MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 31, 1991, at 7:35 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB #269

Motion: REP. GOULD MOVED HB 269 DO PASS

Vote: HB 269 DO PASS. Motion carried 18 to 1 with Rep. Brown voting no.

EXECUTIVE ACTION ON HB #270

Motion: REP. GOULD MOVED HB 270 DO PASS.

Discussion:

REP. MEASURE stated there are many other things that should be added to this bill and we should set the bill aside for awhile and add some additional language.

Motion/Vote: **REP. MEASURE MADE A SUBSTITUTE MOTION THAT HB 270 BE TABLED.** Motion failed 8 to 11.

Motion: **REP. MEASURE MOVED** to amend HB 270.

Discussion:

REP. MEASURE asked **John MacMaster** if he would explain the amendment.

John MacMaster said on page 1, line 25, after the words "uses the telephone to" you would insert a semi-colon and after that you would put a small (i), then the words "attempted stored money or other thing of value from any purses" it becomes subsection of b, so it would be b (i). On page 2, line 1, after the word person, insert a semi-colon and then strike the word "to" after the word "or" and in its place you would put a small (ii) and then the words "disturbed by repeated telephone calls, at the end of that sentence would be a small (ii). What this does is divide e into two types of a misdemeanor, one is extorting money by phone and the other is disturbed by repeating phone calls etc. On page 3, line 13, after (1e) you would insert a small i before the comma. It would be the same for line 17 after (1b).

REP. GOULD said he was opposed to this amendment. A person has to experience this situation before you can understand the circumstances of the crime. There is no penalty that is too tough as far as I am concerned.

REP. RICE stated he felt that second and third offenders should have a higher penalty than first offenders.

Vote: Motion failed with Rep's: Brooke, Russell, Wyatt, Whalen, Toole, Keller, Darko, Brown and Measure voting yes.

Motion/Vote: **REP. GOULD MOVED HB 270 DO PASS.** Motion carried 17 to 2 with Rep's: Russell and Measure voting no.

EXECUTIVE ACTION ON HB #302

Motion: **REP. GOULD MOVED HB 302 DO PASS.**

Motion: **REP. BECKER** moved to amend HB 302.

Discussion: **REP. BECKER** stated that her amendment would make the penalties be the same as the other two bills, but she wasn't sure how to word it.

CHAIRMAN STRIZICH suggested that John MacMaster said there would be an easy way to do this and asked the committee if they would be comfortable with that kind of concept amendment? **REP. MEASURE** objected and felt the amendment would be too extensive to vote on in concept.

CHAIRMAN STRIZICH asked **REP. BECKER** to bring an amendment to **John MacMaster** before the committee meets so we can delay action on this bill.

Motion/Vote: **REP. BROWN MOVED HB 302 BE TABLED.** Motion carried 15 to 5 with Rep's: Brooke, Rice, Toole, Johnson, and Darko voting no.

EXECUTIVE ACTION ON HB #284

Motion: **REP. BOHARSKI MOVED HB 284 DO PASS.**

Discussion:

REP. RUSSELL stated she wondered if they are the FTE's to enforce this? There might be a problem in supporting this problem.

REP. BROOKE stated she has also been concerned with the SRS emphasis on their AFDC clientele getting their first shot of child support when really it involves a whole gamut of people that should be covered by this protection.

REP. WHALEN stated this is a government program and would be a statutory enactment that would require all child support provisions containing divorce decrees.

Motion/Vote: **REP. BROWN MOVED HB 284 BE TABLED.** Motion failed 2 to 18 with Rep's: Brown and Measure voting yes.

Motion/Vote: **REP. BOHARSKI** moved to amend HB 284 with amendments drafted by Rep. Foster. Motion carried unanimously.

Motion: **REP. BROWN** moved to amend HB 284 by changing the age to 21.

Discussion:

John MacMaster, described the amendments and stated on page 2, line 25, after the words "child or" insert "when". Then on page 3, line 1, you would strike the words "child's graduation from high school" and insert "child reaches 21 years of age". This would also change the title of the bill.

REP. DARKO stated if the age of 21 is put in the bill it will be putting these children of divorced parents in a special category saying these children have to be supported until age 21 when most children leave the home at 18.

REP. TOOLE stated the emancipation often occurs at the time the child turns 18 or on graduation of high school. The amendment is going to create a problem in trying to figure out if there should be child support by having the child stay home until 21, or to keep them in school until 21. This bill didn't come in here with any expectations to raise the age and he stated he could not support the amendment.

REP. NELSON stated a lot of kids are more than ready to leave at the age of 18. They want to be out on their own. It is sometimes an agreement between the children and parents at that time, that it is the time to grow-up and be on their own.

REP. BROWN stated he withdraws his amendment.

Motion: **REP. WHALEN MOVED DO PASS HB 284 AS AMENDED.**

DISCUSSION:

REP. WHALEN stated we need some different language that would be more effective and tightly drawn to address the problem. He said he didn't think it is fair to put in law a provision that allows a child to get support until graduation from high school when that child may drag it out until he his 22.

Motion: **REP. WHALEN** moved to amend HB 284 by putting the child's graduation from high school or age 21, whichever comes first.

Discussion:

REP. MEASURE asked what you do with the child that doesn't want to go to school and flunks out his senior year and he is 18 years old and his mother says you have to move out. At this point, she is still collecting money from the father.

REP. WHALEN stated he would withdraw his amendment.

Motion/Vote: **REP. NELSON MOVED HB 284 BE TABLED.** Motion carried 15 to 5 with Rep's: Johnson, Clark, Messmore, Rice and Boharski voting no.

HEARING ON HB #303
TORT IMMUNITY FOR EMERGENCY COMMUNICATIONS PROVIDERS

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE BRADLY, HOUSE DISTRICT 79, stated that this bill is a thoughtful extension of the Good Samaritan Laws in the state of Montana to give some protection to telephone companies when they are involved in the telephone emergency system recently set up, the 911 number. The purpose of the bill is to encourage development of these emergency telephone systems and in order to do that this bill offers some limiting of liability of providers

of those services. The smaller cooperatives fear they cannot withstand the possibility of a law suit that would most probably put them out of business.

There are two specifics in this bill. One which would not make that system liable for release of information that is not in the record. The other is that it limits the liability of tort for damages allegedly caused by the design of the maintenance if an emergency system. This is not absolute immunity by any means. The liability would certainly be there in instances of malice or reckless misconduct.

Proponents' Testimony:

Joan Mandeville, Director of Industry and Regulatory Affairs for the Montana Telephone Association, gave written testimony in favor of HB 303. **EXHIBIT 1**

Dan Walker, U.S. West Communications, stated the committee has heard a good bill introduction and a good restriction of 911 services. We would like to add our support to this bill and think it important that these issues be addressed now rather than at a later and more difficult time.

Earl Owens, General Manager, Blackfoot Telephone Cooperative, stated because of the liability concerns we have denied requests for 911 service. Our concern is that using our standard business operation procedures, we might get a wrong dispatching from the clerk which could cause a law suit and put us out of business.

Gene Phillips, Northwestern Telephone Systems, we support this bill and urge the committee to give it a DO PASS.

Opponents' Testimony:

Michael Sherwood, Montana Trial Lawyers Association, gave written testimony in opposition of HB 303. **EXHIBIT 2**

Questions From Committee Members:

REP. TOOLE asked **Mr. Walker** why this particular enhancement you want implemented isn't protected? **Mr. Walker** said it could be the fact that you live in Missoula and that area has had 911 for many years. He then asked if that it true, then there is nothing inherent of the future of 911 that makes it particularly hazardous to the public. **Mr. Walker** said no there is not, we are introducing more laws to protect the chance of human error.

REP. DARKO asked **Mr. Walker** during the time his company how many law suits have you had? **Mr. Walker** he has no knowledge of any .

Closing by Sponsor:

REP. BRADLY stated we have to have a balance here that is

consistent that people are responsible for the actions and they are not encouraging negligence. We don't want to let a system develop where people are so fearful of making an inadvertent error and subject to a law suit. Please give this bill a do pass.

HEARING ON HB #286

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE BILL STRIZICH, HOUSE DISTRICT 41, stated the bill is presented on behalf of the Montana Probation Officers Association. The bill comes out of a bit of frustration in dealing with the responsibilities of probation officers in youth court that are fairly central to the whole philosophy of youth court. It narrows the authority of the probation in matters of youth in need of supervision and replaces responsibility upon parents and inhibits unnecessary intrusion into family matters by officers of the court.

Proponents' Testimony:

Mona Jamison, Juvenile Probation Officers Association, stated they support this bill. The present statutes do not provide that parents must first attempt to address a problem before a question of needed intervention. There is a group of youth, identified by Federal Agencies that are actually called Throw-Away Push-Out Children. This group consists of children, for various reason, their parents have chosen not to parent. These parents use the court system as a dumping ground for these children. This seems like the most expedient way to get both rid of the children and to discard their responsibility.

This proposed change in the youth court is a starting point in the effort to require parents to accept their legal responsibility to raise their children. The bill still requires the court to take in a youth in need of supervision after this finding is met. The finding is that the child continues to exhibit behavior beyond the control of the parents, despite the attempt of the parents or the guardian, to exert reasonable efforts to resolve the control of the youth's behavior. This statute allows the probation officers to assist the parents to become familiar with other social services relating to their problem.

Mike Fleming, Probation Officer, stated this is a real concern when kids are in trouble because of the parents. Often, there is no supervision, parents are too involved to care. Most of these parents are alcoholics or drug dependant. Until the parents accept the responsibility or do something for themselves to get the problem solved, we will always have this problem. The support we would receive from this bill is demanding them to do something before we have to get involved.

Dick Boutiljer, Montana Juvenile Probation Officers Association, stated that in many cases parents are coming down to the Police Station and filing charges against their child, the officer picks them up and then we call the parents. The parents tell us to keep them they are not coming down to get them. We support the bill and feel their is a great need for it.

Jan Shaw, Executive Director, Helena Youth Resources, stated in many cases the parents fail to have exhausted all their avenues before they call for outside help. We are in support of this bill.

Dick Meeker, Juvenile Probation Officer, stated on an average year we receive 570 referrals to our office. Half of our cases we try to respond to without even seeing the child. We offer our advice over the phone. Families need to address the problems at home before they bring us into the situation. We support this bill.

Opponents' Testimony: none

Questions From Committee Members:

REP. WHALEN asked **REP. STRIZICH** if there was a distinction between a youth in need of supervision and a youth in need of care? **REP. STRIZICH** said a youth in need of care are the youth who are usually neglected and there is a gray area that these youth will be acting beyond the scope of their parents control. There is a clear distinction of the role of probation officer and that is what we are speaking to. **REP. WHALEN** asked if you are trying to make the act work in a way a child could be moved from the home because the parents are crummy parents as opposed to abusive parents. **REP. STRIZICH** said no, we are dealing with a section of the Youth Court Act that specifically deals with youth in need of supervision. It will not affect the area of law that deals with investigations by child protective workers.

Closing by Sponsor:

REPRESENTATIVE STRIZICH stated that what we are asking is to have the parents access some the programs available in our communities before they the court to intervene.

HEARING ON HB #333
REVISE PAROLE ELIGIBILITY

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE BROOKE, HOUSE DISTRICT 56, stated this bill is a recommendation out of the Criminal and Justice Corrections Advisory Council. The central part of the bill is found in page 2, section 5. We are attempting to address some language change. The design capacity at the Montana State Prison, is actually an emergency capacity. When these facilities do reach this

capacity, we are asking to eliminate the actual numeric designation. If you recall we now have a different numeric designation because of different facilities being placed and their are proposed facilities that will be before us at the legislature and therefore, with each of these additional facilities the emergency capacity becomes a different number. We are trying to eliminate the need to change this language every time there is a different number attached to the facility and also to designate the fact that we now have two facilities. One for males and one for females.

Proponents' Testimony:

Jim Palmeroy, Chief Community Corrections Bureau for the Department of Institutions, stated this is a housekeeping measure. The bill does not represent a change in policy. Since 1983, early parole eligibility statutes have contained an oversight that requires legislative action each time prison capacity changes. This bills amends section 46-23-201 by removing the numerical reference to prison capacity and substituting the term emergency capacity. This bill will apply early parole eligibility to offenders in tight correctional systems, to include pre-release centers, affected by overcrowding in the institution. This allows the board of pardons to consider early parole 120 days before their conventional parole eligibility.

Opponents' Testimony: none

Questions From Committee Members:

REP. RICE asked **Mr. Palmeroy** how do we get on emergency status and off emergency status. What is the procedure? **Mr. Palmeroy** said at the particular time the capacities are 1135 at the Montana State Prison and at least 60 at the Women's Correctional Center and just those two institutions are addressed in the current statute. When their capacity exceeds that, prison records will notify the board and also notify the board of eligible paroles in 120 days.

Closing by Sponsor:

REP. BROOKE stated this will be a clean up bill to get our laws consistent with the facilities and further additional buildings or pre-release centers and we won't have to come back and define those emergency capacities. I urge your passage of HB #333.

HEARING ON HB #388
CLARIFY THAT PREGNANCY DISCRIMINATION IS SEX DISCRIMINATION

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE STICKNEY, HOUSE DISTRICT 26, stated she is sponsoring this bill at the request of the Human Rights

Commission. This bill would clarify that the Human Rights Act and Governmental Code of Care Practices in prohibiting discrimination on the basis of sex. Include the discrimination on the basis of pregnancy. The purpose of this change is to amend the discrimination laws to clarify the legislatures intent. If the bill is enacted it will ensure in those areas of the statutes where sex discrimination is prohibited, it is clear that discrimination based on pregnancy is also prohibited.

Proponents' Testimony:

Ann MacIntyre, Human Right Commission, gave written testimony in favor of HB #388. **EXHIBIT 3**

Jan Hill, herself, gave written testimony in favor of HB #388. **EXHIBIT 4**

Dave Barnhill, Deputy Insurance Commissioner, stated they are in support of HB #388.

Diane Sands, Montana Women Lobbyists, gave written testimony in favor of HB #388. **EXHIBIT 5**

Lynda Saul, Interdepartmental Coordinating Committee for Women, gave written testimony in favor of HB #388. **EXHIBIT 6**

Glenna Wortman-Obie, Business & Professional Women's Organization, we support this measure. As a voice of working women, we want you to know that pregnancy needs to be specifically included in definitions of sex.

Harley Warner, Montana Association of Churches, gave written testimony in favor of HB #388. **EXHIBIT 7**

Opponent's Testimony:

Larry Akey, Montana Association of Life Underwriters, stated he does not represent insurance companies, my members are small independent business people. These people are on the front line of the insurance crises. The crisis of affordability. We submit some amendments to this bill. **EXHIBIT 6.** HB #388 is mandatory maternity benefits sneaking in through the back door.

Questions From Committee Members: none

Closing by Sponsor:

REP. STICKNEY stated this bill clarifies that an insurance provider cannot exclude a normal medical cost that occurs only for women. This bill only mandates treating women equally with men.

HEARING ON HB #346
REVISE JOINT AND SEVERAL LIABILITY

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE TOOLE, HOUSE DISTRICT 60, stated this is a bill which address liability issues in civil law suits. This bill is a balance to legislation that previously passed which created an imbalance in the area we are going to be addressing. There are three things this bill does. One is the portion of the bill that requires a potentially liable defendant to be joined in a law suit in order to a portion the liability. The second thing the bill does is reduces the percentage application of joint and several liability. The third issue is connected the second thing being an adjustment in percentage relative to the concept contribution.

Proponents' Testimony:

Joe Bottomly, Great Falls Montana, gave written testimony in favor of HB #346. **EXHIBIT 8**

Tom Beers, Attorney - Missoula, stated that this particular provision has a the most impact to victims across a board. That impact is what is addressed by the bill before the committee. Mr Beers emphasized that he was going to address the issue of fairness. Fairness should be given to all parties, not just the plaintiff and the victim. We, as plaintiff's attorneys, representing plaintiff victims, have the burden of proof in cases. That is fair. Fairness is what the simple justice system is all about. With this particular legislation, that will exist.

Michael Sherwood, Montana Trial Lawyers Association, gave written testimony in favor of HB #346. **EXHIBIT 9**

Opponents' Testimony:

John Alkie, Montana Defense Trial Lawyers, stated his association is in opposition of this bill. There are two parts to this bill, one is the part changing percentile thresholds of when several liability become joint, and one dramatically changes how a jury considers fault in a multiple defense case. The critical thing they are changing, in regards to how a jury considers fault, in current law the jury gets to consider the fault of all parties. They are striking the word consider. That is a very unfair change they are trying to accomplish.

Gerald Neely, Lobbyist - Montana Medical Association, stated the Montana Medical Association is opposing this piece of legislation for the same reasons they support the original legislation that is on the books. It has nothing to do with the profits St. Paul may or may not have made. As a matter of fact, as a physician in Montana, 75% of them have their insurance from through physician

carriers that are non-profit mutual that are owned by the physician themselves. The reason the Montana Medical Association supported approximately 5 major pieces of legislation in 1987, was those 5 major pieces of legislation would, it was estimated at that time, have a major downward impact in the long run on the cost of medical mal-practice insurance in the state of Montana. This was out of concern, for specifically, neurosurgeon practicing in a large city and might have to pay $50 or $60 thousand dollars worth of insurance a year. The focus of the concern had to do with loss of accessibility in the rural areas.

He said it is a fact, the regardless of the facts and figures that have to do with the profit of the insurance companies that are commercial, it is a fact that there has been a steady decline in the number of physicians of the rural areas. It is a fact, that if you pay $40,000 a year for your insurance and only deliver 10 babies, that will not allow physicians to practice in a small community as a family practitioner. It has nothing to do with profit of insurance companies, because we are talking about insurance sold to a physician by the companies they own which at that time, was above a level allowed by physicians in small communities to stay in practice.

Mr. Neely said that half the counties in Montana do not have any obstetrical services. It is a fact, the law on the books regarding several liability the way it was modified in 1887 has had a substantial impact along with the other measures in reducing the cost of obstetrical insurance for obstetrician and family practitioners in the state of Montana. It is also a fact, that if this bill is passed it will reverse that trend and will increase that insurance and will it is submitted if this legislature accepted the policy amendment or passage of the legislation in 1987, namely having a downward impact on the cost of insurance, it must force this legislation to support the reverse principle in making an increase in that insurance. It is submitted that this is very important measure due to Montana Medical Association and the individuals that currently are practicing in the rural areas and for those individuals we might wish to encourage to come back to the rural areas and practice. The impact of this legislation is a virtual repeal of the joint several liability.

Gary Spaeth, Lobbyist - Liability Coalition, stated he would like to point out to those that were not here in 1987 a misconception that the proponents of this legislation would like to have you believe. They indicated that the worry of legislation in 1987 created an imbalance that was unfair and the legislation presently before you was intended to correct the problems that the 1987 legislature was actually influenced by vested interest, and that the legislature was probably fooled in 1987. This was not the case. You as policy decision makers have the responsibility. That is what happened in 1987, the pendulum had swung too far in favor of the plaintiff's side. The liability

coalition wanted to swing it way back to the other side, but the legislature policy makers did not allow that to happen and it landed in the middle. It is even at this time, we ask this committee to not make the change and leave it as it is at this time.

Dan Hoven, Montana Municipal Insurance Authority, stated he concurs with Gary Spaeth. The MMIA opposes HB #346.

Alec Hansen, Montana Legal Cities and Towns, stated the concept of this bill of making the defendant jointly liable is very dangerous to the cities. The MLCT oppose this bill.

Mona Jameson, Doctor's Company, opposed HB 346 and gave written testimony for Jim Cathcart, V.P. - The Doctor's Company. **EXHIBIT 10**

Brett Dahl, Tort Claims Division - Department of Administration, gave written testimony opposing HB #346. **EXHIBIT 11**

Kay Foster, Billings Chamber of Commerce, opposes HB #346.

Jim Ahrens, Montana Hospital Association, opposes HB #346.

Joanne Chance, Montana Technical Council, opposes HB #346.

Jacquiline Terrell, American Insurance Association, opposes HB #346.

Gene Phillips, National Association Independent Insurance, opposes HB #346.

Tom Harrison, Montana Auto Dealers Association, opposes HB #346.

Patrick Fleming, Montana Power Company, opposes HB #346.

Martin J. Oslowski, President - Montana Medical Association, opposes HB #346.

<u>Questions From Committee Members</u>:

REP. JOHNSON asked **Ms. Foster** what the results of the insurance study were? **Ms. Foster** stated that this was one of things the Chamber of Commerce documented. Ms. Foster was actively involved in all the comprises of legislation that came through here. One of the specific recommendations came out of that committee, was we needed to change the joint and several liability. The fact there was a liability insurance crisis and has been talked about here by Mr. Bottomly, it was such a crisis that affected such a small business as a day care. There was a testimony on what we needed to do in state and one of the bills we felt was most important changed this legal concept.

REP. LEE asked **Ms. Terrell** if she could respond to the question that was raised about insurance company's proceeds during this period of time? **Ms. Terrell** said she would like to call to the committee's attention that billions of dollars earned does not necessarily have direct correlation to comparability. In 1987, the insurance industry as an average was less profitable than corporate America.

Closing by Sponsor:

REP. TOOLE stated that this is a complicated area. As afar as the insurance industry is concerned the reduction in rates that was pointed out in the obstetrics area, is something that has took four years. There may be some reduction in rates that is desirable and we are happy to see this. Whether it can all be laid at the door step of the particular bill changing joint several liability, in 1987, is seriously in doubt. Rep. Toole said he felt they went to far and he is here on behalf of this bill asking this legislature to find a balance to the pendulum.

ADJOURNMENT

Adjournment: 12:06 p.m.

BILL STRIZICH, Chair

JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE Jan. 31, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/	/	
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/	/	
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/	/	
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/	/	
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

January 31, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 269 (first reading copy -- white) do pass .

Signed: _____

Bill Strizich, Chairman

221313SC.HSF

HOUSE STANDING COMMITTEE REPORT

January 31, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 270 (first reading copy -- white) do pass .

Signed: _____
Bill Strizich, Chairman

221314SC.HSF

EXHIBIT 1
DATE 1-31-91
HB 303

HB 303

TESTIMONY OF

MONTANA TELEPHONE ASSOCIATION

Good Morning. My name is Joan Mandeville. I am the Director of Industry and Regulatory Affairs for the Montana Telephone Association. I am here today on behalf of our 13 small independent telephone company members, 9 of which are cooperatives. Our members serve approximately 41,000 customers and over one half of the geographic area of Montana.

There is little doubt that we are in the midst of a technological revolution. Our computer and communications systems can do more, faster, and better than ever before. Emergency services are one of the beneficiaries of this technological revolution through services known as "Enhanced 9-1-1". Enhanced 9-1-1 can identify the calling phone number and, before even handing it to a dispatcher, connect a name and address to the number. The callers address and phone number shows up on the dispatchers computer screen as the call is answered. The system allows emergency calls to be routed correctly to one of several dispatch points, even if that point is in another county. This system saves countless lives by greatly accelerating response time, eliminating dispatch error, and providing critical information in situations where a calling party, to injured, scared, or young, does not give the dispatcher all needed information or gives it incorrectly.

Although our membership would like to offer these services when feasible, many have expressed concern about the increased liability exposure. Equipment fails, an address is input into the system incorrectly, the data base does not contain the most recent updates, a call is incorrectly routed, an unlisted telephone number is given out, or in the alternative, an unlisted number is not given out, in any of these situations a telephone company could find themselves in the midst of a civil suit. One such lawsuit could result in a large settlement. Small companies are not in a position to absorb those kinds of costs. One case could wipe out the entire ownership capital of a cooperative. For that reason, many of our small companies have resisted providing these types of services. Others have gone forward, trying to get waivers from subscribers with unlisted numbers, trying to limit exposure through contracts and just hoping it won't happen.

This bill continues safeguards for any person who becomes a victim of reckless, willful, and wanton misconduct. Our members are not asking for a blank check. They want to know that if they enter into partnerships in their communities to provide emergency services, and provide high quality services, they will not be susceptible to large damage claims if any part of the system does breakdown.

Today manages look at the new risks created by offering enhanced emergency services and are hesitant. I believe the lives these systems can save should guide our decisions. You can make that possible.

EXHIBIT
DATE 1-31-91
HB 303

Testimony of Michael J. Sherwood
Representing the Montana Trial Lawyer's Association
Opposing House Bill 303

Article 7 of the Bill of Rights of the United States Constitution guarantees to us as U. S. citizens the right to a jury trial in seeking civil remedies. Article II, Section 26 of the 1972 Montana Constitution carries that concept forth. If reads, in part:

The right of trial by jury is secured to all and shall remain inviolate.

That section applies to civil remedies as well as criminal actions.

Article II, Section 16 of the Montana Constitution provides that Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property or character.

In line with those constitutional provisions, the legislature has defined that duty generally owed by citizens of this state to one another in Section 27-1-701 MCA by saying that " everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person/except so far as the latter has willfully or by want of ordinary care brought the injury upon himself."

The courts and eventually the legislature have noted an exception to this rule that people or entitities should be liable for their carelessness when it causes injury to another. This exception is known as the Good Samaritan Rule. In an effort to insure that doctors, volunteer medical personnel, volunteer fire fighters or any other person will render emergency care or assistance to a citizen of this state who requires such assistance, the Good Samaritan Rule exempts those people for suits for damages arising from their carelessness and allows only recovery when there have been willful or wanton acts. That rule is premised, however, on the fact that the emergency care of assistance is rendered WITHOUT COMPENSATION.

HB 303 proposes legislation which would exempt the providers of emergency communications facilities and services from liability for their carelessness even though those facilities are compensated for their services and costs. Section 10-4-201 MCA imposes a monthly access fee on each access line on each service subscriber. Those funds are specifically earmarked for paying the costs of providing 911 emergency services.

We oppose this bill because:

1. It represents a poor public health and safety policy. 911 services are provided when an emergency exists. Don't we as

EXHIBIT 4
DATE 1-31-91
HB 303

citizens want to insure that personnel that are paid to provide those services act in a careful manner in providing those services at critical times in our lives. When you or a loved on is sick or seriously injured, your only option may be to call 911. At that point you don't want to be calling on carelessly installed lines, or talking to carelessly trained employees, or dealing with an operator who treats your crisis in a careless manner. If the state is going to provide us access to emergency communication services don't we have a right to insist that those be quality services which are performed with at least a minimum of care.

2. It places all the risk of using 911 upon the user, when, in fact the state has established 911 as the only emergency communications system available.

3. While the State has a legitimate interest in providing emergency communication services to its citizens there is no rational relationship between this purpose and requiring that users of the system assume all the risk. See Brewer v. Ski-Lift, Inc., where the Montana Supreme Court held that although the state had a legitimate interest in protecting the economic vitality of the ski industry, there was no rational relationship between this purpose and requiring that skiers assume all the risks of skiing regardless of the presence of negligence on the part of the area operator.

4. A "telecommunications provider" as described in this bill can be and often is a "public safety agency" as defined by Section 10-4-101 MCA. That definition includes the "state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority." In other words this bill attempts to grant immunity to the state and its political subdivisions. Article II, Section 18 of the Montana Constitution provides that the "state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by a 2/3 vote of each house of the legislature.

I urge you to vote Do Not Pass on House Bill 303

EXHIBIT 2
DATE 1-31-91
HB 388

Testimony of Anne L. MacIntyre, Administrator
Human Rights Commission
In support of House Bill 388

The Commission is seeking legislative clarification of this issue because we have encountered disagreement about the meaning of the statute. Although judicial interpretation of the statute is another alternative to resolving this question, the Commission feels legislative clarification is a more expeditious means of clarifying what the law is on this point.

The Montana Human Rights Act was modelled after federal law and the history of the interpretation of the parallel provisions of should be useful to the committee in its consideration of this bill. Congress first prohibited sex discrimination in employment in Title VII of the Civil Rights Act of 1964 as amended. But because the inclusion of sex discrimination in Title VII was done by floor amendment in attempt by opponents of the act to make it seem trivial and therefore kill it, little legislative history existed concerning the intent of Congress in prohibiting sex discrimination in Title VII. It was generally believed by advocates of sexual equality that, because pregnancy is a gender based condition, Title VII also prohibited pregnancy discrimination, however.

The U.S. Supreme Court first considered the question of whether pregnancy discrimination was sex discrimination in the case of General Electric v. Gilbert in 1976. In Gilbert, the court held that it did not constitute unlawful sex discrimination under Title VII for an employer to treat maternity differently than other disabilities under the employer's disability plan. In response to Gilbert, Congress enacted the Pregnancy Discrimination Act of 1978. The Pregnancy Discrimination Act amended Title VII to specifically include discrimination because of "pregnancy, childbirth, or related medical conditions." This language is codified at 42 U.S.C. § 2000e(k).

In the subsequent case of Newport News Shipbuilding and Dry Dock Co. v. EEOC, the U.S. Supreme Court considered the effect of the Pregnancy Discrimination Act on Title VII. The Court noted that, when Congress enacted the PDA, Congress "unambiguously expressed its disapproval of both the holding and the reasoning of the Court in the Gilbert decision. . . ." The legislative history of the PDA noted that Congress intended to clarify rather than change Title VII.

While this activity was occurring on the federal level, the Montana Human Rights Commission was considering the question on the state level. In 1980, in a case called Pendery v. City of Polson, the Commission considered and rejected the reasoning of the Gilbert case and held that an employer's refusal to hire a woman because of her pregnancy could constitute sex

EXHIBIT 2
DATE 1-31-91
HB 388

discrimination for purposes of the act. The parties did not seek judicial review of this decision, however, and we did not obtain an interpretation of state law on this point in the Montana courts. However, the Colorado Supreme Court, in construing Colorado's law which prohibits discrimination in employment on the basis of sex, held that a health insurance plan which excluded coverage for expenses incurred during normal pregnancy while providing male employees with comprehensive coverage for all conditions, including those unique to men, was unlawful. Civil Rights Commission v. Travelers Insurance. This case was decided in 1988.

In addition to those states which have reached this result by judicial interpretation, a number of states have adopted statutory language like that contained in this bill.

There are a number of policy reasons why the statutory clarification contained in this bill should be concurred in by the legislature and some of the other proponents of the bill will speak to those. In summary, we are simply asking the Montana legislature to do what the U.S. Congress did in 1978 and clarify this matter legislatively.

EXHIBIT 7
DATE 1-31-91
HB 388

Testimony of: Jan Hickman Hill
1302 Wilder
Helena, MT 59601

Before: House Judiciary Committee

Re: H.B. 388

Members of the Judiciary Committee, my name is Jan Hill. I am a resident of Helena, am a homemaker and mother of a 2-year-old daughter, and am here today to speak in favor of H.B. 388.

Having had this child while holding an insurance policy which specifically excluded coverage for normal pregnancy and childbirth, I know firsthand the pressures and stresses being in such a circumstance places on similarly situated pregnant women in Montana.

A little over two years ago on a Friday afternoon, I checked into St. Peter's Community Hospital here in Helena. Imagine, if you will, the parents' high state of emotion and anticipation in the hours before birth, especially the birth of a first child. Compound that, then, with the strain of knowing that everything had better go smoothly so that you and the child could leave the hospital at the earliest possible moment so that the bill would not be any bigger than was absolutely necessary.

At 12:30 the following Saturday morning after several hours of exhausting hard labor, my daughter was born. This delivery did not go perfectly but required the calling in of a second physician to assist in a forceps delivery; the first doctor had considered a Caeserean section. My daughter was healthy, and I suffered no irreversible damage, but I was emotionally, physically, and mentally wrung out (I had not slept for over 24 hours). The nurses were attentive to my every need, and at that point, I honestly needed help to get to the bathroom and down the hall to the room with the wonderful sitz bath with its warm, restorative powers.

Later that Saturday when my physician came by to check on me and the baby, I asked him whether we could leave that day. I knew that I had to get up out of that bed and go home. He said that we could be discharged if that was what I wanted to do, but he also stated that, in his experience, women who did leave on the day of delivery did not do that again with subsequent children. I assure you that I will not repeat that mistake.

In order to avoid a hospital charge for an additional day, we had to be gone by midnight that Saturday, less than 24 hours after my baby's birth. We left that night at 11:45; I stalled the departure as long as we could so that I could take advantage of all the care and facilities the hospital offered. What I really wanted was one last soak in that sitz.

Ex. 4
1-31-91
HB 388

After we got home, I was on my on, with a husband who was having to spend extended hours at work, and no family to call on for help in those first couple of days. For a full week, I could not sit and had difficulty walking; it was more of a hobble. Because we had left so soon after birth, my husband had to bundle the baby up and take her back to the hospital for a test which must be performed within a couple of days of birth. Normally, that would be done while mother and child are still hospitalized. A couple of weeks later, my husband and I had to go back to St. Peter's for an abbreviated CPR class, another service offered usually while the parents are still checked into the hospital.

The bottom line for the pregnancy and delivery broke down as follows: St.Peter's - $1,219.94; physician services for care during the nine months and delivery - $1,200.00; lab tests during pregnancy - $434.40; and prescription medicines - $463.48 for a grand total of about $2,900.00. Even though we had major medical coverage, all of these were out-of-pocket expenses.

We just now are pulling out of the financial black hole we have been in for the past two years. And while there have been other matters which added to our monetary woes, this large medical bill took its toll on our family. We were forced to take out a loan to pay the bills, and only recently did we pay that off.

Our health insurance policy denied coverage related to expenses which only a woman can incur but required us to pay in our premium for coverage of those related to male maladies. Women with insurance policies are forced to pay dearly for riders to cover childbirth, but I dare say that a rider for prostate cancer would be a rare bird. Maternity riders are prohibitively high, and my best recollection of what such a rider was charged by our insurance company at the time was about $100 per month. For those couples like me and my husband who after a prolonged period of infertility must resort to medical intervention, the bill for all of those months of rider coverage is staggering.

I urge the Committee to consider H.B. 388 favorably. Thank you for your time.

MONTANA WOMEN'S LOBBY

P.O. Box 1099 Helena, MT 59624 406/449-7917

TESTIMONY OF DIANE SANDS, EXECUTIVE DIRECTOR, MONTANA WOMEN'S LOBBY

EXHIBIT 5
DATE 1-31-91
388

HOUSE JUDICIARY, 1/31/91

IN SUPPORT OF HB 388, "TO CLARIFY THAT PREGNANCY DISCRIMINATION IS SEX DISCRIMINATION"

Mr. Chairman, members of the Judiciary Committee, the Montana Women's Lobby, representing 52 organizations and individual members, wishes to be on record as strongly supporting HB 388. In agreement with federal law which defines "sex" to include pregnancy, childbirth, and related medical conditions, we believe that HB 388 clarifies the intention of the Legislature and the state of Montana also to define "sex" as including pregnancy, childbirth, and related medical conditions.

This issue is important to the MWL because of our long history of association with Montana's landmark 1983 law prohibiting discrimination in insurance based on sex or marital status. It has been the interpretation of the Human Rights Commission and the Insurance Commissioner that this prohibition against sex discrimination in health insurance included pregnancy, childbirth and related conditions.

Unfortunately, a recent survey of major providers in Montana revealed that approximately 70% are out of compliance and continue to sell unnecessary and expensive maternity riders at an average cost of about $900. The cost of a single uncomplicated pregnancy runs about $4,000 currently, although a c-section can run up a bill of $6-8,000 very quickly. Not only are many insurance providers refusing to include pregnancy routinely in individual health policies, but, according to an insurance agent I spoke with yesterday, some companies have told prospective women clients that they will not pay for c-sections at all unless the woman buys the expensive maternity rider.

Allowing insurance companies to exclude pregnancy coverage from their standard policies creates yet another obstacle between women, access to prenatal care, and healthy babies. This despite the correlation between lack of prenatal care and infant mortality, infant morbidity and low-birth weight babies. Many national studies have confirmed that women with no health insurance are less likely to obtain adequate prenatal care and more likely to have a poor pregnancy outcome than women with health insurance which includes pregnancy coverage. The average cost of caring for a low birthweight infant in the newborn

intensive care unit is $15,000. Excluding normal pregnancy coverage in health insurance policies will add to the numbers of women who have no means to pay for prenatal care that is so critical to a healthy outcome to pregnancy and will increase the state's burden for providing for medical expenses related to low birthweight.

The insurance industry has often claimed that having to provide maternity coverage will be expensive, drive up insurance costs and drive insurance providers from Montana. The non-gender insurance law caused a significant reduction in annual health insurance premiums for young families, an average of $222 or 14% for a single mother with two children, according to a study of the economic impacts of the law conducted by the Women's Lobby and the Insurance Department.

To share another state's experience, Massachusetts eliminated maternity coverage discrimination several years ago, separately from a general non-gender insurance law. According to the Massachusetts Division of Insurance's study on implementation the average increase in cost was 1% in most affected policies.

Since Montana has one of the lowest percentages of employer-provided health insurance, and less than half of those insured are women, affordable health insurance for individuals which includes pregnancy coverage is an important public policy goal with an important pro-family impact.

In summary, the public policy of the state of Montana is that sex discrimination - including pregnancy discrimination - should not be tolerated. There is no valid justification for treating one medical condition experienced by only one sex, pregnancy, differently from others. HB 388 will make that policy perfectly clear. We urge your support for this bill.

EXHIBIT 6
DATE 1-31-91
HB 388

TESTIMONY PRESENTED TO THE
HOUSE JUDICIARY COMMITTEE
HOUSE BILL 388

January 31, 1991

Chairman Strizich, Members of the Committee:

My name is Lynda Saul. I represent the Interdepartmental Coordinating Committee for Women, known as ICCW. ICCW was established in 1977 and was re-established in 1990 by Governor Stephens, through Executive Order. Our main purpose is to promote the full participation of women at all levels of state government.

House Bill 388 clarifies existing law to provide protection against discrimination in employment because of pregnancy, childbirth and related medical conditions. Under statute 49-2-310, MCA, it is unlawful to terminate a woman's employment because of her pregnancy. However, under current law it is not clear that it is unlawful to base a hiring decision on whether or not a woman is pregnant. It is the policy of the State of Montana to remove discriminatory barriers to employment in state government based on race, color, religion, creed, sex, national origin, age, handicap, marital status or political belief.

ICCW supports House Bill 388 and urges you to vote in favor of this bill.

EXHIBIT 27
DATE 1-31-91
HB 388

Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624
PHONE: (406) 442-5761

ORKING TOGETHER:

American Baptist Churches of the Northwest

Christian Churches of Montana (Disciples of Christ)

Episcopal Church Diocese of Montana

Evangelical Lutheran Church in America Montana Synod

Presbyterian Church (U. S. A.) Glacier Presbytery

Presbyterian Church (U. S. A.) Yellowstone Presbytery

Roman Catholic Diocese of Great Falls - Billings

Roman Catholic Diocese of Helena

United Church of Christ Mt.-N. Wyo. Cont.

United Methodist Church Yellowstone Conference

Date Submitted: January 31, 1991

Bill Number: HB 388

Submitted by: Harley E. Warner

Mr. Chairman, members of the committee, I am Harley Warner. I am here this morning representing the Montana Association of Churches.

We believe that men and women were created equal in the eyes of God and therefore have the constitutional right to equal opportunities in our society.

We encourage the Montana Legislature to continue to eliminate discrimination against women.

To discriminate against a women because she is pregnant or has a condition related to pregnancy is to discriminate against a women because of her sex.

House Bill 388 will help to alleviate some of these problems. We therefore rise in support of House Bill 388.

HB 301
From Joe Bottomly
Great Falls Mt

EXHIBIT 5
DATE 1-31-91
HB 346

JOINT AND SEVERAL LIABILITY

In 1987 the Montana Legislature passed numerous "tort reform" laws aimed at restricting injured victims ability to recoup their losses sustained as a result of the fault of others. One of the most onerous and misdirected of these statutes was the Amendments to Montana Joint and Several Liability Law.

Prior to 1987, Montana, like most jurisdictions, recognized that an injured victim, who was wholly innocent, could recover the full amount of his damages from any defendant who is at fault for the injury. The principle behind this rule was that, as between an innocent victim and any defendant who was at fault, the victim should be able to recoup all of his damages. If the defendant thought that others (not named as defendants), were also at fault and should contribute, it was up to him to obtain contribution from these other persons. He could do so by adding such persons into the lawsuit and have the jury determine the proportional fault between the parties. Sometimes however, these other defendants could not pay anything. Perhaps they were indigent or had no insurance.

In 1987 the Legislature radically changed joint and several liability. Now, any defendant who's fault is less than 50% is not responsible for all the losses suffered by the victim. He is only liable for that portion of damages which corresponds with his proportion of fault.

The intent of the 87 amendment was to prevent the

situation where a defendant who was marginally at fault was responsible to pay for potentially large damages of the victim. The principle of the statute is understandable. So long as uncollectible damages remain a feature of our tort system, an unfair burden may fall on some parties. However, the question is where should this burden fall, on a defendant who is admittedly at fault, or on the innocent injured person?

Clearly the 87 amendment went too far. When two or more persons contribute to a person's injury, percentages of fault of 25%, 35%, or 45% are not "marginally negligent defendants." These defendants were substantial contributing factors to the victims injuries, and should be jointly and severally liable for the plaintiff's injuries. Their level of culpability justifies their bearing the burden if a co-defendant is indigent and can't pay his share. Only if a defendant's fault is truly marginal, (e.g. less than 10%), could one begin to justify placing the burden on the injured victim. [1]

THE SOLUTION

The Legislature should fine tune the amendment by rolling back the 50% cutoff to a level that would protect only defendants whose fault is truly marginal. A suggested percentage would be 10 percent.

Secondly, the statute should make it clear that if a defendant wants to take advantage of this protection, that it is their

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[1]. Even at that, most legal scholars find no justification for making an innocent victim bear the burden when a defendant is at fault.

responsibility to add persons they believe are also at fault to the lawsuit. The reason for this is that it is unfair and unworkable to allow a defendant at the last moment to shift as much blame as possible on a non-party (an empty chair). This maneuver increases a plaintiff's difficulty by focusing the question of fault on a person who is not even present to defend himself. Plaintiffs are then forced not only to prove the defendant's fault but also defend the absent person to insure an adequate recovery from the remaining defendant.

These changes to the 1987 statute then, would leave the intent of the statutes in effect, but correct the imbalance of the existing statute. Defendants who are truly marginally at fault could be offered considerable protection without placing an unfair burden on an innocent victim.

MT Law Review Vol. 50 1989 p. 197-223

MONTANA CURTAILS JOINT AND SEVERAL LIABILITY

John Richardson*

I. Introduction

Consider the following hypothetical. In 1987, the star of the local college football team caught a ride to the practice field with his mother. At a partially obscured intersection next to a grammar school, an uninsured, unemployed motorist broadsided their car, seriously injuring the football player. He was paralyzed from the neck down and required constant medical care for the remainder of his life.

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* This comment benefited greatly from the suggestions of Professors Bari Burke and Greg Munro of the University of Montana School of Law, Karl Englund of the Montana Trial Lawyers Association, and Jim Robischon of the Montana Liability Coalition. Any errors or omissions are the author's alone.

EXHIBIT 4
DATE 1-31-91
HB 346

Testimony of Michael J. Sherwood
Representing the Montana Trial Lawyers Association
Supporting HB 346

As I have set forth in my testimony opposing House Bill 303 the Montana Constitution provides that we as citizens of this State have a right to full legal redress and under Article II, Section 16, we have the right to have a remedy afforded for every injury of person, property, or character.

In recognition of that constitutional right the statutes of this state long recognized that when an injured victim is injured by two or more parties, those parties should be jointly and severally liable. This meant that if one wrongdoer couldn't pay his share of the damages, the other had to make up for that deficiency and then seek repayment from the first.

In 1987 that law was changed. Now a wrongdoer cannot be made to pay for the damages caused by another wrongdoer, unless a jury finds the injury caused the victim is at least 50% the result of the carelessness of that wrongdoer. This means that, contrary to the constitutional provisions that provide guarantee a remedy afforded for every injury, some injured victims will not be fully compensated for their personal injuries or damages to their property.

This law was passed in response to the "Liability Crisis" which was perceived to exist in 1987. That crisis was real enough to the people of this state, but was, in truth, the creation and fabrication of an Insurance Industry that blamed high rates on large and unjust jury verdicts rather on the poor investment practices and huge profit taking by the insurance industry. The insurance industry, pursuant to the McCarren-Fergusen Act, is not regulated by federal anti-trust laws or the Federal Trade Commission. They have no disclosure requirements regarding their net profits and losses. In this state, as in others, they do not pay income tax, but, instead pay a premium tax based upon total premiums. This method of taxation precludes a determination of their profit taking. Not until after the 1987 session was recessed did an independent study conducted by the U.S. Government Accounting Office emerge which determined Insurance Industry profits from 1976 through 1985. The after tax total profits for the U.S. Property/Casualty Insurance industry for that period were determined by the GAO study to be in excess of $81 BILLION DOLLARS. Projections by that office for profits through 1990 were in the range of an additional $90 BILLION DOLLARS.

Today you will hear testimony opposing this bill from the same vested interests that supported Tort Reform in the 1980's. These are powerful forces: The liability coalition which includes large corporate interests; ~~the Montana Medical Association~~; The state itself and its political subdivisions; and, of course, the insurance industry. You will be told that the limitations on the rights of innocently injured victims have reduced insurance costs.

EXHIBIT 7
DATE 1-31-91
HB 346

Ask for dollar figures. How much have they saved at the expense of injured citizens.

This is a citizen legislature composed of non-professional politicians. A system that allows for the protection of individual rights. Those who will be injured by the 1987 legislation which this bill attempts to amend will be yourselves or loved ones--your constituents and supporters. Please be fair to the citizens of this state. Please ignore the vested interests which were so successful in the 1980's. Please vote Do Pass on this legislation.

EXHIBIT 10
DATE 1-31-91
HB 346

THE DOCTORS' COMPANY

JIM CATHCART

Vice President
Governmental and Corporate Relations

January 29, 1991

Representative Vivian Brooke
Vice Chairwoman
House Judiciary Committee
Montana House of Representatives
Capitol Station
Helena, Montana 59620

Dear Representative Brooke:

HB 346 has been reviewed by The Doctors' Company and as a result of that review The Doctors' Company respectfully urges that it not be passed from the House Judiciary Committee.

The practical effect of HB 346 is to reinstitute joint and several liability in Montana. Reducing the trigger point for liability in proportion to fault from 50% to 10% will increase the amount paid out in claims on behalf of doctors by The Doctors' Company irrespective of the degree of fault.

The original law was passed as compromise legislation in 1987 as a part of a number of other reform measures with the intent of stabilizing rapidly escalating medical professional liability rates. The reform laws, this one included, are having their intended effect. Rates have not increased since the passage of those reform bills. Medical professional liability insurance is widely available for all specialties in all areas. Additionally, The Doctors' Company has filed for reduced rates for a number of specialties ranging from a 5% reduction for OB/Gyn to a 15% reduction for emergency room physicians.

It is The Doctors' Company's experience that reform laws such as yours take four to five years before the full effects of the laws are reflected in premium structure. For example, in California the Medical Injury Compensation Reform Act (MICRA) was upheld by the Supreme Court in 1985. The first substantial reductions and dividends occurred in 1989. For 1990, a dividend will be paid to California member physicians which will be 31% of premiums.

1127 First St.

P.O. Box 2900

Napa, CA 94558-0900

707 / 226-7160

FAX: 707 / 226-1588

The Doctors' Company urges that the law remain so its full effect can be reflected in premiums before a discussion takes place as to whether or not the law should be changed.

The Doctors' Company believes that its positive experience in the last few years in Montana will continue provided the current law on joint and several liability remains in effect. This experience will insure a competitive market and keep medical professional liability insurance rates both available and affordable.

Sincerely,

Jim Cathcart

Jim Cathcart
Vice President
Governmental and Corporate Relations

JC/hls

The Doctors' Company urges that the law remain so its full effect can be reflected in premiums before a discussion takes place as to whether or not the law should be changed.

The Doctors' Company believes that its positive experience in the last few years in Montana will continue provided the current law on joint and several liability remains in effect. This experience will insure a competitive market and keep medical professional liability insurance rates both available and affordable.

Sincerely,

Jim Cathcart

Jim Cathcart
Vice President
Governmental and Corporate Relations

JC/hls

EXHIBIT 11
DATE 1-31-91
HB 346

DEPARTMENT OF ADMINISTRATION

TORT CLAIMS DIVISION

STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2421

HELENA, MONTANA 59620

January 31, 1991

TESTIMONY IN OPPOSITION TO HB 346, by Brett Dahl

Mr. Chairman, Members of the Committee, my name is Brett Dahl. I am Administrator of the Tort Claims Division of the Department of Administration. The Tort Claims Division opposes HB 346 because it is fundamentally unfair to require a defendant to pay more than its share of damages.

The effect of this bill works a particular hardship on governmental entities because they are often targets of lawsuits even when their negligence is minimal. Governmental entities are seen as having unlimited resources and will be sued when other defendants with limited resources will not. Additionally, the incentive is created for a plaintiff to settle with a defendant primarily at fault but with limited resources and to pursue the governmental entity.

A plaintiff's recovery is not barred unless his negligence is greater than the combined negligence of all against whom recovery is sought. Under this bill, a plaintiff 40% at fault will recover 60% of his damages from the state found 10% at fault when the defendant 50% at fault is insolvent. Plaintiff, 4 times more responsible for his injury than the state, will recover most of his damages from the minimally at fault state.

Another effect of this bill is to require a defendant determined to be 10% at fault to pay 100% of the damages if another defendant, 90% at fault, is insolvent.

This bill also eliminates the requirement that the trier of fact apportion negligence among each party whose action contributed to the injury. The incentive for plaintiffs to settle with defendants of limited resources but a high percentage of fault is further increased. Plaintiffs are encouraged settle with defendants with minimal resources and proceed to trial against deep pocket but minimally negligent defendants. The trier of fact will be left to determine fault with an incomplete view of the actions which contributed to the injury.

Do not pass HB 346.

EXHIBIT 12
DATE 1-31-91
SB 346

UMIA
"An InterInsurance Exchange"

Utah Medical
Insurance Association
540 East 500 South
Salt Lake City
UT 84102-2775
Phone (801) 531-0375
FAX (801) 531-0381

January 25, 1991

Montana Medical Association
2021 Eleventh Avenue
Helena, Montana 59601

Attention: G. Brian Zins, Executive Vice President

Dear Brian:

I have reviewed SB-153 and HB-346 which are obvious attempts to erode important tort reform achieved in Montana over the past several years. SB-153 erodes the collateral source rule and will essentially render it ineffective as a result of the elimination of the mandatory offset provision. HB-346 erodes the existing protection afforded by Montana law to a tort feasor whose negligence is found to be less than 50% of the combined fault.

Our rates in 1989 were reduced 5.5% and a rate increase for 1990 was unnecessary. Our rates for 1991 have been reduced 18.5%. Over the last three years, our rates have decreased a total of 24%. While there are several factors that may have contributed to this downward trend, the tort reform in Montana has certainly been a major contributing factor. The rate reductions are obviously consistent with our own loss experience in Montana. The same trends are seen here in Utah where we have had similar tort reform on the books since 1985 and 1986.

The adoption of these bills, in my opinion, will do nothing more than reverse the current trends and destroy the rate stability that has been achieved in Montana.

If I can be of further assistance, please advise.

Sincerely,

Martin J. Oslowski

Martin J. Oslowski
President & Chief Executive Officer

MJO:gb

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB # 303

DATE 1-31 SPONSOR(S) Rep. Bradley

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Earl Owens Missoula	Blackfoot Telephone Cooperative	X	
Dan Madeville	MONTANA TELEPHONE ASSOC.	X	
DAN WALKER	US WEST	X	
GENE PHILLIPS	NORTHWESTERN TELEPHONE	X	
JAY DOWNEN	Montana T&T/Elec Cooperatives	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB #286

DATE 1-31 SPONSOR(S) Rep. Heinrich

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Mona Jamison	Juvenile Probation Assoc.	X	
~~Scott Crichton~~	~~ACLU~~		
Dick Bottomly	~~[illegible]~~ MPOA	X	
JAN SHAW	Helena Youth Resources	X	
Mike Fleming	PROBATION OFFICERS	✓	
Dick Meek	Juv Prob Officer	✓	
~~Dick Ohmans~~	" " "	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB #333

DATE 1-31 SPONSOR(S) Rep. Brooke

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
James Penney	Institutions			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB # 388

DATE 1-31 SPONSOR(S) Rep. Hickney

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jan Hickman Hill	Myself & Family	✓	
Glenna Wortman-Obie	Business & Professional Womens Assn	✓	
HARLEY WARNER	MONTANA ASSOCIATION OF CHURCHES	✓	
Paulette Kohman	Mt Council Mat/Child Hlth	✓	
Anne MacIntyre	Human Rights Comm	✓	
David Rusoff	Human Rights Comm.	✓	
Jan Shaw	Helena Youth Resources	✓	
Dave Bamhill	Insurance department	✓	
Riley Johnson	NFIB		X
LARRY AKEY	MT ASSOC OF LIFE UNDERWRITERS		X
Dick SANDS	MT Women's Lobby	X	
Scott Crichton	ACLU	X	
Lynda Saul	ICCW	X	
RILEY JOHNSON	NFIB		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB# 346

DATE 1-31 SPONSOR(S) Rep. Toole

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Joe Bottomly G.F.	self	✓	
John Alke	Mont. Defense Trial Lawyers		✓
Tom Beers	self	✓	
David Hull	City of Helena		✓
Gary Spaeth	Liability Coalition		X
Brett Dahl	Tort Claims Division		X
Joanne C. Chance	MT Tech Council		X
Mike Jamison	Doctors Company		X
Jacqueline Terrell	Am. Ins. Assoc.		X
Bruce M. Moore	MSBA		X
Gerald J. Neely	Montana Med. Assoc.		X
Brian Zins	MT. Med. Assn.		X
Kay Foster	Billings Chamber		✓
Mike Meloy	MT Def. Trial Lawyers		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB 346

DATE 1-31 SPONSOR(S) Rep. Toole

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Alec Hansen	MLCT		X
Dan Howe	Montana Municipal Insurance Authority		—
JOHN CADBY	MT BANKERS ASSN		X
Tom Harrison	Mt. Auto Dealers Assoc.		X
PATRICK T. FLEMING	Montana Power Company		X
GENE PHILLIPS	NAT. ASSOC. IND. INS. ALLIANCE AMER. INS		X
JAMES TUTWILER	MT CHAMBER COM		X
Roger McGlenn	INDEPENDENT INSURANCE AGENTS ASSOC. OF MT		X
Jim Ahrens	Mt Hospital Association		

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