

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Sen. Bill Yellowtail, on January 19, 1993, at 10:06 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Harp, Sen. Blaylock

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

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

Committee Business Summary:

Hearing: SB 129
SB 153
SB 55
SB 78
Executive Action: NONE

HEARING ON SB 129

Opening Statement by Sponsor:

Senator Doherty, District 20, said that the title on SB 129 ought to say that whoever violates school bus regulations need to be identified. There have been numerous problems involving vehicles violating school bus regulations and no one can make a positive identification as to the driver of the vehicle. It is in the interest of safety that the driver of the vehicle need not to be

identified, but the offenders be prosecuted. There will not be any burden of proof shifting in SB 129. All defenses available to the accused individual will still be available.

Proponents' Testimony:

Donna Hall, Hall Transit and President of Montana School Bus Contractors Association, stands in support of SB 129 because school bus regulations are being violated often. Ms. Hall said that it is easy to identify a car, but not the identity of the driver, so SB 129 will help in prosecuting the violators.

Cheryl Thares, Great Falls Public Transportation Office, read from (Exhibit #1).

Don Waldron, Montana Rural Education Association, would like to go on record supporting SB 129. Mr. Waldron stated the problem with the law now is that a driver cannot be prosecuted unless positively identified.

Darlene Cashman, Hall Transit, supports SB 129 and told the Committee that it is simply impossible for a bus driver to identify a driver in a car that is violating a school bus regulation.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Towe asked Senator Doherty whether the offense was against the owner of the car or the driver. Senator Doherty said it was against the driver.

Senator Towe asked Senator Doherty why SB 129 would not require the identity of a driver be established in order to prosecute. Senator Doherty said that by only having to identify the vehicle, it would make it easier to try cases involving violations of school bus regulations.

Closing by Sponsor:

Senator Doherty stated that for the compelling reasons of the safety of school children, SB 129 is a good piece of legislation to pass.

HEARING ON SB 153

Opening Statement by Sponsor:

Senator Doherty, District 20, stated that SB 153 addresses drivers without required liability insurance. SB 153 stiffens

the penalties against those who drive without insurance. It also adds points to driving records for convictions and eliminates the signature required at the time of registration. If convicted a second time, a judge would order the license plates and motor vehicle registration be taken away. Law enforcement feels SB 153 will be effective in keeping uninsured individuals off the streets.

Proponents' Testimony:

Representative Jim Rice, District 43, stated that SB 153 would have significant impact on uninsured individuals. Representative Rice stands in support of the bill.

Peter Funk, Assistant Attorney General, said that SB 153 would have impact on this problem without costing alot of money and time. The three areas that change in SB 153 would be to enhance penalties for driving with no insurance, add points to a driving record, and remove the requirement that a driver certify they have insurance at the time they register the vehicle at the county treasurers office.

Dean Roberts, Motor Vehicle Division, stated that the offense is visible because the plates are taken away from the uninsured car. There are a very high number of vehicles in Montana that only carry liability insurance, therefore creating another problem. Mr. Roberts pledged his support of SB 153.

Roger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, told the Committee that the citizens of Montana are frustrated by uninsured motorists. Mr. McGlenn stands in support of SB 153. SB 153 is a responsible approach to deal with the issue of uninsured individuals.

Gene Phillips, National Association of Independent Insurers, supports SB 153.

Jacqueline T. Lenmark, American Insurance Association, said that SB 153 is a responsible and cost effective solution to a very persistent problem. It recognizes the realistic enforcement capabilities of the state and local government. The penalties and the points should provide incentive to those who are susceptible. The removal of certification requirements recognizes the paper burden that is imposed on local government. Ms. Leamark urges the Committee to give SB 153 a DO PASS recommendation.

Glenna Wortman-Obie, AAA of Montana, stated that the penalties in the present law are weak and ineffective. SB 153 protects the forgetful, the innocent, and the motoring public. The biggest losses for insurance agencies are uninsured motorists claims. SB 153 may result in lower premiums. Ms. Wortman-Obie stands in support of SB 153 and asks for a do pass recommendation.

Cort Harrington, Montana County Treasurers Associations, urges support for SB 153.

Bill Fleiner, Sheriffs Association and Police Officers Association, supports SB 153. Mr. Fleiner said that SB 153 is practical and would allow law enforcement to tow vehicles that do not have license plates.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Halligan asked Mr. Fleiner about borrowing cars. Mr. Fleiner said that if the individual borrowing a car, makes an effort to find out whether the car has insurance, the individual would not receive a citation if he was stopped and had no insurance.

Senator Halligan asked about the uninsured motorist. Mr. Funk said that there are a variety of types of insurance coverage, some of which applies to borrowed vehicles. Mr. Funk said it is important to provide an incentive for people to discuss these issues and to make sure everyone understands about who is insured and what type of coverage is provided.

Senator Halligan asked Mr. Funk if someone could be convicted of driving without insurance if they were driving an uninsured vehicle, but had insurance that covered them while driving another car. Mr. Funk said that under SB 153 an individual would not be convicted if their insurance covered their driving in another persons' car.

Senator Bartlett asked Mr. Funk whether an uninsured motorist would be charged with an offense if they borrowed a car that was insured and got into an accident. Mr. Funk said that they would not be charged.

Senator Towe asked Mr. Funk about page 10. Mr. Funk said that SB 153 sanctions the vehicle driven at the time of the offense. If the vehicle was not owned by the driver, the sanction would apply to the non-owned vehicle.

Senator Towe asked Mr. Funk about the driver of an uninsured vehicle. Mr. Funk said that the driver of an uninsured vehicle would not be held responsible, but the owner of the car would be.

Senator Towe asked Mr. Funk about borrowing a car that has already had prior convictions of driving without insurance. Mr. Funk said the person who was pulled over could not register a car for 180 days, but could drive their own car if it was insured.

Senator Towe asked Mr. Funk about insurance lapses. Mr. Funk said that if someone who has never had an offense and their insurance lapses and they lend the car to someone who has had to prior offenses, the car would lose its registration and license for 180 days.

Senator Towe asked Mr. Funk if there were any provisions for expunging the record. Mr. Funk said there was not.

Senator Towe asked Mr. Funk if the offenses would apply retroactively. Mr. Funk said that the agency would advise the Motor Vehicle Division not to apply the statute retroactively.

Chair Yellowtail asked Mr. Funk if the Country Treasurer would be responsible for checking the record system for every applicant for a motor vehicle registration. Mr. Funk said that it would. The country treasurers registration list would have a multiple offender no insurance list.

Chair Yellowtail asked Mr. Funk if the Country Treasurers would have to access the entire record system state wide. Mr. Funk said that they would have to key in the full name, address, and drivers license numbers for the offender. The country treasurers office would have to program the computer systems so once the information is keyed it would check for uninsured offenders.

Senator Yellowtail asked Mr. Harrington if all Country Treasurers are equipped to access the system. Mr. Harrington said that they are.

Senator Bartlett asked Mr. Funk about taking drivers licenses away. Mr. Funk said that taking drivers licenses does not deter offenders from driving. Taking away drivers licenses from offenders is not visible to law enforcers, but taking away license plates is.

Senator Crippen asked Mr. McGlenn if SB 153 should have some kind of mandatory uninsured motorist coverage. Mr. McGlenn said that it is an unrelated issue in SB 153.

Senator Crippen asked if there was legislation coming up dealing with coverage for uninsured motorists. Mr. McGlenn said no. Mr. McGlenn would support offering coverage for uninsured motorists, but is opposed to mandating that the public buy it.

Mr. Crippen asked Mr. McGlenn whether independent insurance agencies stress coverage for uninsured motorists. Mr. McGlenn said agents are responsible for informing the public of the availability of insurance that covers uninsured motorists. Uninsured motorist coverage covers bodily injury with a few exceptions. There would be a considerable cost to the consumer to cover more than bodily injury.

Chair Yellowtail asked Mr. Funk whether a person who owned two cars, would be able to drive one if he was cited for no insurance in the other. SB 153 would not affect multiple owned vehicles, unless one of the vehicles needed to be registered within those 180 days.

Senator Towe asked Mr. Funk about who would be enforcing SB 153. Mr. Funk said a judge would enforce SB 153. If an offender fails to turn in their license plates a judge can cite them for contempt of court.

Senator Towe asked Mr. Funk what would happen if judges do not follow up and make sure an offender has surrendered his license plates. Mr. Funk said there would have to be solutions if SB 153 passes.

Closing by Sponsor:

Senator Doherty said if judges do not enforce SB 153, they may face not getting elected. SB 153 addresses the problems of innocent people who have suffered at the hands of people who are breaking the law. The people who are breaking the law ought to be held responsible and the people who haven't broken the law ought not to have a problem. The absence of license plates on a vehicle would give law enforcement an edge at catching offenders. Senator Doherty stated that SB 153 is a good bill.

HEARING ON SB 55

Opening Statement by Sponsor:

Senator Towe, District 46, said the concept of SB 55 allows for the seizure of a vehicle that is uninsured. The person who is driving the car without insurance is not the offender, it is the person who owns the car. The first offense is a penalty not less than \$250.00 and not to exceed \$500.00 or 10 days in jail. After the second offense, the offender is subject to seizure of the vehicle. Upon a third offense the sentencing judge shall order a forfeiture of the vehicle. The judge must find the convicted person as the registered owner and that the vehicle was allowed to be used. After five years has elapsed between convictions the offense is kept confidential and can not be used as a prior conviction. SB 55 protects the security interest of the vehicle. There is a provision that allows a police officer to pick up the vehicle at the scene when the individual is arrested for failing to have insurance. Within five days the court has to send a notice to all the registered owners. If a registered owner did not know the vehicle was being used, the car would be released. When selling a vehicle notice must be given and the car would be sold in a commercially reasonable manner. The proceeds would be delivered to the mortgage company or the local entity who is responsible for seizing the car.

Proponents' Testimony:

Don Baker, told the Committee about two accidents that involved uninsured motorists. Mr. Baker said people are forced to lie about having insurance when they go to the court house to make an application for registration. Mr. Baker feels it is appropriate to address the problem of uninsured motorists and support SB 55.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Grosfield asked Senator Towe about the second offense. Senator Towe said a vehicle would not be forfeited until the third offense, but after the second offense, law enforcement would seize the vehicle when they detect a failure of insurance. When convicted of a third offense, the car that is in storage can be sold. Seizure is the step leading up to forfeiture after a third conviction.

Senator Doherty asked Mr. Bill Fleiner, Montana Peace Officers Association, how law enforcement views the prospect of impounding and caring for the seized vehicles. Mr. Fleiner said it would be labor intensive and expensive.

Closing by Sponsor:

Senator Towe said the situation of having no insurance is terrible. If an uninsured motorist hits you, it will cost you money. SB 55 would be effective in getting the point across to uninsured motorists. Senator Towe suggested merging SB 55 and SB 153.

HEARING ON SB 78**Opening Statement by Sponsor:**

Senator Gage, District 5, said that SB 78 allows a city attorney to represent the state when a person has had their drivers license suspended or revoked in a municipal court situation. The city attorneys were concerned about mandating that the city attorney represent the state. This proposed amendment would make it permissive rather than mandatory.

Proponents' Testimony:

Peter Funk, Montana County Attorneys Association, said SB 78 involves the implied consent process and the appeal hearing. When someone is charged with DUI, a law enforcement officer has the right to ask them to provide a sample of blood, urine, or breath for purposes of determining how much alcohol is in their body. That is called the implied consent scheme. If a person says no, their drivers license would be suspended or revoked. SB

78 gives the person a right to appeal to district court. The intent of SB 78 is to unify the system to clarify that if the DUI arrest occurred in the city, then the city attorney should handle the case. SB 78 was drafted as mandating participation of city attorneys, but we proposed an amendment to make it permissive. (Exhibit #2)

Alec Hansen, League of Cities and Towns, supports SB 78 with amendments.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Bartlett asked Mr. Funk about the hearing notices. Mr. Funk said that on line 25 the word "or" should be stricken and the word "and" should be inserted, so when the district court schedules a hearing, notice will go to both the county attorneys and city attorneys. At that point they can determine who will handle a particular appeal.

Senator Crippen asked Mr. Funk about an appeal. Mr. Funk said that with a criminal charge there is an automatic appeal for any conviction in the lower courts of Montana. The city attorneys office handles the appeal in the District Court all the way through to the Supreme Court. County attorneys feel they are required to represent the state because the statute does not have flexibility.

Senator Towe asked Mr. Funk and Mr. Hansen about striking "shall" and inserting "may." Mr. Funk said that the county and city attorney representatives are comfortable with the amendment, and feel that it will not be a problem as to who would be covering the hearings. Mr. Hansen said that the county and city attorneys would have to cooperate as to who would be covering a hearing.

Closing by Sponsor:

Senator Gage closed.

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Opponents' Testimony:

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Closing by Sponsor:

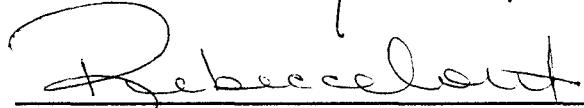
Senator Gage closed.

ADJOURNMENT

Adjournment: 11:39 a.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 1-19-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp			X
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock			X
Senator Rye	X		



GREAT FALLS PUBLIC SCHOOLS

1100 4th Street South
P.O. Box 2429
Great Falls, Montana 59403
(406) 791-2300

January 19, 1993

The Senate Judiciary Committee
State Capitol
Helena, MT 59602

Dear Senators:

This letter is in reference to Senate Bill #129, to eliminate the requirement to identify the driver in a school bus violation. The Great Falls Public Schools supports the passage of this bill.

Great Falls Public Schools transports approximately 3,000 students in the morning and approximately 3,000 students in the afternoon. They contract 32 school buses from Big Sky Bus Lines and 47 school buses from Hall Transit.

My position with Great Falls Public Schools is in the Transportation Office. I schedule the special education school buses and work with the regular school buses also.

The reason for the change is that it is almost impossible for a school bus driver to see the driver of a vehicle. The buses are higher than passenger vehicles so the only thing a driver can see is the top of the vehicle. It would be much easier if the only thing the driver had to identify is the license number and a brief description of the vehicle.

There are too many people driving through the red stop lights and stop signs on the school buses and nothing is being done because the school bus driver cannot identify the driver of the vehicle. I would like to see this law changed before any student is either injured or killed because a vehicle neglected to observe the red lights.

Thank you very much.

Sincerely,

Cheryl Thares

Cheryl Thares
Great Falls Public Schools Transportation

SENATE JUDICIARY COMMITTEE
1
1-19-93
SB 129

Amendments to Senate Bill No. 78
First Reading Copy (WHITE)

For the Committee on Judiciary

Prepared by Valencia Lane (for John Connor)
January 8, 1993

1. Title, line 7.

Following: "ATTORNEY"

Strike: "SHALL"

Insert: "MAY"

2. Title, line 8.

Following: "REVOCATION"

Strike: "OCCURRED IN A CITY"

Insert: "RESULTED IN A CITY OR MUNICIPAL CHARGE"

3. Page 2, line 1.

Following: "revocation"

Strike: "occurred in a city"

Insert: "resulted in a charge filed in a city or municipal court"

4. Page 2, line 2.

Following: "or city attorney"

Strike: "shall"

Insert: "may"

2
1-19-93
SB 78

DATE 1/18

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 78-Gage SB 55-Touss
SB 129-Doherty SB 153-Doherty

Name	Representing	Bill No.	Check One Support Oppose
<u>Steve Zink</u>	<u>MT Co. Attorneys Assoc</u>	<u>78</u>	<input checked="" type="checkbox"/>
<u>" "</u>	<u>Dept of Justice</u>	<u>153</u>	<input checked="" type="checkbox"/>
<u>DONNA HALL</u>	<u>MT TRANSIT</u>	<u>129</u>	<input checked="" type="checkbox"/>
<u>Cheryl Thares</u>	<u>Gov. Ele. Public Schools</u>	<u>129</u>	<input checked="" type="checkbox"/>
<u>Ted Tabaracci</u>		<u>129</u>	<input checked="" type="checkbox"/>
<u>Dorlene Cashman</u>	<u>Transit</u>	<u>129</u>	<input checked="" type="checkbox"/>
<u>Wendy Mothershead</u>			
<u>Judene Mothershead</u>			
<u>ROGER McBLENN</u>	<u>INDEPENDENT INS. AGENTS ASSOC. OF MT</u>	<u>153</u>	<input checked="" type="checkbox"/>
<u>DON BAKER</u>		<u>55</u>	<input checked="" type="checkbox"/>
<u>Jacqueline J. Lenmark</u>	<u>Am. Ins. Assoc.</u>	<u>153</u>	<input checked="" type="checkbox"/>
<u>Jacqueline J. Lenmark</u>	<u>Am. Ins. Assoc.</u>	<u>55</u>	<input checked="" type="checkbox"/>
<u>Elenna Wortman-Obie</u>	<u>AAA Montana</u>	<u>153</u>	<input checked="" type="checkbox"/>
<u>Carl Harrison</u>	<u>MT. County Treasurers</u>	<u>153</u>	<input checked="" type="checkbox"/>
<u>Don Waldron</u>	<u>MREA</u>	<u>129</u>	<input checked="" type="checkbox"/>
<u>JOE ROBERTS</u>	<u>Mt. Cty. Hly. Assoc.</u>	<u>78</u>	<input checked="" type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1/19

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 153

Name	Representing	Bill No.	Check One	
			Support	Oppose
GENE PHILLIPS	NAII	SB153	X	
Don Zullo	Asst. g. [unclear]	" "	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY