

**MINUTES**

**MONTANA SENATE  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By Senator Bill Yellowtail, on January 27, 1993,  
at 10:05 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:** NONE

**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: NONE  
Executive Action: SB 236  
SB 108  
SB 93  
SB 124  
SB 70  
SB 109  
SB 125  
SB 68  
SB 140

**EXECUTIVE ACTION ON SB 140**

**Discussion:**

Valencia Lane explained the amendment proposed by Senator Doherty. (Exhibit #1)

Ms. Lane explained the amendment proposed by Senator Yellowtail. (Exhibit #2)

Ms. Lane explained the amendment proposed by Senator Towe. (Exhibit #3)

Chair Yellowtail told the Committee amendment sb014006.avl is a consensus amendment.

**Motion:**

Senator Towe moved to AMEND SB 140. (sb014006.avl)

**Discussion:**

Ms. Lane explained amendment sb014006.avl.

Senator Towe told the Committee amendment sb014004.avl is not part of the motion to amend SB 140.

Ms. Lane told the Committee sb014005.avl is not part of the motion to amend SB 140.

Senator Towe asked Valencia lane about the impact of inserting the language on page 2, line 4. (Exhibit #4) Ms. Lane said it was to define "assist or participate" with an equine activity sponsor or an equine professional.

Senator Towe asked Pat Melby if all equine sponsors engage in equine activities. Mr. Melby said the purpose of the amendment on page 2, line 4 was to clarify the language that came from legislative council. Mr. Melby said the language on page 2, line 7 through 9, was stricken because it meant that someone participating with a horse was not engaging in an equine activity. The language on page 2, line 4, came from Colorado law which defined assisting participants of equine activities, equine sponsors, and equine professionals. Mr. Melby said the language means people who volunteer to help around equine activities are participating by assisting the equine activity sponsor.

Senator Towe asked Pat Melby about the definition of a participant of equine activities. Mr. Melby said a participant is defined on page 3, line 24.

**Vote:**

The motion to amend (sb014006.avl) SB 140 CARRIED UNANIMOUSLY.

**Motion:**

Senator Yellowtail moved to AMEND SB 140. (sb014005.avl)

**Discussion:**

Chair Yellowtail told the Committee sb014005.avl protects veterinarians against negligence when an animal behaves in an unexpected manner because of the prescribed medicine.

Senator Towe asked Mr. Melby if he objected to amendment sb014005.avl. Mr. Melby said no.

Senator Towe asked Russell Hill, Montana Trial Lawyers Association, if he objected to amendment sb014005.avl. Mr. Hill told the Committee the insertion of medication language in SB 140 was not discussed by Montana Trial Lawyers Association, therefore he did not object or not object. Mr. Hill said the insertion is in the exception clause, so opposition would be doubtful.

Senator Towe told the Committee the amendment sb014005.avl should be added because of the reasons stated.

**Vote:**

The motion to amend (sb014005.avl) SB 140 CARRIED UNANIMOUSLY.

**Motion:**

Senator Towe moved to AMEND SB 140. (sb014004.avl)

**Discussion:**

Russell Hill told the Committee the Trial Lawyers Association could not come to an agreement on amendment sb014004.avl. The Trial Lawyers understanding is that the proponents of SB 140 do not intend to limit liability, but simply intend to define it. The language of the proposed amendment comes out directly of the purpose clause. Mr. Hill said the purpose clause shows the intent of the proponents. The Trial Lawyers Association would like that intent in the operative clause of SB 140 that defines inherent risk. Mr. Hill said it is important to define inherent risk. SB 140 would be imposing on participants of equine activities, a duty to be aware of inherent risks even if those risks are obvious or expected. Mr. Hill said equine sponsors or professionals know the risks that are inherent, when a client may not. Sponsors of equine activities have a duty to inform clients of risks that may not be self evident. Mr. Hill said leaving the language in the purpose clause, not in the operative section of SB 140, could lead to misinterpretation which might limit liability.

Pat Melby told the Committee that the purpose clause, on line 14, came out of the Oregon Law. Mr. Melby said the proposed language waters down SB 140, whether it is in the purpose clause or the operative section. Mr. Melby told the Committee the language should be amended out of SB 140 because an attorney could argue that any risk could be avoided with precautions. Mr. Melby said he objects to amendment sb014004.avl.

Senator Franklin asked Ellen Hargrave if she objected to amendment sb014004.avl. Ms. Hargrave asked the Committee to honor the intent of SB 140. Ms. Hargrave told the Committee SB 140 is a lawsuit avoidance law, and the intent should be kept as clear as possible.

Senator Halligan asked Pat Melby about the definition of inherent risk. Mr. Melby told the committee if the definition of inherent risk was added to SB 140, the definition would be modified so it would not mean the same thing as the dictionary. Mr. Melby told the Committee attorneys would argue that a risk could be reasonably expected, like a knowing about a gopher holes in the middle of a field. Mr. Melby said if inherent risk was defined as reasonably obvious, expected, or necessary, it would imply that the injuries could of been prevented.

Senator Halligan asked Mr. Hill to comment on the previous question. Mr. Hill said inherent would be interpreted to mean the same thing as integral, which would mean a risk or quality would be there and could have been avoided. Mr. Hill said the proponents should be concerned with the integral interpretation. Senator Halligan told the Committee for the record that integral is what you want it to mean, which can restrict liabilities or expand liabilities.

Senator Towe told the Committee that when integral is used it makes sense when we say "that in defense of the equine to behave in ways that are unpredictable," and the next sentence says "the unpredictability of the equines reaction." If we insert the language proposed by the Montana Trial Lawyers Associations, "or shall be reasonably obvious," it would be inconsistent with unpredictable which was used in the first two examples. Senator Towe said SB 140 is trying to predict is the unpredictably of the equine animal.

Russell Hill agreed with Senator Towe. Mr. Hill said his understanding is the first exception does not include unpredictability.

Senator Towe said it does by implication. Mr. Hill said it does so in terms of propensity.

Mr. Hill said the reason subsection 7 was inserted in SB 140 was to cover subsections, A through E. Mr. Hill said if it is appropriate to insert that kind of unpredictability into each subsection than the Trial Lawyers are satisfied. Mr. Hill said it is clear that some of the subsections do not include the element of foreseeability or predictability, and that is their main concern.

Mr. Melby said he did not believe the Montana Trial Lawyers Association really should want amendment sb014004.avl inserted in SB 140. Mr. Melby said the amendment broadens SB 140 to provide more protection to the sponsors and professionals.

Senator Towe withdrew his motion to amend SB 140. (sb014004.avl)  
Senator Towe feels the amendment is not good language.

**Motion/Vote:**

Senator Rye moved SB 140 DO PASS. The motion CARRIED  
UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 68**

**Discussion:**

Valencia Lane explained the amendments. (Exhibit #5)

Senator Towe told the Committee he would not support the amendments.

Senator Crippen told the Committee that the amendment does not make it permanent.

Valencia Lane told the Committee the amendments make necessary changes to session laws that have been passed in former sessions. The amendments extend the termination date for two more years.

Senator Crippen said the question is whether the Committee wants to eliminate the sunset entirely, or put it on for another two years.

Senator Blaylock said the reason SB 68 is before the legislature is to eliminate the sunset law.

Chair Yellowtail said the present sunset limits the law.

Senator Blaylock said that was correct. Senator Blaylock further stated if that had been the intent, we would have put it in for another two years.

Senator Towe said that is what SB 68 with the amendment does.

Senator Blaylock told the Committee he is not in favor of the amendment. Senator Blaylock said if in two years the amounts need to be changed, it could be done. Senator Blaylock told the committee he would resist the amendments.

Senator Towe said he agrees with Senator Blaylock for reasons stated. Senator Towe said action should not be taken, without Senator Doherty who wants to advocate for the amendment.

Chair Yellowtail told the Committee there would be no action on SB 68 without Senator Doherty being present who is the sponsor of the bill.

Senator Grosfield reminded the Committee about the amendment

requiring the 2/3 vote, which needed to be discussed when action was taken on SB 68.

**EXECUTIVE ACTION ON SB 9**

**Motion:**

Senator Halligan moved SB 9 DO NOT PASS.

**Discussion:**

Senator Towe asked the committee to hold up on Senator Halligan's motion. Senator Towe said there may be some problems, but the part of SB 9 that deals with jurisdiction over someone who does not reside in the district is critical. Senator Towe told the Committee in small claims and justice courts, if the individual does not live in the district they could not be sued, which is a problem and grossly unfair. Senator Towe said other states take advantage of Montana in that regard, and that is not right. Senator Towe said for those reasons, SB 9 should be considered.

Senator Halligan said he would consider the amendments if they were voted on separately. Senator Halligan said the reason for limited jurisdiction, is because the courts are court of limited jurisdiction. Senator Halligan said the costs of bringing witnesses to testify in small claims courts would be costly.

Senator Towe told the Committee the problem came to his attention because of the inability to sue someone outside of the state. Senator Towe believe the Justice Court's support the amendments.

Senator Halligan withdrew his motion to DO NOT PASS SB 9.

**Motion:**

Senator Towe moved to amend SB 9. (Exhibit #6)

**Discussion:**

Senator Towe explained the amendments.

Senator Halligan asked to divide the motion. Senator Halligan said he did not want to vote on the amendments dealing with allowing paralegals to represent people in court. Senator Halligan said allowing people to be represented by paralegals would cause alot of problems.

Valencia Lane told the Committee the jurisdictional amounts would be changed in the Code Commissioner Bill.

Senator Towe recommended passing all the amendments, then striking the amendments the Committee is not sure about.

Senator Halligan withdrew his motion.

**Vote:**

The motion to amend SB 9 FAILED by Roll Call Vote. 4/7

**Discussion:**

Senator Halligan said there is a Code Commissioner bill being drafted that deals with some of the issues of SB 9, so he felt SB 9 should not be killed.

**Motion:**

Senator Halligan moved SB 9 be TABLED.

**Discussion:**

Senator Towe said he was disappointed because of the lack of support for SB 9. Senator Towe said the Committee ought to allow the opening up of our small claims courts to citizens who can not afford to hire attorneys. Senator Towe said defeating the provision in which Senator Halligan referred to in SB 9, we are saying we do not want people to be represented by someone who knows what is going on in Justice Courts. Senator Towe said that was not the intent of Small Claims Court. Senator Towe told the Committee it would be a mistake not to pass SB 9. Senator Towe said under current law, plaintiffs in Small Claims Court rarely win on appeal to District Courts. SB 9 is attempting to help plaintiffs in Small Claims Courts.

Senator Crippen told Senator Towe that is NOT what SB 9 is attempting. Senator Crippen said under the law, before an attorney can appeal to district court, the district court has to review the case and find cause for an appeal. Senator Crippen said that is the plaintiffs protection. Senator Crippen told Senator Towe the Committee is concerned about Justice and Small Claims Courts, but also concerned about the constant amending of bills to try to make them better.

Chair Yellowtail said the Committee would deal with SB 9 in a fair and methodical process.

Senator Halligan said the important consideration is that the Justices of the Peace and District Court Judges have the authority to establish procedures and handling of small claim court actions. Senator Halligan said the courts do not need the legislature to tell them how to handle paralegals in court. The legislature is not sending messages to individuals that they can not practice before the courts. Senator Halligan told the Committee attorneys do not want to try cases in Justice Courts or Small Claims Courts. Attorneys desire for Small Claims Court to be for the people, but when needed, they are available.

**Vote:**

The motion to TABLE SB 9 CARRIED with Senator Yellowtail, Towe, Blaylock voting NO.

**Discussion:**

Senator Towe asked Senator Halligan if a letter should be sent from the Committee to the Supreme Court as to how they handle the practice of law, or to the Justice Courts to have them look into the matter.

Senator Halligan said yes.

Senator Towe said that would solve most of his concerns about SB 9.

Chair Yellowtail asked Senator Towe to write the letter for the Committee to send to the Supreme Court.

**EXECUTIVE ACTION ON 23**

**Motion:**

Senator Rye moved SB 23 DO PASS.

**Discussion:**

Senator Brown asked for a review of SB 23.

Senator Rye told the Committee SB 23 requires a third party to be involved in mediation with children.

Senator Bartlett said on page 5, line 20, there was a question about whether the third party should be specified with an amendment. Senator Bartlett said it was discussed that in some instances a child will not volunteer information without the presence of someone the child trusts.

Chair Yellowtail asked the Committee if there was an amendment to specify the third party.

Senator Brown said the third party was specified as a guardian ad litem.

Senator Towe told the Committee that a guardian ad litem is a person who is appointed by the court for a specific purpose in one case. The guardian ad litem serves as a legal guardian who represents the child.

Senator Rye withdrew his motion. Senator Rye said if we had one policy regarding the subject of a third party it would be better than passing SB 23 and hearing another bill on the same subject.

Valencia Lane told the Committee subsection D, page 5 and page 6,



was enacted by the legislature last session. Subsection D allows a school employee to be a third party in an interview. Ms. Lane said it would be possible for a school employee to be the third party.

Chair Yellowtail told the Committee SB 9 would be taken up at the next executive session.

#### EXECUTIVE ACTION ON SB 70

##### Discussion:

Senator Brown told the Committee SB 70 makes it necessary for the Department of Family Services to consult with judges about orders concerning their department.

Senator Brown explained the amendments. (Exhibit #7)

Valencia Lane said after the hearing on SB 70 Judge McClain and Ann Guilkey, Department of Family Services, prepared and agreed to the amendments.

##### Motion:

Senator Towe moved to amend SB 70.

##### Discussion:

Senator Halligan told the Committee SB 70 would allow lawyers to argue for a parent to receive treatment, so they would not lose their children. If a judge felt treatment was needed, treatment would be required. If a person was indigent, the treatment would be paid by the Department of Family Services. Senator Halligan said SB 70 would still allow lawyers to state their case.

##### Vote:

The motion to amend SB 70 CARRIED UNANIMOUSLY.

##### Motion/Vote:

Senator Brown moved SB 70 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

#### EXECUTIVE ACTION ON SB 68

##### Motion:

Senator Doherty moved to amend SB 68.

**Discussion:**

Senator Doherty told the Committee the reason for the amendment was to extend the limit for another two years, instead of getting rid of the sunset entirely. Senator Doherty said special treatment has been given to the government, therefore this treatment should be looked at every two years to decide whether to extend it or not.

Chair Yellowtail asked Senator Doherty if the argument was made that the court may regard the legislatures continued interest in reviewing the amendment. Senator Doherty said yes.

Senator Halligan said if records were kept of victims economic data, the state could balance the need for recovery and the needs of the state. Senator Halligan said there was no testimony on the economic impact of victims. There needs to be substantial evidence in the record to show what the rewards were for the victim. Senator Halligan further stated he did not like the amendment.

Senator Blaylock said he also resists the amendments. Removing the sunset in SB 68, was done so it does not have to be revisited every two years. Senator Blaylock said if the people want the limits raised or lowered, the legislature can look at it at that time. Otherwise as far as SB 68 is concerned it should pass.

Senator Grosfield asked Valencia Lane to explain about amendment 14.

Ms. Lane said the amendment derives from the fact that the constitution requires a 2/3 vote. SB 68 would not be valid unless it passed by a 2/3 vote or greater. Ms. Lane said in the constitution, the vote is required to limit immunity. In the 1986 special session when these limits were first imposed, a 2/3 vote was required in the bill. In the 1987 session, the limits were extended for two more years and there was a statement in the bill that a 2/3 vote may be required. In the 1991 session the limits were extended again, and there was no statement included in the bill. Ms. Lane said it is Greg Petesch's belief that a 2/3 vote is required when immunity is being limited. Ms. Lane said Mr. Petesch believes a limitation on recovery is not immunity. Someone could still sue, but they are limited to their recovery. Ms. Lane said the Committee may not agree with the interpretation, but to be on the safe side a 2/3 requirement should be added to SB 68. Ms. Lane said if SB 68 passed without a 2/3 vote, it could be challenged in court on those grounds. The court would decide whether immunity was being limited, was equivalent to limiting recovery.

Senator Towe said he does not agree with Greg Petesch. Senator Towe said if the amount of recovery is limited, the immunity of a public agency is limited. Senator Towe feels amendment 14 should be adopted into SB 68. Senator Towe said if the motion to adopt all the amendments fail, the Committee should adopt amendment 14.

If the motion on the floor, to adopt all the amendments passes, amendment 14 would already be adopted. Senator Towe also stated he is against the amendments. Senator Towe said there is little concern about future legal challenges, and the people in the state of Montana support SB 68. Senator Towe does not feel that the legislature should have to look at the bill every two years.

Senator Doherty told the Committee it is a rare and extraordinary thing for the legislature to go back to the protection of the sovereign. Senator Doherty said it is something we ought to do seriously, therefore we should be patient and do it every two years.

**Vote:**

The motion to amend SB 68 FAILED with Senator Doherty and Yellowtail voting YES.

**Motion/Vote:**

Senator Towe moved amendment 14 to amend SB 68 on the 2/3 vote requirement. Motion CARRIED to amend SB 68.

**Motion/Vote:**

Senator Blaylock moved SB 68 DO PASS AS AMENDED. The motion CARRIED with Senator Doherty voting NO.

**EXECUTIVE ACTION ON SB 124**

**Motion/Vote:**

Senator Towe moved SB 124 DO PASS. The motion CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 93**

**Motion/Vote:**

Senator Halligan moved SB 93 DO PASS. The motion CARRIED with Senator Rye voting NO.

**EXECUTIVE ACTION ON SB 108**

**Discussion:**

Senator Towe asked the Committee for discussion concerning the fingerprints of juveniles. Senator Towe said with the passage of SB 108, fingerprints and records would be kept by the Justice Department. Senator Towe said that would be a policy change in the law dealing with criminal justice information systems. Senator Towe said he had problems with that issue. Senator Towe told the Committee that the bill was originally drafted to

protect young people from having their fingerprints all over the country.

Senator Halligan said fingerprints are still confidential criminal justice information. Senator Halligan said because the crime rate of juveniles is on the rise, fingerprints need to be distributed across state lines so law enforcement can deal with those crimes. There are high standards that are established for criminal justice information systems to protect fingerprints from exposure from sources who should not get them. Senator Halligan said he is comfortable with how strict the law is in protecting the confidentiality of those prints, and SB 108 would not change that law.

Senator Towe asked Peter Funk, Department of Justice, how the fingerprint system would work. Mr. Funk said there would be some changes in the interstate exchange. Mr. Funk said the set of prints would be sent to Montana with the computerized AVIS system, and the Department of Justice would run a comparison of those types of prints. The fingerprints would not be put into a national system under SB 108, but would allow the Department to do a comparison with fingerprints that were submitted to Montana by a request. SB 108 is not intended for prints to be distributed outside the state of Montana, but it is a request by the Department of Justice to retain them.

Senator Towe asked Mr. Funk about the information in the criminal justice information system. Mr. Funk told Senator Towe the information in the system is solely fingerprints. If a match is made, the agency would tell the requester the county where more information could be obtained. SB 108 does not change the protective provision of the Youth Court Act or the Criminal Justice Information Act. Mr. Funk said all the existing restrictions on juvenile court and youth court information would continue to exist. Mr. Funk said information would be exchanged to a greater degree than it is now, except that fingerprints would now be transmitted to the Department.

Senator Towe asked Mr. Funk if any law enforcement agency could access confidential criminal justice history information. Mr. Funk said any criminal justice agency could access the information or by an order of a District Court.

Senator Towe asked Mr. Funk if an individual could access criminal justice history information. Mr. Funk said no.

**Motion/Vote:**

Senator Halligan moved SB 108 DO PASS. The motion CARRIED UNANIMOUSLY.

**Motion:**

Senator Doherty moved to amend SB 109. (Exhibit #8)

**Discussion:**

Valencia Lane explained the amendments.

Senator Halligan asked if there was opposition to SB 109.

Senator Doherty said there was no opposition, but there was a question of determining serious bodily injury. Senator Doherty said at the time of the injury there would have to be serious permanent injury. Senator Doherty said that was the reason for the amendment.

Senator Grosfield asked Valencia Lane if amendment five includes reference to serious mental illness. Ms. Lane said yes, because defining serious bodily injury would include serious mental illness or impairment as injuries.

Senator Doherty told the Committee there has to be an injury to the body, aside from just mental illness or impairment.

Senator Grosfield asked Senator Doherty if the term includes serious mental illness or impairment in the context of bodily injury. Senator Doherty said yes.

Senator Towe told the Committee on page 2, lines 10 through 12, bodily injury is defined as including mental illness and impairment. Senator Towe said SB 109 does not expand or retract any of the existing law.

Senator Halligan asked Senator Doherty if he supported the amendments. Senator Doherty said yes.

**Vote:**

Motion to amend SB 109 CARRIED UNANIMOUSLY.

**Motion/Vote:**

Senator Doherty moved SB 109 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 125**

**Discussion:**

Valencia Lane told the Committee that John Conner, Attorney General's Office, offered amendments four and five. Ms. Lane said John Conner agreed with the bill as it stands with the amendments. Ms. Lane said amendment one, two, and three were

proposed by Craig Hoppe, Montana Magistrates Association.  
(Exhibit #9)

**Motion/Vote:**

Senator Towe moved amendments four and five. The motion to AMEND SB 125 CARRIED UNANIMOUSLY.

**Discussion:**

Ms. Lane said amendment one corrects a drafting error.

**Motion:**

Senator Blaylock moved amendment one.

**Discussion:**

Ms. Lane said amendment one states that the court would examine the sworn complaint.

Senator Towe asked Craig Hoppe to address the amendment. Mr. Hoppe said the court is supposed to examine sworn complaints. Without a sworn complaint there is no jurisdiction.

Senator Towe asked Craig Hoppe if a complainant is examined in person or by the statement that is made. Mr. Hoppe said in some courts the complainant is examined. Mr. Hoppe told the Committee there is a form by which a complainant can request to file a complaint, then they are placed under oath. A complainant then swears to the complaint before it is examined by the court.

Senator Towe said since a complainant is not examined personally all the time, it would be better to insert sworn complaint in SB 125. Mr. Hoppe said that was correct.

**Vote:**

The motion to amendment SB 125 (amendment one) CARRIED UNANIMOUSLY.

**DISCUSSION:**

Chair Yellowtail asked the Committee about amendments two and amendment three. No motion was made to amend amendment two and amendment three.

Senator Grosfield asked Valencia about page 53. Ms. Lane told the Committee John Conner wants to withdraw his proposed amendment and let SB 125 pass the way it stands.

Senator Grosfield asked if withdrawing the amendment would eliminate section 44 of SB 125. Ms. Lane said no, SB 125 would remain the way it was drafted.

Senator Grosfield told the Committee he would like section 44 to be eliminated from SB 125. Senator Grosfield told the Committee section 44 would allow for a sentence for disorderly conduct, which is now 10 days, to be imposed for six months.

**Motion:**

Senator Grosfield moved to STRIKE section 44 from SB 125.

**Discussion:**

Senator Bartlett told the Committee that she supports Senator Grosfield's motion.

Senator Halligan opposes the motion to strike section 44 from SB 125. Senator Halligan told the Committee that county attorneys can not ask to impose a sentence for longer than the jail time.

Senator Towe supports Senator Grosfield's amendment. Senator Towe said it is inherently inconsistent to sentence someone for no more than 10 days, but keep jurisdiction over them for six months.

**Vote:**

Motion to amend SB 125 by striking section 44 FAILED by role call vote.

**Motion/Vote:**

Senator Halligan moved SB 125 DO PASS AS AMENDED. The motion CARRIED with Senator Crippen and Bartlett voting NO.

**EXECUTIVE ACTION ON SB 236**

**Discussion:**

Senator Crippen told the Committee there is a problem of harassment against homosexuals. Senator Crippen wanted some comments about eliminating race, creed, religion, color, national origin, and sexual orientation from SB 236. Senator Crippen said striking those words may go beyond the scope of the title, but everyone would thus be included under the malicious harassment statute.

Valencia Lane said the title of SB 236 would have to be changed if the words, race, creed, religion, color, national origin, and sexual orientation were stricken, which the legislature does frequently. Ms. Lane said if lines 17 through 19 on page 1 were deleted, section 2, would have to be repealed. Section 2 of SB 236 provides for a sentence enhancement.

Chair Yellowtail told the Committee SB 236 was consistent with

the Montana Human Rights Law, so it would be appropriate for the Malicious Intimidation and Harassment Law to maintain consistency.

Senator Crippen told the Committee everyone should be protected under the law as it stands. Senator Crippen's concern was that by inserting sexual preference to the statute, it would exclude other people who should also be protected under the same law. Senator Crippen asked the Committee why SB 236 could not be broadened to cover every circumstance of harassment.

Chair Yellowtail told Senator Crippen the intent of SB 236 was not to broaden the scope to cover every circumstance.

Senator Franklin said SB 236 responds to a real phenomena in society today. Senator Franklin told the Committee the reason for the list in the statute is to protect those people who are harassed for who they are. Senator Franklin said people of color, homosexuals, or of a different religious background are the ones who are singled out, not those people who are bald or dress funny. Harassment against homosexuals is a real problem, and the Committee should not ignore that fact. Senator Franklin told the Committee she supports SB 236.

Senator Crippen said the opponents were concerned that if sexual orientation was inserted into SB 236, homosexuality would become legal in Montana. Senator Crippen further stated that in the future, other groups who did not feel protected, would be able to come to the legislature and request to have the names added to the list in the statute. Senator Crippen said if every group would not be protected under SB 236, the law should be changed so everyone would be protected.

Senator Towe told the Committee he disagreed with Senator Crippen, because there is merit in the real world to calling peoples attention to what is happening. Senator Towe told the Committee it was hard to obtain council for people who were discriminated against because of color or religion before the Civil Right Act. Today it is hard to get county attorneys to act on behalf of homosexuals. Senator Towe said everybody should be treated equally, but in order to make sure this was done, SB 236 needs to be passed.

Senator Crippen told the Committee that there was a problem with the criminal justice system. Senator Crippen said the acts described in the testimony were criminal in nature which should have been prosecuted. Senator Crippen told the Committee SB 236 would not solve the problems of harassment against homosexuals. Senator Crippen suggested that the criminal justice system should be addressed for failure to enforce laws of a criminal nature.

Senator Crippen asked Ms. Lane if section 2 could be eliminated, and if the sentence for malicious harassment and intimidation could be increased in subsection 3, line 7. Ms. Lane said the



penalty could be increased for malicious harassment and intimidation. Ms. Lane said if the laundry list was taken out of the sentence enhancement statute, the sentence enhancement statute should be repealed.

**Motion:**

Senator Crippen moved to amend SB 236 by striking the words "race" through "activities" on page 1, line 17 through line 19.

**Discussion:**

Ms. Lane suggested that on page 1, line 17, after "when," the comma should be stricken from SB 236. The remainder of the wording should be stricken from the comma on line 17, until after the comma on line 19.

Senator Doherty told the Committee that the malicious intimidation or harassment law allows for a prosecuting attorneys to prosecute a person for two crimes. One crime would be assault, the other for assaulting a person because of their religion, race, or sexual orientation. Senator Doherty said an assault against a person is bad enough, but when they are assaulted because of who they are, or what they believe in, it is worse. Senator Doherty told the Committee that as a matter of policy, it would be good for the state of Montana to say that hate crimes would not be tolerated. Senator Doherty told the Committee it would be an additional count of criminal conduct, this would simply add another tool for prosecuting attorneys.

**Vote:**

The motion to amend SB 236 FAILED by Roll Call Vote.

**Motion/Vote:**

Senator Towe recommended SB 236 DO PASS. The motion CARRIED by Roll Call Vote.

ADJOURNMENT

Adjournment: 12:10 p.m.

*Wm Yellowtail*

BILL YELLOWTAIL, Chair

*Rebecca Court*

REBECCA COURT, Secretary

BY/rc

# ROLL CALL

SENATE COMMITTEE Judiciary

DATE 1-27-93

| NAME               | PRESENT | ABSENT | EXCUSED      |
|--------------------|---------|--------|--------------|
| Senator Yellowtail | X       |        |              |
| Senator Doherty    | X       |        | <del>X</del> |
| 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       |        |              |
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FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 68 (first reading copy -- white), respectfully report that Senate Bill No. 68 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 2, lines 13 and 14.

Strike: section 4 in its entirety

Insert: " NEW SECTION. Section 4. Two-thirds vote. Because [this act] amends and extends the effect of a statute imposing limited immunity on governmental entities, Article II, section 18, of the Montana constitution requires a two-thirds vote of the members of each house of the legislature for passage."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 70 (first reading copy -- white), respectfully report that Senate Bill No. 70 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 9.

Strike: "APPROVES OF THE EXPENDITURE"

Insert: "IS NOTIFIED AND A TIMELY COURT HEARING IS SET; PROVIDING THAT THE DEPARTMENT IS THE PAYOR OF LAST RESORT;"

2. Page 3, line 15.

Strike: "approves the expenditure"

Insert: "is notified and a court hearing is set in a timely manner on the proposed expenditure"

Following: "."

Insert: "The department is the payor of last resort after all family, insurance, and other resources have been examined."

3. Page 4, line 15.

Following: "counseling"

Strike: ";"

Insert: "that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined."

4. Page 4, line 19.

Following: "department"

Strike: "approves the expenditure"

Insert: "is notified and a court hearing is set in a timely manner on the proposed expenditure"

Following: "."

Insert: "The department is the payor of last resort after all family, insurance, and other resources have been examined."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 93 (first reading copy -- white), respectfully report that Senate Bill No. 93 do pass.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 108 (first reading copy -- white), respectfully report that Senate Bill No. 108 do pass.


Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 109 (first reading copy -- white), respectfully report that Senate Bill No. 109 be amended as follows and as so amended do pass.

Signed:   
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 14, line 5.

Following: "(59)"

Insert: "(a)"

2. Page 14, line 6.

Following: "that"

Insert: " (i) "

Following: "death"

Insert: " ; "

Strike: "or"

Following: "which"

Strike: "that"

3. Page 14, line 7.

Following: line 6

Insert: "(ii)"

Following: "causes"

Strike: "or creates a substantial risk of"

4. Page 14, line 8.

Strike: "of"

5. Page 14, line 9.

Following: "organ"

Insert: " ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ"

Strike: "It"

Insert: "(b) The term"

-END-



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 124 (first reading copy -- white), respectfully report that Senate Bill No. 124 do pass.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 125 (first reading copy -- white), respectfully report that Senate Bill No. 125 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 18, line 4.

Strike: "complainant"

Insert: "sworn complaint"

2. Page 49, lines 19 through 22.

Following: "~~offenses~~" on line 19

Strike: remainder of line 19 through "committed" on line 22

Insert: "one or more felony offenses"

3. Page 50, line 1.

Following: "misdemeanor."

Strike: "The"

Insert: "If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, or 45-5-625 against a victim who was less than 16 years of age when the offense was committed, the"

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 3  
January 28, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 140 (first reading copy -- white), respectfully report that Senate Bill No. 140 be amended as follows and as so amended do pass.

Signed: William Yellowtail  
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, lines 4 and 5.

Following: "AN ACT"

Strike: remainder of line 4 through "FOR" on line 5

Insert: "DEFINING THE LEGAL RESPONSIBILITY OF PARTICIPANTS IN  
EQUINE ACTIVITIES,"

Following: "SPONSORS"

Insert: ", "

2. Title, line 6.

Strike: "REPEALING SECTION 27-1-733, MCA;"

3. Page 1, line 11.

Page 2, line 1.

Page 6, line 22.

Strike: "4"

Insert: "3"

4. Page 1, lines 20 through 24.

Following: "that" on line 20

Strike: remainder of line 20 through "activities" on line 24

Insert: "an equine activity sponsor or equine professional who is  
negligent and causes foreseeable injury to a participant  
bears responsibility for that injury in accordance with  
other applicable law"

5. Page 2, line 4.

Following: "unmounted"

Insert: "or to assist a participant, equine activity sponsor, or  
equine professional"

6. Page 2, line 5.

Following: "is"

Insert: "improperly"

7. Page 2, lines 7 through 9.  
Following: "activity" on line 7  
Strike: remainder of line 7 through "equine" on line 9
8. Page 3, line 2.  
Strike: "and"
9. Page 3, line 5.  
Strike: "."  
Insert: "; and  
(f) providing veterinarian or farrier services."
10. Page 3, line 7.  
Strike: "or"  
Following: "corporation,"  
Insert: "or other entity,"
11. Page 3, line 11.  
Following: "riding clubs;"  
Strike: "school- and college-sponsored"  
Insert: "riding"
12. Page 3, line 14.  
Strike: "fairs;"
13. Page 4, line 10.  
Following: "as"  
Insert: "medication;"
14. Page 4, line 15.  
Following: "of"  
Strike: "a"  
Insert: "another"
15. Page 4, lines 15 through 17.  
Following: "to" on line 15  
Strike: remainder of line 15 through "to" on line 17
16. Page 4, line 23.  
Following: "activity"  
Insert: "resulting from risks inherent in equine activities"
17. Page 4, line 24 through page 5, line 1.  
Strike: subsection (2) in its entirety  
Insert: "(2) An equine participant shall act in a safe and responsible manner at all times to avoid injury to the participant and others and to be aware of risks inherent in equine activities."

18. Page 5, line 8.

Strike: "and"

Insert: "or"

19. Page 5, line 11.

Following: "and"

Insert: "the participant's ability"

20. Page 5, line 25 through page 6, line 20.

Strike: sections 4, 5, and 6 in their entirety

Insert: "NEW SECTION. Section 4. Mule and horseracing.

[Sections 1 through 3] do not apply to the horseracing and  
mule racing industry as regulated in Title 23, chapter 4."

Renumber: subsequent sections

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 27, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 236 (first reading copy -- white), respectfully report that Senate Bill No. 236 do pass.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair







# ROLL CALL VOTE

SENATE COMMITTEE Judiciary BILL NO. SB 236

DATE 1-27-93 TIME 12:25 A.M. P.M.

| NAME               | YES | NO |
|--------------------|-----|----|
| Senator Yellowtail | x   |    |
| Senator Doherty    | x   |    |
| Senator Brown      |     | x  |
| Senator Crippen    |     | x  |
| Senator Rye        |     | x  |
| Senator Grosfield  |     | x  |
| Senator Halligan   | x   |    |
| Senator Harp       |     | x  |
| Senator Towe       | x   |    |
| Senator Bartlett   | x   |    |
| Senator Blaylock   | x   |    |
| Senator Franklin   | x   |    |
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Rebecca Court  
SECRETARY

Bill Yellowtail  
CHAIR

MOTION: do pass. carried  
DO PASS



CLERICAL

S. Bill No. 68

Date: 1-28-93

Time: 1105 am

MER  
(Legislative Council Staff)

S / H Standing Committee

Chairman: Wm Yellowtail  
Yellowtail

S / H Committee of the Whole  
(Sponsor)

Judiciary

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

#1 Page 2, Lines 13 and 14  
Following: line 14

Strike section 4 in its entirety

Insert: "NEW SECTION section 4<sup>5</sup>  
Two-thirds ... passage."  
Renumber subsequent section

CLERICAL

Senate Bill No. 140

Date: Jan. 29, 1993

Time: noon

MER  
(Legislative Council Staff)

S / H Standing Committee

W Yellowtail  
(Chairman) Yellowtail

S / H Committee of the Whole

//  
(Sponsor)

Judiciary

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

# 5 insert " , or to assist... "

Amendments to Senate Bill No. 140  
First Reading Copy

Requested by Senator Doherty  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 27, 1993

SENATE JUDICIARY COMMITTEE  
FILE NO. 1-27-93  
D.S. SB140  
BILL NO. SB140

1. Title, lines 4 and 5.

Following: "AN ACT"

Strike: remainder of line 4 through "FOR" on line 5

Insert: "DEFINING THE LEGAL RESPONSIBILITY OF PARTICIPANTS IN  
EQUINE ACTIVITIES, "

Following: "SPONSORS"

Insert: ", "

2. Title, line 6.

Strike: "REPEALING SECTION 27-1-733, MCA;"

3. Page 1, line 11.

Page 2, line 1.

Page 6, line 22.

Strike: "4"

Insert: "3"

4. Page 1, lines 20 through 24.

Following: "that" on line 20

Strike: remainder of line 20 through "activities" on line 24

Insert: "an equine activity sponsor or equine professional who is  
negligent and causes foreseeable injury to a participant  
bears responsibility for that injury in accordance with  
other applicable law"

5. Page 2, line 4.

Following: "unmounted"

Insert: "or to assist a participant, equine activity sponsor, or  
equine professional"

6. Page 2, line 5.

Following: "is"

Insert: "improperly"

7. Page 2, lines 7 through 9.

Following: "activity" on line 7

Strike: remainder of line 7 through "equine" on line 9

8. Page 3, line 2.

Strike: "and"

9. Page 3, line 5.

Strike: "."

Insert: "; and

(f) providing veterinarian or farrier services."

Amendments to Senate Bill No. 140  
First Reading Copy

Requested by Senator Yellowtail  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 27, 1993

1. Page 4, line 10.  
Following: "as"  
Insert: "medication;"

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 1-27-93

BILL NO. SB140

SENATE JUDICIARY COMMITTEE  
VISIT NO. 3  
IF 1-27-93  
BILL NO. SB140

Amendments to Senate Bill No. 140  
First Reading Copy

Requested by Senator Towe  
For the Committee on Judiciary

MTLA

Prepared by Valencia Lane  
January 26, 1993

- 1. Page 4, line 4.  
Following: "are"  
Strike: "an integral part of"  
Insert: "or should be reasonably obvious, expected, or necessary  
to persons engaged in"

1. Page 4, line 4.

Following: "are"

Strike: "an integral part of"

Insert: "or should be reasonably obvious, expected, or necessary to persons engaged in"

MTLA

LC 0019/01

1 of the equine to ride, inspect, groom, or evaluate the  
2 equine; ~~and~~

3 (e) rides, trips, hunts, pack trips, or other equine  
4 activities of any type, however informal, that are sponsored  
5 by an equine activity sponsor; ~~and~~ *(f) providing veterinarian or farrier services.*

6 (4) "Equine activity sponsor" means an individual,  
7 group, club, partnership, ~~or~~ corporation, <sup>or other entity,</sup> whether operating  
8 for profit or nonprofit, that sponsors, organizes, or  
9 provides the facilities for an equine activity. The phrase

10 includes but is not limited to pony clubs; 4-H clubs; hunt  
11 clubs; riding clubs; ~~school and college-sponsored~~ <sup>riding</sup> ~~and~~ <sup>classes</sup>

12 and programs; therapeutic riding programs; operators,  
13 instructors, and promoters of equine facilities; stables;  
14 clubhouses; pony ride strings; ~~farm~~ farms; ranches; and  
15 arenas.

16 (5) "Equine professional" means a person engaged for  
17 compensation in:

18 (a) instructing a participant or renting to a  
19 participant an equine for the purpose of riding, driving, or  
20 being a passenger upon the equine;

21 (b) selling or renting equipment or tack to a  
22 participant; or  
23 (c) providing veterinary or farrier services.

24 (6) "Participant" means a person, whether amateur or  
25 professional, who directly engages in an equine activity,

1 whether or not a fee is paid to participate in the equine  
2 activity.

3 (7) "Risks inherent in equine activities" means dangers  
4 or conditions that are an integral part of equine  
5 activities, including but not limited to:

6 (a) the propensity of an equine to behave in ways that  
7 may result in injury or harm to or the death of persons on  
8 or around the equine;

9 (b) the unpredictability of an equine's reaction to  
10 such things as <sup>medication, yelping, and</sup> sounds; sudden <sup>movement, and</sup> unfamiliar  
11 objects, persons, or other animals;

12 (c) hazards, such as surface and subsurface ground  
13 conditions;

14 (d) collisions with other equines or objects; or  
15 (e) the potential of <sup>another</sup> a participant to ~~act in a~~

16 ~~negligent manner that may contribute to injury to the~~  
17 ~~participant or others, such as to not maintain control over~~  
18 the equine or to not act within the person's ability.

19 NEW SECTION. Section 3. Equine activity liability

20 limitations. (1) Except as provided in subsections (2) and

21 (3), an equine activity sponsor or an equine professional is  
22 not liable for an injury to or the death of a participant  
23 engaged in an equine activity. <sup>resulting from risks inherent in equine activities.</sup>

24 ~~(2) Subsection (1) does not apply to the horseracing~~  
25 ~~and mule racing industry as regulated in Title 21, chapter~~

(2) An equine participant shall act in a safe and responsible manner at all times to avoid injury to the participant and others to be to the industry in the manner of...



DEFINING THE LEGAL RESPONSIBILITY OF PARTICIPANTS IN EQUINE ACTIVITIES,

Handwritten notes and signatures at the top of the page, including names like 'Baker', 'Sawyer', and 'Barnard'.

1 [sections 1 through 3], the following definitions apply:
2 (1) "Engage in an equine activity" means to ride,
3 train, drive, or be a passenger upon an equine, whether
4 mounted or unmounted. The phrase does not mean activity by a
5 spectator at an equine activity, unless the spectator is in
6 an unauthorized area in immediate proximity to an equine
7 activity, or by a person who participates in the equine
8 activity but does not ride, train, drive, or ride as a
9 passenger upon an equine.

10 (2) "Equine" means a horse, pony, mule, donkey, or
11 hinny.
12 (3) "Equine activity" means:
13 (a) equine shows, fairs, competitions, performances, or
14 parades that involve any breed of equines and any of the
15 equine disciplines, including but not limited to dressage,
16 hunter and jumper horse shows, grand prix jumping, 3-day
17 events, combined training, rodeos, driving, pulling,
18 cutting, polo, steeplechasing, endurance trail riding and
19 western games, and hunting;

20 (b) equine training or teaching activities;
21 (c) boarding equines;
22 (d) riding, inspecting, grooming, or evaluating an
23 equine belonging to another, whether or not the owner has
24 received monetary consideration or another thing of value
25 for the use of the equine or permits a prospective purchaser

10 NEW SECTION. Section 1. Purpose. The purpose of
11 [sections 1 through 3] is to assist courts and juries in
12 defining the circumstances under which persons responsible
13 for equines may be found liable for damages to persons
14 harmed in the course of equine activities. It is the policy
15 of the state of Montana that a person is not liable for
16 damages sustained by another solely as a result of risks
17 inherent in equine activities if those risks are or should
18 be reasonably obvious, expected, or necessary to persons
19 engaged in equine activities. It is the policy of the state
20 of Montana that persons who are responsible for equines or
21 for the safety of persons engaged in equine activities and
22 who are negligent are responsible as provided in sections 1
23 through 4 for injuries to those engaged in equine
24 activities. Professional who is negligent and advises
25 foreseeable injury to a participant bears
NEW SECTION. Section 2. Definitions. As used in
responsibility for that injury in accordance
with other applicable law.



NEW SECTION: Section 4. Mule and horse racing. [Sections 1 through 3] do not apply to the horse racing and mule racing industry as regulated in Title 23, Chapter 4.

~~1 Liability limitations: (1) Except as provided in subsection~~  
~~2 (2), a veterinarian or farrier is not liable for an injury~~  
~~3 to or the death of a person who assists the veterinarian or~~  
~~4 farrier in rendering veterinarian or farrier services,~~  
~~5 whether or not the services are for compensation, to an~~  
~~6 equine owned by that person.~~  
~~7 (2) Subsection (1) does not apply:~~  
~~8 (a) if the veterinarian or farrier:~~  
~~9 (i) committed an act or omission that constituted~~  
~~10 willful or wanton disregard for the safety of the person and~~  
~~11 the act or omission caused the injury; or~~  
~~12 (ii) intentionally injured the person; or~~  
~~13 (b) in a products liability action.~~  
~~14 NEW SECTION. Section 5. Repealer. Section 27-1-733,~~  
~~15 MCA, is repealed.~~  
~~16 NEW SECTION. Section 6. Two-thirds vote requirement.~~  
~~17 Because [sections 3 and 4] limit governmental liability,~~  
~~18 Article II, section 18, of the Montana constitution requires~~  
~~19 a vote of two-thirds of the members of each house of the~~  
~~20 Legislature for passage.~~  
~~21 NEW SECTION. Section 7. Applicability. [Sections 1~~  
~~22 through 7] apply to injuries and deaths that occur on or~~  
~~23 after [the effective date of this act].~~  
~~24 NEW SECTION. Section 8. Effective date. [This act] is~~  
~~25 effective on passage and approval.~~

1 ~~4-~~  
2 (3) Subsection (1) does not apply:  
3 (a) if the equine activity sponsor or the equine  
4 professional:  
5 (i) provided the equipment or tack and the equipment or  
6 tack caused the injury because the equine activity sponsor  
7 or equine professional failed to reasonably and prudently  
8 inspect ~~and~~ maintain the equipment;  
9 (ii) provided the equine and failed to make reasonable  
10 and prudent efforts to determine the ability <sup>of the participants</sup>  
11 participant to safely engage in the equine activity and to ability  
12 safely manage the particular equine based on the  
13 participant's representations as to the participant's  
14 ability;  
15 (iii) owned, leased, rented, or otherwise was in lawful  
16 possession and control of the land or facilities upon which  
17 the participant sustained injuries caused by a dangerous  
18 latent condition that was known or should have been known to  
19 the equine activity sponsor or the equine professional;  
20 (iv) committed an act or omission that constituted  
21 willful or wanton disregard for the safety of the  
22 participant and the act or omission caused the injury; or  
23 (v) intentionally injured the participant; or  
24 (b) in a products liability action.  
25 ~~NEW SECTION. Section 4. veterinarian and farrier~~

Amendments to Senate Bill No. 68  
First Reading Copy (white)

Requested by Senator Doherty  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 13, 1993

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 1-27-93

BILL NO. SB68

1. Title, line 5.

Strike: "ELIMINATING"

Insert: "EXTENDING"

2. Title, line 6.

Strike: "OF THE LIMITATION"

Insert: "DATE FOR LIMITATIONS"

Following: "GOVERNMENTAL"

Insert: "LIABILITY FOR DAMAGES IN"

3. Title, line 7.

Strike: "LIABILITY"

Insert: "ACTIONS"

4. Title, lines 9 and 10.

Following: "1991;" on line 9

Strike: "REPEALING SECTION 3, CHAPTER 22, SPECIAL LAWS OF JUNE  
1986;"

5. Page 1, line 16.

Following: "~~date~~"

Insert: "-- termination date"

6. Page 1, line 18.

Following: "~~1987~~"

Insert: ", except that section 3 is effective July 1, 1995"

7. Page 1, line 19.

Following: "~~1987.~~"

Insert: "Sections 1 and 2 of this act terminate on June 30,  
1995."

8. Page 1, line 24.

Following: "~~date~~"

Insert: "-- termination date"

9. Page 2, line 1.

Following: "~~1991~~"

Insert: ", except that section 3 is effective July 1, 1995"

10. Page 2, line 2.

Following: "~~1991.~~"

Insert: "Sections 1 and 2 of this act terminate on June 30,  
1995."

11. Page 2, line 9.

Following: "date"

Insert: "-- termination date"

12. Page 2, line 11.

Following: "~~1993~~"

Insert: ", except that section 3 is effective July 1, 1995"

13. Page 2, line 12.

Following: "~~1993~~."

Insert: "Sections 1 and 2 of this act terminate on June 30, 1995."

14. Page 2, lines 13 and 14.

Strike: section 4 in its entirety

Insert: "NEW SECTION. Section 4. Two-thirds vote. Because [this act] amends and extends the effect of a statute imposing limited immunity on governmental entities, Article II, section 18, of the Montana constitution requires a two-thirds vote of the members of each house of the legislature for passage."

Amendments to Senate Bill No. 9  
First Reading Copy (white)

Requested by Senator Tom Towe  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 14, 1993

SENATE JUDICIARY

EXHIBIT NO. 6

DATE 1-27-93

BILL NO. SB9

1. Title, line 6.  
Strike: "DEFENDANT"  
Insert: "CASE"

2. Title, line 7.  
Strike: "APPEALS"  
Insert: "IS APPEALED"  
Following: "COURT"  
Strike: "AND LOSES"  
Strike: "PLAINTIFF"  
Insert: "PREVAILING PARTY"

SENATE JUDICIARY

EXHIBIT NO. \_\_\_\_\_

DATE \_\_\_\_\_

3. Title, line 8.  
Following: "FEES"  
Insert: "IN CERTAIN CIRCUMSTANCES"

4. Page 4, line 14.  
Following: "and"  
Strike: "As provided in [section 9]."  
Insert: "; and"

5. Page 4, line 16.  
Following: "attorney."  
Insert: "In addition, any person may act as authorized under  
[sections 9, 10, and 11]."

6. Page 6, lines 16 through 18.  
Following: "~~appeal~~"  
Strike: the remainder of line 16 through "court" on line 18  
Insert: "either party is represented by counsel on appeal"

7. Page 6, line 19.  
Strike: "plaintiff"  
Insert: "prevailing party"

8. Page 6, line 20.  
Following: "costs"  
Insert: ", if the court finds that because of the economic  
disparity between the parties, justice so requires"

9. Page 7, line 9.  
Following: "authorize"  
Insert: "by certification"

10. Page 7, line 10.  
Following: "fees."

Insert: "The certification must be reviewed annually and may be renewed after the annual review."

6  
1-27-93  
SB 9

1 SENATE BILL NO. 9  
2 INTRODUCED BY TOWE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND  
5 REFORMING PROCEDURES IN SMALL CLAIMS COURTS AND JUSTICES'  
6 COURTS; PROVIDING THAT IF A <sup>CASE</sup> ~~DEFENDANT~~ IN SMALL CLAIMS COURT  
7 <sup>IS APPEARED</sup> ~~APPEARS~~ TO DISTRICT COURT AND <sup>THE PREVAILING PARTY</sup> ~~LOSSES~~, THE <sup>PLAINTIFF</sup> ~~DEFENDANT~~ MAY BE  
8 AWARDED ATTORNEY FEES; PROVIDING THAT JURISDICTION IN SMALL  
9 CLAIMS COURTS IS NOT LIMITED TO A COUNTY IN WHICH A  
10 DEFENDANT CAN BE SERVED; PROVIDING THAT SERVICE OF PROCESS  
11 IN SMALL CLAIMS COURTS IS THE SAME AS IN JUSTICES' COURTS;  
12 MAKING CONSISTENT THE DOLLAR LIMITATIONS FOR JURISDICTION IN  
13 SMALL CLAIMS COURTS; PROVIDING THAT COUNTY COMMISSIONERS MAY  
14 EITHER APPOINT OR AUTHORIZE NONATTORNEY COURT ASSISTANTS TO  
15 ASSIST CIVIL LITIGANTS IN CERTAIN COURTS OF LIMITED  
16 JURISDICTION; AMENDING SECTIONS 3-10-1004, 3-12-106,  
17 25-31-601, 25-34-102, 25-35-502, 25-35-503, 25-35-604, AND  
18 25-35-806, MCA; AND PROVIDING AN EFFECTIVE DATE."

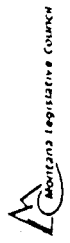
19  
20 WHEREAS, the purpose of [sections 1 through 11] is to  
21 make Small Claims Courts and Justices' Courts more  
22 accessible and functional for persons without legal training  
23 or adequate funds to hire a lawyer; and

24 WHEREAS, it is the Legislature's intent to keep Small  
25 Claims Courts functioning well as a forum by enhancing their

1 ability to handle small claims quickly and informally in a  
2 manner that is not intimidating to claimants, thereby  
3 reducing the burden of claims on the other courts and  
4 reducing costs; and

5 WHEREAS, it is the intent of the Legislature to reduce  
6 the cost deterrent in litigation over small claims and to  
7 minimize inequities between business and individual  
8 litigants by emphasizing the plaintiff's perspective rather  
9 than the defendant's perspective; and

10 WHEREAS, in addition, it is the intent of the  
11 Legislature to provide an effective means of assistance for  
12 litigants in courts of limited jurisdiction who may not have  
13 the means to hire an attorney. The Legislature finds that  
14 fewer and fewer attorneys are willing to represent clients  
15 in courts of limited jurisdiction because of the limited  
16 dollar amount involved or for other reasons. Often citizens  
17 find themselves involved in litigation without benefit of  
18 counsel in cases in which the expense of hiring legal  
19 counsel in relation to the dollar amount of the claim is a  
20 deterrent to bringing the claim. The Legislature further  
21 finds that as a matter of public policy, it is desirable  
22 that litigants have the benefit of advice from a person  
23 knowledgeable in procedures in the courts of limited  
24 jurisdiction pursuant to the limitations set forth in  
25 [sections 1 through 11].



1  
 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 3 **Section 1.** Section 3-10-1004, MCA, is amended to read:  
 4 "3-10-1004. Jurisdiction -- removal from district  
 5 court. (1) The small claims court has jurisdiction over all  
 6 actions for the recovery of money or specific personal  
 7 property when the amount claimed does not exceed \$3,000,  
 8 exclusive of costs; and the defendant can be served within  
 9 the county where the action is commenced.

10 (2) A district court judge may require any action filed  
 11 in district court to be removed to the small claims court if  
 12 the amount in controversy does not exceed \$3,000. The small  
 13 claims court shall hear any action so removed from the  
 14 district court."

15 **Section 2.** Section 3-12-106, MCA, is amended to read:  
 16 "3-12-106. Jurisdiction -- removal from district court:

17 (1) The small claims court has original jurisdiction in all  
 18 actions for the recovery of money or specific personal  
 19 property when:

20 (a) such the action arises out of a contract, express  
 21 or implied; and

22 (b) the amount of the claim, exclusive of costs, does  
 23 not exceed \$2,500; and \$3,000

24 (c) the defendant can be served within the county or  
 25 countries for which the small claims court has been created

1 (2) More than one claim may be joined if all claims  
 2 joined would separately meet the requirements for  
 3 jurisdiction in the small claims court and the total value  
 4 of money claimed or property sought does not exceed \$2,500  
 5 \$3,000.

6 (3) A district court judge may require any action filed  
 7 in district court to be removed to the small claims court if  
 8 the amount in controversy does not exceed \$2,500 \$3,000. The  
 9 small claims court shall hear any action so removed from the  
 10 district court."

11 **Section 3.** Section 25-31-601, MCA, is amended to read:

12 "25-31-601. Who may act as attorney. Parties in  
 13 justice's court may appear and act in person or by attorney; and  
 14 and ~~as provided in section 977~~ any person, except the  
 15 constable by whom the summons or jury process was served,  
 16 may act as attorney." *In addition, any person may act as*

17 **Section 4.** Section 25-34-102, MCA, is amended to read:

18 "25-34-102. Jurisdiction -- joinder -- interpleader.

19 (1) The small claims court has original jurisdiction in all  
 20 actions for the recovery of money or specific personal  
 21 property when such the action arises out of a contract,  
 22 express or implied, and the amount of the claim, exclusive  
 23 of costs, does not exceed \$2,500 \$3,000; and the defendant  
 24 can be served within the county or countries for which the  
 25 small claims court has been created.



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1 (2) More than one claim may be joined if all claims  
2 joined would separately meet the requirements for  
3 jurisdiction in the small claims court and the total value  
4 of money claimed or property sought does not exceed \$27500  
5 \$3,000.  
6 (3) The small claims court has jurisdiction over an  
7 interpleader under 25-34-106 in which the amount claimed  
8 does not exceed \$27500 \$3,000."

9 **Section 5.** Section 25-35-502, MCA, is amended to read:  
10 "25-35-502. Jurisdiction. (1) The small claims court  
11 has jurisdiction over all actions for the recovery of money  
12 or specific personal property when the amount claimed does  
13 not exceed \$27500 \$3,000, exclusive of costs,--and--the  
14 defendant--can--be served--within--the--county--where--the--action  
15 is--commenced.

16 (2) The small claims court has jurisdiction over an  
17 interpleader under 25-35-508 in which the amount claimed  
18 does not exceed \$27500 \$3,000."

19 **Section 6.** Section 25-35-503, MCA, is amended to read:  
20 "25-35-503. Removal from district court. A district  
21 court judge may require any action filed in district court  
22 to be removed to the small claims court if the amount in  
23 controversy does not exceed \$27500 \$3,000. The small claims  
24 court shall hear any action so removed from the district  
25 court."

1 **Section 7.** Section 25-35-604, MCA, is amended to read:  
2 "25-35-604. Service on defendant ----return. (1) The  
3 original of the order and notice shall must be shown-to--the  
4 defendant--and--a-copy-of-it-along-with-a-copy-of-the-sworn  
5 complaint--shall--be served upon the defendant by-the-sheriff  
6 constabier--or--other--process--server in the same manner  
7 provided by law for service of process in civil actions  
8 commenced in justice's court. The-provisions-of-law-relating  
9 to-sheriff's-fees-are-applicable-to-this-section:  
10 (2)--The-sheriff--constabier--or--other--process--server  
11 shall--after--effecting--service--return--the--original--order--to  
12 the-justice-of-the-peace-or-his-clerk-:"

13 **Section 8.** Section 25-35-806, MCA, is amended to read:  
14 "25-35-806. Attorney's Attorney fees upon appeal or  
15 removal. (1) If the parties are represented by counsel--on  
16 appeal a-defendant-appeals-a-matter-to-district-court-under--  
17 the-provisions-of-25-35-003-but-does-not-prevail-in-district

18 court, the court may grant the prevailing-party--his  
19 prevailing party reasonable attorney's attorney fees, in addition  
20 to costs. *if the court finds that because of the*  
21 (2) If a defendant removes a matter to justice's court *economic disparity between the parties,*  
22 under the provisions of 25-35-605(1) but does not prevail in *so*  
23 justice's court, the court may grant the plaintiff his *reg.*  
24 reasonable attorney's attorney fees, if any."

25 **NEW SECTION. Section 9.** Court assistants --

1 appointment or authorization by county commissioners --  
 2 qualifications. The county commissioners may, after  
 3 consultation with the justices of the peace within the  
 4 county, appoint one or more court assistants to provide  
 5 litigants in civil cases in the justice's court, at the  
 6 county's expense, with advice on filing and litigating  
 7 claims in the justice's court. In the alternative, the  
 8 county commissioners may, after consultation with the  
 9 justices of the peace within the county, authorize  
 10 individuals to act as court assistants and to charge fees. *by certification*  
 11 Providing litigants assistance under this section in *10. The certification must be reviewed*  
 12 bringing a case before the justice's court in the county *may be*  
 13 does not constitute the practice of law, and a court *renewed*  
 14 assistant appointed or authorized under this section is not *after the*  
 15 required to be a licensed attorney. The county commissioners *annual review.*  
 16 shall consult with the justices of the peace within the  
 17 county to determine the qualifications and criteria used in  
 18 making the appointments or authorizations. A court assistant  
 19 may not represent a client in court and may only advise a  
 20 client in the areas of court procedures, drafting pleadings,  
 21 conducting discovery, and presentation of the case in  
 22 justice's court.

NEW SECTION. Section 10. Court assistants --  
 appointment or authorization by county commissioners --  
 qualifications. The county commissioners may, after  
 consultation with the small claims court judges of the  
 district courts within the county, appoint one or more court

NEW SECTION. Section 11. Court assistants --

appointment or authorization by county commissioners --  
 qualifications. The county commissioners may, after  
 consultation with the small claims court judges of the  
 district courts within the county, appoint one or more court

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1 assistants to provide litigants in civil cases in the small  
2 claims court, at the court's expense, advice on filing and  
3 litigating claims in the small claims court. In the  
4 alternative, the county commissioners may, after  
5 consultation with the small claims court judges of the  
6 district courts within the county, authorize individuals to  
7 act as court assistants and to charge fees. Providing  
8 litigants assistance under this section in prosecuting a  
9 case before the small claims court in the county does not  
10 constitute the practice of law, and a court assistant  
11 appointed or authorized under this section is not required  
12 to be a licensed attorney. The county commissioners shall  
13 consult with the small claims court judges of the district  
14 courts within the county to determine the qualifications and  
15 criteria used in making the appointments or authorizations.  
16 A court assistant may not represent a client in court and  
17 may only advise a client in the areas of court procedures,  
18 drafting pleadings, conducting discovery, and presentation  
19 of the case in small claims court.

20 NEW SECTION. **Section 12.** Codification instruction. (1)  
21 [Section 9] is intended to be codified as an integral part  
22 of Title 25, chapter 31, part 6, and the provisions of Title  
23 25, chapter 31, part 6, apply to [section 9].

24 (2) [Section 10] is intended to be codified as an  
25 integral part of Title 25, chapter 35, part 5, and the

1 provisions of Title 25, chapter 35, part 5, apply to  
2 [section 10].

3 (3) [Section 11] is intended to be codified as an  
4 integral part of Title 25, chapter 34, part 1, and the  
5 provisions of Title 25, chapter 34, part 1, apply to  
6 [section 11].

7 NEW SECTION. **Section 13.** Severability. If a part of  
8 [this act] is invalid, all valid parts that are severable  
9 from the invalid part remain in effect. If a part of [this  
10 act] is invalid in one or more of its applications, the part  
11 remains in effect in all valid applications that are  
12 severable from the invalid applications.

13 NEW SECTION. **Section 14.** Effective date. [This act] is  
14 effective July 1, 1993.

-End-

Amendments to Senate Bill No. 70  
First Reading Copy

Requested by Senator Towe  
For the Committee on Judiciary

Prepared by Valencia Lane  
January 15, 1993

1. Title, line 9.

Strike: "APPROVES OF THE EXPENDITURE"

Insert: "IS NOTIFIED AND A TIMELY COURT HEARING IS SET; PROVIDING  
THAT THE DEPARTMENT IS THE PAYOR OF LAST RESORT;"

2. Page 3, line 15.

Strike: "approves the expenditure"

Insert: "is notified and a court hearing is set in a timely  
manner on the proposed expenditure"

Following: "."

Insert: "The department is the payor of last resort after all  
family, insurance, and other resources have been examined."

3. Page 4, line 15.

Following: "counseling"

Strike: ";"

Insert: "that does not require an expenditure of money by the  
department unless the department is notified and a court  
hearing is set in a timely manner on the proposed  
expenditure. The department is the payor of last resort  
after all family, insurance, and other resources have been  
examined."

4. Page 4, line 19.

Following: "department"

Strike: "approves the expenditure"

Insert: "is notified and a court hearing is set in a timely  
manner on the proposed expenditure"

Following: "."

Insert: "The department is the payor of last resort after all  
family, insurance, and other resources have been examined."

DATE RECEIVED

FILE NO. 7

DATE 1-27-93

FILE NO. SB 70

Amendments to Senate Bill No. 109  
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane  
January 25, 1993

1. Page 14, line 5.  
Following: "(59)"  
Insert: "(a)"

2. Page 14, line 6.  
Following: "that"  
Insert: ": (i)"  
Following: "death"  
Insert: " ; "  
Strike: "or"  
Following: "~~which~~"  
Strike: "that"

3. Page 14, line 7.  
Following: line 6  
Insert: "(ii)"  
Following: "causes"  
Strike: "or creates a substantial risk of"

4. Page 14, line 8.  
Strike: "of"

5. Page 14, line 9.  
Following: "organ"  
Insert: " ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ"

Strike: "It"

Insert: "(b) The term"

COMMITTEE ON JUDICIARY  
NO. 8  
1-27-93  
SB109

1 or human-readable form, computer services, any other  
 2 tangible or intangible item of value relating to a computer,  
 3 computer system, or computer network, and any copies  
 4 thereof.  
 5 (55) "Property of another" means real or personal  
 6 property in which a person other than the offender has an  
 7 interest which that the offender has no authority to defeat  
 8 or impair, even though the offender himself may have an  
 9 interest in the property.

10 (56) "Public place" means any place to which the public  
 11 or any substantial group thereof has access.

12 (57) "Public servant" means any officer or employee of  
 13 government, including but not limited to legislators,  
 14 judges, and firefighters, and any person participating as a  
 15 juror, advisor, consultant, administrator, executor,  
 16 guardian, or court-appointed fiduciary. The term does not  
 17 include witnesses. The term "public servant" includes one  
 18 who has been elected or designated to become a public  
 19 servant.

20 (58) "Purposely"---a person acts purposely with respect  
 21 to a result or to conduct described by a statute defining an  
 22 offense if it is his the person's conscious object to engage  
 23 in that conduct or to cause that result. When a particular  
 24 purpose is an element of an offense, the element is  
 25 established although such the purpose is conditional, unless

1 the condition negatives the harm or evil sought to be  
 2 prevented by the law defining the offense. Equivalent terms,  
 3 such as "purpose" and "with the purpose", have the same  
 4 meaning.  
 5 (a)  
 6 (59) "Serious bodily injury" means bodily injury which  
 7 that creates a substantial risk of death; ~~or which that~~  
 8 (ii) causes ~~or creates a substantial risk of~~ serious permanent  
 9 disfigurement or ~~of~~ protracted loss or impairment of the  
 10 function or process of any bodily member or organ. ~~It~~  
 11 The term includes serious mental illness or impairment.

12 (60) "Sexual contact" means any touching of the sexual  
 13 or other intimate parts of the person of another for the  
 14 purpose of arousing or gratifying the sexual desire of  
 15 either party.

16 (61) "Sexual intercourse" means penetration of the  
 17 vulva, anus, or mouth of one person by the penis of another  
 18 person, penetration of the vulva or anus of one person by  
 19 any body member of another person, or penetration of the  
 20 vulva or anus of one person by any foreign instrument or  
 21 object manipulated by another person for the purpose of  
 22 arousing or gratifying the sexual desire of either party.  
 23 Any penetration, however slight, is sufficient.

24 (62) "Solicit" or "solicitation" means to command,  
 25 authorize, urge, incite, request, or advise another to  
 26 commit an offense.

*(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ.*

Amendments to Senate Bill No. 125  
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane  
January 26, 1993

1. Page 18, line 4.  
Strike: "complainant"  
Insert: "sworn complaint"

2. Page 20, lines 12 and 13.  
Following: "signed" on line 12  
Strike: "on oath"

3. Page 20, line 13.  
Following: "by a"  
Insert: "sworn"  
Following: "officer,"  
Insert: "on oath"

4. Page 49, lines 19 through 22.  
Following: "~~offenses~~" on line 19  
Strike: remainder of line 19 through "committed" on line 22  
Insert: "one or more felony offenses"

5. Page 50, line 1.  
Following: "misdemeanor."  
Strike: "The"  
Insert: "If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, or 45-5-625 against a victim who was less than 16 years of age when the offense was committed, the"

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U.S. NO. 9  
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SB125  
JUDICIARY COMMITTEE

EXHIBIT NO. 10  
DATE 1-27-93  
BILL NO. SB 140

Amendments to Senate Bill No. 140  
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane  
January 27, 1993

1. Title, lines 4 and 5.

Following: "AN ACT"

Strike: remainder of line 4 through "FOR" on line 5

Insert: "DEFINING THE LEGAL RESPONSIBILITY OF PARTICIPANTS IN  
EQUINE ACTIVITIES,"

Following: "SPONSORS"

Insert: ", "

2. Title, line 6.

Strike: "REPEALING SECTION 27-1-733, MCA;"

3. Page 1, line 11.

Page 2, line 1.

Page 6, line 22.

Strike: "4"

Insert: "3"

4. Page 1, lines 20 through 24.

Following: "that" on line 20

Strike: remainder of line 20 through "activities" on line 24

Insert: "an equine activity sponsor or equine professional who is  
negligent and causes foreseeable injury to a participant  
bears responsibility for that injury in accordance with  
other applicable law"

5. Page 2, line 4.

Following: "unmounted"

Insert: "or to assist a participant, equine activity sponsor, or  
equine professional"

6. Page 2, line 5.

Following: "is"

Insert: "improperly"

7. Page 2, lines 7 through 9.

Following: "activity" on line 7

Strike: remainder of line 7 through "equine" on line 9

8. Page 3, line 2.

Strike: "and"

9. Page 3, line 5.

Strike: "."

Insert: "; and

(f) providing veterinarian or farrier services."

10. Page 3, line 7.



Strike: "or"

Following: "corporation,"

Insert: "or other entity,"

11. Page 3, line 11.

Following: "riding clubs;"

Strike: "school- and college-sponsored"

Insert: "riding"

12. Page 3, line 14.

Strike: "fairs;"

13. Page 4, line 10.

Following: "as"

Insert: "medication;"

14. Page 4, line 15.

Following: "of"

Strike: "a"

Insert: "another"

15. Page 4, lines 15 through 17.

Following: "to" on line 15

Strike: remainder of line 15 through "to" on line 17

16. Page 4, line 23.

Following: "activity"

Insert: "resulting from risks inherent in equine activities"

17. Page 4, line 24 through page 5, line 1.

Strike: subsection (2) in its entirety

Insert: "(2) An equine participant shall act in a safe and responsible manner at all times to avoid injury to the participant and others and to be aware of risks inherent in equine activities."

18. Page 5, line 8.

Strike: "and"

Insert: "or"

19. Page 5, line 11.

Following: "and"

Insert: "the participant's ability"

20. Page 5, line 25 through page 6, line 20.

Strike: sections 4, 5, and 6 in their entirety

Insert: "NEW SECTION. Section 4. Mule and horseracing.

[Sections 1 through 3] do not apply to the horseracing and mule racing industry as regulated in Title 23, chapter 4."

Renumber: subsequent sections

S.B. BILL NO. 140

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INTRODUCED BY Senator Rea

A BILL FOR AN ACT ENTITLED: "AN ACT <sup>DEFINING THE LEGAL RESPONSIBILITY</sup> ~~LIMITING TORT LIABILITY~~  
OF PARTICIPANTS IN EQUINE ACTIVITIES,  
~~FOR~~ EQUINE ACTIVITY SPONSORS AND EQUINE PROFESSIONALS;  
~~REPEALING SECTION 27-1-733, MCA;~~ AND PROVIDING AN IMMEDIATE  
EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purpose. The purpose of  
[sections 1 through <sup>3</sup> ~~4~~] is to assist courts and juries in  
defining the circumstances under which persons responsible  
for equines may be found liable for damages to persons  
harmed in the course of equine activities. It is the policy  
of the state of Montana that a person is not liable for  
damages sustained by another solely as a result of risks  
inherent in equine activities if those risks are or should  
be reasonably obvious, expected, or necessary to persons  
engaged in equine activities. It is the policy of the state  
of Montana that <sup>an equine activity sponsor or equine professional</sup> ~~persons who are responsible for equines or~~  
~~who is negligent and causes foreseeable injury to a participant bears~~  
~~for the safety of persons engaged in equine activities and~~  
~~responsibility for that injury in accordance with other applicable law.~~  
~~who are negligent are responsible as provided in [sections 1~~  
~~through 4] for injuries to those engaged in equine~~  
~~activities.~~

NEW SECTION. Section 2. Definitions. As used in

1 [sections 1 through <sup>3</sup>], the following definitions apply:

2 (1) "Engage in an equine activity" means to ride,  
3 train, drive, or be a passenger upon an equine, whether  
4 mounted or unmounted. The phrase does not mean activity by a  
5 spectator at an equine activity, unless the spectator is in  
6 an unauthorized area in immediate proximity to an equine  
7 activity, ~~or by a person who participates in the equine~~  
8 ~~activity but does not ride, train, drive, or ride as a~~  
9 ~~passenger upon an equine.~~

10 (2) "Equine" means a horse, pony, mule, donkey, or  
11 hinny.

12 (3) "Equine activity" means:

13 (a) equine shows, fairs, competitions, performances, or  
14 parades that involve any breed of equines and any of the  
15 equine disciplines, including but not limited to dressage,  
16 hunter and jumper horse shows, grand prix jumping, 3-day  
17 events, combined training, rodeos, driving, pulling,  
18 cutting, polo, steeplechasing, endurance trail riding and  
19 western games, and hunting;

20 (b) equine training or teaching activities;

21 (c) boarding equines;

22 (d) riding, inspecting, grooming, or evaluating an  
23 equine belonging to another, whether or not the owner has  
24 received monetary consideration or another thing of value  
25 for the use of the equine or permits a prospective purchaser

11  
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1 of the equine to ride, inspect, groom, or evaluate the  
2 equine; ~~and~~

3 (e) rides, trips, hunts, pack trips, or other equine  
4 activities of any type, however informal, that are sponsored  
5 by an equine activity sponsor; and"

6 (f) providing veterinary or farrier services."  
7 (4) "Equine activity sponsor" means an individual,  
8 group, club, partnership, ~~or~~ corporation, <sup>or other entity,</sup> whether operating  
9 for profit or nonprofit, that sponsors, organizes, or  
10 provides the facilities for an equine activity. The phrase  
11 includes but is not limited to pony clubs; 4-H clubs; hunt  
12 clubs; riding clubs; ~~school and college sponsored~~ <sup>riding</sup> classes  
13 and programs; therapeutic riding programs; operators,  
14 instructors, and promoters of equine facilities; stables;  
15 clubhouses; pony ride strings; ~~fairs;~~ farms; ranches; and  
16 arenas.

17 (5) "Equine professional" means a person engaged for  
18 compensation in:

19 (a) instructing a participant or renting to a  
20 participant an equine for the purpose of riding, driving, or  
21 being a passenger upon the equine;

22 (b) selling or renting equipment or tack to a  
23 participant; or

24 (c) providing veterinary or farrier services.

25 (6) "Participant" means a person, whether amateur or  
professional, who directly engages in an equine activity,

1 whether or not a fee is paid to participate in the equine  
2 activity.

3 (7) "Risks inherent in equine activities" means dangers  
4 or conditions that are an integral part of equine  
5 activities, including but not limited to:

6 (a) the propensity of an equine to behave in ways that  
7 may result in injury or harm to or the death of persons on  
8 or around the equine;

9 (b) the unpredictability of an equine's reaction to  
10 such things as sounds; sudden movement; and unfamiliar  
11 objects, persons, or other animals;

12 (c) hazards, such as surface and subsurface ground  
13 conditions;

14 (d) collisions with other equines or objects; or

15 (e) the potential of a participant to act in a  
16 negligent manner that may contribute to injury to the  
17 participant or others, such as to not maintain control over  
18 the equine or to not act within the person's ability.

19 NEW SECTION. Section 3. Equine activity liability  
20 limitations. (1) Except as provided in subsection <sup>subsection</sup> ~~(2)~~ and  
21 (3), an equine activity sponsor or an equine professional is  
22 not liable for an injury to or the death of a participant  
23 engaged in an equine activity, resulting from risks inherent in equine activities.  
24 An equine participant shall act in a safe and responsible manner at all times  
25 ~~(1) Subsection (1) does not apply to the horseracing~~  
to avoid injury to the participant and others and to be aware of the inherent  
and mule racing industry as regulated in Title 23, chapter

EXHIBIT 11  
DATE 1-27-93  
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1 4. risks of the sport.

2 (3) Subsection (1) does not apply:

3 (a) if the equine activity sponsor or the equine  
4 professional:

5 (i) provided the equipment or tack and the equipment or  
6 tack caused the injury because the equine activity sponsor  
7 or equine professional failed to reasonably and prudently  
8 inspect <sup>or</sup> ~~and~~ maintain the equipment;

9 (ii) provided the equine and failed to make reasonable  
10 and prudent efforts to determine the ability of the  
11 participant to safely engage in the equine activity and to  
12 safely manage the particular equine based on the  
13 participant's representations as to the participant's  
14 ability;

15 (iii) owned, leased, rented, or otherwise was in lawful  
16 possession and control of the land or facilities upon which  
17 the participant sustained injuries caused by a dangerous  
18 latent condition that was known or should have been known to  
19 the equine activity sponsor or the equine professional;

20 (iv) committed an act or omission that constituted  
21 willful or wanton disregard for the safety of the  
22 participant and the act or omission caused the injury; or

23 (v) intentionally injured the participant; or

24 (b) in a products liability action.

Mule and Horse Racing.

25 NEW SECTION. Section 4. ~~Veterinarian~~ - and - - ~~farrier~~

NEW SECTION. Section 5. Applicability to governmental entities. Article II, section 18, of the Montana Constitution requires a vote of two-thirds of the members of each house to limit the liability of a governmental entity. Unless this act receives a two-thirds vote of each house, it is not applicable to the equine activities of a governmental entity to the extent that the liability of the governmental entity is limited by this act."

Renumber: subsequent sections

1 This act does not apply to mule or horse racing as regulated in  
2 liability limitations. ~~(1) Except as provided in subsection~~  
3 ~~title 23, chapter 4.~~  
4 ~~(2), a veterinarian or farrier is not liable for an injury~~  
5 ~~to or the death of a person who assists the veterinarian or~~  
6 ~~farrier in rendering veterinarian or farrier services,~~  
7 ~~whether or not the services are for compensation, to an~~  
8 ~~equine owned by that person.~~

9 (2) ~~Subsection (1) does not apply:~~

10 (a) ~~if the veterinarian or farrier:~~

11 (i) ~~committed an act or omission that constituted~~  
12 ~~willful or wanton disregard for the safety of the person and~~  
13 ~~the act or omission caused the injury, or~~

14 (ii) ~~intentionally injured the person, or~~

15 (b) ~~in a products liability action.~~

16 ~~NEW SECTION. Section 5. Repealer. Section 27-1-733,~~  
17 ~~MCA, is repealed.~~

18 ~~NEW SECTION. Section 6. Two-thirds vote requirement.~~  
19 ~~Because (sections 3 and 4) limit governmental liability,~~  
20 ~~Article IX, section 18, of the Montana constitution requires~~  
21 ~~a vote of two-thirds of the members of each house of the~~  
22 ~~legislature for passage.~~

23 NEW SECTION. Section <sup>6</sup>0. Applicability. [Sections 1  
24 through <sup>3</sup>1] apply to injuries and deaths that occur on or  
25 after [the effective date of this act].

NEW SECTION. Section <sup>7</sup>8. Effective date. [This act] is  
effective on passage and approval.