

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 2, 1991,
at 9:42 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 #333

Motion: REP. BROOKE MOVED HB 333 DO PASS. Motion passed with
Rep's: Clark and Boharski voting no.

EXECUTIVE ACTION ON HB #286

Motion: REP. MESSMORE MOVED HB 286 DO PASS. Motion passed

unanimously.

EXECUTIVE ACTION ON HB #353

Motion: REP. BROWN MOVED HB 353 DO PASS.

Motion: REP. BROWN moved to amend HB 353 with the amendments proposed by John Connor. EXHIBIT 1 Motion carried unanimously.

Motion/Vote: REP. BROWN MOVED HB 353 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 212

Motion: REP. WYATT MOVED HB 212 DO PASS.

Motion: REP. DARKO moved to amend HB 212 with the amendments proposed by REP. COHEN. EXHIBIT 2

Discussion: REP. DARKO stated she felt this bill ties the hands of the people who are responsible for the children in there schools.

REP. COHEN stated the committee should take the amendments one at a time and consider each of them separately.

REP. BROWN stated we want to be careful not to go beyond the limits currently imposed mostly by case law on journalistic activities. It seems to me, sub 2 and all the lines on page 2, put in place what is case law that applies to journalist and you probably to leave it all in the bill.

REP. RICE stated if we add the amendment to section 2 you have only left the intended statute referenced here. I do not think this a prohibition in any way of the students producing this information, we need specific exceptions to that. As you are proposing to amend the bill, the students can do anything in subsection 1 except as limited in subsection 2. The amendment fully guts subsection 2.

REP. WHALEN stated he agrees with Rep. Rice. This bill can be fixed easily by leaving the language on page 2 and I think it is wrong to take those sections out. It sends a message to students that they don't have to be concerned about liable and slander. I think the school board will have a right to review the material and approve anything printed, they should be liable. We should amend subsection 3 saying if the school board gave them the authority that they are liable.

REP. MEASURE stated his concern is about the amendment to section

1 subsection 2b. I understand the statute is only applying to teachers and administrators. Whether we leave it in or not it is not going to effect the bill or the board's authority.

Motion: REP. TOOLE MADE A SUBSTITUTE MOTION THAT HB 212 BE AMENDED.

Discussion: REP. TOOLE said his amendment was on page 3, line 18 following "student", insert "pursuant to (section 1)".

Vote: Motion carried unanimously.

Motion: REP. WYATT moved to amend HB 212.

Discussion: REP. WYATT stated her amendment was on page 3, line 22. Following line 21, insert "establish and editorial board and".

John MacMaster stated that this bill doesn't give students anything that they don't already have it makes it more clear they do have this right.

Vote: Motion carried unanimously.

Motion: REP. WHALEN moved to amend HB 212.

Discussion: REP. WHALEN stated his amendment was on page 2, line 8, strike "provided under" and insert "defined in". On the title it would be line 8 by striking "Providing Immunity from" and insert "clarifying the" and on line 9 strike "for" and insert "of". He stated that he wanted to make it clear not to establish any immunity.

Vote: Motion carried unanimously.

Motion: REP. RICE moved to amend HB 212 by sub a of subsection 2 of subsection 1 to read "as seen to minors as defined in 45-8-201 and 45-8-206.

Discussion: REP. RICE stated he was concerned if a teacher who is acting as an advisor and being responsible for what the students will be publishing. He stated that his amendment will not necessarily appropriate the statute and there would be some possible exceptions.

REP. BOHARSKI stated that he wasn't sure 45-8-201 or 45-8-206 doesn't restrict pornographic material.

REP. RICE stated that he didn't want to include any obscene material but with his sentence there definitely shouldn't be anything obscene printed.

Vote: Motion carried.

Motion/Vote: REP. NELSON moved to amend HB 212 in section 1, subsection 2c, at the end of line 13, striking "on the school premises." Motion carried.

Motion: REP. BOHARSKI moved to amend HB 212 on line 16 and 17 at subsection 3 by adding "all rights enumerated in this section are pursuant to the policy if not" and goes on to the new amendment by Rep. Wyatt.

Discussion:

REP. BOHARSKI stated that his amendment clarifies that the Board is going to establish these policies for everything in section 1. "It will be clear that the things in section 1 are subject to the policies and procedures."

REP. BROWN stated that Rep. Boharski's amendment guts the bill and he didn't see any need for the amendment.

Vote: Motion failed 19 to 1 with Rep. Boharski voting yes.

Motion: REP. BROWN MOVED HB 212 DO PASS AS AMENDED.

Motion: REP. RICE moved to amend HB 212 on page 2, line 14 and 15 by striking "material and substantial".

Discussion:

REP. WHALEN stated that he felt the amendment would gut the bill because when talking about any disruption, almost anything could be considered a disruption. He stated that the bill is for students to have Freedom of Expression.

Vote: Motion failed 7 to 13. EXHIBIT 3

Motion/Vote: REP. BROWN MOVED HB 212 DO PASS AS AMENDED. Motion carried 17 to 3 with Rep's: Clark, Boharski, and Rice voting no.

EXECUTIVE ACTION ON HB 289

Motion: REP. DARKO MOVED TO RECONSIDER ACTION ON HB 289.

Discussion:

REP. DARKO stated that the bill needs some clean-up amendments.

John MacMaster stated that on page 3, line 7, the \$100 fee was amended to \$60 by the committee. On page 5, lines 4-14 the original \$100 fee is disposed. He stated that the committee has \$40 being disposed of in this section of the bill that is no longer available under the amendment. He stated that the \$100

goes to 4 different places and the committee is going to have to go to those places and take out \$40.

Motion: REP. BROOKE moved to amend HB 289 by putting the fee back to \$100.

Discussion:

John MacMaster stated that the amendment the committee adopted did not return the fee back to \$60, it took the new fee the bill creates and made the fee \$60 instead of \$100.

Motion/Vote: REP. BROWN MOVED HB 289 BE TABLED. Motion carried 13 to 7 with Rep's: Brooke, Clark, Johnson, Russell, Keller, Darko, Strizich and Nelson voting no.

EXECUTIVE ACTION ON HB 252

Motion: REP. MESSMORE MOVED HB 252 DO PASS.

Motion: REP. TOOLE moved to amend HB 252 by changing the 45 days to 35 days.

Discussion:

REP. TOOLE stated that during the hearing the proponents felt the 45 days was more efficient to work with. He stated that he disagreed with that and it shouldn't be more than 35 days.

REP. MEASURE stated that he didn't have any problem with the banks position to go ahead and kill the bill rather than leave it at 20 days. He stated that the main concern of the distributors is how they look in the eyes of the consumers. He felt the committee is not in the position to do their job for them. He stated that it has worked well for the last 2 years it has been in effect and it protects the homeowners.

REP. CLARK stated that he agrees with Rep. Measure.

Motion: REP. CLARK MADE A SUBSTITUTE MOTION to amend HB 252 to leave it at 30 days.

Discussion:

REP. BROWN stated that he is not inclined to go to 35 days, but he is willing to go with 30 because it seems a reasonable place to stop. He felt it wasn't an extraordinary change in existing law and does cause a few problems for people in that situation, but that it is better than 20 days.

REP. LEE stated that if the distributors feel there should be a change other than what was offered the committee should send this

back to them and they can come back with something more suitable.

Motion/Vote: REP. LEE MOVED HB 252 BE TABLED. Motion failed.

Vote: (Clark amendment) Motion carried 19 to 1 with Rep. Boharski voting no.

Motion/Vote: REP. WHALEN MOVED HB 252 DO PASS AS AMENDED. Motion carried 19 to 1 with Rep. Lee voting no.

EXECUTIVE ACTION ON HB 303

Motion: REP. BROOKE MOVED HB 303 DO PASS.

Motion: REP. WHALEN MADE A SUBSTITUTE MOTION OF DO NOT PASS.

Discussion:

REP. WHALEN stated that all the liability bills are presented from the view point that if the committee doesn't make them immune from the suit, people will be afraid to do their jobs.

REP. TOOLE stated that a person should not engage in an activity at all if he or she feels they need immunity protection. He stated that it isn't right to give them that protection.

REP. BROWN stated that he agrees, but that there is a difference between the large supplier and the small independent groups. He felt the problems stems from the smaller cooperatives not being able to have their people trained for all the equipment. He felt a company shouldn't be in business if they don't have the people to handle the work. He is concerned that none of the companies should be liable for a person on emergency communication.

Motion: REP. BROWN moved to amend HB 303 to strike page 1, line 25, sub 2, in its entirety and sub 3 in its entirety through page 2, line 13 with a period following result.

Discussion:

REP. KELLER stated there are some small communities that are still don't have 911 and this will keep them from getting it if the bill doesn't pass.

REP. DARKO stated that there aren't many liability suits brought against the telephone company. She stated that insurance is generally unavailable and that was one thing when people come in for immunity their insurance is too high and they cannot operate. She felt they are asking for immunity for something that hasn't happened and they can't buy insurance for it.

REP. WHALEN stated that he opposes the amendment because he is

opposed to the entire bill.

REP. NELSON stated she is in support of Rep. Brown's amendment because it will cover the problem without going over board.

Vote: Motion carried 15 to 5 with Rep's: Whalen, Wyatt, Johnson, Measure and Boharski voting no.

Motion: REP. GOULD MOVED HB 303 DO PASS AS AMENDED.

Motion: REP. TOOLE moved to amend HB 303 in subsection 1 be rewritten to read "It shall be unlawful for a telephone company or telecommunications provider to release, in good faith, to personnel of emergency communications systems information not in the public record, including but not limited to unpublished or unlisted telephone numbers".

Discussion: REP. TOOLE stated that his amendment is changing the phrase to simply clarify the law, that it is unlawful to do this.

Vote: Motion carried 17 to 3 with Rep's: Brown, Johnson and Gould voting no.

Motion/Vote: REP. MEASURE MADE A SUBSTITUTE MOTION THAT HB 303 BE TABLED. Motion failed.

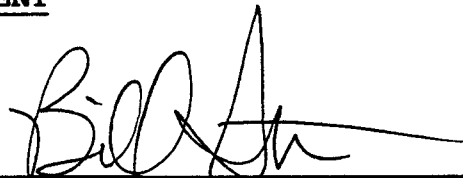
Discussion: REP. WHALEN stated that this bill says if a person receives, by release of information that could do harm to someone else, they are automatically not liable. He felt the committee should consider that fact.

Motion/Vote: REP. MEASURE moved to amend HB 303 by amending the title and the statement of intent to coincide with Rep. Toole's amendment. Motion carried 19 to 1 with Rep. Brown voting no.

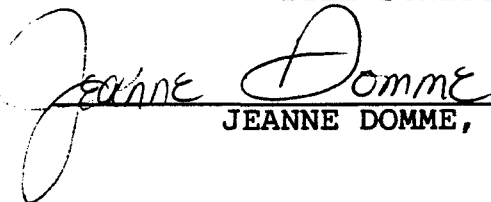
Motion/Vote: REP. GOULD MOVED HB 303 DO PASS AS AMENDED. Motion carried 13 to 7 with Rep's: Russell, Becker, Wyatt, Whalen, Measure, Lee and Strizich voting no.

ADJOURNMENT

Adjournment: 11:41 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

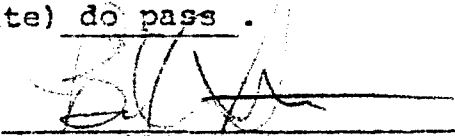
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HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House
Bill 333 (first reading copy -- white) do pass .

Signed: 

Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 286 (first reading copy -- white) do pass.

Signed: 

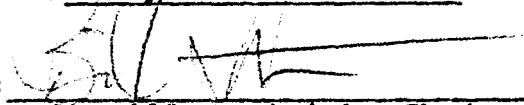
Bill Strizich, Chairman

HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 353 (first reading copy -- white) do pass as amended.

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Page 2, line 3.

Strike: "may"

Insert: "shall"

2. Page 2, line 22.

Following: "~~office.~~"

Insert: "If the appointee is not confirmed, the office shall be vacant and a replacement shall be made under the procedures provided for in this section. The appointee shall serve until the next general election and until a successor is elected and qualified. The person elected or retained at that general election shall serve until the expiration of the term for which his predecessor was elected. No appointee, whether confirmed or unconfirmed, shall serve past the term of his predecessor without standing for election.

(3) If an incumbent files for election and there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow the voters of the state or district to approve or reject him. If an incumbent is rejected, the vacancy in the office for which the election was held shall be filled as provided in subsection (2)."

HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 212 (first reading copy -- white) do pass as amended .

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 8.
Following: "RIGHTS;"
Strike: "PROVIDING IMMUNITY FROM"
Insert: "CLARIFYING THE"
2. Title, line 9.
Following: "LIABILITY"
Strike: "FOR"
Insert: "OF"
3. Title, line 11.
Following: line 10
Insert: "ESTABLISH AN EDITORIAL BOARD AND"
4. Page 2, line 8.
Following: "as"
Strike: "provided under"
Insert: "defined in"
5. Page 2, line 13.
Following: "act"
Strike: "on school premises"
6. Page 3, line 12.
Strike: "Immunity from liability"
Insert: "Liability"
7. Page 3, line 13.
Following: "adoption of"
Insert: "board and"
8. Page 3, line 18.
Following: "student"
Insert: "pursuant to [section 1]"

February 4, 1991
Page 2 of 2

9. Page 3, line 22.

Following: line 21

Insert: "establish an editorial board and"

HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 252 (first reading copy -- white) do pass as amended.

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 5.

Strike: "45"

Insert: "30"

2. Page 2, line 6.

Page 4, line 23.

Strike: "45"

Insert: "30"

3. Page 2, line 10.

Page 5, line 1.

Strike: "45-day"

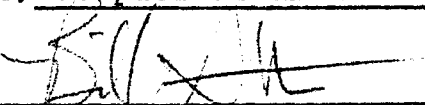
Insert: "30-day"

HOUSE STANDING COMMITTEE REPORT

2-4-91
11:00 am
pd
February 4, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 303 (first reading copy -- white) do pass as amended.

Signed: 
Bill Strizich, Chairman

And, that such amendments read:.

1. Title, lines 4 through 6.

Following: "PROVIDING"

Strike: "IMMUNITY" on line 4 through "IMMUNITY" on line 6

Insert: "THAT IT IS LAWFUL FOR A TELEPHONE COMPANY OR
TELECOMMUNICATIONS PROVIDER TO RELEASE IN GOOD FAITH TO
PERSONNEL OF EMERGENCY COMMUNICATIONS SYSTEMS INFORMATION
NOT IN THE PUBLIC RECORD, INCLUDING BUT NOT LIMITED TO
UNPUBLISHED OR UNLISTED TELEPHONE NUMBERS"

2. Page 1, line 12.

Following: "companies"

Strike: "providing"

Insert: "and telecommunications providers may lawfully provide
to"

3. Page 1, lines 13 through 15.

Following: "systems"

Strike: "and related" on line 13 through "statute" on line 15

Insert: "information not in the public record, including but not
limited to unpublished or unlisted telephone numbers, if the
information is provided in good faith"

4. Page 1, line 19.

Strike: "immunity -- exceptions. (1) A"

Insert: "lawful release of information. It is lawful for a"

5. Page 1, lines 20 and 21.

Following: "provider"

Strike: "is not liable to any person for the good faith"

Insert: "to"

Following: "release"

Insert: "in good faith"

6. Page 1, line 22.

Strike: "of"

7. Page 1, line 25, through page 2, line 13.

Strike: subsections (2) and (3) in their entirety

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE Feb. 2, 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	/	X	
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	/		

Amendments to House Bill No. 353
First Reading Copy

For the Committee on the Judiciary

Prepared by John MacMaster
February 2, 1991

1. Page 2, line 3.

Strike: "may"

Insert: "shall"

2. Page 2, line 22.

Following: "~~office.~~"

Insert: "If the appointee is not confirmed, the office shall be vacant and a replacement shall be made under the procedures provided for in this section. The appointee shall serve until the next general election and until a successor is elected and qualified. The person elected or retained at that general election shall serve until the expiration of the term for which his predecessor was elected. No appointee, whether confirmed or unconfirmed, shall serve past the term of his predecessor without standing for election.

(3) If an incumbent files for election and there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow the voters of the state or district to approve or reject him. If an incumbent is rejected, the vacancy in the office for which the election was held shall be filled as provided in subsection (2)."

Amendments to House Bill No. 212
First Reading Copy

Requested by Rep. Cohen
For the Committee on the Judiciary

Prepared by John MacMaster
February 1, 1991

1. Title, lines 8 and 9.
Strike: "PROVIDING" on line 8 through "DISTRICT;" on line 9
2. Page 1, line 17.
Strike: "exceptions"
Insert: "exception"
3. Page 2, line 7.
Strike: ":",
4. Page 2, line 8.
Strike: "(a)"
5. Page 2, lines 9 through 16.
Strike: ";" on line 9 through "school" on line 16
6. Page 3, lines 12 and 13.
Strike: "Immunity" on line 12 through "required" on line 13
Insert: "School policy on freedom of expression"
7. Page 3, lines 16 through 20.
Strike: ", and" on line 16 through "expression" on line 20
8. Page 3, line 23.
Strike: "that includes"
Insert: ". The policy must be limited to"
9. Page 3, line 25.
Strike: "that is"
Insert: "must be"

EXHIBIT 2
DATE 2-2-91
HB 212

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-2-91 BILL NO. HB#212 NUMBER _____

MOTION: Rep. Rice

NAME AYE NO

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		/
TOTAL	7	13