

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 14, 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. 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 282, 352, 344, 3/7/2005
Executive Action: SB 264, 282, 352-Do Concur In;
SB 231-Tabled

HEARING ON SB 282

Sponsor: SEN. FRANK SMITH, SD 16, POPLAR

Opening Statement by Sponsor:

SEN. FRANK SMITH (D), SD 16, opened the hearing on **SB 282**, Revise racial profiling law. The SENATOR referred to Page 1, Line 22 of SB 282 as it related to 45-5-401, MCA.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 37}

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, spoke to the committee about the cultural awareness training that is currently being taught at the Law Enforcement Training Academy. **Ms. Bucy** in particular spoke about the fact that in some cultures, making eye contact is an aggressive posture.

{Tape: 1; Side: A; Approx. Time Counter: 37 - 80}

Paul Grimstad, Colonel, Montana Highway Patrol (MHP), rose in support of SB 282 and stated that law enforcement can determine certain behaviors, etc. without the "profiling of individuals."

EXHIBIT(juh56a01)

{Tape: 1; Side: A; Approx. Time Counter: 80 - 96}

Jim Kembel, Montana Association of Chiefs of Police, Montana Police Protective Association, rose in support of SB 282.

{Tape: 1; Side: A; Approx. Time Counter: 96 - 104}

Jim Smith, Montana Sheriffs and Peace Officers Association, rose in support and stated that he would work with the sponsor to "beef" up previous requirements.

{Tape: 1; Side: A; Approx. Time Counter: 104 - 110}

Bob Worthington, Montana Medical Insurance Association, rose to support SB 282 and stated that he works with Montana Association of Counties (MACo) where both organizations fund programs at the Law Enforcement Training Academy.

{Tape: 1; Side: A; Approx. Time Counter: 110 - 132}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN spoke with Colonel Grimstad about some conversations that the REPRESENTATIVE has had with law enforcement officers in his district regarding the language contained on Page 1, Lines 21-23. Those being in relation to the requirement that all "stops" be covered under 46-5-401, MCA and following that procedure will put a greater burden on the officers. **Col.**

Grimstad referred that question to **Ms. Bucy** who stated that in her opinion that would not be the case; all officers are trained under the "particularized" stops under 46-5-401, MCA.

They continued to discuss the wording regarding "documentation" language within the bill with the sponsor and whether or not that language could be deleted from the bill. **SEN. SMITH** stated that the removal of that language could compromise the bill and also the officer's safety.

REP. STOKER began his conversation with Col. Grimstad regarding the procedures that officers must follow when stopping a vehicle and what methods the officers incorporate into the conversations with the violator to insure their safety, etc.

REP. RICE spoke with SEN. SMITH regarding the areas where profiling has occurred and if any of the areas have shown an increase. **SEN. SMITH** stated that in the areas of Billings-Hardin, Flathead County and the Great Falls-Browning areas have shown some increases.

REP. WARD questioned Col. Grimstad about how officers can ascertain and put on citations whether or not a person is Native American, Caucasian, etc.

{Tape: 1; Side: A; Approx. Time Counter: 132 - 344}

Closing by Sponsor:

SEN. SMITH closed the hearing on SB 282 and stated that the officers know how to ask questions to retrieve the information they need without the profiling of people.

{Tape: 1; Side: A; Approx. Time Counter: 344 - 368}

HEARING ON SB 352

Sponsor: SEN. DUANE GRIMES, SD 39, CLANCY

Opening Statement by Sponsor:

SEN. DUANE GRIMES (R), SD 39, opened the hearing on **SB 352**, Clarify inadmissibility of medical malpractice legal panel decisions. The SENATOR informed the committee that this bill comes from the Sub Committee's SJ 32 regarding Tort Reform.
{Tape: 1; Side: A; Approx. Time Counter: 368 - 420}

Proponents' Testimony:

Larry Riley, Utah Medical Insurance Group, rose in support of SB 352 and spoke to the committee about the fact that before any suit is filed in court, the Medical Screening Panel must decide whether the claim is valid.

He continued to inform the committee that usually the courts require some mediation efforts to be made; then if the liability is reasonably clear and the insurance company and the client cannot agree, the client can then go forward and sue the insurance company.

Mr. Riley stated that the parties can request a Settlement Conference early in the proceedings without the danger of a victim's rights being impaired toward receiving compensation.

EXHIBIT (juh56a02)

{Tape: 1; Side: A; Approx. Time Counter: 420 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 35}

Pat Melby, Montana Medical Association, rose in support of SB 352.

{Tape: 1; Side: B; Approx. Time Counter: 35 - 41}

Mark Taylor, Montana Hospital Association, rose in support of SB 352.

{Tape: 1; Side: B; Approx. Time Counter: 41 - 46}

Mona Jamison, Doctors' Company, spoke to the committee in support of SB 352 and stated that her client is one of the two medical malpractice insurers in Montana.

{Tape: 1; Side: B; Approx. Time Counter: 46 - 55}

Tom Ebzery, St. Vincents, Holy Rosary, St. James, rose in support of SB 352.

{Tape: 1; Side: B; Approx. Time Counter: 55 - 59}

Webb Brown, Montana Chamber of Commerce, rose in support of SB 352.

{Tape: 1; Side: B; Approx. Time Counter: 59 - 62}

Al Smith, Montana Trial Lawyers Association, rose in support of SB 352 and stated, "...the Medical Screening Panel keeps the integrity in the system and this bill will clarify what the law does...."

{Tape: 1; Side: B; Approx. Time Counter: 62 - 90}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG questioned the SENATOR regarding the admission of "bad faith actions" into evidence in court. **SEN. GRIMES** referred the question to **Mr. Riley**, who stated that he was not aware of any case and it that this would be a complicating factor that would not allow the suit to go forward.

REP. STOKER continued to speak with Mr. Riley regarding the Medical Screening Panel and whether or not a unanimous or majority decision is made by the panel. **Mr. Riley** explained the process to the REPRESENTATIVE and continued to speak to the decisions of the panel and the impact or lack thereof on the physicians/healthcare provider that is involved in the decision.

REP. RICE questioned Mr. Riley about the professionals who serve on the Medical Screening Panel. **Mr. Riley** stated that the panel consists of lawyers and physicians.

{Tape: 1; Side: B; Approx. Time Counter: 90 - 209}

Closing by Sponsor:

SEN. GRIMES closed the hearing on SB 352 and stated that the panel does help "screen" the non-meritorious cases from going forward.

{Tape: 1; Side: B; Approx. Time Counter: 209 - 250}

HEARING ON SB 344

Sponsor: SEN. MICHAEL WHEAT, SD 32, BOZEMAN

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 344**, Revise laws on punitive damages. The SENATOR stated that SB 344 would lift the limitation of punitive damages if the person is under the effect of drugs or alcohol. He referred to the amendment put forth by the trucking industry that would not allow the liability to revert back to the company if the driver is found to be under the influence.

SEN. WHEAT stated that if punitive damages are awarded, the award is paid after the attorneys fees are paid, with one-half going to the victim and one-half going to the state.

{Tape: 1; Side: B; Approx. Time Counter: 250 - 291}

Proponents' Testimony:

Al Smith, Montana Trial Lawyers Association, rose in support of HB 344 and spoke to the merits of this bill. He explained to the committee about the process of proving punitive damages and that those damages are above the amount of any other damages awarded.

He then explained the information that was distributed to the committee members.

EXHIBIT (juh56a03)

{Tape: 1; Side: B; Approx. Time Counter: 291 - 500}

Opponents' Testimony:

Greg VanHorsen, State Farm Insurance, rose in opposition to SB 344 and also spoke for Jacqueline Lenmark-American Insurance Association, Frank Cote, who are also opposed. **Mr. VanHorsen** explained to the committee members why his organization is opposed to SB 344. One of the quandaries Mr. VanHorsen proposed was if the awards are "split," would juries be inclined to award more money, or would juries decide to not award if they know that one-half of the money will be split with the State of Montana. He put forth to the committee that language could be inserted that would not allow the juries to know if the award is to be split.

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS began with his discussion to Mr. VanHorsen regarding the acts of employees with regard to the employer's liability. For example, if the employer was unaware of what the employee was doing that could be a cause for litigation for which the employer would be liable.

REP. GUTSCHE spoke with Mr. Smith regarding the splitting of awards in other states and if juries have awarded more because of that.

REP. CLARK discussed with Mr. Smith the provisions regarding the employee who is under the influence or drugs or alcohol and if any other aggravating circumstance could be added to the bill.

REP. NOENNIG spoke with Mr. VanHorsen regarding Page 1, Line 29 and Page 2, Line 5 and that the sentences state the same thing. **Mr. VanHorsen** stated that he agreed and referred the question to the sponsor, **SEN. WHEAT**. **REP. NOENNIG** posed the question to the **SENATOR** regarding the jury not being told of the splitting and if an amendment would be amendable to the **SENATOR**. **SEN. WHEAT** stated that he would be amenable to a new amendment.

REP. HARRIS continued with the **SENATOR** and discussed the possibility of removing the amendment regarding the employers being liable for the actions of their employees; would that make the employers more diligent with monitoring their employee's actions. **SEN. WHEAT** replied that the trucking industry would be in opposition to that. The **REPRESENTATIVE** continued with that line of questions and if the employers practice "willful blindness," etc. **SEN. WHEAT** stated that employers presently are drug-testing their employees and are trying to do what they can to prevent these problems from occurring.

REP. WINDHAM spoke with Mr. Smith regarding jury instructions given and who drafts those instructions.

REP. STOKER discussed the recap restrictions with Mr. Stang. **Mr. Stang, Montana Motor Carriers Association**, stated that if the amendment was removed from SB 344; his organization would be adamantly opposed to the bill. He informed the committee that 50% of the drivers are tested each year for drugs within the Federal guidelines set forth, with Watkins-Shepard tests 70% of their drivers. The trucking industry is not allowed to test 100% of their drivers per law.

Mr. Stang continued his explanation that if drivers are found with drugs, they are terminated, and when hiring drivers there is a pre-employment test given for drugs.

The trucking industry has a Federal Standard set forth for BAC at .04% and even with all those safeguards, it is impossible for employers to know what their employees are doing all the time.

REP. NOENNIG questioned Mr. Smith about the viability of proving that the employer knew what the driver was doing and that if the amendment was removed, there would still need to be proof the employer knew of the situation.

REP. RICE questioned **SEN. WHEAT** about the other drugs such as cold remedies or prescription medications and if those drugs would be acceptable. **SEN. WHEAT** replied that the list would only be for illicit drugs. The SENATOR then explained the incident where Clausen Distributing was involved in litigation regarding one of their drivers.

REP. CLARK referred to Page 2, Line 11, "condition for punitive damages" and if just drinking could fit into that category. **SEN. WHEAT** replied that there is an inherent risk if someone gets drunk and that could expose a person to punitive damages if that person is drinking and driving a vehicle.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 129}

Closing by Sponsor:

SEN. WHEAT closed the hearing on SB 344.

{Tape: 2; Side: B; Approx. Time Counter: 129 - 143}

EXECUTIVE ACTION ON SB 352

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

Motion/Vote: **REP. STOKER** moved that SB 352 BE CONCURRED IN.

Motion carried unanimously by voice vote. (REPS. PARKER, MCGILLVRAY and HARRIS voted by proxy vote.) (REP. HARRIS will carry)

{Tape: 2; Side: B; Approx. Time Counter: 143 - 158}

EXECUTIVE ACTION ON SB 282

(Please Note: REP. LANGE absent from the room.)

Motion/Vote: REP. STOKER moved that SB 282 BE CONCURRED IN.
Motion carried 10-8 by roll call vote with REP. EVERETT, REP.
KOOPMAN, REP. LANGE, REP. MCGILLVRAY, REP. RICE, REP. SONJU, REP.
STOKER, and REP. WARD voting no. (REPS. HARRIS, LANGE, MCGILLVRAY
and PARKER voted by proxy votes.) (REP. GUTSCHE will carry)
{Tape: 2; Side: B; Approx. Time Counter: 158 - 277}

EXECUTIVE ACTION ON SB 119

The committee discussed SB 119 and determined that an amendment
was needed for this bill. (No Executive Action Taken)
{Tape: 2; Side: B; Approx. Time Counter: 277 - 294}

EXECUTIVE ACTION ON SB 139

The committee discussed SB 139 and determined that an amendment
was needed for this bill. (No Executive Action Taken)
{Tape: 2; Side: B; Approx. Time Counter: 294 - 300}

EXECUTIVE ACTION ON SB 114

The committee discussed SB 114 and determined that an amendment
was needed for this bill. (No Executive Action Taken)
{Tape: 2; Side: B; Approx. Time Counter: 300 - 366}

EXECUTIVE ACTION ON SB 264

(Please Note: REPS. PARKER and MCGILLVRAY returned to room, REP.
NOONAN absent from room.)

Motion/Vote: REP. STOKER moved that SB 264 BE CONCURRED IN.
Motion carried 17-1 by voice vote with REP. EVERETT voting no.
(REPS. HARRIS, LANGE and NOONAN voted by proxy vote.) (REP.
DRISCOLL will carry)
{Tape: 2; Side: B; Approx. Time Counter: 366 - 440}

EXECUTIVE ACTION ON SB 231

(Please Note: REPS. PARKER and SONJU absent from room.)

Motion: REP. WARD moved that SB 231 BE CONCURRED IN.

Motion: REP. BECKER moved that SB 231 BE AMENDED with AMENDMENT for STRIKING PAGE 6, LINES 28-PAGE 7, LINE 3.

Discussion:

Mr. MacMaster explained the amendment to the committee.

Vote: Motion that SB 231 BE AMENDED carried 18-0 by voice vote. (REPS. HARRIS, PARKER, LANGE, SONJU and NOONAN voted by proxy vote.)

Motion: REP. STOKER moved that SB 231 BE CONCURRED IN AS AMENDED.

(Please Note: REP. HARRIS returned to the room.)

Discussion:

Mr. MacMaster informed the committee members that there may be a problem on Page 2, Lines 25-29.

Vote: Motion that SB 231 BE CONCURRED IN AS AMENDED failed 7-11 by roll call vote with REP. BECKER, REP. DRISCOLL, REP. GUTSCHE, REP. HARRIS, REP. NOONAN, REP. PARKER, and REP. WILSON voting aye. (REPS. LANGE, NOONAN, PARKER and SONJU voted by proxy vote.)

Motion/Vote: REP. WINDHAM moved that SB 231 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 105}

ADJOURNMENT

Adjournment: 11:35 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh56aad0.PDF](#))