

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 17, 2003 at 9 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: Rep. John Parker (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 242, 2/11/2003; HB 571,
2/11/2003; HB 578, 2/11/2003
Executive Action: HB 140; HB 500; HB 553

HEARING ON HB 242

Sponsor: REP. CHRISTOPHER HARRIS, HD 30, Bozeman

Opening Statement by Sponsor:

REP. HARRIS opened on HB 242, stating that this bill would prohibit possession of unsealed alcoholic beverage containers in the passenger area of a motor vehicle which is on a street, road, or highway. He stated that this bill would provide an immediate effective date.

He asked whether the Committee would feel comfortable if "their kid" was driving North on a public road and a drunk driver were heading South, on the same road, at 70 miles per hour. He posed that if Committee members would not feel comfortable about that, then they should pass this bill.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 87}

Proponents' Testimony:

Julie Ippolito, Mothers Against Drunk Drivers (MADD), Helena, supported HB 242. She stated that Montana is one of only five States without an open container law. She felt this fact reduces Montana's credibility. She stated that the presence of open containers in a vehicle increases the likelihood that the driver may drink. Permitting open containers in vehicles or drinking while riding is contrary to the spirit of Montana's resolve to enforce DUI laws. She stated that studies estimate that \$5.5 million would be transferred this year from the State's Federal Highway Construction fund into the State's Highway Safety Program because of Montana's failure to have an open container law.

{Tape: 1; Side: A; Approx. Time Counter: 88 - 139}

EXHIBIT (juh35a01)

EXHIBIT (juh35a02)

EXHIBIT (juh35a03)

EXHIBIT (juh35a04)

Opponents' Testimony:

Jack Gunderson, opposed HB 242. He stated that he cannot believe how poorly this bill is written. He felt that you cannot legislate personal responsibility or judgment. He stated he drinks beer and has since the 1930's without a problem or a DUI.

He thinks having a beer while driving keeps him awake when driving a long ways and does not impair his judgment. He stated that the way he reads the bill, he could get in trouble with a beer in the back of his car, if the seal were broken. He stated that the driving in Montana is much different than in other parts of the nation. He thinks that having a beer on the way home from work is a good thing but if he were stopped, he would be labeled as chemically dependent.

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Rick Dean, Local Rancher, opposed HB 242 stating that we are not a bunch of sheep. He felt that there is no more danger in drinking a beer while driving than someone eating or talking on the cell phone while driving.

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John Iverson, opposed HB 242. He shared a story. Last weekend, he and some friends went skiing at Discovery. After skiing all day, they stopped at the gas station and got beer and hot dogs for dinner. The driver got a gatorade and a hot dog. The driver did not have one sip of alcohol. The others drank their beer and ate their hot dogs. He emphasized that if a driver is drunk while driving, they would be breaking the law. He felt that this bill will have no affect on that sort of driver, but will merely punish law-abiding citizens. He stated that if he had been pulled over with an open container, he would be labeled an alcoholic, and forced to go to a drug and alcohol counselor. He felt that MADD is mad that prohibition didn't pan out for them. He emphasized that MADD is enforcing prohibition de facto; instead of banning alcohol, they are banning everything associated with alcohol. He stated that it is getting to the point where a guy will only get to drink in his closet in his home. He stated this bill will have the unintended consequence of causing a lot of littering as people toss the evidence out the window. He felt that it is ironic that MADD is upset about the possible transfer of \$5.6 million being transferred to the 402 plan since that is an alcohol-education fund.

{Tape: 1; Side: A; Approx. Time Counter: 209 - 404}

Informational Testimony:

Dave Galt, Director of DOT, stated that he was available to answer any questions on the transfer of highway funds.

Questions from Committee Members and Responses:

REP. RICE mentioned the "Colorado Project." She stated that last week, Colorado turned down a series of DUI bills, such as the .08 and open container laws. She explained that Colorado felt that they would win under the 10th amendment, and that they would not lose their federal funding of nearly one quarter of a billion dollars. **Mr. Galt** doubted whether it was a quarter billion. He stresses that the most that states get is two percent. He stressed that Montana's federal money for the .08 will be lost, not transferred, if the bill is not passed. He emphasized it starts at \$3 million and works up to \$15 million. He stated he was hired to build a program based on the total money available and when money is transferred, projects need to get pulled.

REP. RICE asked if she were driving down the street and her husband was drinking a beer, how her driving would be impaired. **Ms. Ippolito** responded it would not, but the goal of the bill limits some of the freedoms of law-abiding citizens in order to save lives. **REP. EVERETT** asked about the language in the bill pertaining to one sixth of an ounce of alcohol. **Mr. Galt** responded that language was inserted in the bill in order to protect people who are up picking up beer cans along the side of the road.

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REP. CLARK commented on the funds being transferred from the highway construction to the highway traffic safety fund. He asked whether there was a loss of federal funding or just a redirection of money. **Mr. Galt** responded that on this particular bill, it is a net wash--a transfer of \$5.5 million from the construction fund to the education fund. **REP. CLARK** asked whether there was any construction involved in the safety program. **Mr. Galt** stated there is some construction in the safety program. He stated it is called the Hazard Elimination Program and does things like guard rails, turn bays, signing, widening, and rumble strips. **REP. NEWMAN** asked about some of the differences between this bill and a similar bill in the Senate. **REP. HARRIS** responded that HB 242 applies to streets and roads, whereas the other bill only applies to highways. **Mr. Galt** responded that the differences between the House and Senate bills are as follows: HB 242 does not allow an open container in the vehicle; The Senate bill allows an open container in a locked glove box, or in the area behind the seat if the vehicle does not have a trunk; the House bill fine is \$500, whereas the Senate

bill is a \$100 fine; the House bill mandates treatment whereas the Senate bill does not.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 83}

REP. THOMAS asked whether the rewritten Senate Bill conforms with the federal requirements. **Mr. Galt** responded that it does. **REP. GALLUS** asked Christy Blazer about the percentage of alcohol in a beer. **Ms. Blazer** responded that the percentage of alcohol in a beer is 3.2 percent.

CHAIRMAN SHOCKLEY asked how the DOT is spending the transfer money now. **Mr. Galt** responded that in 2003, DOT created some contracts for additional enforcement of impaired driving. He stated most of the contracts are for \$10,000 apiece. DOT put another \$150,000 into the fund. DOT allocated \$3.9 million to be put into the mobile data radio program spearheaded by the Montana Highway Patrol. DOT also sponsored \$500,000 to the Community Safe Kid Programs. DOT put \$8 million of the transfer money into the Hazard Elimination Program. He summarized that the bulk of the transfer money went into Hazard Elimination, including road widening, rumble strips, turnarounds, and signing. **CHAIRMAN SHOCKLEY** asked what amount of money Montana has to match with the feds. **Mr. Galt** stated it is 13 percent. **CHAIRMAN SHOCKLEY** added that with segregated funds, DOT gets 100 percent of the money without having to match it. **Mr. Galt** stated that is correct. **CHAIRMAN SHOCKLEY** asked whether the segregated money could be spent on probation officers to trace people who drink and drive. **Mr. Galt** responded that it could be used for that.

Closing by Sponsor:

REP. HARRIS closed, stating that although the opponents were eloquent in their testimonies, he stressed that the greater good is to send a loud and clear message that drinking and driving will no longer be tolerated in Montana.

{Tape: 1; Side: B; Approx. Time Counter: 84 - 172}

HEARING ON HB 578

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor

{Tape: 1; Side: B; Approx. Time Counter: 173 - 176}

Opening Statement by Sponsor:

REP. SHOCKLEY opened on HB 571. He explained that this bill is an act requiring local probation officers to give primary attention to misdemeanor offenders convicted under Section 61-8-401 and 406; and amending Section 46-23-1005. He commented that local governments do not have enough money to pay for probation officers to track misdemeanor alcohol abusers. He stated that this bill would fit into the federal scheme which would allow Montana to fund enforcement at 100 percent. This means that Montana would get all of the \$5.6 million without having to put out a nickel.

{Tape: 1; Side: B; Approx. Time Counter: 178 - 229}

Proponents' Testimony:

Jim Smith, Montana County Attorney's Association (Association), supported HB 578. He stated that this bill holds a promise of breaking a negative behavior before it begins a pattern.

Robert Throessel, Montana Magistrates Association, supported HB 578. He stated that this bill is a creative way of dealing with the problem and would give the opportunity to craft a sentence to help the offender and society.

Mike Barrett, Poet, Former Town Councilman, and Professional Letter Writer, Helena, supported HB 578. He stated that pervasive energy affects driving. He stated that 100 percent control of non-violence has never been successful.

Christy Blazer, Montana Beer and Wine Wholesalers' Association, supported HB 578, stating that they have always maintained responsible consumption of their products. She emphasized this bill would ensure public safety, and that the bill's intent of intervention at the front end would be effective.

{Tape: 1; Side: B; Approx. Time Counter: 230 - 238}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NEWMAN asked how many counties have permissive probation offices. **REP. SHOCKLEY** responded that the only one he knows of is Missoula. He stated his understanding was that if you already have a funded position, you cannot use that money. It cannot replace money already being spent for that purpose. **REP. NEWMAN** stated that in existing law, in cases of partner assault or stalking, the offender is required to pay the costs of supervision. He asked whether the Chairman would consider an amendment requiring the offender to pay, if able, the costs of intervention. **CHAIRMAN SHOCKLEY** felt that was a great idea.

Closing by Sponsor:

REP. SHOCKLEY closed on HB 578. He stated he would appreciate the Committee giving this bill strong thought. He felt that everyone agreed that we do not enforce the laws we have. He stated this bill would solve the problem. He emphasized that the problem is that a choice must be made to either vote for HB 578, which would enforce the law we have, or pass the federal open container law. If the money is available, HB 578 can be funded with HB 2.

{Tape: 1; Side: B; Approx. Time Counter: 239 - 396}

EXECUTIVE ACTION ON HB 140

Motion: **REP. NOENNIG** moved that HB 140 DO PASS.

Motion/Vote: **REP. GUTSCHE** moved that HB 140 BE TABLED. Motion carried 13-0, by voice vote. (REPS. LANGE, GALLUS, HARRIS and FACEY stepped out of the room.)

EXECUTIVE ACTION ON HB 500

Motion: **REP. NOENNIG** moved that HB 500 DO PASS.

Motion/Vote: **REP. GUTSCHE** moved that HB 500 BE TABLED. Motion carried 13-0, by voice vote.

EXECUTIVE ACTION ON HB 553

Motion: REP. GUTSCHE moved that HB 553 DO PASS.

Motion: REP. NOENNIG moved that HB 553 BE AMENDED.

Discussion:

John MacMaster explained the amendments. **REP. CLARK** stated that, even with the amendments, this is a flawed bill. The Committee discussed countless changes which the bill would need in order to pass. He questioned whether a subcommittee would be in order.

Vote: Motion that HB 553 BE AMENDED carried, 13-1, by voice vote, with REP. SALES voting no. (REP. GALLUS came back in the room.)

Motion: REP. STOKER moved that HB 553 DO PASS AS AMENDED.

Motion: REP. RASER moved that HB 553 BE AMENDED.

Discussion:

REP. RASER explained her amendment to Page 1, Line 30 of the bill regarding adverse weather.

Vote: Motion that HB 553 BE AMENDED carried 11-7, by roll call vote, with REPS. EVERETT, LANGE, LASZLOFFY, RICE, SALES, STOKER, and THOMAS voting no. (Raser Amendment) (REPS. LASZLOFFY and PARKER voted by Vice Chairman voice proxy. REPS. LANGE, FACEY and Harris returned.)

Substitute Motion: REP. STOKER moved that HB 553 BE AMENDED. (Stoker amendment)

Discussion:

REP. STOKER suggested an amendment regarding the section on Page 2, Line 26 regarding shelter and "treatment."

Vote: Motion HB 553 BE AMENDED carried 16-2, by voice vote, with REPS. EVERETT, and SALES voting no. (Stoker amendment) (REPS. PARKER and LASZLOFFY voted by Vice Chairmen's voice proxy.)

Motion: REP. GUTSCHE moved that HB 553 DO PASS AS AMENDED.

Motion: REP. NOENNIG moved that HB 553 BE AMENDED.

Discussion:

REP. NOENNIG explained his amendment would delete Lines 19-20 on Page 2 regarding the liability of the owner for damages. He stated that it is already covered under the restitution statute. The Committee felt concerned that this very important bill is so flawed and if passed as is, there would be many unintended consequences.

Discussion:

Vote: Motion that HB 553 BE AMENDED carried 14-1, by voice vote, (members present) with REP. SALES voting no.

Motion: REP. NOENNIG moved that HB 553 DO PASS AS AMENDED.

Discussion:

REP. CLARK stated that the problems of the bill start with "What is a pet?" to "who knows what." He felt strongly that the executive action should be postponed, and the bill fixed, or he would have to vote "no." REP. HARRIS suggested a subcommittee be appointed to hash this bill out. REP. RASER offered to work on a subcommittee. REP. LANGE concurred 100 percent with REP. CLARK. REP. EVERETT stated he has no problem with increased penalties but both he and REP. SALES felt the bill was way too subjective. REP. SALES stated he keeps his horses lean but there are people who may feel he is under-feeding them. REP. MALCOLM felt the Section on "clean potable water" needs work. REP. RASER stated that in child abuse, you can dictate what is proper punishment, and proper childcare. She felt that there is a difference between livestock and pets and that there is a difference in types of care required. She stated that we can, and should, recognize what is abuse of an animal. REP. SALES stated there is a big difference between animal and child abuse. He wished to go on record that he elevates humans higher than animals, and the treatment of humans is different than animals.

Vote: Motion to DO PASS HB 553 AS AMENDED failed 9-9, by roll call vote, with REPS. HARRIS, FACEY, GALLUS, PARKER, RASER, NOENNIG, GUTSCHE, NEWMAN and SHOCKLEY voting aye. (REPS. PARKER voted by voice proxy; LASZLOFFY voted by written proxy.)

Motion/Vote: REP. RICE moved that HB 553 BE TABLED. Motion carried 10-8, by voice vote, with REPS. GALLUS, FACEY, GUTSCHE, HARRIS, NEWMAN, NOENNIG, PARKER, and RASER voting no. (REPS. LASZLOFFY and PARKER voted by voice proxy.)

{Tape: 2; Side: B; Approx. Time Counter: 1 - 209}

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh35aad)