

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 15, 2005 at 6:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Gerald Pease (D)
Sen. Jim Shockley (R)

Members Excused: Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: None.
Executive Action: SB 218, SB 357, SB 381, SB 387,
SB 403, SB 429

EXECUTIVE ACTION ON SB 218

Motion: SEN. CROMLEY moved that SB 218 DO PASS.

Motion: SEN. CROMLEY moved that AMENDMENT NO. SB021801.ADS BE ADOPTED.

EXHIBIT(jus37a01)

Discussion: Valencia Lane explained the amendment and where it would be inserted into the bill.

SEN. SHOCKLEY stated that the amendment would make seed contracts only apply to wheat seed.

SEN. MANGAN asked if the amendment was just about wheat.

CHAIRMAN WHEAT responded that because of the title of the bill he felt that they were limiting the subject to the wheat.

SEN. MANGAN asked if the testimony they had heard was null and void because there was no genetically engineered wheat in Montana. CHAIRMAN WHEAT stated that he felt that most of the testimony had been related to genetically modified wheat.

SEN. SHOCKLEY stated that the title did not solve the problem, because when it was drafted the seed contract portion was put into another section of the code that related to seeds in general, such as alfalfa. He went on to say that this was why the amendment was drafted to solve that problem.

CHAIRMAN WHEAT asked Ms. Lane if the amendment was prepared at the request of PRESIDENT TESTER. Ms. Lane responded that she believed it was given to Doug Sternberg with the instructions.

SEN. SHOCKLEY stated that it had been prepared at the instruction of PRESIDENT TESTER.

SEN. CROMLEY and SEN. MCGEE discussed if they needed to specify genetically engineered wheat on several other lines on Page 4 also. SEN. MCGEE stated that he did not think they would need to do so.

Motion/Vote: SEN. SHOCKLEY CALLED THE QUESTION ON AMENDMENT SB021801.ADS. Motion carried unanimously. SEN. PERRY and O'NEIL voted aye by proxy.

Motion: SEN. CROMLEY moved that SB 218 DO PASS AS AMENDED.

Amendment No. SB021801.avl was handed out to the Committee and is attached as Exhibit 2.

EXHIBIT(jus37a02)

Motion: SEN. CROMLEY moved that SB021801.avl BE ADOPTED.

Discussion: Valencia Lane explained the amendment.

Motion: SEN SHOCKLEY moved to SEGREGATE NO. 4 of AMENDMENT NO. SB021801.avl.

CHAIRMAN WHEAT informed the Committee that they were now only considering paragraph 4 of the amendment.

SEN. MANGAN asked **CHAIRMAN WHEAT** to discuss the reason for taking the venue out. **CHAIRMAN WHEAT** explained that there were venue statutes in place that basically provide that an individual could sue wherever the plaintiff resides, where the tort occurred or wherever a foreign corporation does business.

SEN. MANGAN stated that one of the concerns had been that all of the cases were being taken back to Monsanto's home, the State of Missouri. **CHAIRMAN WHEAT** responded that it would still be part of this bill. He referred to Section 4 and read the language pertaining to the question.

SEN. MANGAN and **CHAIRMAN WHEAT** discussed whether or not the language in Section 4 would cover liability in other sections of the bill.

SEN. CROMLEY stated in support of the amendment that it was a good idea not to have a venue statement in the bill, as there were specific venue statutes which would be looked at first. He further stated that the person proposing a suit would have at least this choice, along with possible other choices as well, for venue.

SEN. MCGEE asked if they were addressing paragraph 4 of Amendment No. SB021801.avl. **CHAIRMAN WHEAT** clarified that they were only suppose to be discussing segregated paragraph 4 at this point.

SEN. MCGEE asked **CHAIRMAN WHEAT** what, "strictly liable for injury", meant. **CHAIRMAN WHEAT** stated that what "strict liability" meant, was that if someone was injured the

manufacturer would be responsible. He then provided an example for clarification.

SEN. MCGEE and **CHAIRMAN WHEAT** discussed "strict liability" and "vicarious liability".

CHAIRMAN WHEAT stated that they should probably take the word "strictly" out.

SEN. ELLINGSON stated that he had the bill as drafted, and felt that it imposed strict liability anyway.

CHAIRMAN WHEAT indicated that he had interpreted the language in the bill to impose strict liability. He further stated that through their discussion he had reached the conclusion that they would probably be better off to leave the word "strictly" out.

SEN. SHOCKLEY stated that he felt strict liability should be limited to things that are dangerous to humans as opposed to wheat.

Motion: **SEN. CROMLEY** made a substitute motion that paragraphs 1, 2, 3 and 5 of **AMENDMENT NO. SB021801.AVL** BE ADOPTED.

Discussion: **CHAIRMAN WHEAT** explained that with the substitute motion they were now looking at amending SB 218 with paragraphs 1, 2, 3 and 5 of Amendment No. SB021801.avl. He further stated that paragraph 4 was being set aside and being considered at the present time.

SEN. SHOCKLEY asked if the term "crop contamination" only referred to contamination of adjacent plants or if it included a seed that came from a field that used a genetically modified seed. **CHAIRMAN WHEAT** indicated that he felt it did because it stated by cross pollination or other means.

Valencia Lane stated that the way the bill was drafted cross contamination meant, "transfer of genetic material from growing wheat to other wheat". She went on to she did not feel it meant contamination of another person's field because somehow seed got into another field. She further stated the bill was talking about wheat to wheat not wheat to field or field to field.

CHAIRMAN WHEAT and **SEN. MCGEE** indicated that they felt it would be better if the word "growing" was taken out so it would be read "material from genetically engineered wheat".

Motion: **SEN. CROMLEY** made a substitute motion that paragraphs 1, 2, 3 and 5 of **AMENDMENT NO. SB021801.AVL** BE ADOPTED and eliminate the word "growing" from paragraph 3.

Ms. Lane that even with the elimination of the word "growing" it would still be wheat to wheat. She further stated that cross contamination would still be wheat to wheat. **Ms. Lane** suggested that they look closer at the bill to see if wheat to field, or

field to field, was already covered in the bill. She then advised the Committee that they should not try to put substantive law into a definition section. She went on to say that this section was simply a definition of what cross contamination means.

SEN. CURTISS reminded the Committee that one of the witnesses had told them that seeds were "promiscuous". She then asked if that would help with the definition.

SEN. CROMLEY asked if there was a danger other than the contamination from wheat to wheat. He further asked if there was a danger of genetically engineered wheat to other crops.

CHAIRMAN WHEAT responded that he did not think so. He went on to say that it was either cross pollination between wheat fields or seeds somehow being blown into the fields from a truck passing by, etc.

SEN. MANGAN stated that some of the testimony had indicated that it was the problem of seeds dropping into their fields along with cross pollination that was at issue.

SEN. MCGEE proposed they say that crop contamination meant, "any transfer of genetic material, by cross pollination or other means to wheat that has not been genetically engineered." He went on to say that they would need to strike the words "from growing genetically engineered wheat." He then asked if striking those words would do what they were trying to do.

Ms. Lane stated that she did not feel that they should strike the words "genetically engineered wheat". She went on to say that what she felt they meant was genetically engineered wheat to wheat that was wheat that was not genetically engineered. She further stated that she was looking through the bill to see if it was critical to have language indicating from field to field.

CHAIRMAN WHEAT stated that in Section 3, Subsection 3, if was stated, "a farmer that was not in breach of a contract for the purchase or use of genetically engineered wheat and who

unknowingly comes into possession or uses genetically engineered wheat as a result of natural reproduction and cross pollenization, seed mix contamination, or other contamination is not liable."

SEN. CROMLEY commented on whether or not they needed to define crop contamination.

CHAIRMAN WHEAT responded that he did not think that they did.

SEN. SHOCKLEY stated he felt there were two aspects to crop contamination. He went on to say that one would be the breeding situation, the pollen mixing with other pollen, and then there would be contamination if seed from one field should get into another field. He continued saying that after "genetically engineered wheat" put in "or the transfer of genetically engineered wheat seeds to a field in which they were not lawfully planted".

CHAIRMAN WHEAT replied that he felt they would be better off simply striking the whole definition. He went on to say that he felt that it was getting too confusing.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 29.5}

Motion: **SEN. CROMLEY** made a substitute motion that SB 218 be amended by adding Amendment SB021801.avl, paragraphs 1, 2 and 5.

SEN. MCGEE asked **CHAIRMAN WHEAT** why the sponsor had the issue in amendment 5, "proper venue is the county". He further asked why they wanted to change the venue from the county where the injury took place to one of the three different alternatives. **CHAIRMAN WHEAT** stated that it would give options to the injured party. He went on to say that the action would most likely be filed in the county where the injury occurred.

Vote: Motion that paragraphs 1, 2 and 5 of AMENDMENT NO. SB021801.AVL BE ADOPTED carried unanimously. **SEN. PERRY** and **SEN. O'NEIL** voted aye by proxy.

Motion/Vote: **SEN. CROMLEY** moved that SB 218 DO PASS AS AMENDED. Motion carried 7-5 by roll call vote with **SEN. CURTISS**, **SEN. MANGAN**, **SEN. MCGEE**, **SEN. O'NEIL**, and **SEN. PERRY** voting no. **SEN. O'NEIL** and **SEN. PERRY** voted no by proxy.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 2.6}

EXECUTIVE ACTION ON SB 357

Motion: **SEN. LASLOVICH** moved that SB 357 DO PASS.

Amendment No. SB035701.avl was handed out to the Committee and is attached as Exhibit 3.

EXHIBIT(jus37a03)

Motion: SEN. CROMLEY moved that AMENDMENT NO. SB035701.AVL BE ADOPTED.

Discussion: Valencia Lane explained the amendment to the Committee members.

SEN. MANGAN stated that he did not like the amendment as he felt it would cause more problems than it would be worth.

SEN. LASLOVICH stated that he felt SEN. PERRY'S concern was valid. He went on to say when they had asked how long it took for a criminal background check they were informed that it only took a couple of days. He continued saying he felt it was appropriate that the employer wait a couple of days to receive the criminal background check before hiring the applicant for the position of social worker. He concluded by saying that he supported the amendment.

CHAIRMAN WHEAT asked for a brief synopsis of why the bill was needed. SEN. MCGEE explained the intent of the bill.

Motion/Vote: SEN. LASLOVICH CALLED THE QUESTION ON AMENDMENT NO. SB035701.AVL. Motion carried 11-1 by voice vote with SEN. MANGAN voting no. SEN. O'NEIL and SEN. PERRY voted aye by proxy.

Motion/Vote: SEN. LASLOVICH moved that SB 357 DO PASS AS AMENDED. Motion carried unanimously by voice vote. SEN. O'NEIL and SEN. PERRY voted aye by proxy.

{Tape: 1; Side: B; Approx. Time Counter: 2.6 - 11}

EXECUTIVE ACTION ON SB 381

Motion: SEN. MOSS moved that SB 381 DO PASS.

Amendment No. SB038101.avl was distributed to the Committee and is attached as Exhibit 4.

EXHIBIT(jus37a04)

Motion: SEN. MOSS moved that AMENDMENT NO. SB038101.AVL BE ADOPTED.

Discussion: SEN. MOSS explained the amendment.

Vote: Motion that AMENDMENT NO. SB038101.AVL BE ADOPTED carried unanimously. SEN. O'NEIL and SEN. PERRY voted aye by proxy.

Motion: SEN. MOSS moved that SB 381 DO PASS AS AMENDED.

Discussion: SEN. MOSS provided a synopsis of SB 381 for CHAIRMAN WHEAT'S benefit as he had not been present at the hearing.

SEN. SHOCKLEY stated that during the hearing that had been some concern. He went on to say that the amendment would take care of the problem.

SEN. MANGAN questioned what would happen to a 17 1/2 year old and if they would be considered a child. SEN. MOSS deferred to Ms. Lane for the answer. Ms. Lane responded that she was not sure. She went on to say that she did not think that there were any crimes that were specifically only crimes by or against 16 and younger. She went on to say that apparently the definition was requested by the Department of Justice to be the same as the standard criminal law provisions. She further stated that under the Constitution minors are under the age of 18, therefore, they felt that the definition would help particularly with regard to jury instructions in criminal cases.

SEN. MANGAN referred to Page 11, Line 4, where they had added age 16 and asked if a 17-year-old could have consensual sex and not be in trouble, would someone who took a photo of the act and showed it around be in violation of the law. SEN. CROMLEY responded that SB 381 did not speak to that issue as it was covered under current law.

SEN. MCGEE indicated that he would support the bill, however, he stated he felt that they had left a gap between age 16 and 18. He went on to say that it was hard, because what they were trying to do was define the idea of luring.

Motion/Vote: SEN. SHOCKLEY CALLED THE QUESTION ON SB 381. Motion carried unanimously by voice vote. SEN. O'NEIL and SEN. PERRY voted aye by proxy.

{Tape: 1; Side: B; Approx. Time Counter: 11 - 19.6}

EXECUTIVE ACTION ON SB 387

Motion: SEN. LASLOVICH moved that SB 387 DO PASS.

Amendment No. SB038701.av1 was handed out to the Committee and is attached as Exhibit 5.

EXHIBIT(jus37a05)

Motion: SEN. LASLOVICH moved that AMENDMENT NO. SB038701.AVL BE ADOPTED.

Discussion: SEN. SHOCKLEY explained the purpose of the amendment.

SEN. MANGAN stated that he would have a difficult time voting on the bill without a fiscal note.

CHAIRMAN WHEAT expressed his concerns regarding the lack of a fiscal note. He further indicated that he felt the courts and probation officers should have more discretion in how they fashion the probationary restrictions.

Motion/Vote: SEN. CROMLEY CALLED THE QUESTION ON AMENDMENT NO. SB038701.AVL. Motion carried 11-1 by voice vote with SEN. MANGAN voting no. SEN. O'NEIL and SEN. PERRY voted aye by proxy.

It was determined to suspend further action on SB 387 until the Committee had a chance to review the fiscal note.

{Tape: 1; Side: B; Approx. Time Counter: 19.6 - 27.1}

EXECUTIVE ACTION ON SB 403

Motion: SEN. MCGEE moved that SB 403 DO PASS.

Discussion: SEN. ELLINGSON stated that the bill baffled him. He went on to say he did not understand how anyone could be concerned about being vicariously liable for someone's activities that are by statute immune to liability. He then indicated that he would probably vote against the bill as he did not feel that the statutes needed to be cluttered up with something that has no meaning.

CHAIRMAN WHEAT stated that there was an amendment to SB 403 which they were going to have to deal with first. Amendment No. SB040301.avl was distributed to the Committee and is attached at Exhibit 6.

EXHIBIT(jus37a06)

Motion: SEN. SHOCKLEY moved that AMENDMENT NO. SB040301.AVL BE ADOPTED.

Discussion: Valencia Lane explained that the amendment would take out any reference to commercial vehicle operators.

SEN. WHEAT asked if the amendment struck subpart (a) on Line 28 in its entirety. **Ms. Lane** responded that it would.

SEN. SHOCKLEY stated that he felt they should amend the bill and then discuss whether or not they wanted to pass SB 403.

Motion/Vote: **SEN. SHOCKLEY CALLED THE QUESTION ON AMENDMENT NO. SB040301.AVL. Motion carried 10-2 by voice vote with SEN. CROMLEY and SEN. WHEAT voting no. SEN. O'NEIL and SEN. PERRY voted aye by proxy.**

Motion: **SEN. MANGAN moved that SB 403 DO PASS AS AMENDED.**

Discussion: **SEN. CROMLEY** stated that he did not like the bill and felt that it did not do anything.

SEN. MCGEE stated that he felt it was a good bill because it was a policy statement of the Legislature.

SEN. SHOCKLEY suggested that the language in SB 403 made the concept more bullet proof.

CHAIRMAN WHEAT stated that he had been told over and over that they were not suppose to put things into statutes that really do not belong there. He went on to say that he did not feel that SB 403 belonged in statute because no one could be vicariously liable for someone who was not liable.

Vote: **Motion that SB 403 DO PASS AS AMENDED failed 6-6 by roll call vote with SEN. CURTISS, SEN. MANGAN, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting aye. SEN. O'NEIL and SEN. PERRY voted aye by proxy.**

{Tape: 2; Side: A; Approx. Time Counter: 0 - 6.4}

EXECUTIVE ACTION ON SB 429

Motion: **SEN. SHOCKLEY moved that SB 429 DO PASS.**

Amendment No. SB042901.avl was distributed to the Committee.

Motion: **SEN. SHOCKLEY moved that AMENDMENT NO. SB042801.AVL BE ADOPTED.**

Discussion: **SEN. SHOCKLEY** explained the amendments to SB 429.

SEN. ELLINGSON asked **SEN. SHOCKLEY** if he was sure that he wanted to eliminate the prohibition on Page 2, Lines 22-24. **SEN. SHOCKLEY** responded that he did.

SEN. ELLINGSON asked **SEN. SHOCKLEY** why he wanted to eliminate the prohibition. **SEN. SHOCKLEY** responded that he did not know anywhere in the code it was stated that search warrants were secret.

Vote: Motion that **AMENDMENT SB042901.AVL BE ADOPTED** carried 11-1 by voice vote with **SEN. MANGAN** voting no. **SEN. O'NEIL** and **SEN. PERRY** voted aye by proxy.

Motion: **SEN. SHOCKLEY** moved that **AMENDMENT NO. SB042902.AVL BE ADOPTED**.

Discussion: **SEN. SHOCKLEY** stated the purpose of the amendment was to make sure that if rental car agencies put tracking devices on their rental cars they would have to inform those individuals renting the cars that the tracking device was attached to the vehicle.

SEN. CROMLEY asked what would happen if the police were to put a tracing device on a leased vehicle. **SEN. SHOCKLEY** responded that it would not pertain. He went on to say that the amendment was addressing a tracking device that had been put on the vehicle by the lessor of the vehicle.

SEN. MCGEE asked how a person would know whether or not a company had a GPS unit on the rental vehicle. **SEN. SHOCKLEY** replied that they would have broken the law, and to the extent that breaking the law caused you damages, you would be able to sue them.

Ms. Lane stated that she felt there were problems with placing the amendment in the bill and explained what those problems were.

SEN. SHOCKLEY and **Ms. Lane** discussed further the problems with the amendment.

SEN. ELLINGSON stated that he still had concerns with the way the bill was drafted. He then proposed some language that might clarify what they were trying to do.

CHAIRMAN WHEAT stated that he felt rather than refer to a person they should be referring to a law enforcement official. He went on to say that he was not convinced that getting a regular search warrant wouldn't be a better way to handle the situation.

SEN. SHOCKLEY and CHAIRMAN WHEAT then discussed various ways that they might amend the bill that would be better.

Motion/Vote: SEN. MANGAN CALLED THE QUESTION ON AMENDMENT NO. SB042902.AVL. Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. ELLINGSON, SEN. MOSS, SEN. O'NEIL, and SEN. SHOCKLEY voting aye. SEN. O'NEIL voted aye by proxy, and SEN. PERRY voted no by proxy.

Further action on SB 429 as amended was suspended until the fiscal note was received.

{Tape: 2; Side: A; Approx. Time Counter: 6.4 - 28}

ADJOURNMENT

Adjournment: 7:30 P.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus37aad0.PDF](#))