

**SENATE JOURNAL
61ST LEGISLATURE
SIXTEENTH LEGISLATIVE DAY**

Helena, Montana
January 23, 2009

Senate Chambers
State Capitol

Senate convened at 1:00 p.m. President Story presiding. Invocation by Senator Roy Brown. Pledge of Allegiance to the Flag.

Roll Call. All members present, except Senator Hamlett, excused. Quorum present.

BILLS AND JOURNAL (Senator Curtiss, Chairman): 1/23/2009
Correctly printed: **SB 22, SB 77, SB 89, SB 111, SB 117, SB 127, SB 130, SB 156, SB 160, SB 215, SB 263, SB 264, SB 265, SB 266, SB 267, SJR 2, SJR 6, SJR 13, SJR 14.**
Correctly engrossed: **SB 21, SB 131, SB 171, SJR 4, SJR 8.**

REPORTS OF STANDING COMMITTEES

FINANCE AND CLAIMS (Bales, Chairman): 1/23/2009
SB 65, do pass. Report adopted.

JUDICIARY (Perry, Chairman): 1/23/2009
SB 121, introduced bill, be amended as follows:
1. Page 2, line 1.
Following: "to"
Strike: "any"
Insert: "the"
Following: "in the"
Strike: "state"
Insert: "county in which the respondent resides"

And, as amended, do pass. Report adopted.

SB 158, introduced bill, be amended as follows:

1. Title, line 6 through line 8.
Following: "DISTRICTS" on line 6
Strike: remainder of line 6 through "JUDGES" on line 8
Insert: "TO BE ELECTED"
2. Title, line 9.
Strike: "AN IMMEDIATE"
Insert: "A DELAYED"
3. Page 1, line 22.
Strike: "Provisional appointment -- election."
Insert: "Election of judges."
4. Page 1, line 22 through line 26.
Following: "election." on line 22
Strike: remainder of line 22 through "(2)" on line 26

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5. Page 1, line 26.

Following: "for the"

Insert: "1st,"

Following: "8th,"

Insert: "11th,"

6. Page 1, line 28.

Following: line 27

Insert: "NEW SECTION. Section 3. Contingent voidness. If House Bill No. 2 is passed and approved and if it does not provide funding for personal services and operating expenses to support the additional judges provided for in [this act], then [this act] is void."

Renumber: subsequent section

7. Page 1, line 29.

Strike: "on passage and approval"

Insert: "January 1, 2010"

And, as amended, do pass. Report adopted.

SB 191, introduced bill, be amended as follows:

1. Title, line 7.

Following: "NEEDS;"

Insert: "AMENDING SECTIONS 61-8-460, 61-8-725, AND 61-13-104, MCA;"

2. Page 3, line 6.

Following: line 5

Insert: "**Section 3.** Section 61-8-460, MCA, is amended to read:

"61-8-460. Unlawful possession of open alcoholic beverage container in motor vehicle on highway. (1)

Except as provided in subsection (2), a person commits the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway.

(2) This section does not apply to an open alcoholic beverage container:

(a) in a locked glove compartment or storage compartment;

(b) in a motor vehicle trunk or luggage compartment or in a truck bed or cargo compartment;

(c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;

(d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger; or

(e) in the immediate possession of a passenger:

(i) of a motor vehicle, including a bus, taxi, or limousine, that is used for the transportation of persons for compensation and that includes the provision of a hired driver; or

(ii) in the living quarters of a camper, travel trailer, or motor home.

(3) (a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed \$100.

(b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, [section 1], 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, [section 1], and 46-18-236 may not be imposed for a violation of this section."

Insert: "**Section 4.** Section 61-8-725, MCA, is amended to read:

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"61-8-725. Penalty for violation of speed limits -- no record for certain violations. (1) A person violating the speed limit imposed pursuant to 61-8-303 shall be fined in accordance with the following schedule:

Amount of Fine	MPH in Excess of Speed Limit
\$ 20	1 - 10 (daytime)
20	1 - 10 (nighttime)
40	11 - 20
70	21 - 30
100	31+

(2) A violation of a speed limit imposed pursuant to 61-8-303 is not a criminal offense within the meaning of 3-1-317, [section 1], 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and, except as provided in subsection (4), may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than:

- (a) 10 miles an hour during the daytime; or
- (b) 5 miles an hour during the nighttime.

(3) The surcharge provided for in 3-1-317 or [section 1] may not be imposed for a violation of 61-8-303.

(4) The recordkeeping restrictions provided in subsection (2) with respect to a person's driving record do not apply to a speed limit violation or conviction that was committed by:

- (a) a Montana resident in another state whose violation or conviction was reported to the department by a court or the licensing authority in the state in which the violation occurred; or
- (b) a person who holds a commercial driver's license regardless of whether or not the violation occurred while the person was operating a commercial motor vehicle."

Insert: "Section 5. Section 61-13-104, MCA, is amended to read:

"61-13-104. Penalty -- no record permitted. (1) A driver who violates 61-13-103 shall be fined \$20, but the violation is not a misdemeanor pursuant to [section 1], 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under 61-11-203(2)(m). Bond for this offense is \$20, and a jail sentence may not be imposed.

(2) A violation of 61-13-103 may not be recorded or charged against the driver's record of a person violating 61-13-103.

(3) An insurance company may not hold a violation of 61-13-103 against the insured or increase the insured's premiums due to a violation of 61-13-103."

Renumber: subsequent sections

And, as amended, do pass. Report adopted.

SB 209, introduced bill, be amended as follows:

1. Page 4, line 30.

Strike: "15"

Insert: "10"

And, as amended, do pass. Report adopted.

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

1/22/2009

HB 38, introduced by Campbell

HB 39, introduced by Cohenour

HB 46, introduced by Fleming

HB 70, introduced by Sands

HB 72, introduced by Sands

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HB 78, introduced by Hendrick
HB 97, introduced by Boland
HB 102, introduced by Smith
HB 106, introduced by French

MOTIONS

Senator Zinke moved to add Senator Laslovich as a sponsor to SB 192. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

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

SB 268, introduced by R. Brown, referred to Highways and Transportation.
SB 269, introduced by R. Brown, referred to Business, Labor, and Economic Affairs.
SB 270, introduced by Keane, referred to Business, Labor, and Economic Affairs.
SB 271, introduced by Squires, Arntzen, Gillan, Perry, Stahl, Villa, Wilson, referred to Public Health, Welfare and Safety.
SB 272, introduced by McGee, Nooney, referred to Local Government.
SB 273, introduced by Laslovich, referred to Education and Cultural Resources.
SB 274, introduced by Curtiss, Barkus, Hinkle, Jackson, referred to Taxation.
SB 275, introduced by Squires, referred to Public Health, Welfare and Safety.
SB 276, introduced by Squires, referred to State Administration.
SB 277, introduced by Kaufmann, referred to Taxation.
SB 278, introduced by Kaufmann, referred to Highways and Transportation.
SB 279, introduced by R. Brown, Bales, Barkus, Debby Barrett, Black, Brenden, T. Brown, Brueggeman, Curtiss, Gebhardt, Gillan, Hamlett, Keane, Lewis, McGee, J. Peterson, Ripley, Steinbeisser, Windy Boy, Zinke, Taylor, referred to Education and Cultural Resources.
SB 280, introduced by Gebhardt, referred to Taxation.
SB 281, introduced by Shockley, J. Peterson, referred to Judiciary.
SJR 16, introduced by R. Brown, Gebhardt, Jackson, Murphy, Tutvedt, referred to Business, Labor, and Economic Affairs.

Senator Hamlett present.

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

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

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

SB 34 - Senator Lewis moved **SB 34** do pass. Motion carried as follows:

Yeas: Bales, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Esp, Essmann, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Jackson, Juneau, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Mr. President.

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Total 41

Nays: Balyeat, Curtiss, Erickson, Gallus, Hinkle, Jent, Kaufmann, Moss, Zinke.

Total 9

Absent or not voting: None.

Total 0

Excused: None.

Total 0

Senator McGee assumed the chair.

SB 67 - Senator Laible moved **SB 67** do pass. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Brenden, R. Brown, T. Brown, Curtiss, Esp, Essmann, Gebhardt, Hansen, Hinkle, Jackson, Laible, Lewis, McGee, Murphy, Perry, Peterson, Ripley, Shockley, Steinbeisser, Tutvedt, Zinke, Mr. President.

Total 27

Nays: Branae, Brueggeman, Cooney, Erickson, Gallus, Gillan, Hamlett, Hawks, Jent, Juneau, Kaufmann, Keane, Larsen, Laslovich, Moss, Schmidt, Squires, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried, Williams, Windy Boy.

Total 23

Absent or not voting: None.

Total 0

Excused: None.

Total 0

Senator Hawks reassumed the chair.

SB 68 - Senator Wanzenried moved **SB 68** do pass. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, R. Brown, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.

Total 50

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: None.

Total 0

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SB 78 - Senator Brenden moved **SB 78** do pass. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Steinbeisser, Stewart-Peregoy, Tutvedt, Williams, Zinke, Mr. President.

Total 42

Nays: Lewis, McGee, Squires, J. Tropila, M. Tropila, Wanzenried, Windy Boy.

Total 7

Absent or not voting: None.

Total 0

Excused: R. Brown.

Total 1

SB 155 - Senator Cooney moved **SB 155** do pass. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: R. Brown.

Total 1

SB 161 - Senator Debby Barrett moved **SB 161** do pass. Motion carried as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Essmann, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke.

Total 43

Nays: Black, Esp, Gallus, McGee, M. Tropila, Mr. President.

Total 6

Absent or not voting: None.

Total 0

Excused: R. Brown.

Total 1

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SB 168 - Senator Zinke moved **SB 168** do pass. Motion carried as follows:

Yeas: Bales, Balyeat, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Curtiss, Erickson, Esp, Essmann, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.
Total 44

Nays: Cooney, Gallus, McGee, Murphy.
Total 4

Absent or not voting: Barkus.
Total 1

Excused: R. Brown.
Total 1

Senator Esp moved that **SB 181** be passed for the day. Motion carried.

Senator Peterson moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Story in the chair. Chairman Hawks 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 77 passed as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: R. Brown.
Total 1

SB 89 passed as follows:

Yeas: Black, Branae, T. Brown, Brueggeman, Cooney, Erickson, Gallus, Gillan, Hamlett, Hansen, Hawks, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Murphy, Peterson, Ripley, Schmidt, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried, Williams, Windy Boy, Zinke.

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Total 34

Nays: Bales, Balyeat, Barkus, Barrett, Brenden, Curtiss, Esp, Essmann, Gebhardt, Hinkle, McGee, Perry, Shockley, Tutvedt, Mr. President.

Total 15

Absent or not voting: None.

Total 0

Excused: R. Brown.

Total 1

SB 117 passed as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: R. Brown.

Total 1

SB 127 passed as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.

Total 47

Nays: Esp, McGee.

Total 2

Absent or not voting: None.

Total 0

Excused: R. Brown.

Total 1

SB 130 passed as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane,

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Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: R. Brown.
Total 1

SB 156 passed as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.
Total 48

Nays: Hinkle.
Total 1

Absent or not voting: None.
Total 0

Excused: R. Brown.
Total 1

SB 160 passed as follows:

Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Esp, Essmann, Gallus, Gebhardt, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, McGee, Moss, Murphy, Perry, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: R. Brown.
Total 1

SJR 2 passed as follows:

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Yeas: Bales, Balyeat, Barkus, Barrett, Black, Branae, Brenden, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Gallus, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, Lewis, Moss, Murphy, Perry, Peterson, Ripley, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Tutvedt, Wanzenried, Williams, Windy Boy, Zinke, Mr. President.
Total 43

Nays: Esp, Essmann, Gebhardt, Gillan, McGee, Schmidt.
Total 6

Absent or not voting: None.
Total 0

Excused: R. Brown.
Total 1

SJR 6 passed as follows:

Yeas: Bales, Balyeat, Barrett, Branae, T. Brown, Brueggeman, Cooney, Curtiss, Erickson, Essmann, Gallus, Gillan, Hamlett, Hansen, Hawks, Hinkle, Jackson, Jent, Juneau, Kaufmann, Keane, Laible, Larsen, Laslovich, McGee, Moss, Murphy, Peterson, Ripley, Schmidt, Shockley, Squires, Steinbeisser, Stewart-Peregoy, J. Tropila, M. Tropila, Wanzenried, Williams, Windy Boy, Zinke.
Total 40

Nays: Barkus, Black, Brenden, Esp, Gebhardt, Lewis, Perry, Tutvedt, Mr. President.
Total 9

Absent or not voting: None.
Total 0

Excused: R. Brown.
Total 1

UNFINISHED BUSINESS

Sen. Shockley moved to add Senator Jent as a sponsor to SB 281. Motion carried.

SPECIAL ORDERS OF THE DAY

Senator Barkus thanked Karin Thompson, Helena, a Senate Page for the week of January 19-24, 2009, for her work.

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

President Story requested that if bills have multiple signatures, that a form indicating that Legislators have signed be completed, so individual signatures do not have to be deciphered. President Story requested Senators to check with the Secretary of Senate's Office if they have questions.

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Majority Leader Peterson moved that the Senate adjourn until 8:00 a. m., Saturday, January 24, 2009. Motion carried.

Senate adjourned at 2:51 p.m.

MARILYN MILLER
Secretary of the Senate

ROBERT STORY
President of the Senate