

MINUTES

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

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 2, 1993,
at 10:00 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: Senator Harp

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 224
SB 173
Executive Action: SB 173

HEARING ON SB 224

Opening Statement by Sponsor:

Senator Jacobson, District 36, said SB 224 was brought before the legislature because the perceived threat of liability against gun safety instructors which was interfering with the recruitment of those instructors. Senator Jacobson told the Committee that SB 224 discusses the conditions in which safety instructors would not be held liable for the acts of their students.

Proponents' Testimony:

Gary S. Marbut, National Rifleman Association, Gun Owners of America, Citizens Committee for the Right to Bear Arms, Montana Shooting Sports Association, Western Montana Fish and Game Associations, Big Sky Practical Shooting Club, told the Committee Montana should have an active firearms safety training program. It is estimated that 85% of households in Montana contain firearms. Those people who own firearms need access to safety training. Mr. Marbut said people are not willing to be an instructor because of the perception exposure of potential liability. The concern is that an instructor could be held liable after a class has been taught in the event of an accident. Mr. Marbut told the Committee SB 224 would exempt safety instructors from liability of students who were taught reasonable standards. SB 119 specifies what would constitute a minimum standard. The requirements include five hours of class room time, which would cover specified topics, and one hour of live range practice. Mr. Marbut said that would be a reasonable gun safety course for Montana. Mr. Marbut said the Department of Fish, Wildlife, and Parks would like their hunter safety instructors covered under SB 119, which would require amendments. Mr. Marbut said he does not object.

Bud Elwell, Montana Weapons Collectors, told the Committee he has been an active Montana Hunter Education Instructor for 18 years. Mr. Elwell said firearm instructors support SB 224 because it is a necessary piece of legislation that would help continue with education on firearms. Mr. Elwell said that exempting firearm instructors from liability is absolutely necessary.

Bob Lane, Chief Legal Council for the Department of Fish, Wildlife, and Parks read from prepared testimony. (Exhibit #1)

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, opposes SB 224 because of the substantive changes of the language in the title and the whereas clause. The Montana Trial Lawyers Association does not believe that SB 224 would provide exemption from liability. Mr. Hill said defining minimum elements of reasonable and contemporary standards may increase liability exposure to firearms safety instructors. SB 224 presumes to eliminate the vicarious liability of firearms instructors, when current law already says they are not vicariously liable. The instructors are liable for their own misconduct, but not for the acts of their students. Mr. Hill said SB 224 would not change liability.

Questions From Committee Members and Responses:

Senator Blaylock asked Senator Jacobson if there had been any lawsuits against firearms instructors. Senator Jacobson was not aware of lawsuits.

Senator Towe asked Mr. Marbut asked about the protection of firearm safety instructors. Mr. Marbut said hunter safety instructors who work for the Department of Fish, Wildlife, and Parks, are identified by the state and are protected. Other firearm safety instructors, other than those working for the Department of Fish, Wildlife, and Parks, need and want protection.

Senator Towe asked Mr. Marbut about programs that exist outside of the hunter safety programs of the state. Mr. Marbut said few programs exist because potential instructors are afraid of liability exposure. Mr. Marbut said if hunter safety programs were advertised, a lot of people would attend.

Senator Towe asked Mr. Marbut about the minimum standards in SB 224. Mr. Marbut said that SB 224 describes an acceptable minimum amount of training. Anyone who teaches a firearm safety course should teach the minimum. Mr. Marbut said the minimum standard would produce an adequate understanding of how to handle firearms.

Senator Towe asked Mr. Lane if adults could attend hunter safety training programs. Mr. Lane said yes. The Department of Fish, Wildlife, and Parks intends to expand the program to attract adults, as well as youngsters.

Senator Halligan asked Mr. Lane if volunteer instructors would be immune from liability. Mr. Lane said yes. The definition of state employees includes volunteers. Instructors sign volunteer forms, and the state pays workers compensation insurance on them.

Senator Grosfield asked Mr. Lane about the live firing instructions. Mr. Lane said the safety firearm program was not intended to include live firing because of facility problems. Mr. Lane said the large classes were also a safety problem because of special requirements needed to be sure there was safety during live firing. Mr. Lane said live firing instructions would need to come from other sources. The Department of Fish, Wildlife, and Parks concentrate on hunters safety and ethics.

Senator Grosfield asked Mr. Lane who would instruct people on live firing. Mr. Lane said students could get instructions from parents, neighbors, or at shooting ranges.

Senator Blaylock asked Mr. Lane if he was aware of any lawsuits against hunter safety instructors. Mr. Lane said no.

Senator Doherty asked Mr. Lane how many people went through the fish and game hunter safety courses last year. Mr. Lane said 6,000 children were instructed in the firearms program last year.

The Department of Fish, Wildlife, and Game also instructs bow and archery safety. There are 600 to 700 instructors for firearm

safety and 300 instructors for bow and archery safety.

Senator Doherty asked Mr. Lane how many children could not get into the program. Mr. Lane said there has not been a problem with having to turn away children. Youngsters need instructions in hunter safety before obtaining a hunting license.

Senator Doherty asked Mr. Lane if a youngster could obtain a hunting license after receiving a certificate from a hunter education course other than the Department of Fish, Wildlife, and Games program. Mr. Lane said no.

Closing by Sponsor:

Senator Jacobson said SB 224 is a good bill and asked the Committee to consider SB 224.

HEARING ON SB 173

Opening Statement by Sponsor:

Senator Bartlett, District 23, said SB 173 is intended to allow public employees of retirement boards and the teachers retirement boards to recognize and implement certain court orders defined in SB 173 as family law orders. At the present time, the retirement system benefits and contributions are not subject to execution or other legal processes. SB 173 would accept contributions and benefits from court orders on marital property rights, child support, parental support, and spousal maintenance. Retirement contribution and benefits are now considered assets of a retirement system member, when the member is involved in a divorce action. Under existing law, those assets cannot be divided. In cases of child support, spousal support, or indigent parent support, a court order can only be enforced against the individual member, not by access to a members retirement benefit. SB 173 allows a division of the benefits and direct access under a family law order. Payment would only be made at time the member withdraws his or her contribution, or begins receiving benefits from the retirement system. SB 173 was introduced at the request of retirement system boards and was written to minimize the administration necessary to comply with family law orders. SB 173 includes a provision that would allow the board to charge for costs incurred to the member or to the alternate payee identified in the family law order. Senator Bartlett said there would be no actuarial impact on the retirement systems. Senator Bartlett explained a proposed amendment. (Exhibit #2)

Proponents' Testimony:

David L. Senn, Executive Director of the Teachers' Retirement Board, read from prepared testimony. (Exhibit #3)

Linda King, Public Employees Retirement Division, told the Committee that the Retirement Division has worked with the Teachers Retirement Board to come up with a simple, legal and cost effective method of splitting payments between a retirement system member and an alternate payee as the result of a family law order. Under SB 173, benefits could not be paid out until the member retires or the benefits are refunded. SB 173 would allow the retirement systems to make two payments with the benefits that are promised. That would protect the member from having to give up short term assets in a divorce, and provide for long term security. Ms. King urged support for SB 173.

Tom Bilodeau, Montana Education Association, supports SB 173.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Halligan asked David Senn about splitting the benefits. Mr. Senn said the retirement systems would split the benefits when the member qualifies for the benefits.

Senator Towe asked Mr. Senn about the percentage of the benefits that would be distributed. Mr. Senn said under SB 173, the courts would make the determination as to what is fair and equitable distribution of the benefits.

Senator Doherty asked Senator Bartlett about tribal courts. Senator Bartlett said Title 40 would not include tribal courts, however those issues could still be ordered by another court. The retirement systems are attempting to be able to work with district courts in the State of Montana. Senator Bartlett told the Committee that orders from other courts can be filed with district courts so the division would not have to track down every order that may come from out of state or tribal courts.

Ms. King stated that the internal revenue code requires that the court order must come from a competent family relations court or domestic relations court to be accepted. Ms. King said the orders should be from Montana, to make sure the state courts know about the requirements for the family law orders.

Senator Grosfield asked Mr. Senn about payment of child support through retirement benefits. Mr. Senn said child support could be obtained by other sources, because retirement benefits could not be distributed until retirement.

Senator Towe asked Mr. Senn about the percentages used for distributing benefits. Mr. Senn said a formula should be used based on the number of years in a marriage in which the benefits were accrued.

Senator Crippen asked Mr. Senn if benefits were exempt from bankruptcy under present the law. Mr. Senn said yes.

Closing by Sponsor:

Senator Bartlett said the benefit of SB 173 is to open up additional action and negotiations in domestic relation cases.

EXECUTIVE ACTION ON SB 173

Motion/Vote:

Senator Halligan moved to AMEND SB 173. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

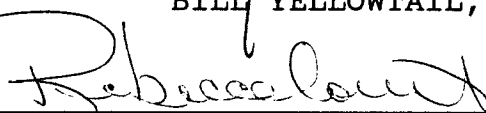
Senator Halligan moved SB 173 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:38 a.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 2-2-93


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		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 2, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 173 (first reading copy -- white), respectfully report that Senate Bill No. 173 be amended as follows and as so amended do pass.

Signed: 
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 2, line 8.
Following: "jurisdiction"
Insert: "under Title 40"

-END-

SB 224
February 2, 1993

**Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the Senate Judiciary Committee**

Volunteer instructors, through the Department of Fish, Wildlife and Parks administered Hunter Education program, certify approximately 6,000 youngsters in the safe handling of firearms annually in Montana.

Hunter Education instruction at this time does not include "... a minimum of one hour of live-fire shooting at a suitable shooting location..." which is listed in Section 1 (2) (b) in SB 224. Nor do we have any plans to make this a requirement. As a result, Hunter Education instructors would not be covered by SB 224 as written. We are concerned that, if the standards of Section (1) (2) are not met, there could be an argument that negligence is implied. There may even be an argument that negligence is established per se or in itself.

In an effort to address this potential problem, we are suggesting an amendment to Section 1, which would add to: "reasonable and contemporary standards,

- instruction received through a Department of Fish, Wildlife and Parks sanctioned Hunter Education class."

The department has not had problems attracting Hunter Education instructors because of concerns about potential liability. However, our voluntary instructors are indemnified for tort claims as state volunteers.

SB 173 PROPOSED AMENDMENT:

On page 2, line 8 insert after the word "jurisdiction" the words
"under Title 40 of this code".

SENATE JOURNAL

FILE NO. 2

DATE 2-2-93

BILL NO. SB173

TESTIMONY - SB 173
Teachers' Retirement Board

Presented by: David L. Senn, Executive Director

"AN ACT PROVIDING FOR THE PAYMENT OF PUBLIC RETIREMENT BENEFITS TO ALTERNATE PAYEES PURSUANT TO FAMILY LAW ORDERS."

Currently retirement system member's contributions and benefits are unassignable either in law or equity and are not subject to execution, garnishment, attachment, or other legal process. However, courts in domestic relations cases, such as divorces consider these benefits as assets and income of the member and often try to make distribution of the retirement benefits.

Senate bill 173 will allow the Teachers' and Public Employees' Retirement Boards to recognize and implement a family law order directing the retirement system, on behalf of its member, to split future benefit payments for child support, indigent parent support, and spousal support.

A family law order may provide for payment to alternate payees as a percentage of the amount paid to a participant or as a fixed monthly amount, or the member may be directed to provide for payment of benefits to the alternate payee through the selection of a specific retirement option.

A family law order may not require a type or form of benefit, option or payment not available to the retirement system participant or for an amount or duration greater than that available to a participant. Payments cannot be made available to an alternate payee until the system member submits a valid application for a benefit and the benefit becomes payable.

This legislation was designed by the boards to have no actuarial cost to the retirement systems. It is anticipated that any administrative cost can be absorbed within existing budgets and staffing levels. While there will be some cost to review, approve, and implement the family law orders, these cost are not expected to be any greater than the current administrative effort required to explain to members, attorneys and the courts that we cannot make distributions to alternate payees.

We believe that this legislation will help safeguard the benefits and assets of our members and their families and ask for your support.

DATE 2-2-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 173, SB224

Name	Representing	Bill No.	Check One Support Oppose	
David Seann	Teachers' Retirement	SB ¹⁷³ 224	✓	
Gunda King	PERS	SB 173	✓	
Bob Lane	FW & P	SB 224		
A. M. (Bud) Ellwell	W.S.S.M.	SB 224	✓	
TOM BILODEAU	M.E.A.	SB 173	✓	
Russell B Hill	MTLA	SB 224		✓
Kelly Jenkins	PERD	SB 173	✓	
GARY S. MARBUT	WRA, GOA, CCRKBA, MSSA, WMFLA, BSPSC	SB 224	✓	
MARK A. CRESS	PERD.	SB 173	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY