MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 8, 2005 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jeff Mangan (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: SB 351, SB 344, SB 319, 2/4/2005
Executive Action: SB 21, SB 316, SB 352

CHAIRMAN WHEAT opened the hearing with general housekeeping issues.

HEARING ON SB 351

Opening Statement by Sponsor:

SEN. DUANE GRIMES (R), SD 39, opened the hearing on **SB 351,** Eliminate unisex insurance law.

SEN. GRIMES attested that this bill is simple in intent. This bill deals with the repealer of unisex law that is in the codes. He commented that in the elections, this was a topic in the auditor race. He stated that many individuals approached him in regard to this law. He does not feel that the unisex law that is present right now is a positive thing. Those individuals in the insurance field feel that this is onerous to women. He provided a document to the Committee. This document was obtained on-line and serves as a rate calculator.

EXHIBIT(jus31a01)

SEN. GRIMES explained this document to the Committee. He directed the Committee to several areas of the document. He stated that due to the statute right now, Montana is the only state in the Nation in which women's insurance premiums are increased. This is very discriminatory to women in Montana. He stated, "I felt I needed to bring this bill forward due to the overwhelming public sentiment in regard to this bill."

SEN. GRIMES claimed that there is a Virginia Law Review on Gender Equality. He discussed the issue of gender equality in this review and explained some results of the implementation of these types of laws. He read the conclusion from the report which stated that the National Organization for Women believes that unisex rates are directly detrimental on women.

SEN. GRIMES concluded by stating why this bill is so important, especially for young women looking for insurance.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 15.8}

Proponents' Testimony:

Greg Van Horssen, State Farm Insurance, stands in support of SB 351. He claimed that State Farm Insurance supports the concept behind this bill. This has been a heavily debated issue over the years. Gender equality is an important issue. He wished to speak specifically about auto insurance and how unisex rating

affects this. He stated that companies do not think unisex rating is fair.

Don Allen, Montana Association of Insurance & Financial Advisors, attested that this is always a topic of discussion. He stated that from a business standpoint, this is not a good idea. They would like the Committee to take a serious look at this bill.

{Tape: 1; Side: A; Approx. Time Counter: 15.8 - 24.7}

Opponents' Testimony:

Linda Gryczan, Montana Women's Lobby, attested that this is a serious pocketbook issue for women. She understands **SEN. GRIME's** intent. However, the language of the bill will not benefit women in the manner he speaks of. She commented that women will pay approximately $22,000 over a reproductive lifetime. She also provided written testimony from Jane Lopp, an insurance adjuster.

EXHIBIT(jus31a02)

Joy Bruck, Volunteer/Advocate, AARP Montana, attested that AARP is opposed to SB 351, for fear that it will lead to gender discrimination. She stated that women are required to either pay higher premiums or accept reduced benefits. She urges the Committee to table this bill. She also provided written testimony.

EXHIBIT(jus31a03)

Jacob Thielen, Helena High School Student, claimed that he is a safe, cautious driver. He can afford to pay his auto insurance with a part-time job. However, if this bill is passed, his premiums will be increased. He attested that passage of this bill will affect auto premium rates to many individuals in Montana. He urged the Committee to kill SB 351.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 3.9}

Allison James, concerned citizen, spoke about the cost of pregnancy insurance. The passage of this bill will increase the cost of medical needs in the case of pregnancy. She urged the Committee to vote no on SB 351. She also provided written testimony.

EXHIBIT(jus31a04)

Kim Abbott, Advocate, Working For Equality and Economic Liberation (WEEL), stands in support of the families of Ms.

James. Those families wishing to raise a family would be profoundly, negatively affected by the passage of this bill. She stated that WEEL strongly opposes this bill.

Tylynn Gordon, Deputy State Auditor, representing John Morrison and the State Auditor's Office, stated that the State Auditor's Office strongly opposes the premise of this bill. She claimed that SB 351 will adversely affect insurance benefits of Montanans. She attested that pregnancy will result in medical debt rather than joy and auto insurance for young men will increase. She also provided written testimony to the Committee.

EXHIBIT(jus31a05)

Scott Crichton, Executive Director, American Civil Liberties Union of Montana (ACLU), attested that there are constitutional concerns as well as social and economic concerns surrounding this bill. He claimed that Title 7 of the Constitution would be violated if there are lowered monthly insurance rates. He stated that there would be unlawful sex discrimination. He hopes the Committee does not spend too much time on this bill. He provided a document to the Committee in regard to his constitutional concerns.

EXHIBIT(jus31a06)

Donci Bardash, Helena resident, shared a personal story of how this would have affected her if she was pregnant at the time of passage of SB 351. She stated that if she had to pay for her pregnancy out of her pocket it would have exceeded $3,000. She urged the Committee to oppose this bill.

Kate Cholewa, Montana Coalition Against Domestic & Sexual Violence (MCADSV), stated that her organization has historically opposed this bill. Women endure economic hardships when extricating themselves from violent relationships. She spoke for MCADSV when urging the Committee to oppose this bill.

Terry Kendrick, Montana Women Vote Coalition, stood in opposition to SB 351.

{Tape: 1; Side: B; Approx. Time Counter: 3.9 - 16.5}

Informational Testimony:

Jacqueline Lenmark, American Insurance Association and the American Council of Life Insurers, attested that she has worked on this issue since 1937. She has told her clients that they should not overturn this law; it is a public policy decision of

the State. She added that the pricing information can be more adequate and therefore increase the competition. She discussed pregnancy riders and their involvement if this bill passes.

{Tape: 1; Side: B; Approx. Time Counter: 16.5 - 21.7}

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. GRIMES remarked that he does not agree with the opponents' claims. He stated that he is not sure some of the opponents understand pricing. This is an issue of fairness. He stated, "Montana is currently a nightmare for insurance producers". He added that he believes this is a decision for the legislature, not the Auditor's Office.

SEN. McGEE assumed the role of Chairman; **SEN. WHEAT** sponsored the next bill.

HEARING ON SB 344

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 344,** Revise laws on punitive damages.

SEN. WHEAT wished to amend the statute dealing with punitive damages. He hoped to remove the cap from those accidents involving drugs and alcohol. He also hopes to divide the punitive damage figure. He would like the victim to receive half, and the Crime Victim's Compensation Fund through the State to receive the other half.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 6.3}

Proponents' Testimony:

Al Smith, Montana Trial Lawyers Association (MTLA), stated that they do support this bill. He provided some background information on punitive damages. He directed the Committee to specific areas of the bill. He attested that there are not very many cases that involve punitive damages in Montana. He reminded the Committee that this is a public policy decision; individuals under the influence of drugs and/or alcohol do not deserve that protection. He added that there are a number of States that do have this exception; it makes sense.

Jacqueline Lenmark, American Insurance Association and on behalf of Greg Van Horssen, State Farm Insurance, declared their support for SB 344. It is good public policy.

{Tape: 2; Side: A; Approx. Time Counter: 6.3 - 14.3}

Opponents' Testimony:

Barry "Spook" Stang, Executive Vice President, Montana Motor Carriers Association, stated that they agree with the part of this bill that divides the compensation. He attested that they are required to perform drug and alcohol testing pursuant to federal law. However, they cannot test their drivers everyday before they get into a truck. The companies are going to get stuck with these bills when it is the employee that is being irresponsible.

Ken Crippen, General Counsel, Watkins and Shepard Trucking, expressed concern with the language in regard to the first part of this bill. However, he wished to convey that Watkins and Shepard Trucking is very concerned with the issue of drug and alcohol use. He emphasized his concern in regard to drug abuse. He feels that the language should be changed to address this problem.

Gary Forrester, Montana Contractors Association, attested that the passage of this bill would put too much liability on companies. He asked the Committee for a do not pass.

Barbara Ranf, Montana Chamber of Commerce, stated that the previous opponents have provided good examples of why this is a bad bill. She feels that this would put too much liability on the employer, when the employee is to blame.

{Tape: 2; Side: A; Approx. Time Counter: 14.3 - 24.4}

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Discussion:

SEN. PERRY stated that while reading the bill initially, it appears that it targets the driver. However, after listening to opponents, it seems that it targets the employer rather than the employee. He wondered if the intent is to actually target those employers with deep pockets or high liability.

SEN. WHEAT attested that is not the intent of the bill.

SEN. PERRY asked **SEN. WHEAT** to expand on that topic.

SEN. WHEAT claimed that the intent is to punish those individuals that act in the wrong.

SEN. PERRY wondered why they would need to remove the cap; there are very few people to which the cap would apply.

SEN. WHEAT stated that from 1990 to the present, there have been 21 cases that involved a DUI and punitive damages were awarded. There is not a huge amount of these cases. Only one of those required compensation from the employer.

SEN. PERRY asked for an explanation on attorney fees if the cap is removed.

SEN. WHEAT attested that it is not about the attorney fees; the issue is punishing the individual who is in the wrong.

SEN. CROMLEY referred to Page 1, Line 24. He wondered about the language stating that the cap does not apply to everyone.

SEN. WHEAT said that, to his recollection, it does not apply to class-action suits.

SEN. CROMLEY provided an example and asked for clarification.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 4.8}

Closing by Sponsor:

SEN. WHEAT thanked the Committee for a good hearing. He reminded **SEN. PERRY** that he is not out to get the trucking companies. His goal is not to go after an employer, unless the employer is aware of what is going on. This bill is simply trying to punish those individuals abusing drugs and alcohol behind the wheel.

{Tape: 2; Side: B; Approx. Time Counter: 4.8 - 7.1}

SEN. WHEAT resumed the Chair. The Committee took a five-minute break.

HEARING ON SB 319

Opening Statement by Sponsor:

SEN. JON ELLINGSON (D), SD 49, opened the hearing on **SB 319,** Public financing for supreme court candidates.

SEN. ELLINGSON spoke about the judicial responsibilities of judges and candidates. He commented on the Supreme Court Justice Campaign of 2000 and provided some figures to the Committee on how much money was spent by candidates in that campaign. He attested that SB 319 is a solution to the problem. He provided a quote by a U.S. Supreme Court Justice. This bill would protect impartiality and ensure neutrality. He said that the issue of impartiality is already a problem in Montana. He added that there is a problem of perception as well. He provided the Committee with three different documents: 1) a report from the American Bar Association, 2) a document from Montana Citizens' League in regard to public funding for judicial elections, and 3) a letter from Judge Linda McGee.

EXHIBIT(jus31a07)
EXHIBIT(jus31a08)
EXHIBIT(jus31a09)

SEN. ELLINGSON read some information from Exhibit #8 and explained it to the Committee. He also provided a DVD from North Carolina for viewing to the Committee.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 2.9}

SEN. ELLINGSON expressed a couple of comments on the DVD. He wished to point out the freedom that it gave the candidates. They could focus on candidates' qualifications and allow them to go out and meet their constituents. The second comment he had was that this opens up the candidacy to all qualified individuals, not just those individuals with money.

SEN. ELLINGSON referred to several portions of the bill and discussed them with the Committee. He spoke about issues such as funding caps, qualifications, potential penalties, and the fiscal note.

{Tape: 3; Side: A; Approx. Time Counter: 2.9 - 12.7}

Proponents' Testimony:

Gordon Bennett, on his own behalf, attested that this is all about an independent judiciary. He provided some background

information on the establishment of the independent judiciary. He provided historical data on other judicial issues as well. He stated that 68% of the public believe that money influences the judicial system. He touched on the Buckley v Valejo Decision and how it affects this bill.

{Tape: 3; Side: A; Approx. Time Counter: 12.7 - 23}

Mr. Bennett stated that in the 1980's and 1990's there were special interest groups that studied the matter of judicial judges and courts. He spoke about several court decisions and provided some statistics. He emphasized the importance of this Committee taking a hard look at this issue.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 4}

John Sheehy, retired Justice of the Montana Supreme Court, stated that he strongly favors this concept. He spoke about the proposals of 1971. It is important to preserve the independence of Judges. The effort to buy courts must be stopped.

John Harrison, retired Justice of the Montana Supreme Court, stated that the issue here is money and what it can do to the justice system. He claimed that he understands how much money it costs to run for office. It is time to run an independent judicial system.

Samantha Sanchez, Justice at Stake, represents herself as well as the organization. She expressed concern for the judicial court system. She hopes they can keep politics out of the Judicial Courts. She provided some information to the Committee.

EXHIBIT(jus31a10)

{Tape: 3; Side: B; Approx. Time Counter: 4 - 21}

Neal Haight, retired Attorney, testified on his own behalf. He attested that the Office of Judge & Justice has a different constituency than the usual office. He explained the difference in the constituencies.

Rita Blouke, President, League of Women Voters, expressed strong support for SB 319. She expressed their support for campaign finance reform. She explained the disadvantages of campaigning without significant funding. She stated that it would cost the average voter approximately $1 a year. She posed the question, "Who wouldn't want to pay $1 a year to support impartiality?" She implored the Committee to support fairness, impartiality and independence. Vote yes to SB 319.

Opponents' Testimony: None.

Informational Testimony:

Betsy Brandborg, Montana Bar Association, explained that there is a commission of the Montana Supreme Court called the Commission on the Code of Judicial Conduct. This is on Page 75 of the Lawyers Desk Book. She attested that they are rewriting the rules for judicial conduct. This is done to protect the integrity of the judicial branch in campaign financing.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 2}

Jim McKeon, Department of Revenue, stated that he is here to answer any questions regarding the application of the credit. They had also spoken with **SEN. ELLINGSON** about some possible amendments to this bill. He spoke specifically about Sections 26-29.

Gordy Higgins, Commissioner of Political Practices, stated that his office will adopt rules and implement provisions. He is available to answer questions.

Questions from Committee Members and Responses:

SEN. CROMLEY wondered if **SEN. ELLINGSON** had a chance to look at the proposed amendments by the Department of Revenue and asked if they are okay.

SEN. ELLINGSON stated that he has seen them and they do not change the intent of the bill; they are technical amendments.

SEN. O'NEIL wondered if a source is able to contribute to a candidate prior to the primary race.

SEN. ELLINGSON claimed that a candidate cannot take money from two sources; it does not matter when it was provided.

SEN. O'NEIL questioned if it is a year before the campaign begins.

SEN. ELLINGSON stated he believes there is an absolute prohibition.

SEN. MANGAN wondered what the limits in North Carolina were and inquired if they were similar to his proposed limits.

SEN. ELLINGSON clarified that it was the amounts available that he was referring to. He expressed concern in their experience

and what a credible amount was. He did not have specific numbers for North Carolina.

{Tape: 4; Side: A; Approx. Time Counter: 2 - 7}

SEN. MANGAN spoke about some monetary figures and asked **SEN. ELLINGSON** if that seems to be an appropriate amount.

SEN. ELLINGSON stated that it probably was an aberration in the feature that provides for matching funding over the public amount.

SEN. MANGAN spoke about the issue in North Carolina. He stated that they heard a lot of positive comments. He inquired if there were any negative responses from that experience.

SEN. ELLINGSON attested that everything they know is positive.

SEN. McGEE asked if there was a fiscal note for this bill.

SEN. ELLINGSON stated that one is coming today.

SEN. McGEE desired to know what would happen if they exceed the amount on the fiscal note.

SEN. ELLINGSON attested that the only way to utilize this dollar amount is by trying it out.

{Tape: 4; Side: A; Approx. Time Counter: 7 - 11}

SEN. McGEE directed the sponsor to Page 15 and wondered if this bill could possibly result in State debt.

SEN. ELLINGSON stated that there may need to be a 2/3 vote on this action. This might necessitate some research; he would look into it.

SEN. McGEE asked him about the contribution of $5 from a certain number of individuals.

SEN. ELLINGSON attested that Section 4 deals with that. He expanded on this area.

SEN. McGEE clarified that this figure will be reportable.

SEN. ELLINGSON agreed that they would be.

SEN. McGEE asked Commissioner Higgins if there were political action committees that made direct contributions to Justice

candidates in 2000. **Commissioner Higgins** referred the question to Dulcy Hubbert. **Ms. Hubbert** stated that there were such organizations that did in fact contribute.

SEN. McGEE wished to clarify that if this bill passes, a candidate would not be able to accept contributions from a private organization. **Ms. Hubbert** agreed that is correct.

SEN. McGEE also wondered if a group would be able to contribute to a political action committee for the purposes of advertising. **Ms. Hubbert** stated she believes that is correct. She directed him to Section 14 which deals with independent expenditures.

SEN. McGEE wondered how effective this could be given the idea that organizations would still be able to contribute to a candidate.

SEN. ELLINGSON stated he hopes that outside organizations will not contribute to an active candidate. He provided some information on court cases which would impact this bill. He agreed that their problems will not be solved entirely by the passage of SB 319.

{Tape: 4; Side: A; Approx. Time Counter: 11 - 18.7}

SEN. McGEE asked Mr. Bennett about the public perception. **Mr. Bennett** agreed that this will not cure everything. He does believe that it will help with the problem of the public perception of contributions to specific candidates.

SEN. McGEE presented the example of McCain v Finegold. He wondered if an individual is able to campaign against somebody they don't like, even though they cannot contribute to somebody they do like. **Mr. Bennett** attested that an individual cannot directly support a candidate.

SEN. PERRY asked Jim McKeon about Page 17, Section 29. He inquired about the issue of tax credit. **Mr. McKeon** spoke about Title 15, Chapter 31 and explained tax credits as it relates to this section.

SEN. MANGAN wondered if there is a potential problem with individuals accessing the public fund of contributions in a campaign race.

SEN. ELLINGSON stated that he did not believe there was a problem. When a company makes a contribution, they do not specify who it is for. Therefore, it is a contribution to a public financing fund.

{Tape: 4; Side: A; Approx. Time Counter: 18.7 - 25.3}

SEN. PERRY wondered if Mr. Bennett favors the system at the national level in which the President appoints Justices and the Senate approves them. **Mr. Bennett** attested that a nationwide election for this position would be far too complicated. However, there is area for abuse. He stressed the importance of an independent judiciary. **SEN. PERRY** asked Mr. Bennett if the political aspects would be eliminated if the Governor appointed the Justices just as the President does at the national level. **Mr. Bennett** stated, "When you are dealing with money and political power, it is impossible to make it perfect." He discussed the options regarding appointments and elections. He stated that the State of Montana is not going to give up the process of elections. He does not see that happening.

Closing by Sponsor:

SEN. ELLINGSON stated that this is an important issue and closed the hearing on SB 319.

EXECUTIVE ACTION ON SB 21

Motion: SEN. SHOCKLEY moved that SB 21 DO PASS.

Discussion:

Valencia Lane presented an amendment to SB 21.

EXHIBIT(jus31a11)

Motion/Vote: SEN. WHEAT moved that AMENDMENT SB002101.ajm BE ADOPTED. Motion carried unanimously. SEN. ELLINGSON voted by proxy.

Motion: SEN. SHOCKLEY moved that SB 21 DO PASS AS AMENDED.

Motion: SEN. CROMLEY moved that a CONCEPTUAL AMENDMENT BE ADOPTED.

Discussion: SEN. CROMLEY explained that a section should be added to establish the effective date as July 1, 2005.

Vote: Motion carried unanimously. SEN. ELLINGSON voted by proxy.

Motion: SEN. SHOCKLEY moved that SB 21 DO PASS AS AMENDED.

Discussion: **Ms. Lane** discussed the language surrounding the applicability date. She wondered if they wanted to change the language. Her advise was to change it to their normal drafting.

EXHIBIT(jus31a12)

SEN. WHEAT asked Mr. Melby if he had any problems with the language regarding malpractice claims. **Mr. Melby** stated that they do not have any problems with that.

Motion/Vote: **SEN. WHEAT moved that A CONCEPTUAL AMENDMENT BE ADOPTED. Motion carried unanimously. SEN. ELLINGSON voted by proxy.**

Motion/Vote: **SEN. SHOCKLEY moved that SB 21 DO PASS AS AMENDED. Motion carried unanimously.**

{Tape: 4; Side: B; Approx. Time Counter: 0 - 10.3}

EXECUTIVE ACTION ON SB 316

Motion: **SEN. CROMLEY moved that SB 316 DO PASS.**

Discussion: **SEN. McGEE** offered a potential amendment that he would like to discuss.

EXHIBIT(jus31a13)

Motion/Vote: **SEN. MCGEE moved AMENDMENT SB035201.avl. Motion carried unanimously. SEN. ELLINGSON voted by proxy.**

Motion/Vote: **SEN. SHOCKLEY moved that SB 316 DO PASS AS AMENDED. Motion carried unanimously. SEN. ELLINGSON voted by proxy.**

EXECUTIVE ACTION ON SB 352

Motion: **SEN. CROMLEY moved that SB 352 DO PASS.**

Motion: **SEN. MCGEE moved that AMENDMENT SB035201.avl BE ADOPTED.**

EXHIBIT(jus31a14)

SEN. McGEE explained how the bill would be affected by this amendment.

Vote: Motion carried unanimously. SEN. ELLINGSON voted by proxy.

Motion: SEN. SHOCKLEY moved that SB 352 DO PASS AS AMENDED.

Discussion: SEN. CROMLEY commented that he supports this bill. He believes there is a slight flaw to it. However, in the interest of time he will vote yes.

SEN. WHEAT asked Mr. Melby if he spoke with **SEN. CROMLEY** in regard to his concerns. **Mr. Melby** stated that he had not spoken to **SEN. CROMLEY.** He stated that they feel that the use of the evidence in a mediation is different than in a court. **SEN. WHEAT** asked Mr. Melby if the Montana Medical Association (MMA) is okay with this language. **Mr. Melby** stated that they are.

Vote: Motion carried unanimously. SEN. ELLINGSON voted by proxy.

{Tape: 4; Side: B; Approx. Time Counter: 10.3 - 16.9}

There were two additional exhibits in opposition to SB 351.

EXHIBIT(jus31a15)
EXHIBIT(jus31a16)

ADJOURNMENT

Adjournment: 11:42 A.M.

_____
SEN. MIKE WHEAT, Chairman

_____
MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT(jus31aad0.PDF)