

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 3, 2005 at 8:00 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. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

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: SB 67, 80, 94, 166, 2/23/2005
Executive Action: SB 35, 94, Do Concur

HEARING ON SB 80

Sponsor: SEN. GARY PERRY, SD 35, MANHATTAN

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on SB 80, Prohibit open alcohol containers in vehicles.

SEN. PERRY informed the committee members that during the 2003 session this bill was brought forth where it was "passed" by the Senate but did not pass through the House Judiciary Committee.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 48}

Proponents' Testimony:

John Bohlinger, Lt. Governor, State of Montana, rose in support of SB 80. He related to the committee the story of his younger days when he "took chances and did risky things." He stated, "I grew up in a culture that did not question such dangerous habits such as driving without a seatbelt or drinking while driving."

Lt. Governor Bohlinger spoke of the statistic that in 2004, alcohol was a factor in 76 deaths on Montana highways. A recent poll in the Billings Gazette showed 69% of Montanans favor a ban on open containers in automobiles. He stated further that the Schweitzer/Bohlinger cabinet is in full support of SB 80.

EXHIBIT(juh47a01)

{Tape: 1; Side: A; Approx. Time Counter: 48 - 90}

Jim Lynch, director, Montana Department of Transportation, rose in support of SB 80. He informed the committee members that since the 2005 session started; there have been thirty-two people killed on Montana highways. Seven of those deaths were related to alcohol, thirteen not related to alcohol and twelve still pending test results. Mr. Lynch stated that of those twelve still being tested, the chance that alcohol was involved will, "...probably be 50% or more."

EXHIBIT(juh47a02)

EXHIBIT(juh47a03)

{Tape: 1; Side: A; Approx. Time Counter: 90 - 165}

Brenda Nordlund, Assistant Attorney General, spoke to the committee regarding the differences in SB 80 and HB 91 which was "passed" out of House Judiciary Committee.

{Tape: 1; Side: A; Approx. Time Counter: 165 - 202}

Paul Grimstad, Colonel, Montana Highway Patrol, spoke to the committee about how this bill initially would be enforced only during routine traffic stops.

{Tape: 1; Side: A; Approx. Time Counter: 202 - 219}

Pat Melby, Montana Medical Association, Rimrock Foundation, rose in support of SB 80 and stated, "...the physicians are the ones who see the results of alcohol-related accidents."

{Tape: 1; Side: A; Approx. Time Counter: 219 - 230}

Mona Jamison, Montana Orthopedic Society, rose in support of SB 80.

{Tape: 1; Side: A; Approx. Time Counter: 230 - 251}

Cary Heggberg, Montana Contractors Association, spoke to the committee regarding the federal mandate, the safety issues and the \$6 million in federal funding that would be in jeopardy.

Mr. Heggberg informed the committee that the loss of the federal funding would affect jobs throughout Montana regarding highway construction. He spoke of how Wyoming is faced with a similar situation and that they will build highways with state funds and mineral and oil funds.

{Tape: 1; Side: A; Approx. Time Counter: 251 - 310}

Barry "Spook" Stang, Montana Motor Carriers Association, rose in support of SB 80 and spoke to the committee about the safety of truck drivers on Montana highways where alcohol is being consumed.

{Tape: 1; Side: A; Approx. Time Counter: 310 - 327}

Kristi Blazer, Montana Beer and Wine Wholesalers, rose to support SB 80. **Ms. Blazer** informed the committee that she is against the amendments to the bill relative to the mitigating factors regarding the offense being inserted on the person's drivers license.

{Tape: 1; Side: A; Approx. Time Counter: 327 - 380}

Bill Muhs, Mothers Against Drunk Driving (MADD), rose to inform the committee that he is on the Governor's Task Force for alcohol related issues. Further, that Montana and Mississippi are the only two states without any laws for drinking and driving.

Mr. Muhs does not support any amendment to SB 80 regarding the "masking" language. He further stated that 71% of Montanans already thought Montana had this statute.

EXHIBIT(juh47a04)

{Tape: 1; Side: A; Approx. Time Counter: 380 - 450}

Greg VanHorsen, Farmers Insurance, American Insurance Association, rose in support of SB 80 and spoke about the amendment regarding the "masking" language for Page 1, Lines 27-30. This amendment would not allow insurance carriers to know if passengers had "open container" violations, just the driver.
{Tape: 1; Side: A; Approx. Time Counter: 450 - 500}

Denice Harris, Montana Chapter, American Automobile Association, rose in support of SB 80.
{Tape: 1; Side: B; Approx. Time Counter: 0 - 6}

Jim Smith, Montana Sheriffs and Peace Officers Association, Montana County Attorneys Association, rose in support of SB 80, however; **Mr. Smith** stated that the language regarding "masking is troublesome."
{Tape: 1; Side: B; Approx. Time Counter: 6 - 11}

Steve Yeakel, Montana Council for Maternal and Child Health, rose in support of SB 80.
{Tape: 1; Side: B; Approx. Time Counter: 11 - 21}

Jim Ahrens, Montana Hospital Association, stood in support of SB 80.
{Tape: 1; Side: B; Approx. Time Counter: 21 - 24}

Mark Taylor, Association of Montana Highway Patrolmen, rose in support of SB 80.
{Tape: 1; Side: B; Approx. Time Counter: 24 - 28}

Don Hargrove, Montana Addictions Service Providers, rose in support but stated that his association, "... does not like the amendment."
{Tape: 1; Side: B; Approx. Time Counter: 28 - 37}

SEN. JIM SHOCKLEY, SD 45, VICTOR, rose in support of SB 80 and stated that the amendment had 100% support in the Senate. **SEN. SHOCKLEY** stated, "...that if this bill goes to a conference committee, the money is in peril...."
{Tape: 1; Side: B; Approx. Time Counter: 37 - 45}

Larry Kibbee, Property Casualty Insurance Company of America, rose in support but stated that the language regarding "masking" is not to his association's liking.
{Tape: 1; Side: B; Approx. Time Counter: 45 - 54}

Jim Kembel, Montana Association of Chiefs of Police, Montana Police Protective Association, rose in support of SB 80.
{Tape: 1; Side: B; Approx. Time Counter: 54 - 58}

Dallas Erickson, Montana Family Coalition, was in support of SB 80, however; "...please remove the amendment referencing Page 1."
[EXHIBIT\(juh47a05\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 58 - 69}

Opponents' Testimony:

John Iverson, self, rose in opposition to SB 80. He spoke to the committee about the problems with SB 80. He stated that the passenger should not be punished, and the fine should be reduced to \$20 and what would happen to the designated driver if pulled over for a violation with open containers in the car. **Mr. Iverson** stated that there should be options provided and that if necessary, the alcohol could be seized from the vehicle.

{Tape: 1; Side: B; Approx. Time Counter: 69 - 122}

Mike Fellows, Montana Libertarian Party, rose in opposition to SB 80 and asked the committee, "Why is this needed, this is about money, not safety." He further stated that the bill will not work, and will not solve the problem. He queried how would it be enforced and finally, the hard-core drinkers will "get around this bill."

{Tape: 1; Side: B; Approx. Time Counter: 122 - 167}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. DRISCOLL began the questions by asking Ms. Nordlund about the proponents that do not want this bill "tinkered with." The REPRESENTATIVE was also interested about people who pick up litter (cans/bottles) for recycling and the affect this bill would have on those people. **Ms. Nordlund** replied that the "recyclers" would still be able to pick up the litter.

REP. NOENNIG also questioned Ms. Nordlund regarding the CFR regulations. She distributed a copy of those requirements to the REPRESENTATIVE.

[EXHIBIT\(juh47a06\)](#)

REP. NOENNIG then asked Mr. Lynch about the access to the study results and the effectiveness of open container laws.

REP. KOOPMAN began his questions of SEN. PERRY regarding the loss of the federal funding.

SEN. PERRY replied that if an open container bill is not put into a statute; the federal funds will be gone as the ability to shift that money from one department to another department will not be available and those monies will not be allowed to go into the safety programs.

REP. KOOPMAN queried Mr. Lynch about the same topic. **Mr. Lynch** stated that the money will be gone and the money will go back to the Federal Highway Trust Fund where it is reallocated through the Federal Re-authorization Act. **REP. KOOPMAN** asked, "...would federal highways be affected regarding construction." **Mr. Lynch**, replied, "Yes." He gave this example, "...if Montana received \$300 million for highway construction and no "open container" bill is put into a statute; the federal government may revoke 2% of the money, which would be \$6 million. That money will go back to the Federal Trust Fund.

REP. HARRIS spoke with Ms. Nordlund about Page 1, Lines 27-28 regarding the language about "a violation would not be a criminal offense."

REP. CLARK asked Mr. Kibbee about the reason for his objection to the amendment. **Mr. Kibbee** explained that insurance companies try to project future driving habits and would not be able to use this information as a "predictor" therefore, would not be able to assess good driver habits. **REP. CLARK** asked Mr. Kibbee if his organization would support SB 80 without this amendment for Page 1, Lines 28-30. **Mr. Kibbee** stated, "...this is a conundrum, [we] feel this is a serious offense."

REP. CLARK continued his questions by asking Ms. Nordlund about Page 1, Line 28, "may not be recorded" and how it could be considered a criminal offense. **Ms. Nordlund** replied that the language needs to have the language of 61-11-101, MCA in the offense for the court's information that goes on the driver's license. She further stated that any criminal or civil conviction that occurs in justice court is a matter of public record; i.e., insurance companies.

REP. CLARK then queried Mr. VanHorsen about the amendment and if that language was to be eliminated, would the insurance companies still be able to retrieve that information. **Mr. VanHorsen** responded by saying that the language in Lines 28-30 is stating to the insurance companies that they may not get the information, however; if the insurance agent is in a "face to face" meeting with the client, the information could be disclosed then by the client.

REP. NOENNIG discussed with Mr. Vanhorsen the insurance company's retrieval of the information and what if any sanctions there would be for the insurance company using that information against an offender.

REP. RICE began her questions of Ms. Nordlund regarding the amount of alcohol that is in the bottom of cans that would be allowable for "recyclers" to handle.

REP. RICE then spoke with Col. Grimstad regarding the situation where a person is pulled over for a speeding violation and an officer observes a beer can that the driver was unaware of; would that driver receive a ticket for "an open container." **Col. Grimstad** stated that the officer would use his/her common sense and would probably not issue a violation.

The questions continued regarding the "recyclers" picking up cans, "whiffs of alcohol" and seizing the containers for evidence. **Ms. Nordlund** replied that an officer would need to have "particularized suspicion" and would be required to "articulate the facts" in front of a judge before a conviction.

{Tape: 1; Side: B; Approx. Time Counter: 167 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 -166}

Closing by Sponsor:

SEN. PERRY closed the hearing on SB 80 and stated to the committee that he would request that the language on Page 1, Lines 27-30 be left in the bill. He wanted the committee to know that this is not an insurance bill, but it is a bill to keep drinking drivers off of the road.

SEN. PERRY further stated that there must be a balance between personal freedoms and safety and then related his personal family story to the committee about his brother and sister who were involved in automobile accidents where alcohol was a factor.

{Tape: 2; Side: A; Approx. Time Counter: 166 - 283}

HEARING ON SB 67

Sponsor: SEN. BRENT CROMLEY, SD 25, BILLINGS

Opening Statement by Sponsor:

SEN. BRENT CROMLEY (D), SD 25, opened the hearing on **SB 67**, Increase fees for marriage license and declaration of marriage without solemnization.

SEN. CROMLEY stated that he brought this bill at the request of the Montana Clerks of Court and further stated that this fee has not been raised since 1981. He informed the committee that SB 67 passed out of the Senate unanimously.

{Tape: 2; Side: A; Approx. Time Counter: 283 - 319}

Proponents:

Mary Phippen, Montana Association of Clerks of Court, rose in support of SB 67.

[EXHIBIT\(juh47a07\)](#)

[EXHIBIT\(juh47a08\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 319 - 351}

Charles Brooks, Yellowstone Board of County Commissioners, rose in support of SB 67.

{Tape: 2; Side: A; Approx. Time Counter: 351 - 363}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of SB 67.

{Tape: 2; Side: A; Approx. Time Counter: 363 - 380}

Harold Blattie, Montana Association of Counties (MACo), rose in support of SB 67.

{Tape: 2; Side: A; Approx. Time Counter: 380 - 389}

Opponents: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. CROMLEY closed the hearing on SB 67.

{Tape: 2; Side: A; Approx. Time Counter: 389 - 398}

HEARING ON SB 94

Sponsor: SEN. BRENT CROMLEY, SD 25, BILLINGS

Opening Statement by Sponsor:

SEN. BRENT CROMLEY (D), SD 25, opened the hearing on **SB 94**, Revise service of process in child protective services cases. The SENATOR stated that he brought this bill at the request of the Department of Health and Human Services.

{Tape: 2; Side: A; Approx. Time Counter: 398 - 467}

Proponents:

Shirley Brown, Department of Health and Human Services (DPHHS), rose in support of SB 94. **Ms. Brown** spoke to the committee about the procedure where the original petition and the termination of parental rights must be served personally upon the parents. SB 94 would address the concerns of the intermediate petitions served upon the parents.

EXHIBIT(juh47a09)

Ms. Brown stated that this bill would affect the language where DPHHS must publish the petitions. SB 94 would remove the requirement of the petition being published out of state and would only require that the petition be published in the local paper at the last known address of the care providers.

{Tape: 2; Side: A; Approx. Time Counter: 467 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 23}

Jim Smith, Montana County Attorneys Association, rose in support of SB 94.

{Tape: 2; Side: B; Approx. Time Counter: 23 - 35}

Opponents: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. CROMLEY closed the hearing on SB 94.

{Tape: 2; Side: B; Approx. Time Counter: 35 - 50}

HEARING ON SB 166

Sponsor: **SEN. JERRY BLACK, SD 14, SHELBY**

Opening Statement by Sponsor:

SEN. JERRY BLACK (R), SD 14, opened the hearing on **SB 166**, Revise methamphetamine enforcement laws. The SENATOR stated that the theft of anhydrous ammonia is a serious problem within the rural community; this compound may be used as a precursor for making methamphetamine.

SEN. BLACK continued to speak to the committee about the dangers of this chemical when not used for its intended purpose.

{Tape: 2; Side: B; Approx. Time Counter: 50 - 87}

Proponents' Testimony:

Jeff Jergens, Toole County Sheriff, spoke to the committee about the problems that have occurred regarding this chemical and other components when used in conjunction for the manufacturing of "meth."

{Tape: 2; Side: B; Approx. Time Counter: 87 - 146}

Chris Christiaens, Montana Farmers Union, Montana Landlord Association, rose in support of SB 166. He informed the committee of the problems that landlords face when their rental properties are used for the illegal manufacturing of "meth."

{Tape: 2; Side: B; Approx. Time Counter: 146 - 179}

Don Hargrove, Montana Addiction Service Providers, spoke to the committee about the costs associated with the ongoing and increasing problem with "meth."

{Tape: 2; Side: B; Approx. Time Counter: 179 - 192}

Craig Allen Campbell, Montana Narcotics Officers Association, rose in support of SB 166 and spoke about the "meth" labs that are escalating in numbers.

{Tape: 2; Side: B; Approx. Time Counter: 192 - 220}

Mike Batista, Department of Justice, rose in support of SB 166 and stated that this bill will provide another "tool" for law enforcement.

{Tape: 2; Side: B; Approx. Time Counter: 220 - 227}

Jim Smith, Montana Sheriffs and Peace Officers Association, Montana County Attorneys Association, rose in support, however; stated that there was some concern about adding another felony to the statutes.

{Tape: 2; Side: B; Approx. Time Counter: 227 - 248}

Pam Langley, Montana Agriculture Business Association, Montana Anhydrous/Fertilizer Association, rose in support of SB 166.

{Tape: 2; Side: B; Approx. Time Counter: 248 - 262}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. CLARK discussed with Mr. Batista the language on Page 3, Line 3. The REPRESENTATIVE was interested in knowing if a "qualifier" was needed for that language.

Mr. Batista replied that the language in Section 2B was for the purpose of "manufacturing dangerous drugs" and that, "...he was comfortable with that language."

REP. CLARK discussed with Mr. Christiaens the language on Page 3 regarding the "manufacturing of dangerous drugs."

REP. CLARK then asked **SEN. BLACK** about 45-6-301, MCA regarding the theft status and 45-9-301, MCA and how these two statutes would coordinate in relation to SB 166.

REP. STOKER began his discussion with Mr. Campbell regarding the methods known for the manufacture of "meth," the number of precursors required and the coordination of **REP. SCHMIDT'S** bill with this bill.

REP. NOENNIG queried **SEN. BLACK** about the "intent of the bill" and whether or not the theft of anhydrous ammonia or the illegal possession of anhydrous ammonia would be considered a felony.

SE. BLACK replied that the intent of this bill would be just that; to make the theft of anhydrous ammonia with the intent of manufacturing "meth" a felony.

REP. HARRIS spoke with Mr. Batista about the theft provision and the evidence that would be required to charge for theft.

REP. HARRIS then asked Sheriff Jergens about the theft provision and if it was needed. **Sheriff Jergens** replied, "Yes," and that he would look at the "totality of circumstances" before charging theft. They continued the discussion regarding the theft language.

{Tape: 2; Side: B; Approx. Time Counter: 262 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 130}

Closing by Sponsor:

SEN. BLACK closed the hearing on SB 166 and informed the committee that he would prefer that the "theft of anhydrous ammonia for the intent to manufacture" be left in the bill.

{Tape: 3; Side: A; Approx. Time Counter: 130 - 171}

(Please Note: REPS. LANGE, PARKER absent from the room.)

EXECUTIVE ACTION ON SB 35

Motion/Vote: **REP. STOKER** moved that SB 35 BE CONCURRED IN.

Motion carried unanimously by voice vote. (REPS. LANGE, PARKER voted by proxy vote.) REP. WARD will carry.

{Tape: 3; Side: A; Approx. Time Counter: 171 - 226}

EXECUTIVE ACTION ON SB 67

Motion: REP. STOKER moved that SB 67 BE CONCURRED IN.

Discussion:

Mr. MacMaster explained to the committee about bills that conflict in the MCA in different parts by one or more bills. HB 476 and SB 67 would need to be "melded" together. The committee discussed this aspect of both bills and what would be accepted regarding the fee increase.

Substitute Motion/Vote: Motion that SB 67 BE INDEFINITELY POSTPONED carried unanimously.

{Tape: 3; Side: A; Approx. Time Counter: 226 - 500}

EXECUTIVE ACTION ON SB 94

Motion/Vote: REP. STOKER moved that SB 94 BE CONCURRED IN. Motion carried unanimously by voice vote. (REPS. LANGE, PARKER voted by proxy vote.) REP. NOENNIG will carry.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 34}

ADJOURNMENT

Adjournment: 10:30 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh47aad0.PDF](#))