

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

CONFERENCE COMMITTEE ON SENATE BILL 201

Call to Order: By **CHAIRMAN JIM BURNETT**, on April 4, 1995, at
8:20 AM

ROLL CALL

Members Present:

Sen. James H. "Jim" Burnett (R)
Sen. Thomas F. Keating (R)
Sen. Fred R. Van Valkenburg (D)
Rep. Norm Mills (R)
Rep. Bob Keenan (R)

Members Excused: None

Members Absent: Rep. Vicki Cocchiarella (D)

Staff Present: Eddye McClure, Legislative Council
Karolyn Simpson, Committee Secretary

Discussion: Amendments to SB 201

Discussion:

SENATOR BURNETT said he has no problems with the amendments from the House.

SENATOR VAN VALKENBURG asked **SENATOR BURNETT** if he had moved to Be Not Concurred In.

SENATOR BURNETT said no, it was **SENATOR BARTLETT** who made the Be Not Concurred In motion.

SENATOR VAN VALKENBURG said he thought it was **SENATOR BAER** who made the motion.

SENATOR BURNETT said he made the Be Concurred In motion, and **SENATOR BARTLETT** made a substitute motion to Be Not Concurred In.

REP. MILLS said **REP. ELLIS** carried this bill in the house, and he is present.

SENATOR KEATING asked **SENATOR BURNETT** if he recommended accepting the House amendments.

SENATOR BURNETT said yes, and we recede from the Senate amendments and accept the House amendments.

Motion: **SENATOR KEATING** moved to Recede from the Senate's objections to accept the House Amendments to SB 201.

Discussion:

SENATOR VAN VALKENBURG said he didn't think there was is a Senate Conference Committee that reflected the majority sentiment in the Senate, and that if **SENATOR KEATING** just wants to go back to the bill as it came from the House, the Senate as a whole, and the Senate Labor Committee, felt strongly there ought to be some triggering device before a test could be done on an employee. **SENATOR BAER** offered the language that was in the bill when it left the Senate that employee's acts or failure to act had to be the direct or proximate cause of the work-related accident. If the House amendments are accepted, the bill will go back to the Senate and they will reject the Conference Committee report, and the Committee's time will have been wasted.

SENATOR BURNETT asked **SENATOR VAN VALKENBURG** what would he change in the bill from what the House amendments did to it. They restored it to the original form, except the original \$500.00 was raised to \$2,500 by the Senate Labor Committee, then the House lowered it to \$1,000.

REP. MILLS said therein lies a compromise already.

SENATOR KEATING said the testing itself is the important thing, and if the testing isn't done quickly, then it doesn't have the validity.

REP. MILLS inserted, it's contaminated.

SENATOR KEATING said the worker needs protection in his record. If the test implies guilt, it should not be in his record. If the test is negative, or if he is found not to be in direct or proximate cause of the accident, then the record should be purged. He asked if purging is in the language of the bill.

REP. KEENAN said, in regard to the purging, there will be a record of the accident, and asked if it would be harmful to have a record of the employee being found not at fault in the employee's records. He then asked if it's the testing that will be purged, but if he's not guilty, he wouldn't worry about being vindicated.

SENATOR KEATING said he thinks that way too, but there are others in the Committee that felt that was a blemish.

REP. MILLS agreed, saying the very fact of a test was done can be misconstrued as a blemish.

SENATOR KEATING said by striking it from their personnel records, so there is no reference to it at all, they are clean. The way the bill is now, the test could be done immediately following the accident on those who were in proximity. If the test is negative, and the subsequent investigation reveals that person tested was not directly or proximately involved in the accident, their record would be purged, and the test would not be in their personnel records. He said he didn't know why that wouldn't be satisfactory in the Senate.

SENATOR VAN VALKENBURG said it wasn't when they voted on it.

SENATOR KEATING said he didn't know if it was well explained.

REP. KEENAN asked what the feeling was.

SENATOR VAN VALKENBURG said the feeling, best expressed by **SENATOR BAER**, was there ought to be a reason for the test being done, other than the fact that someone was just standing around at the time an accident occurred. He said it can best be dealt with by requiring the employer to put in writing the basis for believing the employee caused the accident, prior to taking the test. That does not delay taking the test and is not a huge burden on the employer, and will provide a basis for the test. Under current law, the employer is supposed to articulate the reasons the employer believes the employee is under the influence of drugs or alcohol, and apparently they don't want to do that. He suggested that they at least articulate why they think this employee caused the accident.

SENATOR BURNETT said **REP. ELLIS** carried the bill in the House, and asked him to make a comment.

REP. ELLIS talked about the example made in their Committee. There are people working in a dangerous environment and it is a privilege to do so, just as it is a privilege to drive an automobile. When a person is involved in an automobile accident, the thresholds are even lower than this. The individual is responsible to call authorities to the accident scene, and if they choose to do an alcohol test, the individual has no choice but to submit to one or yield the driver's license for 90 days. The purpose of this bill is to allow people to do these tests, to make the work place safer by making employees realize they are responsible for themselves to stay clean, as far as alcohol and drugs. If the responsibility is put back on the employer and he tests someone who test negative on a judgmental thing, then he becomes liable for infringing on that person's rights. That's the reason it's important for this bill to be there, not that there will be so much testing done, but the employees must understand they are responsible for going to work with their heads straight.

SENATOR BURNETT said that's an explanation that they didn't hear in the Senate Committee.

SENATOR VAN VALKENBURG said **REP. ELLIS** uses the example of someone driving a car, but under that example, the police or law enforcement are required to have probably cause to believe that someone is driving under the influence of alcohol, and they must articulate what that probably cause is. He said that's what he wants with this bill, why does the employer believe that this employee has caused the accident.

SENATOR BURNETT said he said he thought it did.

REP. MILLS referred to page 1, line 30, an employee has been involved in an accident. He said there is a probable cause articulated there. The employee has been involved, which does not mean that he was a bystander. A bystander is not involved in an accident.

SENATOR VAN VALKENBURG said a bystander could very easily be involved in an accident. If a person is walking on a sidewalk and someone drives their car up onto the sidewalk and hits the person, then the bystander is involved, but hasn't caused the accident.

REP. MILLS said he hasn't caused the accident.

SENATOR VAN VALKENBURG said he didn't say cause, he said involved.

REP. MILLS said the word involved is the problem.

SENATOR BURNETT asked what word other than "involved" could be used.

REP. MILLS suggested the word "participant." He said the individual could be in an accident through no fault of his own, and has no objection that he caused it. He referred to **SENATOR VAN VALKENBURG's** example, saying the person hit on the sidewalk should be tested, using **SENATOR VAN VALKENBURG's** reasoning.

SENATOR VAN VALKENBURG said there would be no reason to test the individual hit by the car. He said that is what he is trying to do for the employee who is just standing there when another employee drops an I beam on him.

REP. MILLS said maybe the terminology such as "causationally involved in an accident."

SENATOR VAN VALKENBURG said there is language in current law that says the employer has reason to believe (page 1, line 27) the employee's faculties are impaired. He said, if the new part (line 30) reads "an employer has reason to believe an employee has caused a work-related accident."

REP. MILLS said he sees another side to the issue. Sometimes a person involved in an accident could have avoided it, had his

faculties been in good shape. Maybe he doesn't have, so is involved in an accident even though he didn't cause it. He said he has some trepidation about **SENATOR VAN VALKENBURG's** wording, but it's in the right direction.

SENATOR BURNETT asked about wording to be changed.

SENATOR VAN VALKENBURG said the employer has reason to believe that the employee has caused a work-related accident..

REP. ELLIS asked about using "may have" instead of "has."

SENATOR VAN VALKENBURG said he has no strong feelings about that. He said "has reason to believe" puts some kind of test there so it's just not just an arbitrary test that is being required.

REP. MILLS said he thinks it should be in the employee's record until the test is finished and only purged when the test shows negative.

Ward Shanahan said he has no problems with that as long as the question of the test may not be delayed remains in the law. The only problem he has is, this employee is the only cause. The employee is a cause, because more than one employee can cause an accident. It may be necessary to test more than one employee. He agrees with putting in "an employer has reason to believe" because he doesn't want to allow someone to abuse employees by testing everybody within 2,000 yards of the accident scene. If the employee's been a cause, the duty to conduct the test is in the language from the house.

SENATOR BURNETT asked if "an employer has reason to believe an employee is involved" is satisfactory.

REP. MILLS read it as it would be, page 1, lines 29-30. An employer has reason to believe the employee has caused a work-related accident.

Don Allen suggested the wording "an employer has reason to believe an employee may have contributed to an accident."

SENATOR BURNETT asked if the word "contributed" rather than "involved" is suggested.

Ward Shanahan said whether the word contributed or caused is used makes no difference but doesn't want to get into a quibble over about the fact that a particular individual was the primary cause, because there can be several people at the accident scene.

SENATOR VAN VALKENBURG said he wants to make sure of the wording.

REP. MILLS read the lines in question. The employer has reason to believe the employee may have contributed to a work-related accident.

SENATOR VAN VALKENBURG suggested changing "the employee" to "an employee."

REP. MILLS agreed, then said the title needs to be fixed.

Eddye McClure said, for consistency, she is concerned that the House took out "direct or proximate cause" on line 30, page 1, but left it in on page 2.

Ward Shanahan said he wanted "direct or proximate cause" left in the written finding, because he thinks that person is entitled to that information.

REP. MILLS suggested changing it to read "more than one employee," because as it reads, it could be more than one.

SENATOR BURNETT said an employee could be involved singly, and employee would still work.

SENATOR VAN VALKENBURG said what has been talked about is acceptable. He said the Senate had discussed raising the dollar amount to \$5,000, but then agreed, in the Senate Labor Committee, to compromise at \$2,500. There are power tools that are worth more than \$500. He urged the house to go back to that level.

REP. MILLS said they started at \$500.00 in the house.

SENATOR BURNETT said the House had the figure down to \$500.00 then brought it back up.

REP. MILLS said the Senate compromised up and the House compromised down. He suggested \$1,500.00.

REP. KEENAN asked if the decision is up to the employer whether to test.

REP. MILLS said that was right.

SENATOR VAN VALKENBURG asked **SENATOR BURNETT** what he thinks of the figure of \$1,500.00.

SENATOR BURNETT said he wouldn't hold the bill up on that amount.


Motion/Vote: **SENATOR VAN VALKENBURG** moved to amend to \$1,500.00. The motion CARRIED UNANIMOUSLY.

Motion/Vote: **SENATOR VAN VALKENBURG** moved to amend the House Business and Labor Committee amendment regarding the employee's involvement in a work-related accident to read "the employer has reason to believe an employee may have contributed to a work-related accident that causes death or personal injury." The motion CARRIED UNANIMOUSLY.

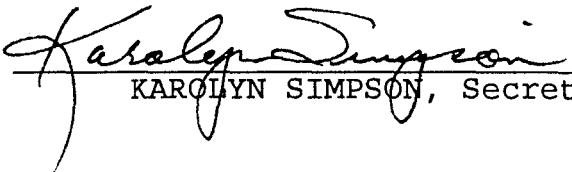
Motion/Vote: REP. MILLS moved the Conference Committee Report BE
ADOPTED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 8:45 AM



SENATOR JIM BURNETT, Chairman



KAROLYN SIMPSON, Secretary

JB/ks

ROLL CALL

FREE CONFERENCE or CONFERENCE COMMITTEE

ON BILL NO. SB 201

DATE 4/4/95

NAME	PRESENT	ABSENT	EXCUSED
Senator Burnett	X		
Senator Keating	X		
Senator Van Valkenberg	X		
Rep. Mills	X		
Rep. Keenan	X		
Rep. Cocchiarella		X	

Free Conference Committee
on SB 201
Report No.1', April 4, 1995

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Conference Committee on SB 201, met and considered:
House floor amendments to third reading copy (blue)

We recommend that SB 201 (reference copy - salmon) be amended as follows:

1. Title, line 5.

Following: "WHEN"

Insert: "THE EMPLOYER HAS REASON TO BELIEVE THAT"

2. Title, line 6.

Following: "EMPLOYEE"

Strike: "HAS BEEN INVOLVED IN"

Insert: "MAY HAVE CONTRIBUTED TO"

3. Title, line 8.

Strike: "\$1,000"

Insert: "\$1,500"

4. Page 1, lines 29 and 30.

Following: "(ii)" on line 29

Insert: "the employer has reason to believe that"

Following: "EMPLOYEE" on line 30

Strike: "HAS BEEN INVOLVED IN"

Insert: "may have contributed to"

5. Page 2, line 1.

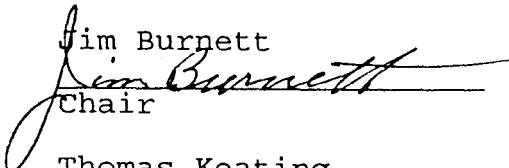
Strike: "\$1,000"

Insert: "\$1,500"

And that this Conference Committee report be adopted.

For the Senate:

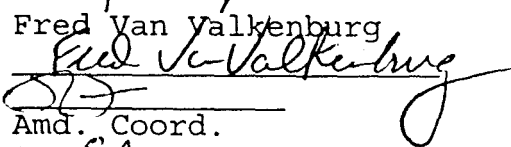
Jim Burnett


Chair

Thomas Keating



Fred Van Valkenburg



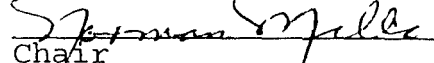
Amd. Coord.

SA

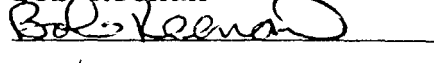
Sec. of Senate

For the House:

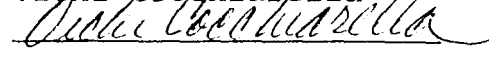
Norman Mills


Chair

Bob Keenan



Vicki Cocchiarella



ADOPT

REJECT

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