MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 8, 2001 at 9:08 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 334, 2/2/2001, SB 384, SB 386, SB 392, 2/5/2001,
Executive Action: None

HEARING ON SB334

Sponsor: **SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER**

Proponents: **Tony Steffens, Rocky Mountain Traffic School**
Terry Steffens, Rocky Mountain Traffic School
Toman Baukema, Rocky Mountain Traffic School
Joe McNeal, Rocky Mountain Traffic School
William Smith, Rocky Mountain Traffic School
Dean Roberts, Motor Vehicle Division

Opponents: **None**

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER, opened on SB 334, a driver re-habilitation program. It was not typical driver training, but an improvement program for frequent offenders of the various traffic laws. Title 61-2-302 had been on the books for a while, and it talked about driver re-habilitation (an improvement program) that the department could establish. However, it had not really been used. A few private entrepreneurs had developed some re-habilitation type programs with some success. This bill attempted to set up departmental certification in order to utilize the existing programs. It would be limited to people whose license was subject to suspension. He pointed out that the driver would have to be declared a driver in need of re-habilitation and improvement. That was defined as, "a person who within a two-year period had accumulated eighteen or more conviction points." The whole purpose of the bill was to end up with a reduction of accidents through training of frequent offenders to get them to take driving seriously. It established a training program that habitual offenders could learn from. He noted that he didn't sign the fiscal note. Most of the program was paid for by the drivers. He thought a $65 fee would be sufficient for reimbursing the state it's costs. Although the fiscal note called for one FTE, he felt the program, especially in its beginning, should not require that big of an effort by the department.

Proponents' Testimony:

Tony Steffens, Rocky Mountain Traffic School, said the goals were to assist the state in implementing and offering through a mandated driver improvement school a course that would assist drivers in need of improvement. He pointed out it was already covered in Montana Code Annotated 61-11-4. SB 334 encompassed drivers with 18 points on their record within a two-year period. It also covered the habitual offenders with 30 points or more

within a three-year period. He mentioned highway fatalities were up this year, and they'd like to do something to address that problem. He currently had a driver improvement program that had been operating in the state for the last year or so. He said they had seen good success and they believed in it. He noted driver improvement programs had been available and offered throughout the United States for about the last 35 years. They were also offered in 16 different countries. He believed the school provided the residents of Montana a very beneficial and high quality program that the state could use. They were willing to work with the state in developing a curriculum that was acceptable to the state, through the program that already existed. He said the law already existed, but there was no place to assign the people because a state approved school was not currently in affect. He said the school was currently self-funded and they hoped to have the state program also self-funding, through assessments to the student and the signee. They would work directly with the Department of Justice to establish traffic school standards and a certified curriculum monitored by the state. He felt it was in the best interest of the people in Montana to have some control over traffic schools. He pointed out driver improvement courses had a high rate of success in reducing the severity and frequency of collisions. He provided a packet of information regarding the school as well as some comments from some of the students, **EXHIBIT(jus32a01)**. He said they would handle most of the student correspondence for those who actually attended the school, after the initial letter of referral was sent out from the state.

Terry Steffens, Rocky Mountain Traffic School, said she and her husband owned and operated the traffic school in the state. Her husband was in law enforcement as well as all the instructors who were present at the hearing. She felt it created a very good curriculum because student questions could be answered by very knowledgeable people. The school currently operated in 10 cities across the state. She felt they could expand into more cities if the bill was passed. She noted the state of Montana was the only one lacking a state regulated program and she thought one was needed. It would be good to involve the state to enhance the curriculum for the people who attended. It also gave people some tools currently not available, and it was an opportunity to re-educate people.

Toman Baukema, Rocky Mountain Traffic School, said he was a part time instructor and a law enforcement officer in the Billings area. He had been an instructor for about four months. He supported everything the Steffens said. It was a fine program with a good curriculum that addressed current needs. It was currently geared to folks that might get a traffic ticket and didn't want it to go on their driving record. For deferred

imposition they agreed to attend the school at their cost. He felt many of the students were safe drivers attending the school to keep their records clean. However, they weren't addressing the problem of traffic law violators. They were in need of a rehabilitative program. The comment sheet contained in **exhibit (1)**, reflected some of the complements the school received.

Joe McNeal, Rocky Mountain Traffic School, said he was a new instructor at the driving school. For the last twelve years, he served as a Deputy Sheriff with the Missoula County Sheriff's Department. He was a firm believer in the education process because he also worked the last five years as a school resource officer with Missoula County. He had written and was the instructor of the Citizenship Leadership and Student Safety Program in Missoula County. He felt it was a worthwhile bill.

William Smith, Rocky Mountain Traffic School, said he also was a Deputy Sheriff from Missoula County for nearly 20 years. During that time he saw a lot of repeat offenders. He thought it was time to increase the motivation for people to learn the error of their ways because it would curtail many of the accidents that were occurring. He thought offenses were growing, and education was the key. As an officer, he saw a great deal of carnage on the roads that would certainly be part of the instruction force he would use in showing these people what could happen to them. He thought it was a good program.

Dean Roberts, Administrator of Motor Vehicle Division, noted he really wasn't a proponent, but informational witnesses were not used. He said they used to have a driver rehabilitation program, but it was not very good. They charged students $50 to watch a series of old movies. He personally thought it was a waste of their money and time and the department's time. It was self-funding, and took place after hours. He reiterated the bill addressed the habitual offender law involving license suspension when 30 points in three years were accumulated. The program used to be set at 20 points, so if someone accumulated 20 points over a two year period, they were required to attend the school or have their license suspended. The department had been talking to the school for a year or so to be able to put this kind of a bill together. The department didn't oppose it. However, they wanted to make sure it had value. That was why the fiscal note included one FTE. He felt if the program wasn't monitored and audited, it would quickly go down hill. Not by the good operators, but by people that came into this business looking to make money, but didn't have good instructors. The FTE would monitor that. They had a lot of experience with third party commercial drivers' license testing across the country. In fact, without it being monitored by the state, third-party, private sector involvement

had been a disaster in those states. He noted over 700 licenses had been sold without anybody taking a test in Illinois. Of those 700, four had caused fatal accidents. Therefore, it was very important to monitor private sector programs. The program, as the fiscal note indicated would take about $65 per person to be self-funding. This program provided the student with an option; suspension for six months without a probationary license if the course was taken. A probationary license would be given upon enrollment in the course. They assumed that half of the people in that predicament (18 points, 2 years) would opt to go to the school verses having their license suspended. He explained that two-thirds of the people with 18 points in two years or 30 points in three years, had at least one DUI on their record and driving while suspended type actions. He said very few people, maybe some kids, accumulated points by speeding and running stop signs. He thought it was a positive step, but it had to be audited correctly to ensure the private school programs were appropriate for those attending. He also mentioned that judges deferred sentencing, in fact, if this was an official school sanctioned by the state, he felt judges would use that option even more.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL asked if a study had been done or if there was any knowledge on these kinds of programs making a difference in the future driving of somebody convicted of a DUI or who had 18 points including a DUI on their record. **Dean Roberts, Administrator of Motor Vehicle Division**, said he would be happy to provide those to the committee. Basically most of those studies come out of large states that had research budgets.

SEN. O'NEIL wondered if the programs reduced traffic deaths. **Mr. Roberts** said yes; if structured correctly, they did make some impacts on that violator to understand he/she had some kind of responsibility.

SEN. RIC HOLDEN asked what activated the actual contact between somebody that had this many speeding tickets and the traffic school. **Tony Steffens, Rocky Mountain Traffic School**, replied the Motor Vehicle Division reviewed drivers' license records. On discovery of a violator who had 18 points or more within a two year period, the department would notify that person in writing that they had the option of attending this driver improvement school.

SEN. HOLDEN questioned if the department sent the school's brochure to that person. How would the person know who to contact and where to go. **Mr. Steffens** said the department would send them the information, as well as anybody else who participated in the program. He said the details hadn't been clarified, but it would probably be at the student's convenience. He noted they were currently in most of the major cities in Montana. He believed they had the only program of this type available, however, that wouldn't restrict other entities from joining this program in the future.

SEN. MIKE HALLIGAN asked if they had a sliding scale for indigent people or any way for people to pay if they didn't have $50. **Mr. Steffens** said they currently offered payment programs to indigent people or those having trouble making payment. Judges currently using the program told them which people had financial problems. They worked with the people to make allowances.

SEN. HALLIGAN felt that judges would make the margin 10 points and use the private facility after a couple of speeding tickets, instead of waiting for the 18 points to accumulate. This would increase the school's usage. He wondered what other states did audits to ensure effectiveness. He asked why the fee was set at $50 and what was included for that price. He also asked how many people were in the class. **Mr. Steffens** said they planned to establish a database to check on those who participated. It would indicate if the curriculum was a benefit to these people rather than have them use it as a crutch for poor driving habits. They were concerned as well. He argued they weren't out there offering this school as an excuse for somebody to support poor driving habits, but were there to correct poor driving habits. So far he believed they had done a good job based on feedback from most of the students. Most students came in with a very low expectation, but left with a very high degree of appreciation for what they learned. Currently, they didn't have enough information about the recidivism, but they hadn't seen any evidence of that within the last year.

{Tape : 1; Side : B}

Sen. Halligan requested a sample audit from the states auditing this type of program as well as their performance evaluations, so they could get a better idea. **Mr. Roberts** said they'd be happy to do that.

Closing by Sponsor:

SEN. GROSFIELD closed on SB 334, noting that on the bottom of page 6, line 30, the department provided the list of support

groups that might be available in the area. He reiterated it was about habitual offenders. There were judges around the state already using these programs, although if the bill passed, use would increase and hopefully an improvement in the records of some of these people would result. This was about their life and other lives that were in jeopardy. He thought it was a good program. He noted that the committee heard from one entity, but he thought there were a couple of others in other areas of the state. He felt that once the department spelled out the parameters and requirements, several more would apply for certification. He brought attention to the involvement in the program of law-enforcement people and their years of experience. They agreed that the program worked and hoped the committee would too.

HEARING ON SB 386

Sponsor: **SEN. MIGNON WATERMAN, SD 26, HELENA**

Proponents: **Robert Peake, President MT Juvenile Probation Officer Association**
Joe Counell, Past President MJPOA
Sandy Oitzinger, Executive Director, MJPOA

Opponents: **Mike Ferriter, Administrator of Community Corrections for the Department of Corrections**

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, HELENA, opened on SB 386. This bill made the Intervention in Delinquency pilot programs permanent and established accounts for them. The Intervention and Delinquency Pilot Project allowed youth courts to administer out-of-home placement funds locally and if placement allotments were not all used, the juvenile probation office could use the extra funds to set up pro-active prevention treatments for youth. This came out of a frustration over too many out-of-home placements of youth in the system. The first Montana pilot program started in 1997 with two programs, one here in Lewis & Clark - Broadwater County and the other in Yellowstone County, in the area around Miles City. The programs were continued in 1999 and nine more districts were allowed to begin participating, so it brought the total to eleven, the current level. Community based prevention programs implemented through these savings included out-patient sex offender treatment, counseling, anger-management services, alternative education programs, mentoring, and more. The Juvenile Probation Officers Association that participated in these were very enthusiastic about these programs and would like to see them

continue. She noted that the program would sunset in 2001 without the passage of this bill or HB 146. In that event, the placements would revert to the old systems. She noted SB 386 allowed the existing system to become permanent for the eleven districts that were using it, but did not expand it. HB 146 by **REP. SHOCKLEY** mandated these programs state wide in all Judicial Districts with a $1.6 million biennial price tag. She understood that the funding had been removed from that bill and it was sitting in House Appropriations. The Juvenile Probations Officers Association would like the program to remain discretionary on the part of the judiciary districts for another two years. They felt that would allow time to fine-tune the programs, as well as address some of the district court opposition. This bill mandated that the programs continue, but left it discretionary on the part of the judicial districts, while maintaining a certain responsibility with the state for two more years. It would not require any new funding source, the existing funding would continue. Two more years would allow time for testing of integration with the mental health programs and also develop some more wrap-around services and maybe alleviate some of the concerns that some of the non-participatory districts had about the program.

Proponents' Testimony:

Robert Peake, President MT Juvenile Probation Officer Association, said he was the Chief Juvenile Probation Officer in Havre. His district chose to participate in the two-year pilot project, and found great success in it. They were able to save money and initiate a couple programs. For the most part, the 11 districts that participated in the program found it to be a program that allowed them to look at the risk factors within a community and be able to try to intervene in families and kids lives earlier. He explained often times they were re-active to what kids did. The kids were placed after they got into quite a bit of trouble. The program allowed them to act early and begin programs that would last. He said in the field of criminology, the best projector of what would happen was looking at what happened in the past. Therefore, spending histories were important when they investigated whether to join the program or not. For the most part, he noted most of the 11 had fairly good past spending histories. His district felt comfortable that they were going to be able to stay within the allotment of funds. Two districts got into the program that didn't have the history, but the Department of Corrections was able to assist them. If the program expended too much money, but had a fund set aside, district contingency funds could be tapped. If the contingency funds were used up, the Department of Corrections stepped in. The Department of Corrections still had a lot of power in it. He

explained the statutory placement committee was a group of people that had oversight responsibilities as well as made recommendations to the Department of Corrections. Then the Department of Corrections approved the recommendation before a placement was ever made. He reiterated the problem with HB 146 was that it mandated every district to participate in this program. There were some districts, within the association, that were afraid of that because there was no fall back if they overspent their budget. In essence there could be high risk kids sitting in the community, but there wasn't money to place those kids. He questioned where the liability fell in that case. He argued it would be not only with the State, but also with the counties as well. He felt big problems could arise if that kid went out and did something. He noted another big problem he foresaw for the reluctant districts. Some districts were able to stay within the financial boundaries, but others had proven over the years that they weren't able to. He felt that would lead to more kids being placed in Pine Hills than ever before. The reason was that at the beginning of the year, there was a lot of money to spend on placements. As the year came to an end and they got a youth with felony offenses, but the funding wasn't available to place that kid into a more appropriate program, he would go to Pine Hills. He argued in the last two years Pine Hills had seen a reduction in numbers because the facility wasn't liked. Kids sent to Pine Hills came back worse than when they were sent. Incarceration was not a deferent to crime, it protected the community. The pilot project allowed programs to hopefully change some of that. The bill allowed for more statistical data to be looked at. Out of those 11 districts, nine had one year of data. The Department of Corrections said the districts would be held accountable for controlling the cost, but the Department of Corrections controlled the costs anyway. Currently they were the ones that gave the final approval of the placement committee's recommendations. Basically the department wanted the accountability to be transferred to the districts, which he had no problem with. The control factor was still there. It could be controlled no matter whether it was a pilot district or within this program or not. He believed they had found success in it so far, but they needed more statistical data. One year by far was not enough. Once it could be shown the program was working, then they had the possibility to bring other districts into the program.

Joe Counell, Past President MJPOA, said he was the Chief Probation Officer in the 5th Judicial District (Beaverhead, Jefferson, and Madison Counties). He was in support of **SEN. WATERMAN's** legislation. He referred to a letter the committee would receive from the Chief Probation Officer in Yellowstone, **exhibit (3)**. He supported her concerns.

Sandy Oitzinger, Executive Director, MJPOA, said she was not going to try to repeat the facts that were given by **President Peake and SEN. WATERMAN.** She provided communications from the Chief Probation Officer in Yellowstone County, **EXHIBIT(jus32a03);** Lewistown, **EXHIBIT(jus32a04);** and Polson, **EXHIBIT(jus32a05).** She also provided an analyses of the placement fund history and budget, **EXHIBIT(jus32a02).** She said the exhibits talked about the crucial importance of leaving the program discretionary. Part of that was based on the fact that there was no safety net. Looking at peoples' budgeted numbers against their historical costs illustrated that certain areas could not sustain another reduction for the sake of putting it into a safety net fund. She said one bill provided a mandate, HB 146, the other one, SB 386, did not. HB 146 had no safety net, SB 386 had a safety net. They thought the bills also differed regarding the extent of county liability.

Opponents' Testimony:

Mike Ferriter, Administrator of Community Corrections for the Department of Corrections, acknowledged the committee did not take informational testimony, but since his testimony leaned more to the side of opponent, he spoke now. He said the concept was developed about five years ago by the department with a great deal of support from the Juvenile Probation Association. Over all they did support the same idea, but the method was the sticky point. One of the functions as the Administrator of Community Corrections was to manage the Juvenile Placement Budget, approximately $10 million annually. The division also was responsible for the over-site and review of the pilot project mentioned. SB 386 was very similar to HB 65, which passed last legislative session. It expanded the pilot concept. He noted the department had responded to the outcomes and results of the pilot, **EXHIBIT(jus32a06).** He also provided a fact sheet that the department developed relative to HB 146, **EXHIBIT(jus32a07).** He pointed out that the department had done, not only what this last legislative session asked, but what the previous legislative session asked them to do: to develop a report and to respond. Basically HB 146 was the result of the two reports they provided to previous legislative sessions. It was the result of the study and the investigation on the pilot projects that were completed. They recommended incorporating on a permanent basis the concept of these pilot projects. HB 146 was sponsored by **REP. SHOCKLEY,** and **SEN. HALLIGAN** testified in support of it as well. The department requested an additional $800,000 per year for the safety net, in the event that a Judicial District ran out of funding. He noted HB 146 did address how that safety-net money would be accessed. The $800,000 annual statutory appropriation was eliminated by the House. Next year there will be $9.7 million

to operate these placement funds. There was discussion about a safety net. He noted the department had always had a safety net; they established it themselves. He said if HB 146 passed, the department would have a safety net. The funding would come out of this $9.7 million, as it came out in the previous two experiments. They understood there were situations where judicial districts would have a difficult year so it was important that there was an avenue for them to turn to. That was actually a practice they developed. In terms of cost, it was a very expensive proposition, certainly it was a good investment, however the Department of Corrections and as an entity of state government they needed better methods in managing this budget. He felt they experimented, practiced, piloted, reported, and HB 146 was the solution on a state-wide basis. He understood where **SEN. WATERMAN's** bill was going, but he thought the department had accomplished what they were asked to do. He encouraged review of the report and fact sheet before they took action on the bill.

{Tape : 2; Side : A}

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN asked the decision making process in terms of treatment alternatives by the judge and the interactive teams once a youth was convicted of a felony. **Robert Peake, President MT Juvenile Probation Officer Association**, replied when a youth was charged with a crime, a felony offense, a misdemeanor offense or what ever it might be, there were two different options. If the youth did not have a felony offense and if the County Attorney approved of an informal handling of that case, it was handled informally. This meant that it didn't go into the courtroom, in front of the district court judge. If the offender had a prior record, the formal process was used. After conviction, a placement committee consisting of members from the community, which could present what they knew about that youth, could be used. The committee would be chaired by the Department of Corrections' juvenile parole officer within the region. They made a recommendation as to what they would like to see done with that kid, whether the youth be placed out of the home. The placement committee could be used for almost anything, but it had to be used for out-of-home placements. An out-of-home placement could be regular foster care within a family, a group home, or the possibility of a therapeutic group home. The state currently had two different programs. The Wilderness Program in Boulder AYA, and Cornerstone up in Swan were intermediate sanction possibilities. These programs were kind of boot-camp type strategies. The ultimate sanction would be Pine Hills for boys and Riverside for girls. The program attempted to prevent out-of-home placements. They were very costly. Most of the kids could

not be placed into a regular foster home. Usually they were 15, 16, 17 years old, and they could deteriorate a regular home very quickly. Most of the time families were not willing to take them in. If a willing home was found, instead of paying a group home rate of $70.00 a day, a negotiated rate of $35.00 a day could be established. (Regular foster care payment was approximately $17 a day.) The program allowed for a little innovation in placing these kids, as well as initiating programs.

SEN. HALLIGAN asked what was the check and balance on the placement team to not over spend. He asked if they always looked at the best interest of the kid. **Mr. Peake** replied absolutely. The bottom line was that the kid was going to come back. The problem in sending them away was that no work was done in the home. When the kid could be kept in the home by providing services and counseling they had a much better chance of keeping that kid in the community and out of the system at a much lower cost.

SEN. HALLIGAN asked how they dealt with judges who disagreed with the placement team and wanted to spend more money. He commented that in any given year there could be all bad kids that required a lot of money. In another year, the kids could stay in the home. **Mr. Peake** said he understood there were difficult judges. The problem was with money and the time of year. If it was at the very end when an offender came in on a felony offense, and the budget wouldn't support him, chances were he would go to Pine Hills.

SEN. HALLIGAN asked how they were going to get the money back that the House removed. **Mike Ferriter, Administrator of Community Corrections for the Department of Corrections**, replied at this point he really couldn’t answer that.

SEN. HALLIGAN asked how it would be paid for; how was the department going to help counties out. **Mr. Ferriter** said they would ask local jurisdictions to manage their own portion of the budget. He thought without the safety net management was more critical. There was only a couple of years of experience, in 1995 under re-organization the Department of Corrections was established and juvenile corrections was moved into the entire department. At that time the budget was $4 million for out-of-home placement. They spent $8 million. Since that time, **exhibit (6)** in section C, a variety of attempts were made to manage the money. He felt the ownership of the budget needed to be put into the hands of the people who spent it. It could not look like one big pot of money; one big state agency. He thought judicial districts were very un-clear in 1995-96 about how much money they had. So, they broke it into regional budgets. They narrowed the

scope and let people know how much money they had. He felt it was important to explain to everyone that this was not an infinite amount of money. If kids could be prevented from going into these out-of-state expensive placements, the money at the end of the year could be used to develop prevention programs or local alternatives. Without the $1.6 million, it was a set back. As he viewed what was happening this legislative session fiscally, the chances of getting it back weren't very good. He knew when that $1.6 million left it was going to be more problematic to get the support from the Youth Court Probation Association.

SEN. HALLIGAN commented that the budget of $4 million back in '95 or '96 was overspent by $4 million. There were benefits because there weren't as many increases in the adult prison population. This was due to earlier intervention with families, which helped kids stay out of prison later in life. **Mr. Ferriter** said that was what it was all about, trying to do a little more prevention.

SEN. JERRY O'NEIL asked if the program saved money in Deer Lodge, or in the adult correction program. **Mr. Ferriter** said statistics couldn't be provided, but as **Bob Peake** indicated, commitments to Pine Hills leveled off. There were fewer out-of-state placements. He thought they were starting to gain ground.

SEN. O'NEIL asked if the lower enrollment in Pine Hills and the fewer out-of-state placements were helping to pay for this program. **Mr. Ferriter** said it made money more available. Out-of-state placements or out-of-home placements generally ran $200 a day. In-home visits could prevent offenders from needing that level of care and eventually going to Pine Hills. Money could be saved to spend locally on trying to prevent families and kids from coming to that point in their lives.

Closing by Sponsor:

SEN. WATERMAN closed on SB 386, the proposal that made the status quo permanent and also allowed time to work with judicial districts to bring them on board. The other proposal mandated the program state-wide without funding for a safety net. She felt it would be very difficult for them to come on board immediately with this program before they were prepared. That was reason enough to not make the program permanent. She encouraged working with those counties to figure out what services they needed to develop the expertise needed to manage the budget. She didn't think it could be mandated at the state level without assistance and time to move into the process. She felt it had been a good program.

HEARING ON SB 392

Sponsor: **SEN. JOHN COBB, SD 25, AUGUSTA**

Proponents: **Claudia Clifford, Insurance Commissioner's Office**
Carol Lambert, Women Involved in Farm Economics

Opponents: **Greg Van Horssen, State Farm**
Roger McGlenn, Independent Insurance Officers of Montana
Jacqueline Lenmark, American Insurance Association

Opening Statement by Sponsor:

SEN. JOHN COBB opened on SB 392. The bill prevented insurance companies from canceling, terminating, non-renewing, or increasing premiums on policies based on claims incurred by drivers' collision with a game animal, fur bearing animal, or predatory animal. This law only applied after it was determined that the driver did not violate the traffic law ordinance of the city. The bill stated a person could not be found negligent in a court of law, and would not pay damages to another party whether by settlement or otherwise. Under existing law insurance companies could not cancel, terminate, non-renew, or increase premiums for individuals with a poor driving record who had been in a collision with an animal. That was the no fault law. However, drivers with a good driving record who had a collision, were susceptible to having their insurance not renewed. He mentioned two other states had comprehensive laws that prohibited non-renewal for any accident that was not the drivers' fault. Many other states had limited laws similar to SB 392, which was a narrow piece of legislation dealing only with injuries and damages incurred due to collision or avoidance of collision as defined here. He provided a table regarding collisions with animals or avoidance, **EXHIBIT(jus32a08).**

Proponents' Testimony:

Claudia Clifford, Insurance Commissioner's, provided the statute, which came from motor vehicle code, not insurance code, **EXHIBIT(jus32a09).**She provided her testimony in writing, **EXHIBIT(jus32a10),** as well as a fact sheet about the bill, **EXHIBIT(jus32a11).**

Carol Lambert, Women Involved in Farm Economics, thought that many Montanans, at one time or another, had their insurance either dropped or raised because of wild animals. The organization called for the development and implementation of legislation prohibiting unjust and unreasonable conduct by a business that was in a dominating position in conduct and supplying, transporting, or buying agricultural goods or services. They felt that insurance companies were creating a dominating position. They could practically hold people hostage. They also hoped that the legislation would extend to domestic animals.

Opponents' Testimony:

Greg Van Horssen, State Farm, opened by saying State Farm and its competitors in the room were not in the business of wiping business off the books. They were in the business of selling insurance policies and keeping that business. There were times when the decision had to be made either to charge more to a particular insured or to remove that particular insured. He noted that these companies were keenly interested in keeping people insured because that was where their money came from. He was not aware of companies that had made it their practice to cancel, non-renew, or rate for the single claim involving either the collision with an animal or the alleged avoidance of a collision with an animal. In certain circumstances insurers made a hard decision to either remove an individual or to rate an individual higher. These difficult decisions were sometimes the result of an increased number of claims over a very short period of time. When this happened, it sometimes indicated that an individual's driving habits had changed for some reason, and the insurer could expect an increased frequency of claims in the future. Importantly, the bill removed from the company their ability to make that decision. If the individual indicated they were trying to avoid a fur bearing or game animal, then the bill said insurance companies could not make those important business decisions.

Roger McGlenn, Independent Insurance Officers of Montana, said he talked to his legislative committee, which consisted of eight agents from all over the state of Montana. He asked them if they were aware of companies that were cancelling, terminating, non-renewing, or increasing rates for contact with fur bearing animals, deer and the like on the first occasion. None of them were aware of any companies that did that. He pointed out that independent agents represented more than one insurance company. Unless there was a frequency problem which **Mr. Van Horrsen** mentioned, they were not aware of any insurance company that had increased these rates, non-renewed, or cancelled. He said they

did believe as **Miss Clifford** said, that this was an invitation to fraud. He said the SR22 filing until Title 61 with financial responsibility laws in the state of Montana often came after a habitual offender had a drivers' license suspension or revocation. The insurance was obtained through the assigned risk pool, where no insurance company would take the risk because of the habitual offender status. Therefore, it went into a pool and whoever was drawn had to write the policy. The rating could be quite severe. The SR22 filing proved financial responsibility under Title 61. It often times insured the individual and not the vehicle. It could be rated sky high, but not canceled because of the financial responsibility laws. He wanted to point out that was the reason for the difference in statute.

{Tape : 2; Side : B}

Jacqueline Lenmark, American Insurance Association, said she also was speaking on behalf of **John McTropolis** who represented the Farmers Insurance Group and the National Association of Independent Insurers. She noted the "phantom driver" problem was a frequent problem. She stressed the implicit invitation in this kind of a statute for less than straight-forward claims reporting, and perhaps fraud.

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL asked if it was already covered under 61-6-103 so that it would be an unnecessary law. **Claudia Clifford, Insurance Commissioner's,** replied Title 61 only applied to those drivers with SR22's or those that had bad driving records with D.U.I.'s. They were trying to make an argument that a privilege already existed, so provide this protection to good drivers.

SEN. RIC HOLDEN said he had trouble with the avoidance of the collision. He could be sympathetic to someone hitting a deer because he observed those collisions. He could understand the insured's complaint if they were to be terminated just because a deer might hop out on the road. He felt the explanations of avoiding something were not always factual. He suggested amending that part; striking the words, "for avoidance of a collision." **SEN. COBB** argued hitting the animal or avoiding it and getting into an accident needed to be weighed. He thought the avoidance should remain. However, if the bill wouldn't pass with that language, it was best to strike it.

SEN. HOLDEN commented he saw the same person several times in his office because of a deer collision. There were some people he never saw. There was a reason for that. He argued some people

observed how they drove and they didn't over-drive the scope of their headlights at night. Other people were just careless. By leaving in the language about not raising premiums, it meant the people who never hit a deer would see premiums rise to take into consideration people that frequently hit deer. He was sympathetic with the first part about not cancelling, terminating, or non-renewing those people. However, he didn't like putting in statute not increasing premiums. He thought that should be a business decision in terms of free market systems. **SEN. COBB** replied that without a premium increase, the company would raise the rates so much that a person would be forced to drop insurance anyway. Right now with no-fault everyone paid for someone else's fault. If you have no-fault insurance now and you're a poor driver, you can hit as many deer as you want. He wanted to protect the good drivers who were being cancelled for no fault of their own. Before the bill was drafted two agents called and said they were mad at their own companies for doing the very things this tried to prevent. **Ms. Clifford** also answered the question. From their perspective, they would prefer that companies raise the deductible. She felt it would put in a penalty to cover minor accidents that resulted from some of these kinds of accidents rather than to increase premiums. There was no control over how much they could increase the premiums. These were instances of no-fault, so there was a sense of fairness about that.

SEN. HOLDEN responded he thought that occurred now when someone had this frequency problem of hitting deer. They would find their deductibles climb rather than their premiums going up. He felt that restricting it in statute would restrict the market and how companies could compete against one another in a free market system. **Ms. Clifford** agreed. However, the practice wasn't done much. More often, companies gave premium increases or used cancellation generally after a second or third collision within a three-year period. She agreed with those in the industry; it was not just a single case instance. There were a lot of laws that served as boundaries for the insurance industry and what they did; otherwise it was a free market.

SEN. HOLDEN commented that both sides of the argument were making factual presentations that contradicted each other. He asked for factual documentation to back up the argument. **Ms. Clifford** said they did have documentation. They received about 3500 complaints a year that actually ended up being cases that they handled. The complaints were in all lines of insurance, and a number of those involved this kind of instance. She didn't know the exact number in a year, but could provide the case numbers. It did exist, it was not a single instance situation.

SEN. HOLDEN said he would be interested to see what the actual complaints said. **Ms. Clifford** replied okay.

SEN. WALT McNUTT commented that the frequency depended on where a person lived. He wondered if the sponsor had more than two or three that had contacted him about this problem. Were there numbers that this had effected. **SEN. COBB** replied no; just the agents said they had problems with their own companies and they said they had heard other problems. Other people seemed to have the problem too, but he didn't have numbers. He commented that people were saying there was no problem out there and this bill wouldn't hurt. If there was nothing going on out there, what was wrong with the bill?

SEN. O'NEIL wondered if after several hits, a person had the option of not reporting the next time they hit a deer to the insurance company so their policy wouldn't be cancelled or their rates raised. **Ms. Clifford** said it was a person's obligation to report it to an insurance company, and she understood that it was sometimes not done.

SEN. O'NEIL asked if they could amend the bill to say that a driver didn't have to report when they hit a deer. **Ms. Clifford** replied that was another topic. She didn't think it fell within the bounds of the bill.

SEN. O'NEIL re-referred to **Roger McGlenn. Roger McGlenn, Independent Insurance Officers of Montana**, said to his knowledge there was an obligation to report to the Highway Patrol or law-enforcement when hitting an animal. He was unaware of any statutory requirement, although there were widely varying contracts. He was unaware of any contractual requirement on an insured person to turn in a claim on their own property.

SEN. O'NEIL clarified if that was the issue. **Mr. McGlenn** said yes. As an agent for eight years, there were times when they advised the insured, like on windshields. "You've had so many why don't you pay for this one, because you're getting close to time the company's going to find a frequency problem on your policy." There were times when agents advised their clients just as **SEN. O'NEIL** suggested.

CHAIRMAN LORENTS GROSFIELD commented he had asked some insurance agents to gather data on deer collisions. It was a public policy of Montana to increase deer and elk populations. He suspected the numbers had increased dramatically over a twenty-year period, just because of the increase of game animals. He wondered if there was any responsibility by the Department of Fish, Wildlife and Parks or sportsmen of the state. He noted the time of day was

an issue in hitting deer; dusk and dawn travel probably had a higher rate of collision. He thought some of the statistics might relate to the time when people were getting off work. From the perspective of an increased deer population, had the department ever talked about that? Was there any responsibility? **Beate Galda, Enforcement Administrator of Department of Fish, Wildlife and Parks,** replied the department was certainly concerned about public safety, along with the Department of Transportation. She said she wasn't the wildlife person, so she couldn't state for sure, but populations fluctuated with the type of animal. She acknowledged it was a problem with the sportsman wanting one thing, motorists another, and agricultural persons another. It certainly was a balancing act, but safety was their concern.

CHAIRMAN GROSFIELD asked if avoidance of collision was more serious and if statistics could prove that avoiding a deer caused more problems. **Ms. Clifford** replied just hitting the animal was the driving training rule of thumb. She agreed that it was safer, and that was what was taught by driving schools.

CHAIRMAN GROSFIELD commented it might make sense to get rid of the avoidance of a collision language for safety reasons. Maybe it would be better to encourage people to hit them, rather than going off in a ditch and maybe hitting a bridge abutment. On page 3, line 15, he didn't understand what that line referred to. **Ms. Clifford** replied it referred to the insured or the operator not paying damages to another party, whether by settlement or otherwise. **Dave Drynan, Insurance Commissioner's Office,** also answered the question. He said it tried to get at the liability portion, who would be held negligent. For example if a person ran into somebody's property, they couldn't be canceled for paying for damage to the farmer's fence if the person wasn't negligent.

CHAIRMAN GROSFIELD said he couldn't see where it said "if you weren't negligent", it just said, "if you don't pay damages". He didn't really understand why that would make any difference to the insurance. **Mr. Drynan** said if a person wasn't negligent, then they shouldn't be held liable for that action.

SEN. MIKE HALLIGAN said the Code contained requirements that if the operator of a motor vehicle was in any manner involved in an accident where people were killed or injured, or in which property damage was in excess of $1000, they had to report it to the department within 10 days of an accident. Another part of the Code referred to willful failure of a driver involved in an accident resulting in property damage, would be fined $250, or get some points, if they didn't file a report. He asked if there was anything in existing car insurance contracts requiring reporting an accident within a certain period of time in order to

qualify for coverage. **Jacqueline Lenmark, American Insurance Association,** replied if a claim was made, then a report would have to be made and the person would have to cooperate with the investigation. She was not aware of a contractual obligation to report damage if a claim was not made. She thought it would vary from policy to policy, but there could be a significant decrease in value of the insured vehicle. She said that if a person did not make that report to the Department of Justice it might show up on the driving record and eventually it would come to the carrier's attention when they looked at the policy for renewal.

{Tape : 3; Side : A}

SEN. HALLIGAN said, "let's say I do get in an accident the first part of the summer and I'm too busy, and it's under $1000 and I know that statute. Six months later I make a claim on my insurance to fix that damage. He questioned if there was anything in insurance contracts that required a person to make a claim within any reasonable period of time after an accident occurred. **Ms. Lenmark** said she did not understand the question, and was looking to **Mr. McGlenn** for some assistance. She thought that would be a late reporting of claim and would create some difficulty. The person would be obligated to make a timely report. **Mr. McGlenn** said he believed that in many contracts there was a requirement to report, if a third party was involved. In the example of taking out the farmer's/rancher's fence or hitting another vehicle in avoidance of an animal. He thought there maybe a requirement to report and cooperate in that instance. In a case where it was simply damage to the person's property, and the person carried insurance for him/herself, he was not aware of contacts that had a reporting requirement to the insurance company. He had seen cases where people didn't report for six months. In those cases, the insurance companies would only pay the value at the time of the occurrence, not at the new value.

CHAIRMAN GROSFIELD asked if raising deductibles was different from raising premiums. **Ms. Clifford** said that was correct.

CHAIRMAN GROSFIELD clarified the bill would allow raising deductible for collision. He didn't know if that was the intention.

Closing by Sponsor:

SEN. COBB closed on SB 392. He said by raising a deductible, a person could still keep that same insurance company if they chose to because they would be paying more of their own costs. He felt there was a problem even though it didn't affect numerous people. He said the gist of the bill was for game animals. Other states

were much broader. Montana already had no-fault for poor drivers. He argued the free market system was still regulated. If a person was a good driver they could get kicked out of their policy, and that was what was in check.

HEARING ON SB 384

Sponsor: **SEN. DON RYAN, SD 22, GREAT FALLS**

Proponents: **Jeff Barber, Montana Wildlife Federation**
Bill Orsello, Montana Wildlife Federation
Jim Hunt, representing self
Stan Frazier, representing self
Toby Day, Legislative Intern for Montana Wildlife Federation

Opponents: **None**

Opening Statement by Sponsor:

SEN. DON RYAN opened on SB 384, an act creating the offense of negligent criminal trespass to private road property. He began by saying different statutes dealt with homicide; punishment was based on the type of homicide. He felt they had to look at trespass in a similar light. He presented the scenario of a friend and constituent who went hunting with another person. They knew one side of the road was private property, the other side was BLM land. They parked and moved up onto the BLM property. When they returned home the driver of the vehicle received a $500 trespass ticket. They did not realize they crossed an un-posted, un-fenced 20 feet of private property to get onto BLM land. That was the way the law currently read. He suggested making the law a little bit more reasonable, so that someone wasn't in fear of doing that type of a thing. He believed the bill would require a couple amendments. He wanted to strike the words "negligent criminal trespass" from the title as well as lines 19 and 20. He felt criminal basically meant that people knew what they were doing. He noted it had been brought to his attention that the Supreme Court might overturn the statute as it currently stood. If someone unknowingly committed an act, how could that person be charged with a criminal penalty? The bill attempted to address the person who made an accidental mistake.

Proponents' Testimony:

Jeff Barber, Montana Wildlife Federation, said their short title for this bill was "The Punishment Fits the Crime". He said the bill's genesis was SB 171 from last session, which required hunters to receive permission to hunt on private property in all

instances. He argued the problem with that was, a hunter couldn't always know exactly where he/she was. Even though it was the hunters' responsibility and they should know where they were, sometimes they could get confused and not know where they were going. It was understandable that a person might unintentionally stray from public land onto private land. Given the nature of public and private land in this state, sometimes hunters just couldn't identify where the public land ended and the private land began. In SB 171 a hunter who strayed could be cited and found guilty of criminal trespass, fined $500, and be given six months in jail. They thought that was a little too harsh and the punishment should fit the crime. SB 384 created a new crime of negligent criminal trespass. If a hunter strayed and the land was not marked, the hunter could be fined up to $100. In some ways for sportsmen, this was shooting themselves in the foot, because under the existing law, intent had to be proven. If it couldn't, the hunter probably would not be guilty of criminal trespass. He said the label that attended the existing law of criminal trespass was at issue. Sportsmen didn't want to be cited for criminal trespass especially when it was something they didn't do on purpose. It could also be argued that the bill wasn't needed, but the problem was with intent. He noted that a hunter could potentially travel a long way to prove intent. It was far easier to have a lesser crime that people could be cited for if it wasn't intentional. He proposed changing "criminal trespass" to "negligent trespass".

Bill Orsello, Montana Wildlife Federation, said he was a lifelong resident of Montana and a hunter and outdoorsman. One of the things that really bothered him as a hunter was that five weeks a year he could be considered a criminal for things that would not be considered a violation of the law the rest of the year. For inadvertently crossing a property line that was unmarked and undefined he could be branded a criminal. That really bothered him. He never had a traffic ticket or been arrested, but all of a sudden because he inadvertently walked onto a piece of property that was a mining claim he could be cited for that and it could go on his record. He thought that was grossly unfair. The bill took it down to negligence because criminal intent wasn't involved.

Jim Hunt, representing self, said he was an avid hunter and also a landowner. He had experienced what this bill addressed; wandering onto other peoples' land inadvertently. He argued if you were from eastern Montana you knew the land was not fenced and it would be difficult to keep track of where you were. He said people needed two things in order to know where they were in eastern Montana: 1)a good map, 2)the ability to read the map. Most people if they had a good map, couldn't read that map, frequently wandering onto other peoples' land. He said people

assumed his land was public land as well. He didn't realize they were committing a crime when they came onto his land. He really didn't care. As a lawyer, he felt people cited in Helena, but lived in Broadus were more likely to forfeit a bond. That happened very frequently in crimes of that nature. He thought the suggested amendment seemed to more appropriately state what happened. Someone acting out of negligence, ignorance, or stupidity, generally speaking, those criminal statutes did not have jail time or a strict liability situation. However, currently people convicted of inadvertently walking onto private land might end up in jail for six months, but that was not generally how the law worked. It also protected the landowner because it would include more people. More people were going to fall under the terms of this statute than others because it went from knowingly to negligently. Frankly that concerned him a little bit. Another concern was, even striking the word "criminal", he questioned whether it should be in Title 45, because Title 45 was the criminal intent statute. Wouldn't it be more appropriate somewhere else?

Stan Frazier, representing self, said others had already mentioned the practicality of fighting a charge. He argued he couldn't take off a day of work to drive a round trip of three or four hundred miles to fight an $80 or $100 trespass charge. He felt the trespass law passed two years ago did not fit reality. This bill would restore some reality to the trespass law. Other bills also were trying to rectify some of the problems caused by the previous trespass law. He had always testified that the real solution, if ranchers were so concerned about people walking on their property was for them to go out and post their property, so everybody knew the boundaries. He argued they testified, "we can't do that, we don't know where the boundaries are." Yet they still wanted to be able to charge somebody else with criminal trespassing. In his estimation, this bill restored some fairness to the hunting trespass law.

Toby Day, Legislative Intern for Montana Wildlife Federation, reported he spent about eight hours on the phone to find out who had been cited for trespass. He found that the few people who crawled through posted fencing were cited for criminal trespass. He said that was actually what that law should be applied to. Several people were caught in the act by the landowner or the sheriff. Most of them had no idea they were even on private property. Most of the people he talked to were very conscientious about even checking out the boundary. Unfortunately, he could not get those people to attend the hearing because it was a long distance to come. Most of them had working obligations. Most of the people out there were not knowingly trying to get onto posted private property. He provided testimony from the vice chair of the Governors Council of the PLPW, **EXHIBIT(jus32a12).**

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL asked if the present law was unconstitutional. **Jim Hunt, representing self,** said there was a negligent vehicular assault statute. There was at least one negligence crime, but he thought the language dealt with willful, wanting, or reckless behavior. So it was behavior that rose above stupidity. In his experience in defending a couple of people on a negligent vehicular assault statute, they were drunk driving and hit somebody. He said he wasn't a constitutional lawyer, so he couldn't say whether the statute was unconstitutional. He could say there would be problems if the word "criminal" was struck, but the statute remained under Title 45. It seemed to him to be more of a civil penalty crime situation.

SEN. O'NEIL wondered if it would be better to table the bill and let somebody challenge its Constitutionality rather than create another law that might be worse. **Mr. Hunt** replied if people were being ticketed under the only available law, but it didn't accurately reflect what happened, he would say no. Right now they were being told they committed a crime. He argued getting a traffic ticket in Billings was easy to forfeit, but then the person had a criminal conviction. In the case of being on somebody's 20-foot strip of land as described earlier, the person probably wasn't guilty of that statute. If people were being convicted, he had concern about that. However, this bill took care of that; it would work better.

SEN. O'NEIL clarified for doing something that wasn't wrong, hunters should just pay a lesser amount to the state. **Mr. Hunt** said that was partly it, but also removing the jail time. He referred to a traffic ticket example. One of the big debates was whether or not your car could be ticketed and you were found guilty of a crime even if your wife or child was driving it. Courts generally let those statutes stand, the person was guilty because it was his/her car, but there was no jail time. He said that was a strict liability situation, which was what this was. He thought the jail time should be set apart.

SEN. MIKE HALLIGAN asked if the first offense of $25 was still a problem. However, this dealt with a criminal offense.
Stan Frazier, representing self, replied the problem was the posting of the land; people were actually committing these offenses unknowingly. People, in good faith were trying to stay on public land and they wandered onto private property

unknowingly. That was a problem. The answer to that problem was posting the land. Yet the landowners didn't seem to want to do that, but they wanted to be able to charge somebody with trespass. He couldn't address the amount of the fines. **Beate Galda, Enforcement Administrator of Department of Fish, Wildlife and Parks,** also answered the question. The statute was in Title 87, landowner permission required for hunting. In 87-3-304 and last session for hunting other than big game animals, the law was expanded to include all hunting. Those areas that it expanded to were the same as it always had been. Currently the bond schedule was $120 for big game hunting without permission as well as for criminal trespassing.

{Tape : 3; Side : B}

SEN. HALLIGAN clarified hunting was $25 first offense, trespassing was potentially $100. That was the problem he was addressing. **Ms. Galda** replied there was a choice into which statute to sign under and the circumstances determined the choice. Title 87 offenses applied only to hunting. Title 45 offenses applied to any injury where the land was posted or the person had been notified that they were not welcome.

SEN. HALLIGAN responded one was negligent, the other was criminal, but they were both a crime. **Bill Orsello, Montana Wildlife Federation,** said the $25 fine was for bird hunting. Previously bird hunting was excluded from the trespass law. The first offense on that would be $25, but it didn't include big game hunting which had been covered before. Violation under the big game hunting could result in an immediate criminal trespass fine.

SEN. DUANE GRIMES clarified that the bill was brought forth to address a big game hunting incident. **SEN. RYAN** said yes.

SEN. GRIMES said the definition of negligence was quite broad. If the hunting scenario was removed, it appeared, because of the definition of "negligently", they almost lowered the whole criminal trespass concept to $100. He questioned that **Mr. Hunt** thought it shouldn't be in the statute at all. **Mr. Hunt** replied first to the intent situation. He said the standards were lowered so that everybody under the knowingly part also fit within the negligent part. At the same time, it picked up more people, because "knowingly" required the average person to know where they were. In the example used earlier, about the 20-foot strip, that didn't sound like most people would know about that. The knowing standard might not apply whereas the negligent standard would probably apply. He thought "knowingly" rightfully should apply if people were going through orange painted gates and "No

Trespassing" signs; if they were on land that was clearly someone else's and they didn't have permission. People should know that, so that was a "knowingly" situation. He didn't think it would take everyone that fit under "knowingly" and put them under "negligently" exclusively. They were still prosecuted under "knowingly" for the more intentional trespasses. He suspected it was probably some fine application of law, because "negligently" said, "it's a gross deviation from the standard of conduct a reasonable person would observe".

SEN. O'NEIL asked if the constituents fought this in court. **SEN. RYAN** said no. They didn't feel they had the resources to do it.

SEN. O'NEIL questioned the bill's purpose allowing the next time it would cost $100 instead of $500. **SEN. RYAN** said that made it a little bit more fair. That was the idea behind it, it wasn't to wipe it out completely and say there shouldn't be a penalty. It was the fact they had no idea that they were committing any type of a crime. They were trying not to. They were going to BLM land.

SEN. O'NEIL asked if there should be a penalty for being on land not known to be private property. **SEN. RYAN** asked for clarification that there should be a penalty for being on land that was not private property.

SEN. O'NEIL restated his question by asking if there should be a penalty for crossing that 20 feet of private property, that they didn't know was private property. **SEN. RYAN** said yes. In his case he would fight that because there was no indicator.

SEN. O'NEIL asked if there should have been a penalty for them in the first place, even a $100 penalty. **SEN. RYAN** replied in this particular case, no. They absolutely had no intent of committing anything.

SEN. O'NEIL then questioned why pass a law that would lower the penalty for being on land not known to be private land. **SEN. RYAN** replied because it was an extreme situation. In order to protect the rights of the landowners, some penalty needed to exist. Everyone should do as much as they could to inform themselves about where they were and who's property they were on, whether it be state land, BLM land, or private land. It was the hunters/hikers responsibility when they went out there. But currently, there was the potential for a $500 fine for walking across unknown private land. He reiterated that deaths didn't always result in the death penalty. The action behind the death determined the proper penalty.

CHAIRMAN LORENTS GROSFIELD clarified the penalty in current law was not to exceed $500. He questioned that most judges would not give the maximum penalty for every single justifiable complaint. He said to give the maximum seemed odd, especially in the situation that was described. He asked if judges were giving the maximum penalty for these offenses. **Ms. Galda** said no. She planned to look into that because that sounded very unusual. Forfeiture of bond was normally $120. She didn't know why a $500 fine would be imposed.

CHAIRMAN GROSFIELD said he appreciated that. He raised a technical point regarding line 17, the words "at a point". Current trespass law required posting at normal points of entry. On fenced property that would be at a gate or on both sides of a stream that crossed a property line. In the instance of a county road that went along private property where every gate was posted, but the points in between the gates, which could be a half a mile apart, were not posted because the statute didn't require it. Didn't having the word "at a point" apply even to posted property? As long as people went in between the posted gates then they would be fine and only be at the $100 level under this bill. **Ms. Galda** said she understood it to mean if people went right past the sign or posting, they wouldn't be found negligent. But, if they went to an area that wasn't posted they would be considered negligent. She hadn't thought about further interpretation. **John Bloomquist, Director of the Stock Growers Association**, said the way the posting statute read, basically it was either posted with a sign or with orange paint. He supposed the bill could have the technical reading of it, "at a point". However, the intent was if it was legally posted. If somebody crossed a legally posted piece of property he didn't know if "at a point" mattered. If it was legally posted, it was legally posted. He didn't know that this would take away from that.

CHAIRMAN GROSFIELD re-referred. **Jeff Barber, Montana Wildlife Federation**, said a person could make the converse argument, and it would go back into the criminal trespassing. He understood his point, but he went down the other path as well. **Mr. Hunt** responded as well saying he didn't know if he could propose the exact language, but it might be better to say "pursuant to the posting statute".

Valencia Lane, Legislative Staffer, said the bill already referred to the posting statute.

CHAIRMAN GROSFIELD replied that was 45-2-601.

SEN. HALLIGAN responded by saying he thought the law was not that strong. If a person went by a gate and saw the fence, the person

had reason to know that it was posted. He didn't think they would be that technical.

Closing by Sponsor:

SEN. RYAN closed on SB 384. He hoped the committee could make something positive out of the bill. He urged consideration of the bill's intent for proper drafting that would address the problem.

ADJOURNMENT

Adjournment: 11:43 A.M.

_____
SEN. LORENTS GROSFIELD, Chairman

_____
ANNE FELSTET, Secretary

LG/AFCT

EXHIBIT(jus32aad)