

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 18, 1997, at 9:06 A.M., in Senate Judiciary Room.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 368, 2/15/97
SB 369, 2/15/97
Executive Action: SB 368, SB 266, SB 303, SB 291

HEARING ON SB 368

Sponsor: SEN. J.D. LYNCH, SD 19, Butte

Proponents: David Brown, Executive Director of the Montanan
Independent Machine Operators Assoc.
Larry Aike, Montana Coin Operators Assoc

Opponents: None

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Count: 9:06}

SEN. J.D. LYNCH, SD 19, Butte, introduced SB 368. He was asked to carry this legislation on behalf of the Montana Independent Machine Operators Association. It is strictly a business bill related to the sale, research and development of video gaming machines. They had not anticipated the impact on local government with Section 1. Amendments will be introduced to delete Section 1 so that there is no impact to local government.
EXHIBIT 1

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 9:07}

David Brown, Executive Director of the Montanan Independent Machine Operators Assoc., spoke in support of the bill. He presented written testimony from Dick Berg, President of MIMOA, **EXHIBIT 2.** He also handed out a copy of the amendments, **EXHIBIT 3.** The first set of amendments strike Section 1 in its entirety so there will be no impact on local governments. The second amendment on page 2, lines 13 through 17, clarifies that it is legal to sell legal machines to another legal jurisdiction. On page 2, lines 24 through 26, this language would allow a manufacturer or distributor to bring in a component program for research and development purposes. They worked with the Department of Justice on this bill and they find it acceptable. **Larry Aike, Montana Coin Operators Assoc.,** is also a proponent of this bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 9:10}

SEN. LORENTS GROSFIELD asked **Wilbur Raymond, Administrative Office, Gambling Control,** if they were comfortable with the bill and amendments?

Mr. Raymond stated they worked with the sponsor on the bill and do believe that the amendments make this a better bill.

SEN. GROSFIELD asked **Mr. Brown** if a person wanted to sell gambling machines and found an out-of-state buyer, why would that not be included in this bill?

Mr. Brown stated that originally they had language in the bill which included route operators. The Department did not want to expand it that far because that would be too broad and increase the Department's necessity to oversee that process. A route operator could sell to a distributor or manufacturer who could make the sale.

Closing by Sponsor:

SEN. LYNCH closed on SB 368.

HEARING ON SB 369

Sponsor: SEN. CHUCK SWYSGOOD, SD 17, Dillon

Proponents: Calvin Erb, Deputy Co. Attorney, Beaverhead County
Corey Laird, Montana Catholic Conference

Opponents: None

Opening Statement by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 9:14}

SEN. SWYSGOOD, SD 17, Dillon, presented SB 369. This an act revising law relating to endangering the welfare of children. This bill comes from a concern of the County Attorney's Office in his area. They wanted this bill to come under the stalking provisions of the statute because repeated misdemeanor offenses do not allow prosecution for someone who leaves the state.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 9:16}

Calvin Erb, Deputy County Attorney, Beaverhead County, stated he wanted to amend either the stalking statute or the endangering of the welfare of children statute. The Attorney General's Office has written a letter regarding this matter. An older gentleman was writing love letters to a 12 year old girl. The parents told him not to have contact with their daughter. The daughter was infatuated with the attention she was given. They had to tell the parents there was nothing they could do. They were hoping the stalking statute would be broad enough in its definition of "victim". The parents would be the victim. The Attorney General's Office didn't feel this controlled. They could proceed against the daughter as a youth in need of supervision. The type of behavior involved here is stalking. The man was grooming the child for later contact and a more intimate relationship at a future time. This was clearly defined in the letters. However, there had been no sexual contact and no encouragement to leave home. He made statements of his love and desire to be with this young child. If the victim is under the age of 16 and the offender is three or more years older, the parents would be the victim and could give the notice to the perpetrator. The stalking statute is progressive in terms of penalty. A repeat offender could move to a different jurisdiction and with three or four misdemeanor offenses, there would be no history of him. Local residents would have no way of knowing this person was in the habit of trying to groom young children to leave their homes and engage in a more intimate relationship. As far as

grandparents having this used against them, criminal law deals with the intent of purposely and knowingly committing the crime.

Corey Laird, Montana Catholic Conference, urged support of SB 369.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 9:23}

SEN. MIKE HALLIGAN, referring to the order of protection portion of the statute, 40-15-102, wondered if there may be a way to allow for a restraining order to be issued to a parent who wanted to protect their child. He asked if this had been considered?

Mr. Erb stated the statute was broad. This would force a private person to seek civil redress and institute an action before the state. Civil and criminal law should stay separate.

SEN. HALLIGAN stated that filing the charge would allow for a period of time for this person to continue his behavior and then he may be able to exert his control over the child. He handles a lot of family law. If a father does not like the custody arrangement, he could do everything possible to entice the child away from the custodial parent. He sees where parties could try to get criminal law involved to get the other side.

Mr. Erb stated that people often try to get their office involved in divorce and custody battles. If this law is enacted, they will evaluate and investigate. If it appears they are being invited into some such situation, they can decline to prosecute.

Closing by Sponsor:

SEN. SWYSGOOD stated he understood the concerns of parents. He presented the letters the county attorney wrote to him as well as the response they received from the Attorney General. **EXHIBIT 4**

EXECUTIVE ACTION ON SB 368

{Tape: 1; Side: a; Approx. Time Count: 9:29}

Amendments: sb036801.ajm - **EXHIBIT 5**

Motion/Vote: **SEN. SHARON ESTRADA MOVED TO AMEND SB 368.** The MOTION CARRIED UNANIMOUSLY.

Motion: **SEN. ESTRADA MOVED SB 368 DO PASS AS AMENDED.**

Discussion: **SEN. GROSFIELD** commented that he visited with a couple of proponents during the break and it turns out that a lot of route operators do have a distributors license.

Vote: The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 266

Amendments: sb026606.av1 - EXHIBIT 6

Discussion: Ms. Lane asked Jackie Lenmark to explain her amendments. She reminded the committee that these were the sixth set of amendments on this bill. Three were submitted by Ms. Lenmark in the alternative, one set came from the Trial Lawyers and one from Jerry Driscoll.

Ms. Lenmark stated she was also speaking on behalf of HIAA, Blue Cross/Blue Shield, NAIL, State Farm, the Alliance of American Insurers and Montana Medical Benefits Plan. There have been meetings between the insurers, independent agents and the Insurance Commissioners Office. They have not reached consensus. The amendments are endorsed by the insurers. Subrogation is difficult for lay persons as well as lawyers. When there is a loss and an insurance company pays for that loss, the insurance company through the theory of subrogation will pursue the wrongdoer. That is the theory of subrogation. The amendments create and correlate a subrogation right for three kinds of insurance: property and casualty insurance for which there has been no statutory right, disability or health insurance for which there has been a subrogation right, and health service corporations for which there has been a statutory right.

Amendment no. 5 corrects a codification in the original bill draft. Section 3 of the original bill needs to appear in all three chapters. Amendments 2, 3, and 4, make the rights of each type of insurance the same. No particular line of insurance has a greater subrogation right than another. If you have several lines of insurance involved in an accident, it is important to get money to the injured person quickly. The injured person's med pay would pay immediately. The health insurance company would start paying medical bills. Once there has been a determination of liability, the casualty company would compensate the injured person. Without the right of subrogation, the health insurance or med pay insurance may be reluctant to pay immediately because they have no opportunity to recover those funds from the tortfeasor, the liable party's insurance company. They inserted the language on arbitration so that if there is a dispute amongst insurers and an insured about the extent of recovery, the injured person will have recovery and the person who is truly liable will be responsible for payment.

Motion: SEN. RIC HOLDEN MOVED TO AMEND SB 266.

Discussion: SEN. STEVE DOHERTY asked for comment from the independent insurance agents and the trial lawyers.

Russell Hill, MTLA, stated the amendments do not solve the problems in Section 1 and 2 but, in fact, extend those problems

to other sections of the code which were not in the original bill. This subrogation would not be limited to tort actions and third-party liability. The insurance companies object to any standards. Health insurers would have a subrogation right against the policyholder for lost wages, etc.

Roger McGlenn, Independent Insurance Agents Assoc., stated their major concern was to address the Reaglor decision and the Youngblood decision which prohibited subrogation of medical payments under the auto policy. Their concern is Section 4 of this bill. This would establish the right of subrogation. He had a set of amendments which would strike Sections 1, 2, and 3 of the bill and would leave Section 4 of the bill. **EXHIBIT 7.**

SEN. DOHERTY asked **Mr. McGlenn** if they would be happy with the bill if the amendments were adopted?

Mr. McGlenn stated that there was HB 103 which dealt with order of payment which they feel would be a significant companion issue to this which would establish who paid and when they paid. It would also provide the right of subrogation

Substitute Motion: **SEN. DOHERTY** MOVED SB 266 BE AMENDED.
(EXHIBIT 7).

Discussion: **SEN. DOHERTY** explained this would strike sections 1, 2, and 3 and leave section 4 of the bill.

SEN. HALLIGAN asked **SEN. GERRY DEVLIN** if he approved of the amendment?

SEN. DEVLIN stated that it was fine with him.

SEN. GROSFIELD asked if in amendment 3, inserting the word "policy" after casualty, was necessary?

Ms. Lane stated it should be there. The next amendment strikes "or disability policy or health service corporation contract" which would leave "or under another casualty."

SEN. GROSFIELD asked for comments from **Mr. Hill** and **Ms. Lenmark**.

Mr. Hill explained that at a meeting of all the parties, the insurance companies indicated that without sections 1 and 2 they would kill this bill. **Mr. McGlenn** understands that what he wants most out of this bill may be sacrificed by the amendments he has offered. They have no objections to section 3 and 4 of the bill.

Ms. Lenmark stated that without section 1 and 2 in the bill, they will be no effective right of subrogation. The insurance companies did express an intent to kill the bill if it went out of committee in that form because it does not give any right of subrogation to property/casualty companies and creates a legal problem.

Vote: The **MOTION CARRIED** on roll call vote with **SEN. HOLDEN, JABS** and **GROSFIELD** voting "no".

Motion: **SEN. HALLIGAN MOVED SB 266 DO PASS AS AMENDED.**

Discussion: **SEN. GROSFIELD** commented that this amendment included that the correct changes to the title be made and that Section 5 be deleted.

SEN. HOLDEN asked **Mr. McGlenn** how this bill would work?

Mr. McGlenn stated the goal of the independent agents was to make the tortfeasor pay and prevent duplicate payments for the same line of coverage. Under an auto liability policy, there is a negligent act of a third party. Their sincere intent is that an insurer will be able to subrogate back against the insurer of a negligent third party.

SEN. DOHERTY stated that insurance agents had a problem explaining to people who bought insurance from them what the situation was in a casualty policy. The amendments address their problem. During the testimony on this bill, it was revealed that disability policies and health service corporations already have a right of subrogation. The door was opened a little and a lot of horses tried to get into this parade. The amendments address the issue which was brought.

SEN. REINY JABS asked if this bill helped at all?

SEN. DOHERTY said they are solving the problem of this issue brought before them. The other amendments are other issues entirely. Last time he checked, the insurance industry could not kill bills.

SEN. JABS asked **Ms. Lenmark** if she was in favor of the amendment?

Ms. Lenmark stated that with the amendments currently on the bill, she and the other insurers are opponents.

SEN. HOLDEN asked why she would be an opponent?

Ms. Lenmark stated there already exists a statutory right of subrogation but it may not be exercised until the injured person has fully recovered and the court has interpreted that full recovery to include all damages, including pain and suffering and attorney fees and costs. Blue Cross cannot recover what it has paid for medical bills until a party has recovered all other damages. That was the purpose of section 1, 2, and 3 and making those sections read the same in each chapter of the insurance code so that no insurance company has a different right. The law will now read that health insurers will still have a right of subrogation but not until full recovery. Rarely will the injured person get to full recovery because they pay up to one half of their recovery to their attorney.

Vote: The MOTION CARRIED on oral vote.

EXECUTIVE ACTION ON SB 303

Motion: SEN. HALLIGAN MOVED SB 303 BE TAKEN FROM THE TABLE.

Discussion: SEN. HALLIGAN commented they are to the point where the technology has reduced the cost to where it can be a viable option for dealing with DUIs. The judge has a discretion to order it.

Vote: The MOTION CARRIED with SEN. HOLDEN and ESTRADA voting no.

Motion: SEN. HALLIGAN MOVED SB 303 DO PASS AS AMENDED.

Discussion: SEN. HALLIGAN stated this makes the offender pay before they get to the fourth defense DUI.

SEN. HOLDEN stated that local governments needed to administer the program. There are problems with the machines not working in subzero weather. People disconnect their machines.

CHAIRMAN CRIPPEN commented that apparently SEN. HOLDEN'S concern is that there is no money provided for local government or the state to pay for the program.

SEN. JABS asked if this bill provided for the judge to force the people to pay for the equipment?

SEN. HALLIGAN stated there was nothing in the bill which would force a justice of the peace that this be a part of the sentence. There are organizations which might fund the equipment. One he could think of was Mothers Against 'Drunk Drivers.

CHAIRMAN CRIPPEN stated this is not mandatory. It benefits the defendant. If he has a job and wants to drive, he will have to come up with the money.

SEN. HALLIGAN felt that insurance companies have made workplaces safer because of prevention measures. If we can make people safer on the road, this bill will be a benefit.

SEN. MCNUTT stated that this is a tool. The person has lost his drivers license and is not supposed to be driving. Since this is not mandatory, he was in favor of this device.

Vote: The MOTION CARRIED with SEN. HOLDEN and SEN. ESTRADA voting no.

EXECUTIVE ACTION ON SB 291

Amendments: sb029101.avl - EXHIBIT 8

Discussion: CHAIRMAN CRIPPEN commented that he asked Ms. Lane to prepare amendments to this bill which would incorporate the philosophy in the penal codes of the State of Texas dealing with this issue. It eliminates the laundry list and is more generic. It would include any group including a group being harassed because of sexual orientation. He feels that laundry lists become more exclusive than inclusive.

Ms. Lane explained that the amendment would eliminate the laundry list of race, creed, religion, color, national origin, or involvement in civil rights or human rights. The existing statute is based on whether or not the victim belonged to one of those classes or groups. This amendment places the emphasis on the defendant's bias or prejudice against a group. Section 2 of the bill already provides a sentence enhancement. She has amended the bill to apply to the criminal statute of malicious intimidation and the sentence enhancement. The affect is to focus on the defendant's bias or prejudice rather than the victim's inclusion in a group and substitute that standard for the laundry list.

CHAIRMAN CRIPPEN stated that the Law Review article noted that this may be too broad and have a chilling effect.

SEN. HOLDEN stated that originally the main interest of this legislation was for gays and lesbians to gain human rights protection. He asked Ms. Kaufman how her group would feel about the amendments?

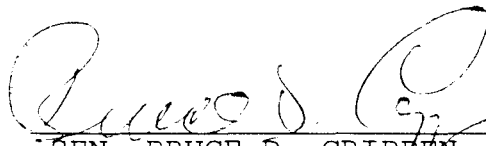
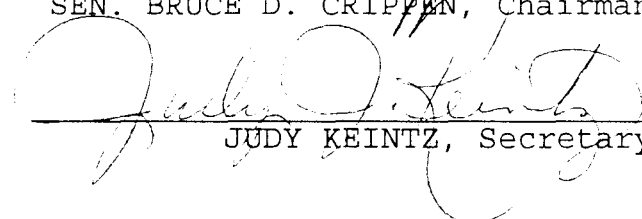
Ms. Kaufman clarified that the issue is not discretion, rather it is malicious harassment and intimidation. They are confused. This amendment would seem to include gays and lesbians. They form a group of people against which hatred and bias is exhibited. Would there be constitutional challenge due to vagueness? Would the Boy Scouts be a group under this bill? If a crime was committed against them because of hatred, they ought to be groups under this bill. She questioned whether there was any legal history on this in Texas?

CHAIRMAN CRIPPEN explained that the Law Review article discussed various aspects of the Texas law as it relates to the Constitution in the areas of vagueness and the chilling effect.

SEN. DOHERTY commented that he discussed with Cascade County prosecutors the case where a racially mixed couple was attacked. The offender has been charged under the malicious intimidation or harassment statute because there were sufficient facts to indicate that the attack occurred because a black man was with a white woman. He asked the prosecutor about taking the specific laundry list out and inserting a general group. Her immediate response was, why would you make a criminal statute less specific?

ADJOURNMENT

Adjournment: The meeting adjourned at 10:40 a.m.


SEN. BRUCE D. CRIPPEN, Chairman

JUDY KEINTZ, Secretary

BDC/JJK