

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 23, 2005 at 9:07
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. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jon Ellingson (D)
Sen. Jeff Mangan (D)
Sen. Lynda Moss (D)
Sen. Gerald Pease (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:

Executive Action: HB 331; HB 385; HB 304; HB 476; HB
611; HB 721; HB 356

EXECUTIVE ACTION ON HB 331

Motion: SEN. JESSE LASLOVICH, SD 43, moved that HB 331 BE CONCURRED IN.

Motion/Vote: SEN. MICHAEL WHEAT, SD 32, moved the approval of amendment #HB033101.apm. Motion carried on a unanimous voice vote. SENATORS PEASE, MANGAN, ELLINGSON, and MOSS voted aye by proxy.

EXHIBIT(jus64a01)

{Tape: 1; Side: A; Approx. Time Counter: 3.6 - 10.1}

Motion: SEN. WHEAT moved the approval of amendment #HB033110.apm.

EXHIBIT(jus64a02)

Discussion: SEN. WHEAT said that the amendment exempts the risk retention groups and professional malpractice insurance carriers from the joint underwriting association (JUS).

SEN. DANIEL MCGEE, SD 29, opposed the creation of a JUA and the amendment. He said that the amendment made HB 331 more exclusionary, and he questioned why the Legislature would want to exclude professional malpractice insurance and premiums written for risk retention groups.

Mona Jamison, The Doctors Company, said that when criteria is focused on cost, there has to be that likelihood that, as the result of the cost or unavailability, there will be no providers providing insurance. The Doctors Company will still be in the state selling insurance. Because The Doctors Company insurance has been deemed high, that cost would have triggered the bill. There is also an assessment on the members of the JUA. Those costs will be passed on to the policyholders; i.e., the physicians. Medical malpractice (med-mal) rates then increase even higher. That is why The Doctors Company has asked that The word "cost" be stricken from HB 331 or, at least, that The Doctors' Company get the exclusion because it becomes a disincentive for the two companies that are still in the state selling med-mal insurance.

{Tape: 1; Side: A; Approx. Time Counter: 10.1 - 15.3}

SEN. WHEAT asked why risk retention groups should be excluded from HB 331 and what percentage of the overall casualty market do

they have. **Pat Driscoll, Chief Legal Counsel, State Auditor's Office (SAO)**, said that the combined percentage of the premiums written for captive insurers and risk retention groups is 1/2 of 1%. He added that captive insurers are already excluded because of the captive statutes. Commissioner Morrison wants to encourage captive insurers in Montana because it is an area that he has promoted and believes that it is good for the Montana insurance economy. He also believes that risk retention groups should be treated the same way. The SAO views the risk retention groups and captive insurers as another option, that is, that they serve the same purpose as the JUA.

{Tape: 1; Side: A; Approx. Time Counter: 13.6 - 20.1}

SEN. WHEAT asked what a risk retention group was. **Mr. Driscoll** said that a risk retention group is established by federal law and can be regulated by their states of charter. Risk retention groups and captive insurers are both designed to facilitate a type of self-insurance. For example, if a person owns a surveying company and the person wants to insure himself, the person would follow the statutory requirement under the captive insurance statutes and create a separate entity that would be a subsidiary of the surveying company. The person would fund the subsidiary company who would, in turn, insure the parent company.

Motion: **SEN. WHEAT'S** motion to approve amendment #HB033110.apm carried on a 9 to 3 roll call vote. **SENATORS MCGEE, PERRY, and CURTISS** voted nay. **SENATORS ELLINGSON, MANGAN, MOSS, and PEASE** voted aye by proxy.

Motion: **SEN. LASLOVICH** moved that HB 331 BE CONCURRED IN AS AMENDED.

Motion: **SEN. MCGEE** moved the approval of amendment #HB033106.apm.

EXHIBIT (jus64a03)

{Tape: 1; Side: A; Approx. Time Counter: 21.8 - 29.9}

Discussion: **Jacqueline Lenmark, American Insurance Association (AIA)**, said that HB033106.apm permits an insurance company that participates in the JUA to take a premium tax offset for any expenses or funds that are expended in the support of the JUA or for their assessments that are not reimbursed through the other reimbursement mechanisms within the bill. It, in essence, provides a safety net within a safety net by protecting the purchasers of auto and homeowners insurance. It gives them extra

protection against the increased cost of insurance going to support the doctors who are going to be protected by the JUA. The purpose of the provision is to spread the cost of the insurance mechanism to every citizen of the state.

SEN. WHEAT asked the opinion of **Pat Melby, MT Medical Association (MMA)**. **Mr. Melby** said that this was one area that the MMA could not agree on because the Commissioner of Insurance opposes the amendment and because if the amendment is included, there is the possibility that it will be rereferred to Senate Finance and Claims or Senate Taxation.

Vote: **SEN. MCGEE'S** motion failed on a 10 to 2 roll call vote. **SENATORS MCGEE** and **PERRY** voted aye. **SENATORS ELLINGSON, MANGAN, MOSS,** and **PEASE** voted nay by proxy.

{Tape: 1; Side: B; Approx. Time Counter: 2.6 - 14.4}

Motion: **SEN. LASLOVICH** moved that HB 331 BE CONCURRED IN AS AMENDED.

Discussion: **SEN. MCGEE** said that he was offended by what has happened in the insurance world and what the Legislature expects Montanans to pay. He pays more for insurance than for anything else in his life. Insurance is a crime, and HB 331 brings the crime to the surface because it insures the insurers.

SEN. WHEAT said that it is the insurance industry that needs reviewing, but it cannot be done in Montana. The entire insurance industry in the state makes up 1% or less of the entire insurance world. The purpose of HB 331 is to put a safety net around the doctors. He felt it important to send the message to the physicians in Montana communities that the Legislature will protect them.

Vote: **SEN. LASLOVICH'S** motion carried on a 7 to 5 roll call vote with **SENATORS O'NEIL, SHOCKLEY, MCGEE, PERRY,** and **CURTISS** voted nay. **SENATORS ELLINGSON, MANGAN, MOSS,** and **PEASE** voted aye by proxy. **SEN. WHEAT** will carry the bill.

EXECUTIVE ACTION ON HB 385

{Tape: 1; Side: B; Approx. Time Counter: 14.4 - 30.2}

Motion: **SEN. WHEAT** moved that HB 385 BE CONCURRED IN.

Discussion: **SEN. WHEAT** said that HB 385 is favored over HB 304 because it gives some rulemaking authority to the Department of Justice with regard to how the driver's licenses are prepared.

SEN. MCGEE asked about the differences between HB 385 and HB 304. **Ms. Lane** said that the two bills are very similar but worded differently. Even though they try to get at the same concept, it would not be wise to pass both bills because the conceptual concepts conflict. **SEN. MCGEE** asked, if the Committee chooses to use HB 385 as the base bill, would it be wise to include the amendments to 61-5-104, MCA, into HB 385. **Ms. Lane** said, no. The DOJ has expressed a preference for the language in HB 385. The real substantive difference is in rulemaking.

SEN. CURTISS said that HB 304 prohibits statutory licensing by rulemaking which was strongly supported in the House. **Ms. Lane** said that the rulemaking language in HB 304 is the language that the DOJ had problems with. This is a policy issue that needs to be decided. **SEN. CURTISS** clarified that the rulemaking in HB 304 was relative to something that was going to be done in the U.S. Justice Department relating to September 11 regulations.

SEN. WHEAT said that **REP. DIANE RICE, HD 71**, did not like the idea of the federal government imposing standards on Montana. The DOJ wanted rulemaking authority in order to handle the minimum standards that are being implemented in federal statute.

Motion: **SEN. CROMLEY** moved to further amend HB 385--page 7, line 6, following Department, strike "on either" and insert "no later than", strike "(i)" on line 7, and strike line 10. Motion carried on a 9 to 3 voice vote. **SENATORS SHOCKLEY, MCGEE, and PERRY** voted nay. **SENATORS SHOCKLEY and PERRY** voted nay by proxy and **SENATORS MOSS, PEASE, ELLINGSON, and MANGAN** voted aye by proxy.

Motion/Vote: **SEN. CROMLEY** moved that HB 385 BE CONCURRED IN AS AMENDED. Motion carried on a 7 to 5 roll call vote with **SENATORS CURTISS, MCGEE, O'NEIL, PERRY, and SHOCKLEY** voting aye. **SENATORS PERRY and SHOCKLEY** voted nay by proxy. **SENATORS MOSS, PEASE, ELLINGSON, and MANGAN** voted aye by proxy. **SEN. CROMLEY** will carry the bill.

EXECUTIVE ACTION ON HB 304

{Tape: 1; Side: B; Approx. Time Counter: 30.2 - 30.3}

Motion: **SEN. MCGEE** moved that HB 304 BE CONCURRED IN.

Motion/Vote: SEN. WHEAT moved a SUBSTITUTE MOTION that HB 304 BE TABLED. Motion carried on a 7 to 5 roll call vote. SENATORS O'NEIL, SHOCKLEY, MCGEE, and PERRY voted nay by proxy. SENATORS MOSS, PEASE, ELLINGSON, and MANGAN voted aye by proxy.

EXECUTIVE ACTION ON HB 476

{Tape: 2; Side: A; Approx. Time Counter: 3.5 - 11.3}

Motion: SEN. CROMLEY moved that HB 476 BE CONCURRED IN.

Motion: SEN. CROMLEY moved the approval of amendment #HB047601.av1.

EXHIBIT (jus64a04)

Discussion: Ms. Lane said that SEN. CROMLEY has SB 67 which also increases marriage license fees and has already gone to the Governor for signature. HB047601.av1 is a coordination instruction proposed by the Clerks of District Courts and provides that if both bill pass, it adds the increases out of both bill into the final version and provides that the increases go as provided in each bill.

Vote: SEN. CROMLEY'S motion to approve amendment #HB047601.av1 carried unanimously by voice vote. SENATORS MOSS, PEASE, ELLINGSON, MANGAN, PERRY, and SHOCKLEY voted aye by proxy.

Motion: SEN. CROMLEY moved that HB 476 BE CONCURRED IN AS AMENDED.

Motion: SEN. O'NEIL moved a CONCEPTUAL AMENDMENT to charge \$100 to each offender.

Discussion: SEN. O'NEIL felt his amendment would provide for less domestic violence in a marriage than in a common law arrangement. He felt it backward to put an additional fee on marriage because it makes it harder to get married.

Ms. Lane said that the conceptual amendment is outside the scope of the Title.

SEN. O'NEIL withdrew his conceptual amendment.

SEN. MCGEE said that he could support HB 476 if the fees came from divorces rather than from marriage license fees. He felt that the Legislature could explore the possibility of a "common

decency court" similar to a restorative justice concept whereby the offender and victim would go before an entity to learn how to treat each other with dignity. He will offer a study resolution for an interim study on this concept.

Vote: SEN. CROMLEY'S motion carried on an 8 to 4 roll call vote. SENATORS O'NEIL, MCGEE, PERRY, and CURTISS voted nay. SENATORS MOSS, PEASE, ELLINGSON, MANGAN, PERRY, and SHOCKLEY voted aye by proxy. SEN. PERRY voted nay by proxy. SEN. ELLINGSON will carry the bill.

EXECUTIVE ACTION ON HB 611

{Tape: 2; Side: A; Approx. Time Counter: 11.3 - 20.6}

Motion: SEN. CROMLEY moved that HB 611 BE CONCURRED IN.

Motion: SEN. LASLOVICH moved the approval of amendment #HB061101.av1.

EXHIBIT(jus64a05)

Discussion: SEN. LASLOVICH said that he would not support HB 611 as currently written because of the impact on local jail costs. However, recognizing that there is a problem, he proposes to reduce the period of time spent on partner and family member assaults.

Motion: SEN. LASLOVICH moved to amend amendment #2 of #HB061101.av1--strike "48 hours" and insert "96 hours".

SEN. LASLOVICH said that he did not like mandatory minimum sentences because there are situations where the Judge's hands are tied. He felt it better that the Judge have the discretion to impose a period of incarceration.

Vote: Both of SEN. LASLOVICH'S motions carried unanimously by voice vote. SENATORS MOSS, PEASE, ELLINGSON, and PERRY voted aye by proxy.

Motion: SEN. CROMLEY moved that HB 611 BE CONCURRED IN AS AMENDED.

Discussion: SEN. SHOCKLEY said that no testimony has demonstrated to him that harsher sentence equal less time, but they do equal more cost to the taxpayers. He opposed HB 611.

Vote: SEN. CROMLEY'S motion failed on a 6 to 6 tie vote. SENATORS MOSS, PEASE, ELLINGSON, and MANGAN voted aye by proxy. SEN. PERRY voted nay by proxy.

EXECUTIVE ACTION ON HB 721

{Tape: 2; Side: A; Approx. Time Counter: 20.6 - 20.7}

Motion: SEN. LASLOVICH moved that HB 721 BE CONCURRED IN.

Motion: SEN. WHEAT moved the approval of amendment #HB072101.av1.

EXHIBIT (jus64a06)

Discussion: Ms. Lane said that the amendment strikes Section 8 which is the two-thirds vote clause that is tied to the immunity section.

SEN. WHEAT said that a Judge and anyone acting under the authority of the Judge already has judicial immunity. He did not believe that the Legislature should extend immunity in this situation.

Vote: SEN. WHEAT'S motion to approve amendment #HB072101.av1 carried unanimously by voice vote. SENATORS MOSS, ELLINGSON, PEASE, and PERRY voted aye by proxy.

Motion: SEN. LASLOVICH moved that HB 721 BE CONCURRED IN AS AMENDED.

Motion: SEN. MANGAN moved a CONCEPTUAL AMENDMENT to HB 721--Page 2, line 22, strike "a district court".

Discussion: SEN. WHEAT pointed out that HB 721 is designed for District Courts. He felt that if the Committee adopted SEN. MANGAN'S conceptual amendment to make it apply to just courts rather than District Courts, the bill would have to be extensively changed.

Following a brief discussion, SEN. MANGAN withdrew his CONCEPTUAL AMENDMENT.

Vote: SEN. LASLOVICH'S motion that HB 721 BE CONCURRED IN AS AMENDED carried unanimously by voice vote. SENATORS MOSS, PEASE,

ELLINGSON, and PERRY voted aye by proxy. SEN. LASLOVICH will carry the bill.

EXECUTIVE ACTION ON HB 356

{Tape: 2; Side: B; Approx. Time Counter: 9.6 - 28.5}

Motion: SEN. WHEAT moved that HB 356 BE CONCURRED IN.

Motion: SEN. WHEAT moved the approval of amendment #HB035601.av1.

EXHIBIT(jus64a07)

Discussion: Al Smith, MT Trial Lawyers Association (MTLA), said that the MTLA and law enforcement agreed upon HB035601.av1. The amendment proposed that the person applying for a job and signing a form to release information to the employer, that the person could request a copy of any information being sent. He added that if the amendment is going to be a problem for HB 356, it could be deleted. Basically, if information was falsified and the employer knew or should have known it was false, employers will not get the protection under HB 356.

SEN. MCGEE asked for an explanation of "or should have known that the information was false". Mr. Smith said that the language means that a past employer should take care in assembling information for sending on to prospective employers. The past employer needs to verify that the information that they are sending on is, in fact, true. It could be the secretary who prepared the information, but the employer is responsible for what goes out of the office.

SEN. O'NEIL said that the Constitution states that people have the right to confront the witnesses against them. He asked if HB 356 is now saying that a court order is needed before people can hear what the witnesses against them had to say. Mr. Smith said law enforcement has heartburn with the language that says that an applicant can just request and receive a copy of the information. He saw no problem with leaving the amendment off because the applicant can bring an action against the former employer and use the court system, through discovery, to get the information. He agreed that going to court is more onerous. However, HB 356 is important from a public policy perspective.

Vote: SEN. WHEAT'S motion to approve amendment #HB035601.av1 carried on a 8 to 4 voice vote. SENATORS O'NEIL, PERRY, MCGEE, and SHOCKLEY voted nay. SENATORS MOSS, ELLINGSON, PEASE, and

LASLOVICH voted aye by proxy and **SEN. PERRY** voted nay by proxy.

Motion: **SEN. WHEAT** moved that **HB 356 BE CONCURRED IN AS AMENDED.**

Discussion: **SEN. MANGAN** said that HB 356 is about someone from law enforcement sitting down with a private employer and asking "Did you have goofy feelings about this person?" Although he understood why law enforcement wanted the information, being an employer and knowing that he had to pay unemployment if he fires someone or can get wrongfully sued for some things that are well documented, why would he want to put himself in line for that kind of a lawsuit. He opposed HB 356.

Motion: **SEN. O'NEIL** made a **SUBSTITUTE MOTION** that **HB 356 BE TABLED.** Motion carried on a 7 to 5 voice vote. **SENATORS CROMLEY, PEASE, MOSS, ELLINGSON, and LASLOVICH** voted nay. **SENATORS MOSS ELLINGSON, LASLOVICH, and PEASE** voted nay by proxy. **SEN. PERRY** voted aye by proxy.

ADJOURNMENT

Adjournment: 11:17 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

LOIS O'CONNOR, Transcriber

MW/mp

Additional Exhibits:

EXHIBIT ([jus64aad0.PDF](#))