her son Jim, who was 24, had received four traffic tickets and was rated as a high risk. To avoid paying a new insurance company premiums for a high risk driver, Mrs. Maynard said she tried to exclude the son from her insurance policy. She said the insurance company then informed her she could not exclude a family member of the same residence. Mrs. Maynard said her son had to move out so she could afford insurance for herself and her 16 year old daughter.

Oliver Goe said he was an attorney representing State Farm Insurance. He stated support of the bill with proposed amendments. Goe said he believed there were strong public policy reasons for supporting the amendment, of exclusion and for changing the statutes as they currently read. He also cited support on behalf of Consumer's economic needs in addition to protecting the public traveling on Montana's Highways.

He said, from the public's standpoint, I think it is important for the Committee to be aware of the decision in Iowa Mutual Insurance Company vs. Davis, which was a decision in the Supreme court in March of 1988. (SEE EXHIBIT #1). In that decision the Supreme Court held that the Mandatory Liability Coverage Requirement prohibited exclusion of name drivers from a policy. He said he thought the effect of the decision was contrary to Legislature's intent as well as the Court's. He

cited the immediate result of the decision. It was a large number of smaller insurance companies that either quit writing or substantially increased premium costs. Consequently, a larger number of uninsured vehicles were being driven.

Goe expressed a concern over some potential problems in the bill. He said he did not feel Section 1 was necessary. He cited Section 33-23-203 as an anti-stacking provision contained within the code as it is currently written. Subsection 2b prevents "other reasonable limitations, exclusions or reductions of coverage which are designed to prevent duplicate payments for the same element of loss." Therefore, Section 1, subsection 2a is not necessary.

He next cited Section 2, which amends 61-6-103. Specifically applicable to what we are talking about here is subsection 14 page 7 of the proposed amendments. He said there were two potential problems. Number one allows for an exclusion for family members, or in those situations where that persons license has been revoked, suspended or cancelled. "That language is not broad enough. It probably doesn't cover 90% of the situations that this proposed amendment is needed to address., . . . What is really needed is the ability to exclude a particular family member who is a high risk family member but still has a license., . . . Lastly, I would indicate that the amendment should not be to Section 61-6-103, but needs to be 61-6-301. The Montana Supreme Court, when it was deciding the Iowa case, strongly indicated that the policies in the State of Montana were mandatory coverage as found in 61-6-301,. . . I think 61-6-301 needs to state, verbatim, that a family has the option to exclude a family member from a Motor Vehicle Liability Policy."

Jacqueline Terrell said she was an attorney representing the American Insurance Association. We support the concept of this bill as outlined by Mr. Goe. We also concur in Mr. Goe's suggestions for amendments. "Our primary concern is with the very strong language of the Iowa Mutual Decision which would indicate that the statute needs to be amended with a specific statement of public policy. Also a specific statement of exclusion in Section 61-6-303. The Montana Supreme Court Decision specifically refers to that section as the appropriate section to identify exclusions. We believe that section should also be amended in this bill."

Gene Phillips representing the National Association of Independent Insurers stated, "we concur with the position taken by the previous two supporters of the bill and support the bill with those proposed amendments."

Testimony:

Opponents:

Representative Boharski stated he was not there to oppose the legislation but wanted to stress a potential problem. He expressed a desire to the committee's intent concerning the proposed legislation. He also stressed the original intent of the Montana Legislature when it passed the Mandatory Liability Insurance Law in 1979, was to require all drivers on the road be licensed drivers. "A possible situation that could arise out of changing this could be a minor family member being involved in an accident. If, for instance, an excluded minor must drive in an emergency situation and had an accident, he is also in violation of the law set forth in 1979."

Questions From Committee Members: Senator Weeding asked, "If a person could no longer sign a rider of exclusion from coverage? Now, is that no longer in effect? Are we talking about that sort of thing?" Ron Ashabraner, of the State Farm Mutual Auto Insurance stated, he thought there was some confusion as to what the bill intended to do. Previous to the decision handed down by the Supreme Court the consumer in Montana, found it desirable to insure a specific driver to an assigned vehicle. This was especially true in cases involving ownership of several vehicles being insured. The insured elected to insure one vehicle for the high risk driver, leaving the rest of the vehicles and insured parties a more desirable premium rate.

Because of the terminology in the Mandatory Insurance Laws in many states there were Supreme Court Decisions which said you could no longer single out drivers and vehicles. This decision pertains to residents of a household on a long-term basis, not a temporary visit.

Senator Noble asked Ashabraner, "If the law was such that you can't write an exclusion in a family household or any business?" Ashabraner said, "No you can't, since the decision was handed down you can't exclude any one directly involved from any policy."

Senator Thayer asked Ashabraner, "Are we mixing apples and oranges here? Senator Weeding and Senator Noble were talking about business type policies and we are talking about family type policies. Is there a difference?" Mr. Ashabraner said, "Yes, I think there is."

Senator Williams asked, "Which Supreme Court decision are we concerned with, who handed it down?" Jacqueline Terrell said, "It was the Montana Supreme court. The case name is Iowa Mutual Insurance v. Davis. It was referred to the Montana Supreme court by the Federal District Court. It is cited in 752 Pacific Reporter 166 and was decided in March of 1988. The legal problem that revolves around this particular decision is that the Montana Supreme Court had earlier stated the driver exclusion was permissible in Montana. The Mandatory Liability Insurance Statute was enacted to validate that earlier ruling. Now we need a specific statutory exclusion."

Senator Williams asked Terrell, "With the amendments, do you feel the bill would address the issue to the Court's satisfaction?" She said, "I would hesitate to make that guarantee. I think, however, with that sort of amendment, the statute would certainly fare better."

Senator Thayer asked Senator Rasmussen whether or not he could concur these amendments? "Maybe you can just answer in your closing."

Senator Thayer asked Senator Rasmussen, "In titling the bill, wasn't your intent obviously aimed at protecting a family type policy? After hearing the testimony it seems there is no distinction between family or business. Would it be your intent to broaden the title to include business?" He stated, "The intent of the bill was family policies only." Mary McCue clarified the fact that the title was probably too narrow anyway.

Chairman Thayer asked Mr. Goe to please stay after adjournment and confer with Mary and Senator Rasmussen in regard to his proposed amendments.

Closing by Sponsor: Senator Rasmussen stated that the hearing definitely pointed out the bill needed more work. He also expressed regret over confusion caused by the Supreme Court Ruling. With that, "I will close and hope we can meet the bill's needs through the proposed amendments."

ADJOURNMENT

Adjournment At: 10:57 a.m.



SENATOR GENE THAYER, Chairman

GT/ct

senmin.113

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1-13-89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
<u>SENATOR DARRYL MEYER</u>	✓		
<u>SENATOR PAUL BOYLAN</u>	✓		
<u>SENATOR JERRY NOBLE</u>	✓		
<u>SENATOR BOB WILLIAMS</u>	✓		
<u>SENATOR TOM HAGER</u>	✓		
<u>SENATOR HARRY MC LANE</u>	✓		
<u>SENATOR CECIL WEEDING</u>	✓		
<u>SENATOR JOHN "J.D." LYNCH</u>	✓		
<u>SENATOR GENE THAYER</u>	✓		

Each day attach to minutes.

EXHIBIT NO. 1

DATE 1/13/89

BILL NO. SB 87

166 Mont.

752 PACIFIC REPORTER, 2d SERIES

PSI

placed in the Montana State Prison or the Swan River Camp under some guise of further treatment. He is not eligible to go to Rivendell in Billings because it does not have security.

The elements of the crime of deliberate homicide in Montana are a voluntary act, (§ 45-2-202, MCA), coupled with either purpose or knowledge (§ 45-5-102, MCA). There is a lapse in logic, therefore, for the Youth Court and the majority of this Court to determine that K.M.H. must be transferred to the adult court for criminal prosecution because he is seriously mentally ill, when in the adult court, because he is seriously mentally ill, he may not be convicted of committing a crime. The majority and the Youth Court have been forced to this illogical position because the legislature has failed to make provision for the proper treatment of crazed youths even though the state constitution requires that laws for the punishment of crimes shall be founded on the principles of prevention and reformation. Art. II, § 28, 1972 Mont. Const.

The consequences are terrible for this 15 year old boy. Without overlooking his killing of one person and his assault with a deadly weapon upon another, we may note that historically no civilized governmental entity holds a person responsible for criminal conduct resulting from a lack of substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. American Law Institute, Model Penal Code, § 4.01(1) (1962). Yet Montana, in 1979, removed that defense from our criminal statutes, and placed it in the power of psychiatrists to opine to the jury whether the defendant had the particular state of mind which is an element of the offense charged. Section 46-14-213, MCA. (See my dissent in *State v. Korell* (Mont.1984), 690 P.2d 992, 1005, 41 St.Rep. 2141, 2156.) The likelihood is that this 15 year old boy will be sentenced to a long prison term in the adult court, and that facially, treatment for his mental condition will be ordered, but very little received. In the meantime, he will be subjected to the company of male prisoners, half again, twice and three times his age.

In the adult court it is even possible for him to receive a death sentence. In light of his immature age, his recognized mental illness, the bleak prospect of adequate treatment for him and his long years of prison life, it is almost not too callous to ask, "Oh death, where is thy sting?"

In this election year, every legislative candidate and gubernatorial candidate should be asked this important question, "What do you intend to provide for the treatment of youths out of control by reasons of mental illness?"



Handwritten scribbles and initials

IOWA MUTUAL INSURANCE COMPANY, Plaintiff,

v.

Jeffrey DAVIS and Curtis Beck, Defendants.

No. 87317.

Supreme Court of Montana.

Submitted Jan. 7, 1988.

Decided March 18, 1988.

United States District Court for the District of Montana certified for determination whether mandatory liability coverage requirements prohibited the exclusion of a named driver or drivers from coverage under a motor vehicle liability policy. The Supreme Court, Gulbrandson, J., held that mandatory liability coverage requirements of statute prohibited exclusion of named driver or drivers from coverage under motor vehicle liability policy.

Question answered in affirmative.

Insurance ⇐435.8(1)

Mandatory liability coverage requirements of statute prohibited exclusion of named driver or drivers from coverage un-

