

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 10, 2005 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. John Parker (D)

Members Absent: None

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 49, HB 58, HB 61, 1/5/2005
Executive Action: None

HEARING ON HB 61

Sponsor: REP. DEE BROWN, HD 3, Hungry Horse

Opening Statement by Sponsor:

REP. DEE BROWN, HD 3, opened the hearing on HB 61, Montana Recreation Responsibility Act. REP. BROWN stated to the committee that a similar bill (SB4) will be heard in the Senate.

EXHIBIT(juh06a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 75}

Proponents' Testimony:

Dave Arbenz, Prickly Pear Sportsman Association, informed the committee that the organization he represents is most concerned with the affects of this bill regarding shooting ranges. Mr. Arbenz requested that in Section 4 the language include "shooting ranges."

{Tape: 1; Side: A; Approx. Time Counter: 75 - 132}

Bob Jordan, Wild River Adventures, spoke to the committee about his organization's concerns regarding both manmade and natural dangers that pose inherent risks while persons are recreating. Mr. Jordan's company provides recreational opportunities for disabled persons. With liability rates rising; disabled citizens will no longer be able to take advantage of the outdoors due to the prohibitive cost of insurance that the providers must pay.

{Tape: 1; Side: A; Approx. Time Counter: 132 - 260}

Darwon Stoneman, Glacier Raft Company, voiced his organization's concerns regarding the liability issues.

EXHIBIT(juh06a02)

{Tape: 1; Side: A; Approx. Time Counter: 260 - 300}

Tracy Knutson, Attorney, testified via a phone from Alaska. Ms. Knutson informed the committee that this bill was not Tort reform. She further addressed concerns regarding after school programs and independent recreating operators being forced to close down due to lack of insurance coverage.

EXHIBIT(juh06a03)

{Tape: 1; Side: A; Approx. Time Counter: 300 - 457}

Robin Cunningham, Fly Fisherman of America-Montana, rose in support of HB 61. Mr. Cunningham shared a story with committee members regarding an incident that happened to a client.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 20}

Jean Johnson, Montana Outfitters and Guides Association, rose in support of HB 61.

{Tape: 1; Side: B; Approx. Time Counter: 20 - 27}

Aimee Grmoljez, Montana Tourism Coalition, rose in support of HB 61.

{Tape: 1; Side: B; Approx. Time Counter: 27 - 31}

Bob Worthington, Montana Municipal Insurance Authority, rose in support of HB 61.

{Tape: 1; Side: B; Approx. Time Counter: 31 - 43}

Stuart Doggett, Montana Innkeepers Association, rose in support of HB 61.

{Tape: 1; Side: B; Approx. Time Counter: 43 - 52}

Ronda Carpenter-Wiggins, Montana Snowmobile Association, rose in support of HB 61.

{Tape: 1; Side: B; Approx. Time Counter: 52 - 58}

Jay Bodner, Montana Stockgrowers Association, rose in support of HB 61.

{Tape: 1; Side: B; Approx. Time Counter: 58 - 68}

Webb Brown, Montana Chamber of Commerce, rose in support of HB 61.

{Tape: 1; Side: B; Approx. Time Counter: 68 - 78}

Opponents' Testimony:

Al Smith, Montana Trial Lawyers Association, rose in opposition to HB 61. His many concerns were; duplication of statutes already in the Montana Code Annotated (MCA), HB 61 shifts more responsibility on the participants instead of the provider thereby eliminating the liability of that provider and insurance companies are behind HB 61, etc.

[EXHIBIT\(juh06a04\)](#)

[EXHIBIT\(juh06a05\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 78 - 327}

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. HARRIS, KOOPMAN, MCGILLVRAY, NOENNIG, CLARK, GUTSCHE, WINDHAM, LANGE, DRISCOLL and NOONAN asked numerous questions of the sponsor; **REP. BROWN**, Mr. Worthington, Mr. Smith, Mr. Jordan and Mr. Cunningham. Some of the questions asked by committee members were whether other participants in a group event could be held responsible and the signing of pre-release documents and their validity. "If other states have adopted a similar statute," he asked, "have their insurance rates dropped because of such a statute?" **Mr. Brown** noted in his answer to **Rep. Noonan** that due to this "inherent risk" clause or statute being relatively new, there is not enough case law as yet to answer the question about insurance rates.

When asked if the insurance companies would benefit from this bill being enacted and how this bill would affect the small business provider from litigation, the response from several of the small business owners who testified, stated that currently due to the high cost of liability insurance they may be forced out of business.

Another question by **REP. NOONAN** to Mr. Brown was whether or not this bill would be a disincentive for providers to properly train their employees and maintain their equipment in an appropriate manner. **Mr. Brown's** response was, "No," and that the risk is still inherent, therefore the provider would continue to maintain his equipment and train his employees appropriately.

{Tape: 1; Side: B; Approx. Time Counter: 327 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 322}

Closing by Sponsor:

REP. BROWN closed the hearing of HB 61.

{Tape: 2; Side: A; Approx. Time Counter: 322 - 325}

HEARING ON HB 58

REP. CHRIS HARRIS, HD 58, Bozeman

Opening Statement by Sponsor: **REP. CHRISTOPHER HARRIS, HD 66,** opened the hearing on HB 58, Open documents in civil settlements concerning public hazards.

{Tape: 2; Side: A; Approx. Time Counter: 325 - 460}

Proponents' Testimony:

Richard Barber, private individual, spoke to the committee regarding the death of his son due to a defective product and

that similar legislative actions in California have reduced litigation for this issue 40-50 per cent.

{Tape: 2; Side: A; Approx. Time Counter: 460 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 102}

Opponents' Testimony:

Al Smith, Montana Trial Lawyers Association, explained his organization's position on this bill and why this could be the right thing to do initially, but if HB 58 did pass, it could lead to fewer settlements in litigation which would not be good for either side of the civil matter.

{Tape: 2; Side: B; Approx. Time Counter: 102 - 156}

David Martin, Lee Enterprises, spoke briefly to the committee about what is currently in the Montana Constitution as it related to this bill.

{Tape: 2; Side: B; Approx. Time Counter: 156 - 171}

John Alke, Montana Defense Trial Lawyers, stated to the committee members that many aspects of litigation could be affected by this bill. The process of "discovery," trade secrets, all civil, not just product liability cases, could be made public. **Mr. Alke** stated that second generation lawsuits may happen as a result of this statute and anyone could be subpoenaed for information among other things.

{Tape: 2; Side: B; Approx. Time Counter: 171 - 319}

Jacqueline Lenmark, America Insurance Association, rose in opposition to this bill. Ms. Lenmark stated to the committee that this bill would apply to all documents in litigation.

{Tape: 2; Side: B; Approx. Time Counter: 319 - 361}

Webb Brown, Montana Chamber of Commerce, rose in opposition to this bill.

{Tape: 2; Side: B; Approx. Time Counter: 361 - 378}

Mona Jamison, Wine Institute, Montana Society of Orthopedic Surgeons, General Motors, Doctors Company (insurance company), rose in opposition to this bill. Ms. Jamison stated that this would destroy the whole historical basis of the judicial system. Ms. Jamison went into further detail how this could happen.

EXHIBIT (juh06a06)

{Tape: 2; Side: B; Approx. Time Counter: 378 - 468}

Gail Abercrombie, Montana Petroleum Association, rose in opposition of this bill.

{Tape: 2; Side: B; Approx. Time Counter: 468 - 473}

Joe Mazurek, D.A. Davidson, rose in opposition to this bill.

{Tape: 2; Side: B; Approx. Time Counter: 473 - 487}

Brad Griffin, Montana Retail Association, rose in opposition to this bill.

{Tape: 2; Side: B; Approx. Time Counter: 487 - 500}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MACGILLVRAY, inquired of Mr. Alke if any amendments would help this bill. **Mr. Alke** stated that he would like to see the bill defeated.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 19}

Closing by Sponsor:

REP. HARRIS closed the hearing on HB 58; he stated that there is case law in Montana that states evidentiary material filed with the court is filed with a public party.

{Tape: 3; Side: A; Approx. Time Counter: 19 - 58}

HEARING ON HB 49

REP. BILL WILSON, HD 22, GREAT FALLS

Opening Statement by Sponsor:

REP. BILL WILSON, HD 22, opened the hearing on HB 49, Revise registration requirements for sexual and violent offenders. **REP. WILSON** gave a brief description to committee members as to each section listed in the bill.

{Tape: 3; Side: A; Approx. Time Counter: 58 - 119}

Proponents' Testimony:

Ali Bovington, Montana Assistant Attorney General, rose in support of this bill. **Ms. Bovington** informed the committee members that the registration law for sex offenders was first enacted in 1989. It was amended in 1995 to include violent offenders. She further explained how this bill would be beneficial.

EXHIBIT(juh06a07)

{Tape: 3; Side: A; Approx. Time Counter: 119 - 209}

Jim Smith, Montana Sheriffs and Peace Officers Association, Montana County Attorneys Association, rose in support of HB 49.

{Tape: 3; Side: A; Approx. Time Counter: 209 - 232}

Jim Kimble, Montana Association of Chiefs of Police, rose in support of HB 49.

{Tape: 3; Side: A; Approx. Time Counter: 232 - 237}

Brenda Thompson, Montana Department of Corrections, rose in support of HB 49.

{Tape: 3; Side: A; Approx. Time Counter: 237 - 254}

Opponents' Testimony:

Scott Crichton, ACLU, rose in opposition to HB 49. **Mr. Crichton** expressed his concern as to what the compelling reason is for this registration process.

{Tape: 3; Side: A; Approx. Time Counter: 254 - 314}

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. HARRIS, NOENNIG, KOOPMAN, STOKER, and MCGILLVRAY queried Ms. Bovington extensively. Among their questions were: "If an offender needs to register, would that impose an additional sentence; would this be a life time registration; and is this a reasonable equivalent to what other states are doing?"

{Tape: 3; Side: A; Approx. Time Counter: 314 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 70}

Closing by Sponsor:

REP. WILSON closed the hearing on 49 and stated that this bill would be a "clean-up" bill.

{Tape: 3; Side: B; Approx. Time Counter: 70 - 82}

ADJOURNMENT

Adjournment: 11:50 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/PS

Additional Exhibits:

EXHIBIT ([juh06aad0.PDF](#))