

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By ACTING CHAIRMAN REINY JABS, on March 13, 1997,
at 9:00 A.M., in Room 325.

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: Sen. Holden, Sen. Estrada, Sen. Halligan

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:	HB 243	3/4/97
	HB 479	3/4/97
	HB 346	3/4/97
Executive Action:	HB 251, HB 243, HB 479,	
	HB 346, HB 339, HB 68	

HEARING ON HB 243

{Tape: 1; Side: A; Approx. Time Count: 9:05; Comments: .}

Sponsor: REP. MATT DENNY, HD 63, Missoula

Proponents: Brad Griffin, Montana Retail Assoc.
Aric Curtiss, Helena Shop Ko Loss Prevention
Manager
Bernard Jakely, Great Falls Shop Ko Loss
Prevention Manager
Jeff Koch, Montana Collector's Association

Chris Gallus, Montana Chamber of Commerce

Opponents: None

Opening Statement by Sponsor:

REP. MATT DENNY, HD 63, Missoula, introduced HB 243. This bill allows the assignment of claims arising from shoplifting. On page 2, section 3, the language refers to a civil claim for the greater of \$100 or the retail value of goods not to exceed \$500 in addition to actual damages can be assessed against a shoplifter caught in your store. Under current law, those claims cannot be assigned and thus many of these claims are not being pursued to the extent that they could be. This bill would allow them to assign those claims to collection agencies or others. The first part of the bill would allow more than 10 filings in small claims court for those kind of claims.

Proponents' Testimony:

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

Brad Griffin, Montana Retail Assoc., spoke in support of HB 243. When a shoplifter is apprehended with a \$200 VCR and taken upstairs by the loss control person and he is processed, he is then released and the retailer can then send the shoplifter a demand letter for \$200 even though they received the merchandise. That is a civil penalty which is a minimum of \$100 and a maximum of \$500. Those demand letters usually go unpaid. The retailers can take up to 10 of the unpaid claims to small claims court per year and convert the claim into a judgment. One out of 60 shoppers is a non-traditional shopper. Only one out of 35 shoplifters is caught. Retailers go through the 10 claim limit in one month. The House inserted an amendment on page 2, line 16, which would allow retailers to file more than 10 claims in a calendar year. The retailer could take the unpaid demand letter and assign it over to a collection agency. The collection agency's attorney could attempt to turn that into a judgment. If there were no shoplifting, prices could be lowered from 12% to 15%.

Aric Curtiss, Helena Shop Ko Loss Prevention Manager, rose in support of HB 243. Last year they had 719 retail theft detentions in their five area stores. Shop Ko pursued civil recourse in 627 of those cases. Demands of over \$78,000 were made. Less than 54% of that was collected. At the time of the detention they inform the shoplifter that they will pursue civil demands and give them a copy of law explaining what it is. Once they are released, the corporate office sends a letter of demand. If that is unanswered, a second follow up letter goes out. Ten days later they will receive a third letter. Due to shoplifting, the average American family spends about \$500 a year in extra costs because retailers have to raise their prices.

Bernard Jakely, Great Falls Shop Ko Loss Prevention Manager, spoke in support of HB 243. This bill will make it easier to make sure that the people who are raising the prices for the rest of us pay their fair share. Shoplifters are becoming more violent. Last week a man and a woman concealed \$300 of merchandise, it took about six employees to apprehend them due to the fight which ensued. Shoplifting is a big business.

Jeff Koch, Montana Collector's Association, stated that this bill would allow retailers to assign their civil damage to someone who has the ability to collect. This bill only allows enforcement of this claim in small claims court. That is a difficulty for the merchant as well as the agency. Small claims court does not allow an attorney to be involved. It only allows 10 claims per year per entity. An assigned account cannot be brought in for an action. He asked for amendments which would change the wording "small claims court" to "court of competent jurisdiction." This would allow the claims to be brought in city, municipal, justice, or district courts.

Chris Gallus, Montana Chamber of Commerce, rose in support of HB 243.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 9:21; Comments: .}

SEN. LORENTS GROSFIELD asked if shoplifters are trying to make a living by shoplifting?

Mr. Jakely stated that they have people who travel on the Shop Ko vacation plan. They will stop in Helena and shoplift. They then take the merchandise to Great Falls and ask for a refund. Refunds are better with a receipt, but to compete they do give refunds. While they are in Great Falls, they will hit four or five stores. The penalties are not severe enough. He feels sorry for the people who are down on their luck. If they would ask for assistance, they would probably put them to work for a day or two. This bill would put the judgment on their credit rating. The people who do this for a living are becoming more and more violent.

SEN. SUE BARTLETT asked **Mr. Koch** for clarification of his proposed amendment.

Mr. Koch explained that attorneys are not allowed unless all parties have attorneys. The consumers will not have an attorney which means the agency has to send an employee instead of an attorney. Section 25-05-505 (5) states that no party may file an assigned claim in small claims court. Agencies could bundle all the claims into one claim.

SEN. BARTLETT felt that HB 243 allowed a party to assign the claim as long as its under the statute which deals with the civil penalty for shoplifting. There would still be the attorney problem. Would a retail business assign the claims in groups?

Mr. Koch stated the assignment could be in groups. The bill addresses assignment and allows the assignment to be made but it does not address the small claims court situation which does not allow assigned claims to be brought in the court.

SEN. BARTLETT felt the House amendment handled that problem. This would be found on page 2, lines 14 and 15. She has a bill which repeals Chapter 34 of the small claims statutes. This bill would not conflict with this bill in any way.

SEN. STEVE DOHERTY stated that a shoplifting claim and a bad debt civil claim would mean that there would be different witnesses.

Mr. Koch stated that a typical civil filing would involve a pre-trial hearing which would take a half an hour. If that is not resolved there is a mediation session which lasts about 90 minutes. If that is not resolved, there would then be a trial which would take a couple of hours. This would all have to occur twice.

SENATOR CRIPPEN felt the title was very specific. He felt that what was being proposed was to add offenses other than shoplifting into other areas of jurisdiction.

Ms. Lane stated the title would have to be amended, but what is being presented is way beyond the scope of the original title which was specific to not only shoplifting but assigning claims for shoplifting and allowing them to be brought into small claims court.

REP. DENNY understood the problems involved with the proposed amendments.

CHAIRMAN JABS asked the procedure involved when someone was apprehended for shoplifting.

Mr. Griffin explained that a criminal conviction was not necessary to assess the civil penalty which could be a minimum of \$100 and a maximum of \$500. A demand letter can be sent for the amount of the merchandise which was taken, even if the retailer recovered the merchandise.

Closing by Sponsor:

REP. DENNY closed on HB 243.

HEARING ON HB 479

Sponsor: REP. CARLEY TUSS, HD 46, Black Eagle

Proponents: None

Opponents: None

Opening Statement by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 9:40; Comments: .}

REP. CARLEY TUSS, HD 46, Black Eagle, introduced HB 479. When campaigning she visited a lady who told her she would not be voting because she felt that by not voting she would not be required to go to jury duty. Many people have indicated to her that getting an excuse for jury duty was difficult because of the physical difficulties of leaving home. People who have been good citizens all of their lives have a hard time with not being capable of sitting or leaving their home. The major portion of HB 479 states that people can be permanently excused from jury duty. She used the Medicare definition for home care. This means you need to be homebound and use assist devices.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 9:48; Comments: .}

SEN. BARTLETT asked how this would work for the clerks of district court who are the jury commissioners.

Mary Phippen, Clerks of Court, stated it should not cause any problems. A lot of counties are using procedures similar to this. Once a person has reached a certain age and has a chronic illness, there is no sense of notifying them year after year.

SEN. CRIPPEN questioned if lawyers wouldn't recognize senility during voir dire.

SEN. DOHERTY stated that on a case by case basis it would be easy to figure out. The judge usually asks if anyone has problems with hearing, whether they would have problems getting to the courthouse, or sitting an extended period of time. Most judges allow people out on a case by case basis. Someone with pulmonary disease would probably get a letter from their doctor and send it to the clerk and he would be let out. This bill would allow for this to be done in advance. Your name wouldn't even be in the jury pool.

Ms. Phippen explained that they would draw 450 names of potential jurors for each year. They would then send out jury summons, questionnaires, affidavits to claim excuse to the 450 people. A person with a chronic illness will fill out their affidavit to claim excuse and get a doctor's notification that they are unable to serve as an active juror. They draw an extra amount because they know they are only going to qualify about half of the potential jurors. The judge will permanently excuse them from jury duty. They give a list to the clerk and recorder so that they are not notified every year. If a juror is on active jury duty for a year and they are going to be out of the county for more than 48 hours, other than a weekend, they will call in and have their name taken off during that time.

Closing by Sponsor

REP. TUSS stated this would make things easier for the clerk and recorders and adds a degree of dignity for folks who would not ask for permanent exclusion.

HEARING ON HB 346

{Tape: 1; Side: B; Approx. Time Count: 9:54; Comments: .}

Sponsor: REP. JOE TROPILIA, HD 47, Great Falls

Proponents: Dean Roberts, Department of Justice

Opponents: REP. LES PROUSE, HD 15, Shepherd

Opening Statement by Sponsor:

REP. JOE TROPILIA, HD 47, Great Falls, introduced HB 346. Originally, this bill increased the penalty for not having liability insurance. His amendment to the bill was to take away the offender's driver's license. He or she would also have to show proof of insurance when licensing their car. The bill also stated that the insurance companies would notify the Department of Justice and the county treasurer if the insurance was cancelled. The insurance companies felt that would cost them too much money. They tabled the bill in judiciary. He agreed to amend that section of the bill. The Judiciary Committee passed the bill with the other two provisions. There is a provision stating that the county treasurers do not have to do this and the Department would like to amend that out of the bill.

Proponents' Testimony:

Dean Roberts, Department of Justice, stated that in 1993 there was a bill passed which came up with the present penalties. The old law stated that people had to sign a document with the county treasurer stating they had liability insurance. Research showed that no one had ever been prosecuted for not signing the document. All this does is slow down the process of registering

a vehicle. They have prepared amendments which change the title of the bill. **EXHIBIT 1** The original title addressed financial responsibility laws. The bill only spoke to proof of insurance. Amendment no. 3 would strike all the language dealing with the suspension of a license and also the reporting. In 1993 there was a mistake made by increasing the penalty, but allowing the person to automatically receive their registration and license plate. No one ever asks if they have insurance. Amendment no. 4 would provide that the license plate and registration would not be given back until proof of compliance was shown to the Department. They tracked people who lost their registration and plates and found that most of them were third time offenders.

Opponents' Testimony:

REP. LES PROUSE spoke in opposition of the bill. This bill makes a new class of people to discriminate against. Sixty percent of all vehicles on the road in Montana do not have liability insurance because people cannot afford insurance. Excessive fines make the problem worse. He handed out amendments, **EXHIBIT 2**. Instead of putting people in jail, he would give the judge the authority to pull their license but instead of paying the fine of \$250, \$500, or 10 days in jail or both, allow for them to show the judge within 30 days that they have insurance. Instead of a \$500 fine, they could have a \$100 fine and put the money on insurance.

Informational Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: b; Approx. Time Count: 10:10; Comments: .}

SEN. DOHERTY asked **REP. TROPILIA** if he agreed with **REP. PROUSE's** amendments?

REP. TROPILIA explained that in the House Floor session the amendments were voted down about 90 to 10.

SEN. CRIPPEN asked **REP. PROUSE** if driving was a privilege or a right?

REP. PROUSE stated that by the State of Montana it would be a privilege.

SEN. CRIPPEN stated that people have laughed at penalties in the past.

REP. PROUSE stated that 90,000 individuals have non-renewals every year. He doesn't believe this to be the upper class individuals. There are reservations with 80% unemployment rates. If the fine takes their first three paychecks, we will be sending them back to welfare.

SEN. CRIPPEN felt a \$100 fine would not get anyone's attention. He asked REP. PROUSE if he carried under-insured motorists coverage on his policy and how much it cost him?

REP. PROUSE stated he did because he had to and that it probably cost him an additional \$12. Other states have no-fault insurance. He would like to propose such a bill next session.

SEN. AL BISHOP asked if insurance companies notified the auditor's office when liability insurance was cancelled?

Roger McGlenn, Executive Director of the Independent Insurance Agents Assoc., stated they were not required to do so. There are multiple rules on cancellation mid-term which the insurance companies are required to follow but this does include notice to the insurance department.

CHAIRMAN JABS felt that REP. PROUSE's amendment would allow people not to carry insurance until they were caught.

REP. PROUSE stated that right now he would not have to buy insurance. If he didn't buy insurance for two years he would be \$2400 ahead and he could easily pay the \$500 fine. We should focus on having people pay insurance and not pay fines.

SEN. BISHOP commented that if people are driving without insurance, would it bother the same people to drive without a driver's license.

REP. TROPILIA answered they would also lose their license plates and motor vehicle registration.

Closing by Sponsor:

REP. TROPILIA closed on HB 346.

EXECUTIVE ACTION ON HB 251

{Tape: 2; Side: a; Approx. Time Count: 10:20; Comments: .}

Discussion:

SEN. DOHERTY stated he was in front of House Judiciary when executive action was held on this bill. House Bill 251 allowed a jury to determine if a lawsuit was frivolous or not. If a judge has determined that the case has enough merit to be brought to a jury and they decided for the defendant and make a decision that the case was not meritorious enough to be brought to the jury, who wins? He asked if the committee would reconsider their action and amend that part of the bill. He felt that mechanically there would be a problem.

Ms. Lane stated that question did come up during the hearing. Russell Hill, MTLA, felt it was a problem and assumed it was up

to whichever body was making the decision in the case. If there was no jury, the judge would decide. If there was a jury, the jury would decide. He felt that there might be a problem.

SEN. DOHERTY stated that there are certain federal cases in which you are not allowed to have a jury. Some federal judges impanel a jury for advisory questions on factual matters. He would be willing to have a jury make an advisory opinion to the judge after hearing all the evidence.

SEN. CRIPPEN stated that he would try to hold the bill for a day so amendments could be prepared.

SEN. DOHERTY felt that by making the jury make that decision, the role of the jury would change from deciding facts to making a decision about the law. Currently the judge gives the instructions, the jury determines the facts and determine who wins. Does it go both ways? If the defense is a sham and the defense lawyers ran up the cost of the case because they are paid by the hour, the jury would need to be instructed to determine if either side or both sides cases were without merit.

EXECUTIVE ACTION ON HB 243

{Tape: 2; Side: a; Approx. Time Count: 10:34; Comments: .}

Discussion:

SEN. GROSFIELD, referring to page 2, line 4, asked if the language added by the House in line 16 might also be included.

SEN. BARTLETT explained that small claims court are set up to provide a neutral forum and expeditious procedures with a minimum of legal trappings. That is why attorneys are not customarily seen in small claims courts. The collection agencies may not want to take the time to do this, but an employee of theirs can take care of the cases.

Motion/Vote: SEN. CRIPPEN MOVED HB 243 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 479

{Tape: 2; Side: A; Approx. Time Count: 10:45; Comments: .}

Motion: SEN. CRIPPIN MOVED HB 479 BE CONCURRED IN.

Discussion:

SEN. BARTLETT commented that at the stage where the clerk of court notifies the clerk and recorder and has the person's registration record flagged so that they are not drawn for a jury list, this would be in violation of current law. That may be going on at the present time. House Bill 479 states that the

chronically ill individual can be excused from the jury. The statute on selection of jury lists states that they must select from the most recent list of all registered electors. The numbers are much smaller here and shouldn't cause a problem. House Bill 479 addresses specifically excluding individuals from jury duty but not excluded from being drawn from the jury list.

SEN. GROSFIELD suggested including the statute on selection of jury lists in HB 479. He questioned whether this could overturn a jury verdict.

Ms. Lane explained that she drafted the bill and she understood the intent of the bill was to exclude these individuals from the jury list. She suggested the bill not be amended at this point. If **SEN. BARTLETT's** concern is a true concern, this could be addressed next session. The local clerk and recorder felt this bill was sufficient.

SEN. BARTLETT stated that this bill excluded the individuals from jury duty. She felt that the sponsors wanted to exclude them from the list as well. In the records, these people will not ever be drawn for the list.

Ms. Lane commented that there could be an amendment added with respect to 3-15-402 which would state that persons who had been excused from jury duty under this section of the bill may be stricken from the list.

Substitute Motion: **SEN. CRIPPEN MOVED HB 479 BE AMENDED.**

Discussion:

SEN. CRIPPEN explained his amendment would state that when an individual has been permanently excused from jury duty under 3-15-313, that their names be removed from consideration under 3-15-402. That would be new section 2.

Vote: The MOTION CARRIED UNANIMOUSLY.

Motion/Vote: **SEN. CRIPPEN MOVED HB 479 BE CONCURRED IN AS AMENDED.** The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 346

Amendments: Department of Justice Amendment, EXHIBIT 1

Motion: **SEN. DOHERTY MOVED HB 346 BE AMENDED.**

Discussion:

SEN. DOHERTY explained the amendment to be Department of Justice amendment presented by Brenda Nordlund during the hearing.

Ms. Nordlund explained that this bill, as originally presented, was poorly drafted. The Department does not support sections 1 and 2. When they spoke at the House Judiciary hearing they spoke specifically to the section addressing suspension of driver's licenses. They support the bill with the amendments presented.

Vote: The MOTION TO AMEND HB 346 CARRIED UNANIMOUSLY.

Motion/Vote: SEN. DOHERTY MOVED HB 346 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 339

{Tape: 2; Side: A; Approx. Time Count: 11:03; Comments: .}

Amendments: hb 033901.avl EXHIBIT 3 and hb033902.avl EXHIBIT 4

Discussion:

Ms. Nordlund stated that the state DUI Task Force would prefer to see hard driver's license suspension. She prepared the amendments as a means of accommodating committee members who remembered that SEN. NELSON had strong objection to the 18 to 20 year olds. The amendments are in alternative. Amendment 1, hb33901.avl, allows a probationary driver's license to be issued if the court makes a specific finding that alternative means of transportation is not available to the person to meet work or school obligations and the person pays the reinstatement fee of \$100 provided in 61-2-107. This amendment will disqualify us from the incentive money for the highway safety bureau. It does not affect the federal aid in highway construction dollars. The second amendment, hb033902.avl, would provide that they serve at least 30 days of a hard suspension and then be eligible for the probationary drivers license upon payment of the license reinstatement fee. The way the law is written, if someone is sentenced under the MIP statute it is up to the court as to whether they get the probationary license. The information she presented to the committee at the hearing explained that the number of probationary licenses which they have been issuing to MIP offenders has been a drop in the bucket compared to the number of suspensions and revocations. The 30 day hard suspension will qualify for the federal incentive monies for highway traffic safety.

{Tape: 2; Side: b; Approx. Time Count: 11:00; Comments: .}

This would amount to \$500,000 per biennium. Amendment no. 1 would disqualify the state.

SEN. GROSFIELD asked if 30 days was the lowest number we could use?

Ms. Nordlund stated 30 days was necessary to receive the federal funding dollars.

Motion/Vote: SEN. CRIPPEN MOVED HB 339 BE AMENDED -
hb033902.avl. The MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. CRIPPEN MOVED HB 339 BE CONCURRED IN AS
AMENDED. The MOTION CARRIED with SEN. BISHOP voting no.

EXECUTIVE ACTION ON HB 68

Amendments: Department of Corrections Amendment - EXHIBIT 5

Discussion:

Dave Ohler, Department of Corrections, explained that SEN. GROSFIELD had stated he wanted to see an amendment which would exempt out instances in which state employees were negligent during a riot or disturbance. His amendment, EXHIBIT 5, would get rid of the exceptions and states that state employees could not be held liable in negligence unless the negligence results in death or serious bodily injury.

SEN. GROSFIELD stated he was concerned about negligence which results in serious injury. He is not sure the amendment goes far enough. Serious bodily injury would deal with disfigurement. They heard a bill a few days ago where serious bodily injury in a rape case would go to capital punishment.

SEN. BARTLETT asked what the effect would be in taking medical malpractice out as a clear exception?

SEN. CRIPPIN felt this would modify the amendment which was put in by the House.

Mr. Ohler stated that they only have one employee who would be subject to a medical malpractice suit and that would be the psychiatrist

SEN. CRIPPEN stated that if there was an intentional tort, the House felt there could not be immunity. By striking that, if there was an intentional tort, it would be okay unless it resulted in death or serious bodily injury.

Mr. Ohler stated that would not be the case. The only exception to liability for state employees is if they committed negligence. The death or serious bodily injury goes to the negligence cause of action only. In certain instances, state employees would not be exempt for liability even for negligence.

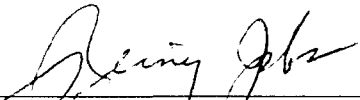
SEN. BARTLETT asked if SEN. HALLIGAN had expressed concern with having the malpractice, gross negligence, etc. list in the bill?

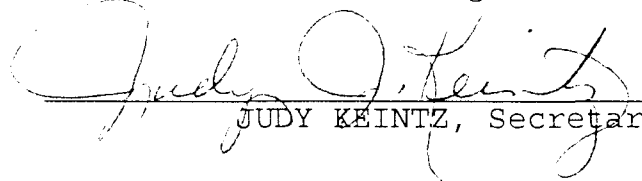
Mr. Ohler stated that was right. Simply by saying they were exempt from negligence stands on its own and there is no need to list all the exceptions.

SEN. DOHERTY had concerns about the broad wording of serious bodily injury. What about holding a knife to someone's throat for a long period of time, but actually not using the knife? What about breaking a finger?

ADJOURNMENT

Adjournment: The meeting adjourned at 11:20 a.m.


SEN. REINY JABS, Acting Chairman


JUDY KEINTZ, Secretary

RJ/JJK