

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 31, 2005 at 9:07 A.M., in Room 102 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. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jeff Mangan (D)
Sen. Dan McGee (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: HB 146, HB 324, HB 366, HB 474, HB 562, HB 730

EXECUTIVE ACTION ON HB 146

{Tape: 1; Side: A; Approx. Time Counter: 0.3}

Motion: SEN. CROMLEY moved that HB 146 BE CONCURRED IN.

Motion: SEN. CROMLEY moved that Amendment HB014601.AVL BE CONCURRED IN.

EXHIBIT(jus68a01)

Discussion: Ms. Lane explained the Amendment. CHAIRMAN WHEAT asked if the bill was structured after the Federal Statute. Ms. Lane said, yes, it is, and noted that New Section 5, Page 4, Lines 3-4, was at the Attorney General's request.

Vote: Motion carried unanimously by voice vote. SEN. MANGAN and SEN. MCGEE voted aye by proxy.

Motion: SEN. CROMLEY moved that HB 146 BE CONCURRED IN AS AMENDED.

Discussion: SEN. CURTISS said most of this was covered in existing law and asked if the bill was necessary. CHAIRMAN WHEAT said this is fashioned after the Federal "whistle-blower" statute, and it is not in place in Montana. He did not think it was covered in existing law.

SEN. PERRY asked who advised that the bill was modeled after a Federal law. Ms. Lane said REP. GALLIK indicated that during his testimony. SEN. PERRY said he could not support the bill.

SEN. CROMLEY said he thought it was modeled after the Federal act and also that the majority of states have similar acts. He thought it was a good bill and gave an example that he knew of to illustrate how it worked. He strongly supports the bill.

SEN. SHOCKLEY said that anytime the public can be involved in looking after the government's money and it doesn't cost the government anything, it is a good idea.

SEN. PERRY stated that the problem he sees is that it gives financial incentives for one citizen to be chasing after what may or may not be true. Anyone could be charged and have to defend themselves, while the "whistle-blower" has a financial incentive to gain from it.

SEN. SHOCKLEY stated it is like any other claim, and there has to be proof of the claim.

SEN. CROMLEY said if it was a frivolous claim it would not go into this action, because with this particular bill they would only get a percentage of the money.

SEN. O'NEIL noted that Page 6, Line 13, addresses **SEN. PERRY'S** concern. He gave an example, and said that a hospital was using a double set of books, one to get money from the government, and the other to show they weren't making any profit. Someone brought a suit against the hospital and both the "whistle-blower" and the government made money from his lawsuit.

Comment: **SEN. ELLINGSON** left the room.

SEN. CURTISS said she could not support this and thought it would open the door for a lot of litigation related to allegations.

CHAIRMAN WHEAT explained that the bill was designed to address people who are "ripping off" the taxpayers. He said he will support the bill, and felt it would not open the floodgates of litigation because there has to be proof when the claim is brought. He stated that he agreed with **SEN. SHOCKLEY** and wanted to have a way to get the money back.

Vote: Motion carried 9-3 by voice vote with **SEN. CURTISS**, **SEN. MCGEE**, and **SEN. PERRY** voting no. **SEN. ELLINGSON**, **SEN. MANGAN** and **SEN. MCGEE** voted by proxy.

CHAIRMAN WHEAT asked **SEN. CROMLEY** to carry the bill on the floor, and he agreed to.

EXECUTIVE ACTION ON HB 324

{Tape: 1; Side: A; Approx. Time Counter: 16.4}

Motion: **SEN. WHEAT** moved that HB 324 BE CONCURRED IN.

Motion: **SEN. O'NEIL** moved a conceptual amendment to Line 21 to strike the words "...but is not limited to".

Discussion: **SEN. O'NEIL** stated that those words make the bill vague and he would like to have a better structured bill.

SEN. CROMLEY spoke in opposition to the Amendment and said he did not think that would change the meaning.

SEN. SHOCKLEY asked who drafted the bill. **Ms. Lane** said that she did not know who drafted it. **SEN. CROMLEY** stated it was John McMaster who drafted the bill.

SEN. O'NEIL withdrew his Conceptual Amendment.

Motion: **SEN. O'NEIL** moved a conceptual amendment to Line 21 to strike the words "...includes but is not limited to", and insert the words, "...consists of".

Discussion: **SEN. SHOCKLEY** stated that the bill read better with **SEN. O'NEIL'S** Amendment, but he did not think the bill should be changed if they wanted it to pass.

SEN. CROMLEY agreed with **SEN. SHOCKLEY** that if they are interested in having the bill pass, it should not be amended.

SEN. O'NEIL said that he would not vote for a bill that was vague and would only support the bill with the Conceptual Amendment.

SEN. ELLINGSON said they need to pass the bill. He felt that they should resist the urge to amend good bills that have come over from the House.

SEN. CROMLEY said there wasn't a problem with the bill as written. The second sentence contains additional explanatory information that he did not think detracted from the bill.

SEN. O'NEIL said a lot of things are included when it is not limited to "knowingly approaching within eight feet of a person". He felt the bill was a lot broader than they realized.

Ms. Lane addressed drafting style and explained that the amendment should be to start striking after the word "knowingly" on Line 20 and continue through "knowingly" on Line 22. The crime is stated in the first sentence, the second sentence gives an indication of what the crime consists of, but is not limited to that. She felt that **SEN. O'NEIL** is trying to limit the crime to approaching within eight feet.

CHAIRMAN WHEAT asked about the first Conceptual Amendment. **Ms. Lane** said it did not seem to accomplish anything.

CHAIRMAN WHEAT agreed with **SEN. CROMLEY** and said that the crime is stated in the first sentence.

SEN. O'NEIL further explained the Amendment.

Substitute Motion: SEN. O'NEIL moved to amend the conceptual amendment by striking everything after the word "person" on Page 1, Line 20, and striking all of Line 21.

Discussion: Ms. Lane explained that the bill as drafted is broader than approaching within eight feet. She said that SEN. O'NEIL'S Amendment would set an eight-foot limit.

SEN. PERRY referred to Line 22, and said if a person approaches another person within eight feet to ask consent to an activity, that might be construed as a violation under this bill.

{Tape: 1; Side: B; Approx. Time Counter: 0.4}

SEN. CROMLEY spoke in opposition to the Amendment and said that it took out the principal offense; obstructing or blocking the entry, and only refers to approaching within eight feet.

Vote: Motion failed 1-11 by voice vote with SEN. O'NEIL voting aye. SEN. MANGAN and SEN. MCGEE voted by proxy.

Discussion: SEN. SHOCKLEY said this isn't about freedom of speech, he felt strongly that people should go about their business without any undue hindrance. He said he will carry the bill if it passes.

SEN. PERRY and SEN. SHOCKLEY discussed what makes this case different from any other assault case.

Vote: Motion carried 8-4 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, and SEN. PERRY voting no. SEN. MANGAN and SEN. MCGEE voted by proxy.

EXECUTIVE ACTION ON HB 366

{Tape: 1; Side: B; Approx. Time Counter: 7.9}

CHAIRMAN WHEAT summarized the bill. It would exempt a firearm manufactured and retained in Montana from regulation under the Commerce Clause of the U.S. Constitution.

Motion: SEN. SHOCKLEY moved that HB 366 BE CONCURRED IN.

Discussion: SEN. SHOCKLEY described the Stewart case, which involved someone manufacturing machine guns. The 9th Circuit Court ruled that he could manufacture the guns with parts purchased from around the country as long as they are not sold.

SEN. CROMLEY said the bill relates to the sale of guns and would be considered commerce. If this bill is passed, it may give someone a false hope that they can do this with immunity.

SEN. CURTISS strongly supported the bill because of the people that manufacture black powder guns as a hobby.

CHAIRMAN WHEAT noted that there is already a manufacturer of black powder guns in Big Timber, without this bill.

SEN. PERRY noted that black powder rifles do not fall under firearm laws.

SEN. O'NEIL noted the case of Sheriff Prince from Ravalli County that said a sheriff does not have to do background checks and said he would support the bill.

CHAIRMAN WHEAT said he has had many discussions about whether this bill was designed to set up a legal battle involving Constitutional rights under the State and Federal Constitutions, he has also discussed economic development. He felt this would set the stage for litigation and could not support the bill.

Vote: Motion failed 5-7 by roll call vote with **SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY** voting aye. **SEN. MANGAN and SEN. MCGEE** voted by proxy.

Motion/Vote: **SEN. ELLINGSON** moved that HB 366 BE TABLED AND THE VOTE REVERSED. Motion carried 11-1 by voice vote with **SEN. SHOCKLEY** voting no. **SEN. MANGAN and SEN. MCGEE** voted by proxy.

EXECUTIVE ACTION ON HB 474

{Tape: 1; Side: B; Approx. Time Counter: 18.6}

Motion: **SEN. CROMLEY** moved that HB 474 BE CONCURRED IN.

Discussion: **Ms. Lane** said that the bill deals with legal notices that a county is required to publish and explained the Amendment.

SEN. SHOCKLEY said he understood from testimony that the paid newspapers did not want any competition.

SEN. ELLINGSON said the counties supported the bill and the paid newspapers opposed it. He said the Committee would have to rely on the counties to use good judgment in the publications they choose to put their legal notices in. He said there were several

good ones: The Queen City News and The Missoula Independent have wide circulation despite the fact that they are free. Advertisers put lots of money into those publications hoping to get purchasers, and that is a good indication that the papers are picked up and read. He said he is in favor of the bill. He asked if they were going to proceed with the Amendment in the absence of **SEN. MCGEE**.

CHAIRMAN WHEAT said he did not think that they should and instructed the Committee to put it back into their folders.

SEN. CURTISS strongly opposed the bill and said it is in the best interests of consumers that advertising is carried in papers of long standing. People get accustomed to looking in certain places for legal ads.

CHAIRMAN WHEAT said that in fairness to **SEN. MCGEE** they would deal with the bill when he gets back.

EXECUTIVE ACTION ON HB 562

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

Motion: **SEN. CROMLEY** moved that HB 562 BE CONCURRED IN.

Motion: **SEN. MOSS** moved that Amendment HB056201 BE CONCURRED IN.

EXHIBIT(jus68a02)

Discussion: **Ms. Lane** passed out the Amendment and explained it.

SEN. O'NEIL said he would vote against this type of an amendment because it basically says that the king can do no wrong.

Vote: Motion failed 1-11 by voice vote with **SEN. MOSS** voting aye. **SEN. MCGEE** voted by proxy.

Discussion: **SEN. ELLINGSON** asked for more information about the problem and the reason for the bill. **SEN. SHOCKLEY** said the testimony indicated there had never been a problem and if they are made immune, they can buy the insurance very cheaply.

CHAIRMAN WHEAT said it is a good program and they don't currently have a problem. They are trying to prevent future problems.

SEN. CROMLEY said this bill excludes all liability, even gross negligence, and asked whether it includes immunity for intentional misconduct.

{Tape: 2; Side: A; Approx. Time Counter: 0.3}

CHAIRMAN WHEAT noted that the bill says there is no liability on the part of..., and a cause of action of any nature may not be brought against any member, insurer, agent, etc.

Substitute Motion/Vote: **SEN. O'NEIL** made a substitute motion that HB 562 BE TABLED. Substitute motion carried 9-3 by voice vote with **SEN. CROMLEY**, **SEN. MANGAN**, and **SEN. MOSS** voting no. **SEN. MANGAN** and **SEN. MCGEE** voted by proxy.

EXECUTIVE ACTION ON HB 730

{Tape: 2; Side: A; Approx. Time Counter: 2.1}

Motion: **SEN. SHOCKLEY** moved that HB 730 BE CONCURRED IN.

Discussion: **SEN. SHOCKLEY** addressed the bill. In the case where the young woman is not willing to tell her parents, he suggested having the child visit a lawyer after hours, give the reasons and discuss the case, then have it filed in court the next day. The judge could accommodate the case "in camera" and either grant or not grant the abortion procedure privately.

He said someone could be for or against the bill, but the legal argument that it is unconstitutional does not exist. The Supreme Court of the United States allows judicial bypass in certain circumstances. The problem in Montana is the tension between the right to privacy, Article 2, Section 10, and persons who are not adults having the same rights as persons that are adults, except that the state may pass statutes that enhance their protection, Article 2, Section 15. He felt that the Supreme Court should have the opportunity to determine that tension. Judicial bypass is reasonable and he would support it. He would like to avoid adding amendments.

Comment: **SEN. MANGAN** arrives.

SEN. CROMLEY agreed with **SEN. SHOCKLEY'S** legal analysis. He said he had problems with the bill and would not support it. He said it is the dysfunctional families that have the problems. He said that abortion counseling needs to be done. He objected to the part that says a judge is to find that an abortion is in the best interest of the petitioner. If they have a Catholic judge, and the person is sincere in his religion, they will believe that submitting to an abortion is going to create a sinful result in a person's life. He asked, "How could a sincere Catholic judge ever say that an abortion will be in the best interests of that

person? They would have to say, no". He said that rules out any judge who has strong religious convictions. He stated that he didn't think there is any bill that would work.

SEN. PERRY said that seems contradictory to the justice system, since religion isn't supposed to enter into decisions when it comes to law.

CHAIRMAN WHEAT said he is saying that it creates a huge conflict for the judge placed in that position. They may be able to override the conflict.

SEN. CROMLEY said it may not be a religious belief, it is just the belief on the part of the judge.

SEN. SHOCKLEY said that, practically, it doesn't take long to figure out the Catholic judges, the judge gets paid to make his judgments on the law, not on his moral feelings. He should defer these cases to another judge.

CHAIRMAN WHEAT said he did not like the language, and did not feel that an abortion is in the best interest of the petitioner. He said this ends up being a medical decision, because it might not be in their best interest psychologically or medically. It's not just a quick decision, there needs to be testimony supporting what is in their best interest.

SEN. SHOCKLEY said there are only three places in the state that perform these operations. He predicted that a 14 year-old woman will go in for an abortion without benefit of judicial bypass, she will have remorse and tell her parents, and they will sue and shut down the operation. Doctors are exposing themselves to litigation, and the first lawsuit will shut this down. He said this bill is good for both pro-choice and pro-life.

Motion: **SEN. SHOCKLEY** moved that Amendment HB073003 BE CONCURRED IN.

EXHIBIT (jus68a03)

Discussion: **SEN. SHOCKLEY** explained Amendment HB073003.

SEN. CROMLEY asked **SEN. SHOCKLEY** if he was saying that notification of a parent is beneficial in all cases. **SEN. SHOCKLEY** said that the parent is always the best choice, but the amendment he proposed says that if the parents are not available, then it is the opinion of the legislature that the judicial bypass would be in the child's best interest and would enhance the protection of the minor.

CHAIRMAN WHEAT expressed concern that the legislature would be making this finding, when the bill relies on a court to make the determination based on the unique circumstances of each case. He said there may be circumstances where the court finds that parental notification is not in the child's best interest. **SEN. SHOCKLEY** said this provision is addressing the procedure.

SEN. MANGAN felt that the Amendment covers both, because it talks about notification "and" the procedure.

Vote: Motion failed 5-7 by roll call vote with **SEN. CURTISS**, **SEN. MCGEE**, **SEN. O'NEIL**, **SEN. PERRY**, and **SEN. SHOCKLEY** voting aye. **SEN. MCGEE** voted yes by proxy.

Discussion: **SEN. SHOCKLEY** explained Amendment HB073005.

EXHIBIT (jus68a04)

{Tape: 2; Side: B; Approx. Time Counter: 5}

Motion/Vote: **SEN. O'NEIL** moved that segregate paragraphs 4 and 5 BE CONCURRED IN. Motion failed 6-6 by roll call vote with **SEN. CURTISS**, **SEN. ELLINGSON**, **SEN. LASLOVICH**, **SEN. MCGEE**, **SEN. PERRY**, and **SEN. SHOCKLEY** voting aye. **SEN. MCGEE** voted aye by proxy.

Discussion: **CHAIRMAN WHEAT** directed the discussion to Paragraphs 1, 2, and 3 of the Amendment.

SEN. ELLINGSON expressed his appreciation to **SEN. SHOCKLEY** for his efforts and said that he felt the state should not involve themselves in these matters. He said he would not support either the Amendment or the bill.

Motion/Vote: **SEN. O'NEIL** moved that segregate paragraphs 1, 2, and 3 BE CONCURRED IN. Motion failed 5-7 by roll call vote with **SEN. CURTISS**, **SEN. ELLINGSON**, **SEN. LASLOVICH**, **SEN. MCGEE**, **SEN. PERRY**, and **SEN. SHOCKLEY** voting aye. **SEN. MCGEE** voted by proxy.

Discussion: **SEN. SHOCKLEY** said that 86% of the people going through this procedure have parental support. He stated, "We are saying the 14% who don't, who come from dysfunctional families, the state doesn't care anything about. Those who need it most get nothing".

Motion: **SEN. O'NEIL** moved that conceptual amendment on Page 2, Line 5, to strike, "...of a pattern" BE CONCURRED IN.

Discussion: SEN. SHOCKLEY said he meant to have that in his amendments, and he would have done what SEN. O'NEIL is doing. He stated they just want to establish physical abuse, to allow the judge to proceed.

Vote: Motion carried 9-2 by roll call vote with SEN. MOSS and SEN. WHEAT voting no.

Motion: SEN. SHOCKLEY moved that HB 730 BE CONCURRED IN AS AMENDED.

Discussion: SEN. SHOCKLEY said he did not have anything further to say about the bill.

SEN. PERRY and CHAIRMAN WHEAT discussed whether the bill concerned the best interests of the child.

Substitute Motion/Vote: SEN. MANGAN made a substitute motion that HB 730 BE TABLED. Substitute motion failed 6-6 by roll call vote with SEN. CURTISS, SEN. CROMLEY, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting no. SEN. MCGEE voted by proxy.

Discussion: SEN. CROMLEY thanked SEN. SHOCKLEY for information he provided because it made him think about judicial bypass. He stated he disagreed with the amendments and the bill. He did not think they would ever get judicial bypass, and he did not feel that it is the solution. He said that it is more of a medical counseling decision.

SEN. SHOCKLEY said if he was a judge, he would probably be in the same situation as SEN. CROMLEY. If he could not unbiasedly enforce the law, he would give it to another judge.

SEN. MOSS also thanked SEN. SHOCKLEY for the work he had done on the bill. She stated she could not support the bill. She felt that going before a judge would be even more traumatizing. Planned Parenthood counselors and physicians have training in counseling and they have the expertise to help young women. She said there is a process where an adult or a friend is with the young woman to help make that decision and it would be made in a very thoughtful manner. She said it is more appropriately done in a clinic than in a judge's chambers.

SEN. PERRY clarified an earlier point. The judge is not making a decision on the pros and cons of abortion itself, but rather whether or not that abortion is in the best interests of the

petitioner. **CHAIRMAN WHEAT** said he felt that the judge is making a decision about an abortion.

SEN. CURTISS asked the Committee how they would feel if their daughter or granddaughter bled to death overnight because they were not aware of the fact there was an abortion. She said it could happen.

Substitute Motion: **SEN. O'NEIL** moved that conceptual amendment to strike Subsection 4, Line 29, on Page 1, BE CONCURRED IN.

Substitute Motion/Vote: **SEN. MANGAN** made a substitute motion that HB 730 BE TABLED. Substitute motion carried 7-5 by roll call vote with **SEN. CURTISS**, **SEN. MCGEE**, **SEN. O'NEIL**, **SEN. PERRY**, and **SEN. SHOCKLEY** voting no. **SEN. MCGEE** voted by proxy.

*Comment: The Committee took a ten minute break. **SEN. MCGEE** arrived. **CHAIRMAN WHEAT** said they would resume Executive Action on HB 474.*

EXECUTIVE ACTION ON HB 474

{Tape: 2; Side: B; Approx. Time Counter: 19.5}

Motion: **SEN. CROMLEY** moved that HB 474 BE CONCURRED IN.

Motion: **SEN. MCGEE** moved that Amendment HB047401 BE CONCURRED IN.

EXHIBIT(jus68a05)

Discussion: **SEN. MCGEE** explained the Amendment.

SEN. MANGAN said he would not vote for it.

Vote: Motion carried 10-2 by voice vote with **SEN. CROMLEY** and **SEN. MANGAN** voting no.

Motion: **SEN. CROMLEY** moved that HB 474 BE CONCURRED IN AS AMENDED.

Discussion: **SEN. MOSS** stated she received a lot of information from proponents and opponents on this and can't support the bill because she feels it is critical for legal notices to be published with subscription newspapers. She noted that another way people access this information with subscription newspapers is through the Internet.

SEN. CURTISS said it is in the best interest of the consumer that legal ads appear in syndicated papers they have subscribed to.

SEN. O'NEIL said that paid circulation newspapers don't reach everyone in the county. Flathead County requires that legal notices only have to be advertised in one newspaper in the county, and for one contract period the Big Fork Eagle had the contract. He stated that most people don't read that paper. He noted that the number of paid subscriptions are going down, and the readership of free newspapers is going up. He said that the Missoula Independent is also on the Internet, and favored allowing free newspapers to have the advertising.

{Tape: 3; Side: A; Approx. Time Counter: 0.2}

SEN. CROMLEY spoke in favor of the bill and said it wasn't about the paper that had the widest circulation. He said Billings has a paper that only has legal notices in it. He said they could trust the county, as it is in their best interest to put notices in the paper with the widest circulation or they are subject to criticism.

SEN. MANGAN voiced support for the bill. He said it goes back to local control. Local governments will make the appropriate decision for their area.

SEN. PERRY noted the public's right to participate in government. Under Montana law, the legislature cannot reduce a Montanan's rights to know, but in order to get a notice publicized, citizens are required to purchase the publication. He cited lack of communication before the bill was written and suggested they come back in two years with a better bill. He will not support this.

Vote: Motion failed 6-6 by roll call vote with SEN. CROMLEY, SEN. ELLINGSON, SEN. MANGAN, SEN. O'NEIL, SEN. SHOCKLEY, and SEN. WHEAT voting aye.

With no further business, **CHAIRMAN WHEAT** adjourned the meeting.

{Tape: 3; Side: A; Approx. Time Counter: 8}

ADJOURNMENT

Adjournment: 11:15 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

LINDA KEIM, Transcriber

MW/mp/lk

Additional Exhibits:

EXHIBIT ([jus68aad0.PDF](#))