

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
52nd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Bill Strizich, on February 6, 1991,  
at 8:07 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 388**

**Motion:** REP. STICKNEY MOVED HB 388 DO PASS.

**Discussion:** REP. RICE stated there were some amendments presented  
by Life Underwriters Association. EXHIBIT 1

**Motion/Vote:** REP. RICE moved to amend HB 388. EXHIBIT 1  
Motion failed 9 to 10.

Motion: REP. STICKNEY MOVED HB 388 DO PASS.

Vote: Motion carried 15 to 4 with Rep's: Clark, Gould, Keller, Lee voting no.

HEARING ON HB #505

EST. BURDEN OF PROOF IN INTENTIONAL INTERFERENCE OF CONTRACTS

Presentation and Opening Statement by Sponsor:

REP. COBB, HOUSE DISTRICT 52, stated HB 505 is an act establishing the burden of proof in cases involving an intentional interference with a contractual relationship. This bill puts into statute what existing common law is, there are no major changes.

Proponents' Testimony: none

Opponents' Testimony: none

Questions From Committee Members:

REP. TOOLE asked REP. COBB why this bill is addressing a small bit of it an not attempting to enact the full code that address this general area?

REP.COBB said we are trying to put into law the Supreme Court ruling.

Closing by Sponsor: none

EXECUTIVE ACTION ON 346

Motion: REP. TOOLE MOVED HB 346 DO PASS.

Discussion: REP. TOOLE stated there are a couple of things he would like to explain to the committee. The percent reduction of liability is found in two places on page 1. What we are asking to do is reduce the percentage down to 10% from 50% so that the joint and several liability can be available for anyone who is a serious participant in causing harm but is not a marginally involved person. The 10% number is just a number. The committee should consider whether it wants 10% or another number. There are people out there who are not protected and cannot recover because of lack of insurance coverage. Joint and several liability emerged in the law of this state for many years. Joint and several liability is needed to provide coverage for people who otherwise be a victim and go uncompensated.

The other part of the bill addresses a different problem. It allows for a portion of the negligence only between those who are party to the suit. Under current law there are people who may not be part of the suit who are looked to for payment. No jury

can award a person more than 100% of the actual damage determined in the case.

**REP. WHALEN** stated he was in support of the motion. He read some of a case as an example as to why this area of law was developed. He stated he would urge all of the committee to think of it from the standpoint of the injured victim instead of the insurance companies.

**REP. BROWN** stated he was not worried about the insurance companies. He stated that he is worried about all the people in Local Government, the Sheriff's Department, Taverns and Bars, and small businesses. He stated that his phone is ringing off the hook and that is why he is voting no.

**REP. CLARK** stated he feels we have had only had this in effect since 1987 and the only people who seem to be concerned about this are the lawyers. He said he also feels that the committee should give this some more time and let it work as it has been in the past.

Motion: **REP. MEASURE** moved to amend HB 346.

Discussion: **REP. MEASURE** stated that his motion would strike 10% on line 24, page 1, and insert "30%".

**REP. BOHARSKI** made a substitute motion to TABLE HB 346. Motion failed with a tie vote. **EXHIBIT 2**

Vote: Motion by **REP. MEASURE** to amend HB 346 carried with Rep's: Gould, Messmore, Clark, John, Keller, Boharski voting no.

Motion: **REP. DARKO** moved HB 346 Do Pass as amended.

Motion: **REP. RICE** moved to amend HB 346.

Discussion: **REP. RICE** said his amendment would strike the amendments to subsection 4 on page 2 and leave in the change of percentage we made earlier.

**REP. WHALEN** stated he opposes the amendment.

Vote: Motion carried 14 to 6 with Rep's: Whalen, Wyatt, Russell, Darko, Measure, and Strizich voting no.

Motion: **REP. DARKO** MOVED HB 346 DO PASS AS AMENDED.

Vote: Motion failed. **EXHIBIT 3**

Motion: **REP. WHALEN** MOVED HB 346 BE TABLED.

Vote: Motion carried.

EXECUTIVE ACTION ON HB #391

Motion: REP. DARKO MOVED HB 391 DO PASS.

Motion: REP. DARKO moved to amend HB 391. EXHIBIT 4

Discussion: REP. DARKO stated during the hearing there were a lot of problems voiced about the confidentiality section of the bill. She said she called the Legal Staff at the Department of Family Services and had them go through language that could be used in the bill to tighten up this section. These resulting amendments are from the Utah code and have been narrowed down and tightened up. I think this legislation meets some of the problems people had and most specifically relative to the confidentiality issue.

REP. BROWN asked REP. DARKO if this is legislation the Catholics can live with relative to their Canon Laws? REP. DARKO replied saying "yes, these are better than they had requested."

REP. TOOLE asked REP. DARKO what the intent is of the language "in the course of discipline" mean? REP. DARKO said a lot of churches do not have Canon Law and go on church law. Some churches have a book of discipline. Church law is the same as church discipline.

REP. NELSON asked REP. DARKO how a clergyman would tell if the person was still counseling or asking for confession? REP. DARKO said the priest would ask the person if he/she was now confessing. He would let them know if they were confessing that he or she must keep of their statements confidential. However, if we are still engaged in counselling he or she must report anything that they feel needs be reported.

Vote: Motion carried 17 to 3 with Rep's: Nelson, Measure, Boharski voting no.

Motion: REP. DARKO MOVED HB 391 DO PASS AS AMENDED.

Discussion:

REP. RICE stated the amendments may make the bill a little better but no good enough over all to vote for.

Vote: Motion carried 11 to 9. EXHIBIT 5

EXECUTIVE ACTION ON SB 49

Motion: REP. STICKNEY MOVED SB 49 BE CONCURRED IN.

Discussion: REP. TOOLE stated he was concerned with the vocational school language on page 1, line 17. He stated he

would amend the bill by changing vocational school to Vo-tech centers.

Motion/Vote: REP. TOOLE moved to amend SB 49 as noted above.

Motion: REP. STICKNEY made a substitute motion to amend SB 49.

Discussion: REP. STICKNEY stated her amendment would leave out vocational school altogether and leave a period after secondary school. EXHIBIT 1. This would clarify which schools were involved.

Vote: Motion carried 16 to 4 with Rep's: Johnson, Clark, Gould and Keller voting no.

Motion: REP. DARKO MOVED SB 49 DO PASS AS AMENDED.

Vote: Motion carried.

EXECUTIVE ACTION ON SB 140

Motion: REP. DARKO MOVED SB 140 BE CONCURRED IN.

Discussion: REP. MEASURE stated he felt the teachers and coaches selling these drugs to people should have a higher penalty given to them than stated in this bill.

REP. DARKO stated this being listed as a Class II drug, it is setting the same penalties as SB 49.

Vote: Motion carried 19 to 1 with Rep, Whalen voting no.

EXECUTIVE ACTION ON HB 412

Motion: REP. GOULD MOVED HB 412 DO PASS.

Discussion: REP. TOOLE stated this bill is a concern to him because it doesn't address the problem of alcoholism.

Motion/Vote: REP. TOOLE moved to amend HB 412 at section 2 page 2 by inserting "in the position of driving while under the influence of alcohol or being in control of a motor vehicle while having a blood alcohol level of .10".

REP. MEASURE stated that was not the intent of the bill.

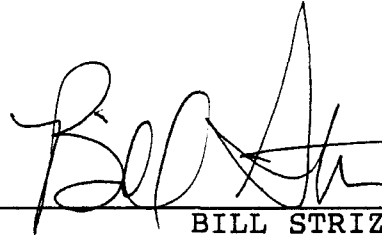
Motion: REP. DARKO MADE A SUBSTITUTE MOTION to amend HB 412 by striking line 22 on page 2 and taking out all reference made to

REP. DARKO said it wasn't right to punish a person who is has a chemical dependency which is considered to be a disease.

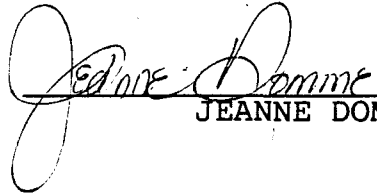
Motion/Vote: REP. STICKNEY MOVED HB 412 BE TABLED. Motion carried 11 to 9 with Rep's: Johnson, Clark, Wyatt, Gould, Strizich, Rice, Keller, Lee, and Boharski voting no.

ADJOURNMENT

Adjournment: 10:21 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-6-91

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

February 6, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 388 (first reading copy -- white) do pass .

Signed: 

Bill Strizich, Chairman

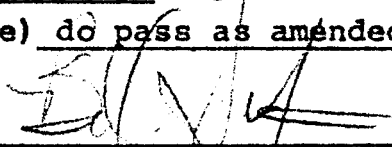


HOUSE STANDING COMMITTEE REPORT

February 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 391 (first reading copy -- white) do pass as amended .

Signed:   
Bill Strizich, Chairman

And, that such amendments read:

1. Page 2, line 15.

Following: "(4)"

Insert: "(a)"

Strike: "A"

Insert: "Except as provided in subsection (4) (b), a"

2. Page 2, lines 17 through 19.

Strike: "Subsection" on line 17 through "religion." on line 19

3. Page 2, line 20.

Following: line 19

Insert: "(b) A clergyperson or priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the clergyperson or priest in his spiritual professional capacity;

(ii) canon law, church doctrine, or established church practice requires the clergyperson or priest to keep the statement or confession confidential; and


(iii) the person who made the statement or confession does not consent to the disclosure by the clergyperson or priest."

HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 49 (third reading copy -- blue) be concurred in as amended .

Signed: 

Bill Strizich, Chairman

And, that such amendments read:

1. Page 1, line 17.  
Strike: "or vocational school"

HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Bill 140 (third reading copy -- blue) be concurred in.

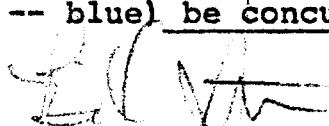
Signed:   
Bill Strizich, Chairman

Exhibit 1 was not transmitted with the minutes.

EXHIBIT 2  
 DATE 2-6-91  
 HB 346

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-6-91 BILL NO. HB#346 NUMBER \_\_\_\_\_

MOTION: Table - Failed

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	10	10

HOUSE OF REPRESENTATIVES  
 JUDICIARY COMMITTEE

EXHIBIT 3  
 DATE 2-6-91  
 HB 340

ROLL CALL VOTE

DATE 2-6-91 BILL NO. HB #346 NUMBER \_\_\_\_\_

MOTION: DO PASS AS AMENDED Motion by Darko  
FAILS

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	10	10

Amendments to House Bill No. 391  
First Reading Copy  
Requested by Rep. Darko

For the Committee on the Judiciary

Prepared by John MacMaster  
February 4, 1991

1. Page 2, line 15.

Following: "(4)"

Insert: "(a)"

Strike: "A"

Insert: "Except as provided in subsection (4)(b), a"

2. Page 2, lines 17 through 19.

Strike: "Subsection" on line 17 through "religion." on line 19

3. Page 2, line 20.

Following: line 19

Insert: "(b) A clergyman or priest is not required to make a report under this section if:

(i) his knowledge or suspicion of the abuse or neglect comes from a confession made directly to him by the child or by a person who abused or neglected the child;

(ii) the confession was made to the clergyman or priest in his professional capacity and in the course of discipline by the church;

(iii) canon law or church doctrine requires the clergyman or priest to keep the confession confidential; and

(iv) the person who made the confession does not consent to disclosure by the clergyman or priest through a report made under this section."

EXHIBIT 2  
 DATE 2-6-91  
 HB 391

HOUSE OF REPRESENTATIVES  
 JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-6-91 BILL NO. HB# 391 NUMBER \_\_\_\_\_

MOTION: DO PASS AS AMENDED BY DARKO

NAME AYE NO

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	11	9



HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO. HB# 505

DATE 2-6-91

SPONSOR(S) Rep. Cobb

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE

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