MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **SEN. BRENT R. CROMLEY**, on February 10, 2005 at 9:00 A.M., in Room 137 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. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: Sen. Gerald Pease (D)

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

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

Committee Business Summary:
Hearing & Date Posted: SB 375, 2/7/2005; SB 374, 2/7/2005; SB 378, 2/7/2005
Executive Action:

VICE CHAIR BRENT CROMLEY, SD 25, BILLINGS explained that the order of the bills would be SB 375, SB 378, and SB 374.

HEARING ON SB 375

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 375,** Revise venue of out-of-state railroad defendants.

SEN. WHEAT informed the Committee that SB 375 would allow Federal Employees Liability Act (FELA) defendants in Montana to bring a claim against the railroad anywhere in the state. He explained and then read an excerpt from the Montana Supreme Court case Rule versus Burlington Northern. He reported that the Supreme Court's decision in the Rule case followed the legislative change that was made in 1995 and upheld the venue change in the Rule case. However, he expressed that there is an underlying liberal construction that is in favor of the injured worker in most of the FELA cases. He claimed that his bill attempted to take the venue in FELA cases to the way it was before the legislature's changes in 1995. He thought, as a legislative body, the Committee should be making a policy statement that they were going to give as many options as they could to the injured FELA worker. He reserved the right to close.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 8}

Proponents' Testimony:

REP. BOB BERGREN, HD 33, HAVRE, spoke on behalf of the railroad workers whom he represented. He believed that HB 375 would create a fairness issue for the workers and for the companies involved. He felt that a neutral venue would be beneficial to both sides.

{Tape: 1; Side: A; Approx. Time Counter: 8 - 9.3}

Zander Blewett, from Great Falls, expressed that the present venue statute is fair for virtually every claim except when it is applied to FELA claimants. The reason he gave for this was that FELA claimants are forced to sue. As a result, the FELA worker must prove negligence on the part of the railroad. He indicated that, if workers are forced to bring a case only in the area at which they were hurt or the area in which they live, they are left without many choices. He explained that, because of this, there have been very few cases brought against the railroad in Havre and Glendive. Therefore, the present venue law allows the

railroad to decide where they are going to be sued. He attached a copy of the federal law to the handout which he provided to the Committee. He indicated that there was no equal protection problem with this bill because of the help of the Supreme Court. He pointed out that before 1995 the railroad could be sued in any county regardless of where they were doing business. He clarified that the proponents of the bill were not seeking to do this just to allow the railroads to be sued in any county in which they do business.

EXHIBIT(jus33a01)

{Tape: 1; Side: A; Approx. Time Counter: 9.3 - 15.1}

Fran Marceau, State Director for the United Transportation Union, discussed the legislation which led to the railroad companies succeeding in limiting the areas where railroad workers could file lawsuits. He asserted that SB 375 allowed injured Montana railroad workers the right to bring action under FELA in any county where the railroad does business. This levels the playing field. He urged the Committee to support SB 375.

{Tape: 1; Side: A; Approx. Time Counter: 15.1 - 16}

Craig Gilchrist, Chairman of the Montana State Legislative Board for the Brotherhood of Locomotive Engineers and Trainmen, stressed that railroad workers were not asking for any more rights than they had before. They were just trying to get their rights restored. He asked the Committee to support SB 375 because it was a fairness issue.

{Tape: 1; Side: A; Approx. Time Counter: 16 - 17}

Erik Thuesan, a Lawyer from Helena, found railroad workers to be very courageous individuals and was glad he could represent them. He provided a handout describing how FELA fit into the current legislation. He discussed a case he was working on for a railroad worker in Havre. He described the built-in conflict of interest which the jury members in Havre would have. He also described the issues surrounding having a trial out of Billings, which is the other option for a FELA case. He pointed out that the way in which the venue is currently set up allows the railroad to move the location of the trial around depending on where they put their agent for service of process. He reiterated that FELA was created to give the worker a level playing field, giving them the opportunity to choose the place of trial wherever the railroad is doing business.

EXHIBIT(jus33a02)

{Tape: 1; Side: A; Approx. Time Counter: 17 - 22.4}

Al Smith, Montana Trial Lawyers Association, remarked that the bill would not violate equal protection. He commented that the Committee had a rational basis to support the bill because it is allowed by the federal act, they have a constitutional duty under Article 13, Section 1, to protect Montana citizens from corporations and the Montana Supreme Court has said that it is within the power of the legislature to set venue statutes. He also explained that it did not violate Article 2, Section 31, which is the prohibition against granting special immunities and privileges. He explained that the bill would not grant immunity to anyone and would not grant special privilege but it would give injured railroad workers a choice.

{Tape: 1; Side: A; Approx. Time Counter: 22.4 - 24}

Don Judge, Representing Teamsters Local 190, stood in support of SB 375. He agreed with Mr. Smith's testimony completely. He believed that the change in venue was completely an issue of political power. The Teamsters Union was hoping that the political balance had changed and the balance would return to a fair level. He mentioned that the bill only allowed residents of Montana to file cases in any county where the railroad does business.

{Tape: 1; Side: A; Approx. Time Counter: 24 - 26.6}

Darrell Holzer, Representing the Montana State American Federation of Labor - Confederation of Industrial Organizations (AFL-CIO), spoke in strong support for SB 375. He restated that it was truly a fairness issue and he hoped that the level of fairness was restored. He requested that the Committee provide a do pass recommendation for the bill.

{Tape: 1; Side: A; Approx. Time Counter: 26.6 - 27.2}

Opponents' Testimony:

Randy Cox, Lawyer Representing Montana Rail Link, expressed that Montana Rail Link was a Montana company that employs many people and puts millions of dollars into the economy. He claimed that Montana Rail Link would be the only Montana company that would not be afforded the protection of the venue laws which every other Montana company has. He asserted that SB 375 treated a railroad differently than any other company in the United States. He felt that the bill would allow a worker to sue in any county where they felt they would receive the largest settlement. He professed that the venues chosen by the 1995 law had been applied

fairly and evenly to all cases over the past ten years. He referenced the Rule case and provided a copy of an opinion on the case. He indicated that the Supreme Court's ruling which had occurred January 25, 2005, rejected all of the defenses put forth by Mr. Rule. He stressed that there was no special right of a FELA claimant. He commented that if the case was not having a fair trial in certain counties there were provisions in the law which would move the venue to other locations. He also indicated that FELA claimants could go to federal court. What the law requires is to give FELA claimants full access afforded to all other plaintiffs. In his opinion the Montana Supreme Court ruled that the current law did exactly that. He discussed the effect which SB 375 would have on Montana Rail Link. Fundamentally, he saw nothing fair about elevating a particular type of lawsuit and treating it differently from every other court lawsuit in Montana. He saw no justification to change the law just for FELA claimants.

EXHIBIT(jus33a03)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 13.8}

Paul Babb, Chief Executive of Butte-Silver Bow, was opposed to the bill because of the economic development impacts. He remarked that transportation and railroad service in Butte-Silver Bow are key components of their economic development infrastructure. He stressed the importance of Union Pacific to Butte and the Port of Montana. His concern was to make sure that the railroad service would continue in Butte and hopefully expand. He opposed SB 375 because he saw it as a disadvantage for keeping the railroad in Butte.

{Tape: 1; Side: B; Approx. Time Counter: 13.8 - 14.9}

George Paul, General Manager for the Port of Montana, rose in opposition to SB 375 because of the economic benefit to Butte and to Montana. He passed out a pamphlet on the Port of Montana. He opposed this legislation because it limited the ability of the Port of Montana to serve its customers and hurt the economic development of Montana.

{Tape: 1; Side: B; Approx. Time Counter: 14.9 - 17.6}

Leo Berry, Attorney from Helena Representing Burlington Northern and Santa Fe (BNSF) Railroad Company, discussed the law prior to 1997 and the facts which precipitated the change in law. He addressed the options, and effects of those options, FELA complainants have for choosing a location to have their case heard. He reiterated that the Montana Supreme Court unanimously

approved the legislation passed in 1997. He explained that Burlington Northern moved their resident agent to Billings because they had reorganized their operations and moved their corporate headquarters for BNSF to Billings. He quoted the Rules case ruling.

EXHIBIT(jus33a04)

{Tape: 1; Side: B; Approx. Time Counter: 17.6 - 24.6}

William Penn, Economic Development Director of Butte-Silver Bow, opined that one of the most important factors of attracting manufacturing is transportation. He felt that Butte-Silver Bow needs the services and the ability the railroads provide. They believe that they have an advantage to create economic development because of the transportation provided by the railroads.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 0.8}

SEN. BILL TASH, SD 36, DILLON, talked about the Union Pacific Railroad. He mentioned that the Barrett Minerals Company was very dependent on the Union Pacific Railroad. He agreed that the bill was about a fairness issue but not in the way the proponents expressed.

{Tape: 2; Side: A; Approx. Time Counter: 0.8 - 4.2}

Ed Bartlett, Attorney from Helena Representing Union Pacific, opposed SB 375. He added that the Committee should look at the existing statute 25-2-122, Parts 1-3. He provided a written version of his testimony. He asserted that the Rule case was important because of the timing of the case and the fact that it rejected the same arguments made by Mr. Blewett. He noted that the legislature could decide to do things in addition to FELA but it cannot do less. He referred to the State of the State Address made by Governor Schweitzer. He submitted a letter from the Butte Local Development Corporation in opposition to SB 375.

EXHIBIT(jus33a05)
EXHIBIT(jus33a06)

{Tape: 2; Side: A; Approx. Time Counter: 4.2 - 7.9}

John Youngberg, Representing the Montana Farm Bureau, briefly addressed the Committee. He noted that it cost more money to ship grain from Montana to the coast than it would to ship grain from the Dakotas. He claimed that this had more to do with the cost of doing business in Montana than with the distance. He

concluded that venue shopping caused higher settlements against the railroad which in turn caused a higher cost of doing business which then translated into higher rates.

{Tape: 2; Side: A; Approx. Time Counter: 7.9 - 8.9}

Richard Owen, Representing the Montana Grain Growers Association, rose in opposition to the bill. He saw the bill increasing the operating costs of the railroad which would be passed directly onto the farmers. He informed the Committee that the farmers already spend in excess of $100 million per year shipping grain.

{Tape: 2; Side: A; Approx. Time Counter: 8.9 - 9.9}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JEFF MANGAN, SD 12, GREAT FALLS, explored the economic development side of the bill. He had the distinct impression from the people in Butte that, if this bill passed, Union Pacific would leave. He asked Mr. Bartlett if that was the case.

Mr. Bartlett replied that he could not tell him that it was going to end that way for sure. But, the reason that he indicated to the Committee that Union Pacific only had 125 miles in Montana was because Union Pacific would weigh the cost and the risks of doing business in Montana and he felt that this bill might influence their feelings.

SEN. MANGAN followed up by asking if he could assume that miles were added since 1995.

Mr. Bartlett responded that there had not been any new miles since 1995.

{Tape: 2; Side: A; Approx. Time Counter: 9.9 - 11.9}

SEN. MANGAN was under the impression that one of the reasons for the high transportation costs was that there was only one way to transport grains. He wanted to know if the farmers' transportation costs had decreased since 1995 or increased.

Mr. Owen answered that he did not have the exact figures on cost increase but he did know that the cost per mile had increased because of other circumstances.

{Tape: 2; Side: A; Approx. Time Counter: 11.5 - 12.7}

SEN. MANGAN addressed Mr. Berry. He asked if he could assume that the costs of the railroads have decreased since 1995.

Mr. Berry did not have those kinds of figures but agreed that there were other cost factors that went into running a railroad.

SEN. MANGAN wondered if there were any cost savings from the changes in venues since the opponents had been claiming that there would be increases if the venues were opened up. He asked if any of the savings were passed on to the grain growers.

Mr. Berry did not have these figures either.

{Tape: 2; Side: A; Approx. Time Counter: 12.7 - 13.8}

SEN. MANGAN was curious why dire comments were being made about economic development. He asked if Butte had seen any increased business from Union Pacific or savings passed on because of the venue change from 1995.

Mr. Babb could not speak to the question. He claimed that he would not be standing before the Committee unless he had talked with people who felt that what was happening currently was fair. He wanted to make sure that they maintain what they have in Butte-Silver Bow and transportation is key to do this. He noted that business had increased with railroad service since the Port of Montana opened.

SEN. MANGAN followed up by asking if Mr. Babb had been told by the industry that business would decrease or that they would no longer be doing business in Butte if SB 375 passed.

Mr. Babb remarked that he had not heard that they would no longer be doing business, but from a strong economic development and business standpoint he did not want to offer any disincentives.

{Tape: 2; Side: A; Approx. Time Counter: 13.8 - 16.1}

SEN. JON ELLINGSON, SD 49, MISSOULA, mentioned that Mr. Cox had passed out the recent Supreme Court decision in Rule versus Burlington Northern. He asked Mr. Blewett to comment on the decision as it related to his testimony on SB 375.

Mr. Blewett explained that the Rule decision said nothing other than the fact that the venue, as it is, is acceptable. The decision allowed the legislature to set the policy. The point he saw to this is that, because the Court said that the legislature set the venue like it did, they would follow it in FELA cases. However, they also said that it was totally up to the legislature

to make the decision. The major difference is that FELA workers would not have to sue their employer in their hometowns.

{Tape: 2; Side: A; Approx. Time Counter: 16.1 - 18.5}

SEN. ELLINGSON summarized Mr. Blewett by saying that it was back in the legislature's lap to evaluate the various competing interests and make the right public policy decision affecting the railroad workers.

{Tape: 2; Side: A; Approx. Time Counter: 18.5 - 19}

SEN. DANIEL MCGEE, SD 29, LAUREL said that Mr. Judge had indicated that the reason the law was changed in 1995 and again in 1997 was because of a shift in political power.

Mr. Judge affirmed this inference.

SEN. MCGEE followed up by asking if Mr. Judge would agree that SB 375 was before the Committee for the same reason.

Mr. Judge felt that the opportunity to change the law back to a balance of fairness was related in part to the fact that there was a chance that this legislature may adopt the change.

{Tape: 2; Side: A; Approx. Time Counter: 19 - 19.9}

SEN. JESSE LASLOVICH, SD 43, ANACONDA, asked **SEN. WHEAT** what his intent was with the language on Line 28 which referred to where the railroad does business. He wanted to know if it meant where the railroad has tracks or where they spend money.

SEN. WHEAT did not know if there was federal case law. His intent was that where the railroad does business is where they have tracks on the ground and workers on the tracks.

{Tape: 2; Side: A; Approx. Time Counter: 19.9 - 21.3}

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS, wondered if a judgment would vary for an injured worker if they had a jury trial or a bench trial.

Mr. Blewett explained that the trials were virtually always jury trials because the plaintiff either demands it or the defense does. Neither party would agree to have a bench trial.

SEN. O'NEIL followed up by saying that he assumed it would not make much of a difference who the judge is.

Mr. Blewett felt that it made very little difference who the judge was because the FELA law is very clear cut and there isn't much room for the judge to effect the case.

{Tape: 2; Side: A; Approx. Time Counter: 21.3 - 23.1}

SEN. O'NEIL interpreted this to mean that the fact that Judge Warner was a judge in Havre and also signed the Rule decision would not have any consequences.

Mr. Blewett commented that the fact that Judge Warner was in Havre had nothing to do with the decision. He asserted the decision would be decided by jurors who live in Havre and are dependent on the railroad. Therefore, few cases are heard there for fear of an unfair trial.

{Tape: 2; Side: A; Approx. Time Counter: 23.1 - 23.8}

VICE CHAIR CROMLEY was concerned that the proponents of the bill had made an argument that a FELA claimant could get a less than adequate award in the hometown of the railroad. He noted that they had heard that, if the claimant gets an adequate reward, it would be bad for the economy but had not heard any evidence that they had been getting more than they deserve in other county venues.

Mr. Cox responded that it was very difficult to say if someone received more than they deserved or less than they deserved when a jury listens to all of the evidence and makes the decision. His point was that there were more choices available where to file the FELA case for an injured worker than there are for other individual residents of Montana suing in, or out-of-state companies.

{Tape: 2; Side: A; Approx. Time Counter: 23.8 - 25.9}

SEN. GARY PERRY, SD 35, MANHATTAN, cited a comment made by Mr. Smith which he had found disconcerting: "If you support corporations, vote no, if you support workers, vote yes." This confused him because he thought that their duty on the Committee was to support fairness and justice impartially. He asked for clarification.

Mr. Smith replied that when he had said that he meant it in the context that this bill was fair to workers so, if the Committee wanted to support workers they should vote for it. However, the current law is unfair to workers so, if the Committee wanted to continue to support the corporate world, they should vote against the bill.

{Tape: 2; Side: A; Approx. Time Counter: 25.9 - 27.4}

SEN. PERRY referred to the testimony by Mr. Blewett. He quoted from the written version of the testimony which said that it would be unfair for a railroad worker to bring an action in Havre. He wanted to know if this meant that it would be difficult to receive an impartial trial in Havre regarding this type of case.

SEN. WHEAT affirmed that it would be. He explained that the companies for which Mr. Babb, Mr. Paul, and Mr. Penn were there testifying on behalf of, would have nothing change for them. The reason he presented, for them being at the hearing, was that they were feeling the pressure from the corporation who told them that it would be bad for business. He believed that there was pressure in company towns so that injured workers do not receive a level playing field.

{Tape: 2; Side: A; Approx. Time Counter: 27.4 - 29.7}

SEN. PERRY cited Section 201 on change of venues, which allows for an impartial trial. He asked **SEN. WHEAT** if this law did not apply to railroad workers.

SEN. WHEAT could not imagine going in front of a judge in Havre, who was elected by the people of Havre, and have him make the decision that an individual would not get a fair trial in Havre. He could not imagine a judge granting a change of trial in that case. The only time he could think of that section of the law being used was in criminal cases where there has been a horrible crime and the defense lawyers in the community did not believe that the criminal defendant could receive a fair trial.

{Tape: 2; Side: A; Approx. Time Counter: 29.7 - 31.4}

SEN. MCGEE asked that Mr. Halligan give an overview of his experience in this area since he had been a senator, a lawyer, and currently works for the railroad.

Mr. Halligan thought that with the issuance of the Supreme Court opinion which dealt with the issues related to the fairness, balance, and legality, and what the legislature did in 1997, he would have to concur with the decisions of both the Supreme Court and the legislature.

{Tape: 2; Side: A; Approx. Time Counter: 31.4 - 33.2}

Closing by Sponsor:

SEN. WHEAT did not bring this bill to the Committee because there was a shift in political power. He did not view this bill as a political power moved but as a bill that was designed to do the right thing for injured workers. He reminded the Committee that injured railroad workers did not have the benefits of workers compensation, they have to bring their claims against the company. He understood that the Montana Supreme Court upheld the changes to the venue statute in 1995 and 1997. He was not going against this decision. What he was doing was asking that the Committee reflect back and reconsider the actions taken in 1995 and 1997 and change the statute back in these railroad cases because it was the right thing to do for injured workers. He referred to Mr. Cox's testimony about treating railroad companies differently. He asserted that it was federal law that they be treated differently because there was no workers compensation. He mentioned that in 1992 the federal court said that FELA was designed to provide injured railroad workers with as many options as possible when changing the venues in which they could file their complaint. He was just trying to give those options to the workers. He purported that nothing would change if this bill was passed, Union Pacific would continue to make its decisions on whether it could make money in Montana based on many things other than this bill. He mentioned the scare tactics and alarmist attitude being used by the opponents to the bill. He concluded that the bill had been drafted before the Supreme Court decision even came down. He asked the Committee to give a do pass to SB 375.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 5.3}

VICE CHAIR CROMLEY closed the hearing on SB 375. There was a five minute break at this time.

HEARING ON SB 378

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 378,** Allow prefiling request for insurance liability limits for torts.

SEN. WHEAT indicated that SB 378 would make it a lot easier for people to find out about the type of insurance that is available from the individual who caused the accident. The bill would allow the claimant to ask the responsible party about their insurance coverage. He provided an example of what he would do if someone came into his office and this bill had been passed.

This bill would save client's attorney fees. Currently there are no mechanisms to find out this type of information. He claimed that this bill would make it easier to get this type of information without filing a lawsuit.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 4.5}

Proponents' Testimony:

Al Smith, Representing Montana Trial Lawyers Association, spoke in support of the bill. He added that this bill might help decrease litigation because there would be no need to file a suit in the first place to find out what the insurance limits were. It would also decrease the amount of time it would take to settle a case. He mentioned that similar bills had been passed in other states.

{Tape: 3; Side: A; Approx. Time Counter: 4.5 - 5.9}

Opponents' Testimony:

John Alke, Representing the Montana Defense Trial Lawyers, appeared in adamant opposition to the bill. He claimed that this bill was about finding a person with money and inventing a theory that would allow an individual to tap that money. He addressed good faith litigation. He assumed that this bill would allow people to ask people how much money they had and then decide who they want to sue. He presented a scenario in which this might be used. He stressed that this bill would be extraordinarily obtrusive. He felt that this bill would go against the Privacy in Insurance Act. He asked for a do not pass recommendation.

{Tape: 3; Side: A; Approx. Time Counter: 5.9 - 10.5}

Jacqueline Lenmark, Representing the American Insurance Association, asked the Committee to give the bill a do not pass recommendation. She had several reasons she wanted to bring to the Committee's attention. Firstly, contrary to **SEN. WHEAT'S** statement, she felt that this bill was not simple. On Line 13, she pointed out, the bill said that "the claimant would serve upon the parties against whom the action is brought a request." This demand for information would go to the parties not to the insurance companies. She recounted what **SEN. WHEAT** had said about some insurance companies being good about producing this information upon request. She asserted that since Montana passed its insurance information privacy act, no insurer should be producing this type of information to anyone except under the very express terms of the Information Privacy Act. She expressed that this bill was compelling the information which is private to

the insured without the protection of due process. She was concerned with the fact that the insured would also not have time or ability to retain legal counsel under this bill. She stressed that just because an accident occurred doesn't mean that an individual is necessaryily liable for the accident. She was particularly concerned with the conflicting timeframes which this bill presented because it compelled the production of information within 15 days, while under the Insurance Information Privacy Act, if the insured did not happen to have at their fingertips the amount of coverage, the company would have 30 business days, upon a written request by the insured, to comply. This time restraint would open the individual up to compliance problems. She asked that the Committee give a do not pass recommendation. She also spoke on behalf of Gregg VanHoursen urging a do not pass recommendation from him as well.

{Tape: 3; Side: A; Approx. Time Counter: 10.5 - 18.7}

Dwight Eastman, Representing Farmers Insurance Group of Companies, rose in opposition to SB 378. He echoed the concerns raised in testimony and concurred with Ms. Lenmark's concerns. He spoke to the practical matter of the law. He noted that there were a number of laws which would come into play if liability and medical bills were not in question.

{Tape: 3; Side: A; Approx. Time Counter: 18.7 - 19.9}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MCGEE asked **SEN. WHEAT** to go through the bill with him. Beginning on Line 12 and moving to Line 17 he cited sections of the bill. He wanted to know if the phrase "upon the parties against whom an action might be brought" was an allegation. He wanted to know if it was compatible to have "against whom an action might be brought" and "is alleged".

SEN. WHEAT thought that any time there was an injury there would be a search for the liable parties by the lawyers. He thought that this bill should be limited to liability insurance. This would then encourage lawyers to look at who was responsible. He concluded that the allegations would not be made until the lawyer had done the investigation and filed a claim with the court.

SEN. MCGEE followed up, asking, if they are different, how would they work. He presented a scenario where these rules would not work. He was curious about what "is alleged" meant when the phrase "against whom a claim may be brought" was used because if

there is no allegation then the individual has no responsibility to respond.

SEN. WHEAT explained that what is being discussed is whether it is the language of "against whom an action may be brought" or "allegation towards a person". Basically he expressed that the bill asks if under either scenario are there sufficient facts that this person may have some liability towards the injured.

SEN. MCGEE inferred that **SEN. WHEAT** saw the two terms as being equivalent.

SEN. WHEAT replied that, for purposes of this statute, he did. He offered to change them to make them the same. He felt that the important part was that there would be an investigation that would occur to determine who was responsible. He thought that it would make it a lot clearer if liability insurance was the focus.

SEN. MCGEE followed up stating that the phrase "against whom an action may be brought" seems broad. He was unsure if there needed to be an allegation in order to make the potentially liable party respond.

SEN. WHEAT suggested that the two of them sit down and reconstruct the language in order to carry across his intent.

{Tape: 3; Side: A; Approx. Time Counter: 19.9 - 28.2}

SEN. JON ELLINGSON, SD 49, MISSOULA, proposed a scenario to Mr. Eastman where the problem was the lawyer did not know where the limits were. He felt that this bill addressed those limits. He wanted to know how they would be able to prevent the type of scenario he proposed without having some sort of a requirement imposed on the insured and the insurance companies to provide the information early on so that a claimant can find out wether an offer is good and conceivably avoid having to hire a plaintiff's attorney.

Mr. Eastman clarified that he had stood in opposition to the bill not in favor of the bill.

SEN. ELLINGSON affirmed that he wanted someone who was opposed to the bill to address his question. He remembered that Mr. Eastman had said that insurance companies would be settling these cases anyway.

Mr. Eastman tried to clarify, in this scenario this particular bill would be unnecessary because in this case, if in fact

liability was clear, then an insurance company who had a limit of $25,000 would be paying the limit.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 4.3}

SEN. ELLINGSON followed up asking how the claimant or the claimant's attorney are to know whether the offer is decent if they do not have the limits of liability.

Mr. Eastman indicated that his insurance company could find out the limits quickly if a lawyer for an injured party requested it. If there was no dispute over liability or medical bills, then the amount offered would most likely be the limit.

{Tape: 3; Side: B; Approx. Time Counter: 4.3 - 6.5}

SEN. GARY PERRY, SD 35, MANHATTAN, wanted to know for what could there be a decent offer if there was no lawsuit or allegation.

Mr. Alke replied that a decent offer is driven by the extent of the injuries to the plaintiff. There are two separate questions that must be answered: "What are the damages to the potential plaintiff?" and "Assuming whatever level of damages those are, is there sufficient coverage to pay for them?" He felt that a lawyer should have a good idea of the policy limits when a potential plaintiff explains to them the extent of the damages and the amount of the proposed settlement.

{Tape: 3; Side: B; Approx. Time Counter: 6.5 - 8.8}

SEN. PERRY cited the Constitution, Article 2, Section 10, Right of Privacy. He wanted to know what compelling state interest would there be in SB 378 to invade the individual's right to privacy. He also wanted to know where the Due Process, Article 2, Section 17, was.

SEN. WHEAT replied that when an individual buys liability insurance they buy it because they want to make sure that if they are in an accident the other party would be covered. The compelling interest, as he saw it, was that if someone is hurt they have a right to know how the one responsible is going to pay for it. Secondly, he responded that the due process aspect of the bill was to not pass it. He admitted that they were trying to get to the instances where an individual would not have to go to court. He asserted that the bill did not require compelling state interest and did not invade any one's privacy.

{Tape: 3; Side: B; Approx. Time Counter: 8.8 - 12.4}

SEN. JIM SHOCKLEY, SD 45, VICTOR, asked that **SEN. WHEAT** discuss the policy aspect of the bill.

SEN. WHEAT responded to the comments of Mr. Alke. He could never imagine anyone asking for homeowner policies from houses that are near the scene of an accident. He reiterated that his bill was intended to figure out what is available from the potentially liable parties. He expressed that in all of these cases, he writes letters to the individuals that explain what is happening. He stressed that they do not need to find a lawyer.

SEN. SHOCKLEY followed up, assuming that if the insurance company or the individual messed up would the individual be sanctioned later on.

SEN. WHEAT restated that he would propose an amendment to change the wording from the individual themselves and make it their insurance company.

{Tape: 3; Side: B; Approx. Time Counter: 12.4 - 15.4}

VICE CHAIR CROMLEY agreed with Mr. Alke that, if he was representing a defendant, the actions of the plaintiff's lawyer would be to search for the deep pocket. However when he is representing a plaintiff he feels that he would be trying to find all different ways to compensate his client. He wondered if Mr. Alke would be more comfortable with this bill if it required that the request have in it a paragraph indicating that the request was made for purposes of evaluating a claim which has the potential to be brought and that there is a good faith basis.

Mr. Alke enjoined that it would not be sufficient because the bill is asking for a forced compulsion for one party to provide for another party. If there is a lawsuit pending, then there would be a valid policy reason to provide the information. He asserted that this bill was designed so that people could demand information simply by saying that they might want to sue a person. He stressed that the information being requested is private.

{Tape: 3; Side: B; Approx. Time Counter: 15.4 - 19}

Closing by Sponsor:

SEN. WHEAT was surprised that the opponents to this bill saw it as such an intrusion. He reiterated that he was just trying to make it easier on the injured to find out if the people who injured them had insurance and in what amount. He stated that it had been done in other states and would be good public policy.

He quoted from the Florida statute which covers similar information but is much broader. He discussed the changes he thought should be made to the bill, but interjected that he wanted to maintain the intent of the bill.

{Tape: 3; Side: B; Approx. Time Counter: 19 - 21.5}

VICE CHAIR CROMLEY closed the hearing on SB 378 and opened the hearing on SB 374.

At this time, **SEN. O'NEIL** left the hearing.

HEARING ON SB 374

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 374,** Revise selection of chief justice.

SEN. WHEAT explained that SB 374 had to do with the way the Chief Judge of the Montana Supreme Court is selected. He indicated that currently the position is an elected position. His bill would make it that anyone who runs for the Supreme Court would be elected as a justice per the constitution. He informed the Committee that SB 374 would make it so that anyone who runs would run as an associate justice and then, amongst the associate justices, the chief justice would be selected. This would be on a rotating basis between the justices every two years. The effective date of the bill would be January 2009. He explained that the first chief justice would be the senior justice in regard to continuous terms of service. In case there are two who are equal in this regard the position would go to the oldest. He explained the reasons why he brought this bill to the legislature. One of the underlying reasons he gave for the bill was that it would take away from when justices, who are already on the court, going out onto the campaign trail. By doing this, it would free the judges up to spend more time on their cases. He made the point that the perception of the judges is eroding in the view of the public and the contentious races between two sitting judges contribute to that. He thought that this bill would solve at least some of that problem. He clarified that this bill was his own, no one else had approached him about carrying it on their behalf.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 1.3}

Proponents' Testimony: None.

Opponents' Testimony:

John Alke, Representing Montana Defense Trial Lawyers Association, pointed out that Article 7, of the Constitution, specifies the makeup and the selection of all the judicial offices. He cited that Section 3 specifies that the Supreme Court shall consist of the office of chief justice, four associate justices and gives the legislature the option of adding two more. He informed the Committee that in Section 7 the constitution specifies that all offices of the Supreme Court shall be for an eight-year term, this includes the office of chief justice. The last section he addressed was Section 8 which specifies that all judicial offices would be filled by the vote of the electorate. He did not think it was possible to not conclude that the office of chief justice was a constitutional office which must be filled by vote of the people. He thought that it was unconstitutional and asked for a do not pass recommendation.

{Tape: 4; Side: A; Approx. Time Counter: 1.3 - 3.8}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ELLINGSON asked **SEN. WHEAT** what he thought of Mr. Alke's observations of the constitutionality of the measure.

SEN. WHEAT replied that when he had looked at the constitution he had not read it the way Mr. Alke did. He did not see any constitutional problems. He assumed that, if there had been, the Legislative Fiscal Analyst Assistant would have informed him of them.

{Tape: 4; Side: A; Approx. Time Counter: 3.8 - 5.2}

SEN. SHOCKLEY asked if **SEN. WHEAT** had asked **SEN. BALYEAT** to cosign.

SEN. WHEAT had not. He replied that the reason he hadn't was because the bill wouldn't reduce the wages of the judges.

{Tape: 4; Side: A; Approx. Time Counter: 5.2 - 5.8}

Closing by Sponsor:

SEN. WHEAT closed on SB 374.

{Tape: 4; Side: A; Approx. Time Counter: 5.8 - 5.9}

ADJOURNMENT

Adjournment: 11:30 A.M.

_____
SEN. BRENT CROMLEY, Vice Chair

_____
for MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT(jus33aad0.PDF)