

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 26, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH			✓
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

MINUTES OF THE MEETING  
BUSINESS AND LABOR COMMITTEE  
50TH LEGISLATIVE SESSION

January 26, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on January 26, 1987 at 10:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Pavlovich who was excused.

HOUSE BILL NO. 228 - Remove Automatic Stay of Insurance Commissioner's Order Upon Appeal, sponsored by Rep. Charles Swysgood, House District No. 73, Dillon. Rep. Swysgood stated this bill was at the request of the State Auditor and stated that an order by the Insurance Commissioner will not be stayed unless the Insurance Commissioner and an appellant agree to a stay or after hearing arguments from the appellant and the Commissioner, the District Court determines that the Commissioner's order should be stayed pending its judgement. He commented that if the bill passed the appellant could present arguments as to why the appeal order should be stayed and the Commissioner could present arguments as to why the order should not be stayed.

Rep. Swysgood stated that the bill is not retroactive because it does not include an applicability section; the effective date would be October 1, 1987. He said this bill would not effect a person's right to appeal an order by the Insurance Commissioner, it simply provides that an order by the Commissioner is not automatically stayed just because it was appealed.

PROPONENTS

Andrea Bennett, State Auditor and Commissioner of Insurance. Ms. Bennett stated that this bill is proposed because in the last two years of her administration in reviewing the laws she found a great travesty in this particular issue that the bill addresses. She stated that with an automatic stay provision the administrative procedure hearing process is virtually ineffective. She commented that after the Department has gone through full administrative hearings, the violator can negate any effort they have taken including action and fines by simply filing a piece of paper and can continue to sell insurance. Exhibit No. 1.

Roger McGlenn, representing the Independent Insurance Agents Association of Montana. Mr. McGlenn stated that with the protection of the hearing process in the statute, they

support this bill and feel that this is in the best interests of the Montana insurance consumer.

Bonnie Tippy, representing the Alliance of American Insurers and the Montana Association of Life Underwriters. Ms. Tippy stated that she is submitting an amendment to the bill with an applicability clause. She stated that they have a concern that this act applies to all appeals filed after the effective date.

#### OPPONENTS

None.

#### QUESTIONS

Rep. Simon stated that if the license of a person is suspended during the appeal process, that person is denied the ability to earn a living and operate their business; and asked Ms. Bennett to address the issue of due process. Ms. Bennett responded that the Montana Administrative Procedures Act does not have an automatic stay order and no other state agency has one except the Insurance Commissioner's office. She stated that due process is provided through the Administrative Procedures Act.

Rep. Wallin asked what redress does a person have for the loss of his earnings and how soon could get back to earning if the court does not rule for about 6 months and finds that the Insurance department was in error. Ms. Bennett responded that there are two ways in which that person may have their order stayed; one is that the Insurance Commissioner and the appellant agree to stay the order, and the other is that after a hearing the arguments from the appellant and the Insurance Commission, the court will determine that the Commissioner's order should be stayed pending its judgement, and the judge makes his decision usually a day or right after that hearing.

Rep. Wallin asked if there should be an amendment to the bill with a defined time that is reasonable for the decision is to be rendered. Ms. Bennett responded that she would prefer that not be done.

Rep. Bachini asked if Ms. Bennett would comment on Ms. Tippy's amendment. Ms. Bennett responded that it was not a necessary amendment, but it would give added protection. She said the bill is not retroactive and it does not include an applicability section that makes the provision of the bill apply retroactively, so those people that already have stays in place are safe.

Rep. Simon asked if Ms. Bennett has any concern about the position of her office and the state of Montana would be in if she revoked an agent's license and put him out of business during the appeal and subsequently found that the Commissioner's office was in error, and there is a lawsuit. Ms. Bennett responded that she has been sued, and believes that after a full administrative hearing, according to the Montana Procedures Act, it is not upon her that she puts that person out of business but upon the court.

Chairman Kitselman stated it was his understanding that out of 8,000 licensed agents, licensed and operating within the scope of the laws, and there were 19 complaints, that the Commissioner was handling through the MAPA procedure; he asked if there was another way to more simply take care of this without affecting the livelihood of 8,000 licensed agents. Ms. Bennett responded that this is one section of the insurance law that does not follow MAPA, and she wants to be equal to the other state agencies in their administrative ruling. She said she believes that even if you have only one agent that is violating the law and is placing a question on the industry of insurance that are mostly good qualified people, that agent should be dealt with to protect the others.

Chairman Kitselman asked if the Commissioner had the responsibility of making the decision on the administrative level whether that agent should stay operation. Ms. Bennett responded that she did.

#### CLOSING

Rep. Swysgood stated that the Insurance Commissioner wants to come under the same provisions provided under the Montana Administrative Procedures Act which covers most of the procedures of other state agencies. He commented that the point to stress is that even if only one out of the 8,000 agents doing business in Montana is dishonest and is granted an automatic stay and continues to do business, this area should be addressed. He stated if this bill is passed, the appellant could present arguments as to why the appealed order should be stayed, and the Insurance Commissioner would have the opportunity to present arguments as to why his orders should not be stayed. He said this bill makes the procedures under the Montana Insurance Code the same as they are under the MAPA and this bill makes procedures for the Insurance Commissioner the same as they are for most other state agencies.

HOUSE BILL NO. 232 - Increase Fee for Revival of Corporation After Suspension or Forfeiture, sponsored by Rep. Fred Thomas, House District No. 62, Stevensville. Rep. Thomas

stated that this bill will accomplish three main things: (1) it raises a revival fee for a corporation from \$5 to \$15, (2) it sets up a deposit of these fees collected for these services in the Secretary of State's Office and deposits them into an account to fund the services of making such filings in the Secretary of State's Office, and (3) the \$2 fee for a federal tax lien is being withdrawn and replaced with a fee of \$7 which is the same amount as any small business in Montana would have to pay to file a tax lien, so the federal government is paying the same fee as anyone in Montana to file a tax lien.

#### PROPOSERS

Larry Akey, Chief Deputy to the Secretary of State, Jim Waltermire. Mr. Akey stated that this bill accomplishes two purposes for filings in their office, the corporate revival fee and the federal tax liens. He said the these fees are currently out of line with the other fees that are charged by the Secretary of State's office. He commented that corporate revivers entail basically the same kind of action on the part of their office staff, but the filing of new articles or amended articles for corporations required in the current statute is a \$5 fee for corporate revivals and \$15 for articles of incorporation, and the same is true for federal tax liens. He stated that this bill moves the operations of the business filing sections, their Corporations Bureau from the general fund to the state's special revenue fund which completes the process that they have been in for the last six years.

#### OPPOSERS

None.

#### QUESTIONS

Rep. Driscoll asked what was being repealed on page 7 of the bill. Mr. Akey responded that the repealer at the end of the bill was for some sections in the profit corporations statute, and this bill will clarify the profit and nonprofit language so that the two are parallel in construction; and when is accomplished the two sections are not needed.

Rep. Simon asked if all the fees that the Secretary of State's office collected with the exception of these two fees are going into a special revenue fund. Mr. Akey responded that at the present time they were not, the fees they collect are deposited in the general fund and the appropriation for the operation of the office comes out of the general fund, and what this bill will accomplish is to clearly tie the service they offer with the fees that they

charge by having those services paid out of the state special revenue fund.

CLOSING

Rep. Thomas made no further comments.

HOUSE BILL NO. 218 - Showing Proof of Ownership of Forest Products to Law Enforcement Officer, sponsored by Rep. Raymond Brandewie, House District No. 49, Big Fork. Rep. Brandewie commented that at the present time it is unlawful to carry more than five coniferous trees or Christmas trees, or 200 pounds of boughs without proof of ownership. He stated that there is a problem with the law as it now stands, because there are thousands of dollars worth of trees and boughs stolen each fall from state, federal and private forest lands in the state. This is a serious problem for the small land owner and the nonresident land owner who has 40 acres of prime grand fir trees and someone from out of state goes in and steals all the trees on that property, he commented. He said the problem with the way the law is written now is that you have to find the person stealing on the property and once he is on the county road he can't be stopped. He said this bill would allow the law enforcement people such as the State Lands, Fish and Game, and highway patrolmen, to stop the people with the trees and ask them to show proof of ownership, and it won't be a problem for the legitimate owner of the trees because there is a subsection that states that it does not apply to transportation of trees with the roots, or transportation of logs, poles, or other forest products from which limbs and branches have been removed, and coniferous trees by the owner of the land.

PROPOSERS

John DeLano, representing Plum Creek. Mr. Delano stated that Plum Creek will plant 1.2 million seedlings in the state of Montana taken from their nursery at Pablo, and they are in favor of this bill.

Don Allen, representing the Montana Wood Products Association. Mr. Allen stated the forest products industry is interested in any legislation which will insure sound practices of handling forest products, from planting to harvesting, and that the law that is already on the books will be enforced.

QUESTIONS

None.

CLOSING

In closing Rep. Brandewie read a letter from the Flathead County Attorney in Kalispell who supported the bill. Exhibit No. 1.

EXECUTIVE ACTION - January 26, 1987 - 10:40 a.m.

ACTION ON HOUSE BILL NO. 196

Rep. Wallin moved that House Bill No. 196 DO PASS.

Rep. Wallin moved the amendments. (See Standing Committee Report). The motion carried unanimously.

Rep. Wallin moved that House Bill No. 196 DO PASS AS AMENDED. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 228

Rep. Swysgood moved that House Bill No. 228 DO PASS.

Discussion

Chairman Kitselman stated that his concerns with the bill was that it gives away rights of the individual to have due process. He cited a situation where an individual had a problem and his right to make a living was denied and it was later determined that the State Auditor's Office had made an error.

Rep. Glaser stated that in this nation a person is innocent until proven guilty.

Rep. Swysgood withdrew his motion of DO PASS.

Chairman Kitselman referred House Bill No. 228 to a subcommittee composed of Rep. Thomas, Rep. Swysgood, and Rep. Hanson, with Rep. Thomas as chairman.

ADJOURNMENT

The meeting adjourned at 11:10 a.m.



REP. LES KITSELMAN, Chairman

# STANDING COMMITTEE REPORT

January 26

19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 196

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

REP. LES KITSELMAN

Chairman

## EXTENDING JURISDICTION OF MEDICAL-LEGAL PANEL TO DENTISTS

### AMENDMENTS AS FOLLOWS:

1) Title, line 7  
Following: "27-6-306"  
Insert: "THROUGH 27-6-308"

2) Page 7, line 16  
Following: line 15  
Insert: "Section 5. Section 27-6-307, MCA, is amended to read:  
"27-6-307. Assistance to claimant in obtaining expert consultation.  
The panel director shall cooperate fully with the claimant in  
retaining, to consult with the claimant, upon payment of a reasonable  
fee by the claimant in claims involving:

(1) a physician, a physician qualified in the field of medicine  
involved, who will consult with the claimant upon payment of a  
reasonable fee by the claimant; or

(2) a dentist, a dentist qualified in the field of dentistry  
involved.

Section 5. Section 27-6-303, MCA, is amended to read: "27-6-303.  
Director to furnish panel members with documents. At least 10 days  
prior to the hearing, the director shall furnish to each panel  
member copies of all claims, briefs, medical or dental records, and  
other documents the director considers necessary."  
Renumber: subsequent sections

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# STANDING COMMITTEE REPORT

January 26

19 37

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 213

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

REP. LES KITSELMAN

Chairman

SHOWING PROOF OF OWNERSHIP OF FOREST PRODUCTS TO LAW ENFORCEMENT OFFICER

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# Office of the County Attorney

## Flathead County

EXHIBIT 1  
DATE 1-20-87  
HB 228

Kalispell, Montana 59903-1516

P.O. Box 1516  
Courthouse Annex  
(406) 752-5300 · Ext. 241

TED O. LYMPUS, County Attorney  
JONATHAN B. SMITH, Chief Deputy  
DENNIS J. HESTER, Deputy  
RANDY K. SCHWICKERT, Deputy  
THOMAS J. ESCH, Deputy  
EDWARD CORRIGAN, Deputy

January 20, 1987

Representative Ray Brandewie  
Capital Station  
Helena MT 59620

RE: House Bill 218

Dear Representative Brandewie:

You have introduced House Bill 218 amending Section 76-13-601, M.C.A., to provide that a person transporting christmas trees shall be required to produce proof of ownership or a bill of sale upon request of certain law enforcement personnel. I wholeheartedly support this amendment to that statute.

This amendment would cure a basic problem faced by law enforcement in their attempt to limit the amount of theft of christmas trees from private and public lands and to enforce the provisions of Section 76-13-601 as it is presently written. As a criminal prosecutor, I have been involved in meetings with private tree growers and state and federal agencies involved in christmas production. I can assure you that christmas tree theft in Northwestern Montana is not a small issue. There has been a concensus from the groups involved that there is a definite need for more law enforcement involvement in the prevention and apprehension of those stealing christmas trees. Your amendment would give law enforcement personnel a realistic and valuable tool in which to assure that those that are transporting christmas trees in fact, obtained those trees legitimately.

OFFICE OF THE COUNTY ATTORNEY  
Flathead County, Montana

By Dennis J. Hester  
Dennis J. Hester, Deputy

WRITTEN TESTIMONY OF STATE AUDITOR  
HB 228 (REMOVAL OF AUTOMATIC STAY)

A. Background

The Montana Administrative Procedures Act (MAPA), which governs the procedures of most state agencies, does not provide for an automatic stay of the agency decision if the agency decision is appealed to the district court. (Section 2-4-702(3), MCA.) If a person appeals an agency decision to the district court under MAPA, the agency may grant or the reviewing court may order a stay upon terms which it considers proper after providing notice to the affected parties and an opportunity for hearing. Id. The only time an agency decision is automatically stayed under MAPA is when an agency appeals a district court judgment reversing an agency decision. (Section 2-4-711(2), MCA.)

Unlike MAPA, the Montana Insurance Code provides an automatic stay if the agency decision is appealed. The automatic stay provision of the Montana Insurance Code permits an insurance agent or insurance company to continue selling insurance in this state by simply appealing a suspension or revocation order by the insurance commissioner. An insurance agent or insurance company who appeals from an order by the insurance commissioner gets an automatic stay without having to provide reasons for one to the district court. The insurance commissioner has no opportunity to present arguments to the district court as to why a suspension or revocation of an insurance license should not be stayed. The current insurance law, in permitting an automatic stay of an appealed agency decision, prevents the insurance commissioner from protecting Montana insurance consumers from insurance agents and insurance companies who have had their licensed suspended or revoked and who are likely to harm consumers if permitted to continue selling insurance pending the outcome of an appeal.

B. Proposed change to law

If House Bill 228 is passed, an order by the insurance commissioner will not be stayed simply because it is appealed to the district court. Instead, an order by the insurance commissioner will not be stayed unless (1) the insurance commissioner and the appellant agree to a stay; or (2) if, after hearing arguments from the appellant and the insurance commissioner, the district court determines that the insurance commissioner's order should be stayed pending its judgment. If House Bill 228 were passed, the appellant would present arguments as to why the appealed order should be stayed; and the insurance commissioner would have an opportunity to presents arguments as to why her order should not be stayed.

House Bill 228 is not retroactive because it does not include an applicability section that makes the provisions of the bill apply retroactively. "Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed [in the bill]." (Section 1-2-201(1), MCA.) If House Bill 228 were passed, it would be effective on October 1, 1987, because no effective date is included in it.

House Bill 228 does not affect a person's right to appeal an order by the insurance commissioner. It simply provides that an order by the insurance commissioner is not AUTOMATICALLY stayed just because it was appealed.

#### C. Justification/Conclusion

1. The Montana Administrative Procedures Act (MAPA), which governs the procedures of most state agencies, does not provide for an automatic stay of an appealed agency decision. (Section 2-4-702(3), MCA.)

2. The only time an agency decision is stayed under MAPA is when an agency appeals a district court judgment reversing an agency decision. (Section 2-4-711(2), MCA.)

3. Under the current law, an insurance agent or insurance company who appeals from an order by the insurance commissioner gets an automatic stay without having to provide reasons for one to the district court. The insurance commissioner has no opportunity to present arguments as to why the suspension or revocation of an insurance should not be stayed. The current insurance law, in permitting an automatic stay of an appealed agency decision, prevents the insurance commissioner from protecting Montana insurance consumers from insurance agents and insurance companies who have had their licenses suspended or revoked and who are likely to harm consumers if permitted to continue selling insurance pending the outcome of an appeal.

4. If House Bill 228 were passed, the appellant would present arguments as to why the appealed order should be stayed; and the insurance commissioner would have an opportunity to present arguments as to why her order should not be stayed.

5. House Bill 228 is not retroactive because it does not include an applicability section that makes the provisions of the bill apply retroactively. If House Bill 228 were passed, it would be effective on October 1, 1987, because no effective date is included in it.

6. House Bill 228 does not affect a person's right to appeal an order by the insurance commissioner. It simply provides that an order by the insurance commissioner is not AUTOMATICALLY stayed just because it was appealed.

D. Short summary

House Bill 228 makes procedures under the Montana Insurance Code the same as they are under the Montana Administrative Procedures Act. House Bill 228 makes procedures for the insurance commissioner the same as they are for most other state agencies. If House Bill 228 were passed, a person who appeals a suspension or revocation order by the insurance commissioner would have to present arguments to the district court as to why the commissioner's order should be stayed pending the its decision. The insurance commissioner would have an opportunity to present arguments to the district court as to why her suspension or revocation order should not be stayed pending the its decision.





