

SENATE JOURNAL
TWENTIETH LEGISLATIVE DAY - JANUARY 26, 2005

SENATE JOURNAL
59TH LEGISLATURE
TWENTIETH LEGISLATIVE DAY

Helena, Montana
January 26, 2005

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Tester presiding. Invocation by Fr. Jerry Lowney. Pledge of Allegiance to the Flag.

Roll Call. All members present. Quorum present.

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 47

Nays: Balyeat, O'Neil, Shockley.
Total 3

Absent or not voting: None.
Total 0

Excused: None.
Total 0

REPORTS OF STANDING COMMITTEES

BILLS AND JOURNAL: 1/26/2005
Correctly printed: **SB 5, SB 45, SB 78, SB 150, SB 182, SB 221, SB 223, SB 301, SB 302, SB 303, SB 304, SB 305, SB 306, SB 307, SB 308, SB 309, SB 310, SB 311, SB 312, SJR 12.**
Correctly engrossed: **SB 8, SB 80, SB 171, SB 194, SB 243.**

BUSINESS, LABOR, AND ECONOMIC AFFAIRS (Cocchiarella, Chairman): 1/26/2005
SB 5, do pass. Report adopted.

SB 8, introduced bill, be amended as follows:

1. Title, page 1, line 17.
Following: "39-71-741,"
Insert: "39-71-743,"

2. Page 8, line 7.
Following: "~~every insurer~~"
Insert: "insured by a plan No. 2 or a plan No. 3 insurer"

3. Page 9, line 16.
Following: "(5)"
Strike: "When" through "more insurers"
Insert: "If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers"

4. Page 9, line 17.
Following: the first "insurer"

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Strike: "at risk to pay benefits"

5. Page 9, line 19.

Following: "insurer"

Strike: "at risk to pay"

6. Page 9, line 20.

Following: the first "insurer"

Strike: "may seek"

Insert: "must receive"

7. Page 11, line 16.

Following: "An"

Insert: "undisputed"

8. Page 13, line 5.

Following: "if"

Strike: "a claimant and"

Following: "insurer"

Strike: "dispute"

Insert: "disputes"

9. Page 13, line 6.

Following: "the"

Insert: "medical treatment or"

10. Page 13.

Following: line 20

Insert: "**Section 10.** Section 39-71-743, MCA, is amended to read:

"39-71-743. Assignment or attachment of payments. (1) Payments under this chapter may not be assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

(a) as provided in 71-3-1118;

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law; or

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to chapter 71 or 72 of this title.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is ~~approved for payment on the basis of~~ necessary to pay current child support and a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Renumber: subsequent sections

11. Page 14, lines 13 through 14.

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Following: "services" on line 13
Strike: remainder of line 13 through "entitlement" on line 14

And, as amended, do pass. Report adopted.

SB 78, do pass. Report adopted.

SB 243, introduced bill, be amended as follows:

1. Title, page 1, line 5.

Following: "SUBWAREHOUSE;"

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 1.

Following: line 27

Insert: "NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval."

And, as amended, do pass. Report adopted.

FISH AND GAME (Tropila, Chairman): 1/26/2005
SB 221, do pass. Report adopted.
SB 223, do pass. Report adopted.

HIGHWAYS AND TRANSPORTATION (Pease, Chairman): 1/26/2005
SB 45, do pass. Report adopted.

JUDICIARY (Wheat, Chairman): 1/26/2005
SB 80, introduced bill, be amended as follows:

1. Page 1, line 25.

Following: "(3)"

Insert: "(a)"

2. Page 1, line 27.

Following: line 26

Insert: "(b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a violation of this section."

3. Page 1, line 30.

Following: line 29

Strike: "not less than"

Following: "0.5%"

Insert: "or more"

And, as amended, do pass. Report adopted.

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

1/26/2005

HB 49, introduced by Wilson
HB 113, introduced by Jent
HB 157, introduced by McKenney
HB 161, introduced by McNutt
HB 162, introduced by Henry
HB 174, introduced by Witt
HB 179, introduced by Lake
HB 191, introduced by Becker
HB 196, introduced by Jayne
HB 209, introduced by McKenney
HB 225, introduced by Maedje
HB 316, introduced by Callahan

MOTIONS

Senator Cromley moved SB 297 be moved from Senate Business, Labor and Economic Affairs Committee to Senate Public Health, Welfare and Safety Committee. Motion carried.

Senator Black moved to add additional sponsors to SB 293. Motion carried.

Senator Cobb moved to remove SB 109 from the second reading calendar and refer it back to Senate State Administration Committee. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

The following Senate bills were introduced, read first time, and referred to committees:

SB 301, introduced by Story, referred to Local Government.
SB 302, introduced by Ellingson, referred to State Administration.
SB 303, introduced by Ellingson, referred to Taxation.
SB 304, introduced by Kitzenberg, referred to Highways and Transportation.
SB 305, introduced by Cooney, referred to State Administration.
SB 306, introduced by Kitzenberg, referred to Highways and Transportation.
SB 307, introduced by Toole, referred to Energy and Telecommunications.
SB 308, introduced by O'Neil, referred to Public Health, Welfare and Safety.
SB 309, introduced by O'Neil, referred to Local Government.
SB 310, introduced by O'Neil, referred to Public Health, Welfare and Safety.
SB 311, introduced by Grimes, referred to Business, Labor, and Economic Affairs.
SB 312, introduced by Bales, referred to Fish and Game.
SB 313, introduced by Laible, referred to Education and Cultural Resources.

The following Senate joint resolution was introduced, read first time, and referred to committee:

SJR 12, introduced by Kitzenberg, Ryan, referred to Education and Cultural Resources.

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Senator Ellingson moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Tash in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 109 - Senator Cobb moved consideration of **SB 109** be placed at the bottom of the second reading board for the

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purpose of amendment. Motion carried.

SB 150 - Senator Keenan moved **SB 150** do pass. Motion carried with Senators Ellingson and Mangan voting nay.

SB 171 - Senator Gallus moved consideration of **SB 171** be placed below SB 194 on the second reading board. Motion carried.

SB 182 - Senator Gillan moved **SB 182** do pass. Motion carried with Senators Balyeat, Barkus, McGee, and Story voting nay.

SB 194 - Senator Laible moved **SB 194** do pass.

SB 194 - Senator Laible moved **SB 194**, second reading copy, be amended as follows:

1. Page 1, line 30.

Following: "quadricycle;"

Insert: "and"

2. Page 2, line 1 through line 3.

Following: "61-9-417"

Strike: "1" on line 1 through "state" on line 3

Amendment adopted unanimously.

SB 194 - Senator Laible moved **SB 194**, as amended, do pass. Motion carried as follows:

Yeas: Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Essmann, Gallus, Gillan, Harrington, Hawks, Kitzenberg, Laible, Larson, Lind, Mangan, Moss, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 34

Nays: Bales, Balyeat, Barkus, Black, Brueggeman, Esp, Gebhardt, Grimes, Hansen, Keenan, Laslovich, Lewis, McGee, O'Neil, Steinbeisser, Story.
Total 16

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 171 - Senator Gallus moved **SB 171** do pass.

SB 171 - Senator Gallus moved **SB 171**, second reading copy, be amended as follows:

1. Title, line 4.

Strike: "OR CHANCELLORS"

2. Page 1, line 11.

Strike: "or chancellor"

3. Page 1, line 12.

Strike: "or chancellor"

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Amendment adopted unanimously.

SB 171 - Senator Gallus moved **SB 171**, as amended, do pass. Motion carried as follows:

Yeas: Barkus, Black, Brueggeman, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Gallus, Gillan, Hansen, Harrington, Kitzenberg, Larson, Laslovich, Lewis, Lind, Moss, Pease, Roush, Ryan, Smith, Squires, Stapleton, Toole, Tropila, Weinberg, Williams, Mr. President.

Total 29

Nays: Bales, Balyeat, Cobb, Elliott, Esp, Essmann, Gebhardt, Grimes, Hawks, Keenan, Laible, Mangan, McGee, O'Neil, Perry, Schmidt, Shockley, Steinbeisser, Story, Tash, Wheat.

Total 21

Absent or not voting: None.

Total 0

Excused: None.

Total 0

Senator Ellingson moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Tester in the chair. Chairman Tash moved the Committee of the Whole report be adopted. Report adopted unanimously.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

SB 115 passed as follows:

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, Pease, Perry, Roush, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 44

Nays: Balyeat, Elliott, Esp, Essmann, O'Neil, Shockley.

Total 6

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 86 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

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Total 0

Excused: None.

Total 0

SB 123 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 178 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 183 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 188 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brueggeman, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, Ellingson, Elliott,

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Esp, Essmann, Gallus, Gebhardt, Gillan, Grimes, Hansen, Harrington, Hawks, Keenan, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Mangan, McGee, Moss, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, Toole, Tropila, Weinberg, Wheat, Williams, Mr. President.
Total 50

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SPECIAL ORDERS OF THE DAY

President Tester announced that the Senate and the House of Representatives will be in joint session tomorrow (21st Legislative Day) for the purpose of hearing U.S. Senator Baucus' address.

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Ellingson moved that the Senate adjourn until 1:00 p.m., Thursday, January 27, 2005. Motion carried.

Senate adjourned at 2:08 p.m.

BILL LOMBARDI
Secretary of Senate

JON TESTER
President of the Senate