

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON HIGHWAYS AND TRANSPORTATION**

Call to Order: By **VICE CHAIRMAN RIC HOLDEN**, on January 23, 2001
at 3:00 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Ric Holden, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Bob DePratu (R)
Sen. Dan Harrington (D)
Sen. Sam Kitzenberg (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: Sen. Arnie Mohl, Chairman (R)
Sen. Dale Berry (R)
Sen. Glenn Roush (D)

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Marion Mood, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 208, 1/16/2001; SB 225,
1/15/2001
Executive Action: none

HEARING ON SB 208

Sponsor: SEN. EMILY STONINGTON, SD 15, Bozeman

Proponents: Bob Garner, self, Bozeman

Opponents: None

Opening Statement by Sponsor:

SEN. EMILY STONINGTON, SD 15, Bozeman, opened by saying that she was approached by a constituent to carry this bill so that future prosecution of cases like his would be less complicated. He was nearly knocked down in a store's parking lot by a pick-up driver backing up. Under current statute, the definitions of careless and reckless driving apply to public streets and roadways only, not to parking lots, where this incident happened. She wants to include parking lots in the law since, when this was prosecuted, it was said this was not a willful and wanton act which is how reckless driving is classified, and it could not be ticketed. It was defined as careless driving, which reads:" that a person operating a vehicle on a public highway shall drive it in a careful and prudent manner so as not to unduly or unreasonably endanger the life, limb, property or other rights of a person entitled to the use of the street or highway"; this does not include 'parking lot', and her constituent had no redress.

Proponents' Testimony:

Bob Garner, Bozeman, related the incident by saying the he was nearly run over by a small pick-up truck backing up at 20 mph in Blockbuster's parking lot. The only way he could save himself was to hold on to the back of the camper on the truck and run backwards, at the same speed as the truck, for about 20 feet, before the truck changed into a forward gear, all the time banging on the camper window to draw attention to himself. But the truck just drove off. Subsequently, the police ticketed the driver for reckless driving, and the city court found him guilty as charged. Six months later, he appealed to District Court and since the judge could not find him guilty of 'reckless' driving because 'willful and wanton' implied intent, he ruled that he was guilty of 'careless' driving. The defense attorney pointed out that the charge was 'reckless' and not 'careless', and 'careless' only applies when the offense takes place on a highway. He was then found not guilty because of the language in the statute even though the judge admitted he was clearly guilty of careless driving. **Bob Garner** further stated that in drafting the bill it should be made clear that it applied only to property like a parking lot used by the public, not private property.

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL wondered about the following scenario if this bill was passed: what if someone had a road going through his

property that then was used by the public, and he himself slid off it, could he then be charged with careless driving on his own property. **SEN. STONINGTON** answered she was no attorney but wondered who would charge him on his own land. **SEN. O'NEIL** stated that a wrecking truck driver could report the incident. **SEN. STONINGTON** found this example far-fetched and explained she could not address this question. **SEN. DAN HARRINGTON** told of how he once was hit at a McDonald's and there was not even an investigation, and he wondered if this bill would change that. **SEN. STONINGTON** allowed as to how it would since the charge of careless driving then would apply to parking lots, too. Currently, only 'reckless' driving encompasses both public highways and parking lots. **SEN. VICKI COCCHIARELLA** asked whether reckless driving could be charged on private property. **SEN. STONINGTON** answered that yes, the law does not distinguish between private property and public highways on charges of 'reckless' driving. **VICE-CHAIRMAN RIC HOLDEN** asked **Bob Garner** if he got hurt in the accident. **Bob Garner** replied that there was minimal injury, he sustained a sprained ankle, and he did not want to pursue a civil suit for damages; he did seek medical advice, though, and had acupuncture which took care of his problems over a period of a few months. **VICE-CHAIRMAN HOLDEN** asked if his attorney thought he had no recourse with regards to a personal injury claim since the ticket did not stick. **Bob Garner** stated that it did not affect any civil claim; he said his attorney concurred with the judge as far as the language of the law was concerned, saying he did rule accurately. The city judge had ruled that the driver was driving recklessly, but the district court judge did not agree. **VICE-CHAIRMAN HOLDEN** asked who had determined the speed of the truck. **Bob Garner** said it was a "guesstimate" by a witness who described the truck as the proverbial 'bat out of hell' because he came out so fast. **SEN. COCCHIARELLA** wanted to know who called the police, and **Mr. Garner** said employees of Blockbuster did. **SEN. COCCHIARELLA** then wanted to know if the police came without question to a private parking lot. **Bob Garner** explained that they came based on the complaint that there had been an accident in the parking lot. **SEN. COCCHIARELLA** asked whether the police issued the ticket right there or at a later time. **Bob Garner** answered that they went to the Law and Justice Center after the officer had questioned him, the driver, and the witness, and found, after checking the statutes, he could only charge him with reckless driving on that private property. He then issued the ticket. **SEN. COCCHIARELLA** then asked **VICE-CHAIRMAN HOLDEN** if this bill should not be heard in the Judiciary Committee. **VICE-CHAIR HOLDEN** stated that he could ask to have it referred to Judiciary if the committee members were not comfortable with it and said he would take this up again during executive action. **SEN.**

COCCHIARELLA wondered if this was the kind of issue usually dealt with in the Judiciary Committee of which is was a member. **VICE-CHAIRMAN HOLDEN** agreed. **SEN. GERALD PEASE** also felt this issue might belong in Judiciary because of the liability issue **SEN. O'NEIL** had brought up. **VICE-CHAIRMAN HOLDEN** repeated there would be discussion on this during executive action. **SEN. O'NEIL** wondered if **Mr. Garner** had trouble collecting from his insurance company since this incident took place on private property. **Bob Garner** answered nothing was precluded because there was no civil action since he was not interested in recovering any money.

Closing by Sponsor:

SEN. STONINGTON closed on SB 208.

{Tape : 1; Side : A; Approx. Time Counter : 18.6}

HEARING ON SB 225

Sponsor: **SEN. JACK WELLS, SD 14, Bozeman**

Proponents: none

Opponents: none

Opening Statement by Sponsor:

SEN. JACK WELLS, SD 14, Bozeman, said he proposed this bill after the changes made in licensing vehicles during the initiative that was passed last November. He said the license fee for vehicles is based on their age, and the way this is determined is by subtracting the model year from the current year. He explained that he had bought a 1994 travel trailer in 1993 and expected the license fee to go down in 1997, after paying the higher rate for 4 years as determined by law. He was surprised when he was charged the higher rate again and told, moreover, that his trailer was only three years old according to the above formula. He said in his case, that meant he had to pay the higher rate for 5 years, not four, and this glitch was the reason for this bill. He added one paragraph to the current statute which says that if the purchase year precedes the model year, then the purchase year is considered the model year for purposes of determining the registration fee. He said he initially meant for this to cover cars and light trucks because of the referendum passed last year, and later came to find out it included all vehicles as defined in

Section (1) and busses, Section (2) since they, too, are taxed depending on their age. He then summarized the fiscal note and said it would not affect the counties for 4 or 5 years, pointing to FY 2007 when there will be quite a few vehicles having passed the four-year mark which then will decrease potential revenue. He maintained this was not a tax cut but rather a correction establishing the intent and fairness of the law.

{Tape : 1; Side : B; Approx. Time Counter : 0.1}

Proponents' Testimony: none

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked if there was a proposal to reimburse counties and school district for the lost revenue.

SEN. WELLS said there was none; he explained that the intent of the law was to have taxes go down after 4 years, and it was an unfortunate windfall for the counties to have had that extra year at the higher rate only because it is possible to buy next year's model this year.

Closing by Sponsor:

SEN. WELLS, closing on SB 225 stated he would not be totally opposed to excluding trucks and busses from this bill if the committee felt the fiscal impact was too severe, mainly because in that category, getting next year's model was not as prevalent as in the car and light truck category. He also pointed out that there was nothing in his bill that dealt with second owners, and that he had considered amending the bill to provide for the second or third purchaser. He said it was entirely possible for the subsequent owner to be taxed at the old formula, by just looking at the model year and subtracting that from the current year, and in that case the counties would be losing less revenue.

VICE CHAIRMAN HOLDEN, noting that three committee members were not present, postponed executive action and adjourned the hearing.

ADJOURNMENT

Adjournment: 3:40 P.M.

SEN. ARNIE MOHL, Chairman

MARION MOOD, Secretary

AM/MM

EXHIBIT (his18aad)