

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS & INDUSTRY**

Call to Order: By Chairman J.D. Lynch, on January 8, 1991, at 10.00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: Jerry Noble (R)

Staff Present: Bart Campbell (Legislative Council).

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

Announcements/Discussion: Chairman Lynch suggested that if some bills that come before us have no opponents, executive action should be taken that same day. A proxy vote can be left by a person who cannot attend. Also, the consent calendar will be utilized with any non controversial bills that pass unanimously. There were no objections.

HEARING ON SENATE BILL 2

Presentation and Opening Statement by Sponsor: Senator Hager, sponsor of the bill, said that this is a bill to make the regional rate making law permanent. It was put in for two years to get some experience with it, and it has worked well.

Proponents Testimony:

Susan C. Witte, Chief Legal Counsel, State Auditor's office, spoke in support of the bill (Exhibit A and A-1).

Mark Staples, representing the Montana Tavern Association, said they support the continuation of this regional rate making bill. Montana's taverns does not have that many claims, but gets dragged into statistics of many other areas that are less fortunate. He has not seen the coverage that he would like to, but is anticipating that if this law stays in affect longer than two years, they may start to.

Tim Whalen, representative from the house, carried this piece of legislation two years ago. He said that the concept of the bill is very simple to state. Insurance companies set a rate upon actuary data that they are provided upon the number of claims they have, and the number of people they are underwriting. Montana is not a very populous state and does not have the same number of claims that they have in other states. In particular lines of insurance there is not enough actuary data to set an appropriate rate. Statistics have to have a population of a sufficient size in order to run an statistical analysis. This bill gives the insurance companies where there is not enough actuary data to look at other states similar to Montana and determine if the rate is appropriate. He also stated that insurance rates are so high for doctor's in rural communities that are delivering babies; so called obstrutrical malpractice crises, that by the time those doctor's are compensated through medicare or medicaid there just isn't enough money to pay all costs including their insurance costs. Since this piece of legislation went into affect the Doctor's Company in which he is specifically familiar with, because a lawyer that represents doctors in Montana that buy from the Doctor's Company experienced a rate reduction of 17%.

Jerry Lyndorf, representing the Montana Medical Association, stated that the purpose of this act is to ensure that rates are neither too high, too low, or unfairly discriminatory. The act only applies to non competitive lines or volatile lines, this is not our concern. In the state now, there are probably three companies that actively provide medical malpractice insurance. Our concern would be if one of these insurers should withdraw we have a non competitive market. This piece of legislation provides the insurance commissioner with a good tool should that situation occur to help insure that the rates remain fair and reasonable.

Opponents Testimony:

Jacqueline N. Terrell, a lawyer from Helena and a lobbyist for the American Insurance Association, opposed this bill (Exhibit C).

Gene Phillips, a lawyer from Kalispell and a Montana council to the national association of independent insurers and the alliance to the american insurers. Two years ago this

legislation was made to be the answer to the medical malpractice problem that faced the state. The crises existed and allowed the doctor's to obtain medical malpractice insurance at an obstructical purposes at a reasonable cost. However, the delay in adopting rules indicates that the crises, if one ever did exist no longer exists. The rules are yet to be adopted, and no action has ever been taken. This law has never been used, and should not be on the books.

Roger McGlenn, executive director of the independent insurance agents association of Montana, spoke about the existing statute in chapter 16 of title 33. It provides all the necessary regulatory authority to accomplish the intent and affect any changes that are necessary. The terms volatile and non competitive are inadequately defined. It does not relate to a specific case, and under the terms in the administrative rules that were proposed and heard on December 17th in a public hearing is also not adequately defined. The independent insurance agents feel this law under the reporting requirements outlined in the administrative rule seem broadened. Many companies may feel because the limited amount of business they make in Montana and the expense in complying with these rules, it may just be better to not to comply with Montana. This relates to the independent agents main concern. With Montana being such a small marketing area, this law along with the administrative rules that were proposed may adversely affect the market availability.

Questions From Committee Members: Senator Williams wondered who the doctor's agency was, and who they represent.

Susan Witte replied the doctor's company is one of the largest writers of medical malpractice insurance in Montana.

Senator Williams wondered why the rules had not been enacted.

Susan Witte replied this bill was impossible to implement without an actuary. An actuary was hired early last year, it took him some time to look at the bill and develop the rules.

Senator Williams was concerned that if the rules were not enacted on right away, there may be a law suit and could end up costing the state a lot of money.

Dave Barnhill replied that it took 3 years to recruit this actuary, because the demand for actuaries is very high and Montana being such a remote state made it more difficult.

Senator Thayer said that the original bill had a lot of problems and challenges.

Susan Witte replied there had been no litigation filed to date. The law is being used, as stated in her testimony. The rules require setting forth the data or the standards that insurers are supposed to report.

Senator Thayer wondered if a particular line of insurance gets down to one or two numbers as far as offering the appliance so the rule will kick in and the law be implemented, what would happen if these people withdraw from the market place altogether.

Susan Witte replied insurers should be charging rates that are fair, non discriminatory, non excessive in Montana. If the rates they are charging are based on national experience for

Montana risks, they may be unfair. Insurers will not be driven out of the market, it requires them to base their information on Montana risks.

Senator Gage wondered if there are areas in Montana that cannot operate unless you have a particular insurance coverage.

Dave Barnhill replied that only in limited areas is a particular insurance coverage needed.

Senator Gage wondered about the statement of intent and the terms non competitive and volatile.

Susan Witte replied in response to refer them to the beginning of the paragraph. This crises is simply not cost effective to continue to practice almost doubles the obstructal coverage. It does not mention the crises in this sentence but mentions it two paragraphs down.

Senator Gage wondered how they determine how much per hour an actuary gets paid.

Jim Borkhart replied that this man is salary employed, there are no special costs in connection with any review of a rate that would come in. Nothing that would go to the insurer nothing that would go above and beyond his regular salary. There are many duties that the actuary has. It would be a portion among them, it is not a practice to break down every hour and try to allocate them so precisely.

Senator Thayer questioned how many states have implemented the rate making.

Susan Witte replied that South Dakota implements rate making informally as well as Iowa. But she is unaware that either has an actual statute on the books. Rules, yes.

Senator Lynch asked if it was an exaggeration that the 17% rate reduction was a direct result of the 1989 bill.

Representative Tim Whalen answered in response that it was not a direct result, but since this rate was enacted, rates have gone down 17%.

Senator Thayer wondered what has happened in general to the liability insurance market in the last couple years. The entire market has softened somewhat and rates have come down generally.

Jim Borkhart commented that in the medical malpractice area it has remained the same in the last two years with the exception of the doctor's company who made a reduction.

Jerry Lyndorf commented to Senator Thayer's question that the latest articles that he has read that there was about one hundred thirty six billion dollars excess capacity in the property casualty market. So the market has softened. Projections are that the market will harden in 1991 or 1992.

Senator Gage questioned about other states having the similar reporting requirements that this state has.

Jacqueline Terrell responded saying that other states do not have similar reporting requirements. Section 2-35. The additional data required in this act is unlike any in other states. This legislation specifically requires a determination first, that a line is volatile or non competitive before any other of this information is required from an insurer.

Senator Gage asked assuming that rules were implemented and put into place is this bill beyond repair.

Jacqueline Terrell responded that the American Insurance Association stands ready to help make this law a workable law. It is necessary that the commissioner has all of the authority that she needs under the rest of the rate making act in chapter 16.

Closing by Sponsor:

Representative Tim Whalen closed by stating that this is not an unnecessary piece of legislation.

Executive action will be taken on Thursday, January 10, 1991.

ADJOURNMENT

Adjournment At: 11:20 a.m.



JD LYNCH, Chairman



DARA ANDERSON, Secretary

JDL/DIA

STATEMENT OF
AMERICAN INSURANCE ASSOCIATION

BY
JACQUELINE N. TERRELL
RE SENATE BILL 2

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 1/8/91
BILL NO. 2

Mr. Chairman and members of the committee:

My name is Jacqueline N. Terrell. I am a lawyer from Helena and a lobbyist for the American Insurance Association. The American Insurance Association is a national trade association that promotes the economic, legislative, and public standing of its some 200-member property-casualty insurance companies. The Association represents its participating companies before federal and state legislatures on matters of industry concern.

The American Insurance Association opposes the repeal of the Sunset on the Regional Ratemaking Act for the following reasons.

To attack a problem sensibly it is necessary to understand what the problem really is. That must precede any credible proposals for solving the problem. There has been little effort to ascertain in an objective way the nature of the problem we think we are addressing today. Most analysis has had the goal of supporting preconceived conclusions, i.e., it has been advocate's research.

First, there are significant legal problems with the legislation as enacted. The temporary legislation is vague and provides constitutional challenges regarding the delegation of

legislative authority to the Commissioner of Insurance. Douglas v. Judge, 174 Mont. 32, 568 P.2d 530, 533-35 (1977) (cited with approval in In Re Auth. to Conduct Sav. and Loan Activities in the State of Mont. by Gate City Sav. and Loan Ass'n., 182 Mont. 361, 597 P.2d 84, 89-90 (1979); Grossman v. State, 209 Mont. 427, 682 P.2d 1319, 1336 (1984); White v. State, ___ Mont. ___, ___ P.2d ___, 45 St. Rep. 1310 (1988). The legislation provides no effective definition of "noncompetitive" or "volatile" by which the Commissioner of Insurance may determine with reasonable clarity the limits of power delegated to her. To validly delegate administrative authority to the Commissioner, the provisions of this legislation must be "sufficiently clear, definite, and certain to enable the [Commissioner] to know [her] rights and obligations." Douglas, 174 Mont. 32, 568 P.2d at 534. The rules recently proposed to implement the legislation demonstrate quite adequately how difficult the Commissioner's task is in determining with reasonable clarity appropriate definitions under the enacting legislation.

Further, the statement of intent attached to the legislation is inconsistent with the body of the legislation. A statement of intent is required for each bill delegating new rule making authority. It is used "to guide the details of interpretation by those charged with implementation of the bill." Mont. Code Ann. § 5-4-404 (1989); Joint Rules of Mont. Leg. 70-10(2), 70-30(2). The statement of intent attached to House Bill 247, the original enacting bill, clearly set out that the powers contemplated by the

legislation are to be exercised with regard to obstetrical malpractice insurance only. The bill, however, requires the Commissioner to ratemake for any line of insurance designated as "noncompetitive" or "volatile." Further, the statement of intent is drafted in permissive language, while the statutes enacted by the bill are mandatory. Compare House Bill 247 (reference bill), page 1, line 25 through page 2, line 11 with 33-16-234. A statement of content inconsistent and misleading is fatally defective to the legislation to which it is attached.

The bill was advocated by the presentation of misinformation both to the committees that heard the original bill and to the bodies on the floor. The American Insurance Association took then and now takes strong exception to the misinformation as follows:

1. Regional ratemaking is an answer to the insurance industry's process of rating Montana along with such high risk states as Florida, New York, and California. In fact, most often, Montana is not lumped with these states, but is rated with states similar to Montana. Interestingly, the St. Paul Company, which is the only major private carrier writing medical malpractice in Montana, does not even write in Florida, New York, or California, and so in no way uses those states in the ratemaking process. The only other major malpractice carriers are nonprofit doctor-owned companies. As originally conceived, the legislation contemplated lumping Montana with those states that are geographically contiguous to Montana. The thinking was that those states are similar to Montana in terms of claims experience. Such thinking,

however, does not take into consideration the differing judicial systems of those states, the likely different claim experience, and the government and industry goals in a given state. To assume that because Montana shares a border with a contiguous state it is in all respects similar for insurance purposes is simply erroneous.

2. This is legislation that will take care of the medical malpractice insurance crisis. In reading the statement of intent on House Bill 247, one would assume that this legislation affects only medical malpractice insurance, and the statement accurately reflects the type of testimony by proponents in both House and Senate Committees in 1989. The statement of intent is wholly inaccurate, however. The legislation can affect all types of property and casualty insurance, including automobile, where there are approximately 200 carriers in the state. The legislation is so far broader than it was "sold," American Insurance Association feels that representatives and senators were seriously misled regarding the effects. Regardless, the bill was enacted in a perceived crisis. It was not until just weeks ago that the Commissioner's office even began drafting rules to implement the provisions of the legislation. Clearly it has not addressed the obstetrical malpractice insurance crisis that was present to this legislature two years ago.

The legislation is replete with burdensome reporting and statistical compilation requirements unlike requirements that exist in any other state. Such burdensome reporting requirements

can only send a negative message to the insurance industry. Under the legislation as enacted, and the administrative rules that have been recently proposed to implement the legislation, those insurers which do provide valuable insurance products to Montanans can be penalized for their effort to make insurance available to Montana consumers, by requiring them to pay for an examination that amounts to a market conduct review. Mont. Code Ann. § 33-16-236(2) (1989).

Finally, the legislation is based on two erroneous premises. First, the legislation contemplates granting the Commissioner the authority to determine that a line is noncompetitive or volatile while suspending Montana's competitive rating law with respect to that line. The legislation as enacted in no way suspends or modifies Montana's competitive rating law. Mont. Code Ann. § 33-16-101(2) (1989). While some states do have provisions to suspend or modify the application of competitive rating laws to lines found to be noncompetitive, no such provisions are found in Montana's Insurance Code. On the contrary, the competitive rating law by its own terms continues in full force and effect without regard to whether the Commissioner has invoked the provisions of the regional ratemaking act.

Secondly, the legislation seems to contemplate that insurers are required to provide insurance to Montana consumers. With respect to medical malpractice insurance, it is respectfully called to the attention of this committee, that medical malpractice insurance is necessary because malpractice sometimes

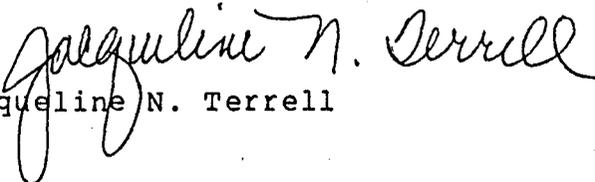
occurs. To create a market atmosphere where private insurers are not able to sell their product does not serve the Montana consumer or the victim, who may be entitled to the proceeds of that insurance should malpractice occur in any way. Montana doctors need insurance to protect them. Montana patients need Montana doctors to carry malpractice insurance to protect them when malpractice does occur.

There was great pressure in 1989 to persuade the legislature to enact this legislation, with the promise that it would be used to bring medical malpractice insurance premiums into line. The legislation carried with it the authority and duty to implement it through administrative rules. The same office that advocated so strongly for this legislation's enactment has waited nearly two years to begin the rule making procedure.

The American Insurance Association respectfully urges this committee to give this bill a do not pass recommendation, and to allow the underlying legislation to sunset as Senator Lynch so wisely proposed in the hearings in 1989.

Submitted to Senate Business and Industry Committee for hearing on Senate Bill 2, January 8, 1991, 10:00 o'clock a.m.

Respectfully submitted,


Jacqueline N. Terrell

BUT SUBMITTED HIS TESTIMONY LATER THAT DAY.

HEARING ON SENATE BILL 2
BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE
JANUARY 8, 1991

Statement in Opposition by R. Stephen Browning on Behalf of State Farm Insurance Companies.

Mr. Chairman, and members of the committee, State Farm Insurance Companies opposes SB 2. We opposed the original regional ratemaking bill that was enacted into law during the last session of the legislature. At that time, we predicted that the regional ratemaking law provided too much discretion to the Commissioner and, conversely, provided too little guidance to the Commissioner in carrying out her responsibilities. Our predictions about the problems that this bill would cause were confirmed when the Commissioner issued her proposed rules on the bill late last year.

State Farm opposed the proposed rules for a variety of reasons. The principal reason is that this law requires too much additional reporting with too little prospect that the information will be effectively used by the Insurance Commissioner's office. (A copy of our testimony against those rules is attached.)

Montana provides a national market of less than three-tenths of a percent for insurance sold in the United States. As you know, national insurance companies are required to provide insurance reports for all states in which they do business. There are several organizations that have been set up to facilitate this task so as to avoid onerous and contradictory reporting requirements, such as that established by the regional ratemaking law. One example of a national insurance reporting organizations is the Insurance Services Office (ISO), which was created to provide important information on the insurance industry. Another example is the recent reporting changes approved by the National Association of Insurance Commissioners (NAIC), which should address many of the concerns that the regional ratemaking bill was established to address. (A copy of those changes is enclosed.)

It is State Farm's conclusion that the regional ratemaking law is not necessary and should not be continued. However, if this committee decides that the sunset provision on the existing regional ratemaking law should be removed, State Farm Insurance respectfully requests that you provide additional direction to the Commissioner in carrying out her responsibilities under this law. Specifically, it is advisable for the law to be amended to provide definitions for "volatile" and "non-competitive". Should the committee decide to adopt such definitions, State Farm would be happy to provide the committee some suggested definitions for those two terms, which are critical in carrying out the operation of this law.

Alternatively, since there is little question that homeowners and auto insurance are either volatile or non-competitive in Montana, we would ask that those two lines of insurance be exempted from this law, if regional ratemaking is to be continued.

Thank you for the opportunity to provide our views on this important legislation.

State Farm Insurance Companies



December 27, 1990

One State Farm Plaza
Bloomington, Illinois 61710Pamela Edwards Eidsmoe
Attorney
(309) 766-3530
Telecopy (309) 766-4909Mr. David Barnhill
Deputy Commissioner
State Auditor's Office
P.O. Box 4009
Helena, MT 59604-4009

Dear Mr. Barnhill:

I am writing on behalf of the State Farm Insurance Companies in response to proposed regulations concerning "noncompetitive" and "volatile" lines of insurance. We ask that our comments be included in the record. We have a number of serious concerns with the proposed regulations and appreciate the opportunity to comment. In 1989 State Farm wrote over \$53 million in automobile insurance premiums, and over \$17 million in homeowners premiums. Thus we are necessarily concerned with regulations that could result in any sort of rate regulation in a state where competition has worked so well.

Our primary concerns are that the definitions are overly broad and vague, that the regulations go beyond statutory authority, and that the requirements placed upon a company found to write in a volatile or noncompetitive line are unduly harsh and contain unnecessary reporting requirements. With these regulations in place, many insurers writing in a line designated by the Commissioner as volatile or noncompetitive might be inclined to stop writing in that line entirely. Regulations which would result in a reduction in the number of carriers are not in the best interests of Montana consumers.

Our first concern is with the standard for designating a line as volatile or noncompetitive provided in Rule II, Definitions section. This section supplies only two criteria that need to be met before a line of insurance could be classified as noncompetitive, and only three criteria for a finding of volatility. It would be far too easy for a line of insurance to be labeled volatile or noncompetitive based solely upon consumer complaints and the withdrawal of insurers from a particular market. We question the relationship between the number of consumer complaints and availability, as typically there is some segment of the public that would be such a poor risk as to be uninsurable in even the most competitive of markets. Further, there is some conflict between the very narrowly drawn definitions in Rule II and the criteria set forth in Rules III and IV. It is critical to ascertain which is the intended standard. We suggest that sections (2)(a)(i) and (ii) and (2)(b)(i), (ii) and (iii) be stricken, in order to be consistent with the criteria set forth in Rules III and IV, and in order to broaden the definitions to a more workable standard.

Mr. David Barnhill
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Rule IV would require insurers to submit data when the Commissioner "has cause to believe" a particular line of insurance is volatile. There is no hearing process to allow insurers to show that there is an adequately competitive market before being subjected to exceedingly burdensome reporting requirements. The statutory authority for requiring insurers to submit claim information at the discretion of the Commissioner is unclear. We also object strongly to the requirement that each insurer submit an "estimate of the incurred cost of the claims as of each calendar year end, since the date the claim was reported to the insurer." It is poor public policy to make public an insurer's estimates of the value of open claim files. The claim settlement process would virtually grind to a halt if claimants were given the advantage of knowing the insurer's evaluation of the claim value. A rise in settlement costs would be inevitable, as would a corresponding increase in premiums. We strongly urge the Department to remove section (1) of Rule IV.

Further, the use of the credibility standard in Rule IV is not appropriate. Section 33-16-233 of the Montana Code indicates that a line will be "considered 'volatile' if the line has a low volume of claims in Montana." In order to remove the subjective nature of an evaluation by the Commissioner to determine volatility, we suggest that "low volume of claims" be defined to mean less than ten claims, but that even a volume of ten claims be acceptable if reasonable and appropriate data is made available to the Commissioner. This would provide a more objective standard and would greatly simplify the determination of volatility.

The data reporting requirements found in Rule V of the proposed regulations are excessive and burdensome, particularly for insurers who write in all fifty states. Submitting loss, expense, premium, and exposure data for every state for the preceding five years on a particular line of insurance is an extraordinarily time consuming and expensive requirement, and goes beyond the reporting requirements set forth in Montana Code section 33-16-235. We question whether the Department of Insurance currently has the resources to process and evaluate such data for all fifty states. Scarce resources of insurers and insurance departments alike should not be wasted on volumes of useless information.

Our next concern is that Rule VI, section (1) of the proposed regulations would allow the Commissioner to "withdraw approval of an insurer's previously approved rates...and require that the insurer file the rates it intends to use along with statistical support sufficient to substantiate the filing." The statutory authority for this drastic measure is unclear. Sections 33-16-204 and 205 are far more narrowly drawn, and we suggest that in order to comply with the current statutes, this section of the proposed

David Barnhill
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regulations be eliminated. If an insurer's reliance upon other states' data appears inappropriate, the Commissioner, through a hearing process, has the power under §§33-16-204 to 206 to require the insurer to justify or correct any problems. Again we stress that the Commissioner's role is to ensure that competition exists, not to undertake ratemaking responsibilities and as such section (1) of Rule VI should be stricken from the proposed regulations.

There are a number of serious problems with the proposed regulations that State Farm believes must be addressed prior to adoption of any regulations concerning volatile or noncompetitive lines. We believe the current statutes provide more workable guidelines and we urge the Department of Insurance to reconsider the need for the proposed regulations. The proposed regulations are, in various places, overly broad, vague, beyond statutory authority, and unduly harsh, and we strongly oppose these regulations. If, however, the Department is convinced of the need for such regulations, we suggest that our comments be taken into consideration in order that more workable, less drastic regulations ultimately might be adopted.

If we can offer any assistance, or elaborate on any of our comments, please contact us. Again, we appreciate the opportunity to comment on the proposed regulations, and hope that our comments will be helpful.

Sincerely,



Pamela Edwards

PKE/dg

cc: Steve Browning
Greg Hayward
Rob Kelley
Judy Mintel
Gary Pauley

FEB 02 1988

RECEIVED

NAIC Accelerated Reports

The general liability "accelerated reports" are intended to provide more responsive countrywide and individual state premium and loss information for specific general liability sublines and classes of business. They are intended to bridge the gap that presently exists between the current NAIC Fast Track Monitoring System Reports and the traditional policy year statistical agent reports. They will be produced and distributed quarterly within 180 days after the end of each quarter and will span the time period from the fourth quarter of 1985 through the latest quarter.

Types of Reports

The first report is the Calendar Year Premium and Loss Report (See Exhibit I). It displays earned premium and incurred losses on an "account" quarter basis. With the exception of class data by state, the incurred loss experience will also be supplemented by the underlying number of claims. To facilitate a review of the overall results, a four quarters ending total will be displayed.

The second report is the Policy Year Breakdown of Calendar Year Losses (See Exhibit II). This report will illustrate for the latest calendar year losses what the lag time is in reporting and settling claims. For example, a claim newly reported in June, 1987 on a policy in effect from April, 1984 to April 1985 will be included in the data for the second quarter 1987 in the Calendar Year Premium and Loss Report and will be identified as being covered by a policy in effect during policy year 1984.

Experience included in the Accelerated Reports

Monoline and multiline policies written and class coded under the ISO Statistical Plans and reported to ISO are included. As such, any experience reported under the ISO Commercial Statistical Plan (CSP) and the intermediate level of the Commercial Minimum Statistical Plan (CMSP) are included. All other CMSP data is excluded since it does not contain class detail. Inasmuch as CSP and CMSP were introduced in 1979, data on policies effective prior to 1979 is not included.

The accelerated report currently is broken down into major general liability sublines. These sublines are Owners, Landlords and Tenants Liability, Manufacturers and Contractors Liability and Products/Completed Operations Liability (countrywide only). In the future, as data under the new Commercial General Liability (CGL) becomes available, the major sublines will be Premises/Operations Liability and Products/Completed Operations Liability.

There is also a breakdown by special class groupings which have experienced availability or affordability problems. These class groupings are municipal, public school, day care, recreational, liquor law and lawyers, professional liability. Exhibit III contains a list of the individual classes included in the class groupings. As conditions warrant, additional classes may be added to the reports on a prospective basis.

Data Limitations

The data in the "accelerated" reports are the premium and loss transactions during the same calendar quarter or year, irrespective of when the policies generating the losses were written and the premium collected. The losses for a given calendar quarter or year arise not only from incidents occurring in that period but also from incidents that occurred several years prior. This resulting mismatch of premium and loss information is particularly acute for many of the so-called "long-tail" classes included in the reports, because losses may not be reported or settled for many years after the policy has expired.

Any analysis of the data shown on the "accelerated" reports must recognize that there is an inherent mismatch of premium and losses reported on a calendar year accounting basis. For example, losses reported during the account or calendar quarter are not necessarily representative of accidents occurring within the account or calendar quarter. As such, the reports are not intended to evaluate the adequacy and fairness of rates. In addition, the value of the data makes this report inappropriate for use in evaluating the need for, or effect of, any changes in the civil justice system or regulatory mechanism used in your state. Neither are the reports necessarily reflective of insurer profitability.

For data to be useful for evaluating adequacy and fairness of rates, premiums and losses for a given set of policyholders and a given time period must be compared and actuarial adjustments (i.e., basic limits, excess limits, credibility, extraordinary events) must be considered. Individual states have addressed the need for comparable premium and loss data for general liability by directing statistical agents to annually compile policy year "statistical" data on their behalf.

In order to demonstrate loss patterns, each "accelerated" statistical report will be supplemented by the previously discussed Policy Year Breakdown of Calendar Year Losses Report. This report allocates the losses from the latest year to the years when the responding policies were actually written. This report clearly illustrates that losses for the latest calendar year are attributable not only to policies written in the latest year but also to many previous years.

The losses in the accelerated report do not include estimates for any losses that have occurred but have not yet been reported to the companies. For general liability lines, these incurred but not reported (IBNR) losses can significantly affect the ultimate loss experience. Obviously, the reported loss experience reflects varying levels of maturity as described in the Policy Year Breakdown of the Calendar Year report. As noted above, data from any policy effective prior to 1979 is not included in these reports. The significance of this missing information will vary by subline and class and will diminish as more years are added to the report.

Uses of the Accelerated Report

Since the experience included is on a calendar quarter and calendar/fiscal year "accounting" basis, it represents the premium and loss activity in that quarter and year. Therefore, the reports provide the most current "historic" look at experience for specific general liability sublines and classes of business and can be used to monitor market changes and help identify potential problems in advance.

Although the usefulness of the actual values in the accelerated report is limited, an analysis of quarterly premium and loss transactions can provide timely insight into the most current conditions for specific sublines and classes of business and how they are changing. For example, the monitoring of premium writings over time can assist in pinpointing market dislocations.

FEB 02 1988

NAIC Accelerated Reports

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Data Limitations

The data in the "accelerated" reports are the premium and loss transactions during the same calendar quarter or year, irrespective of when the policies generating the losses were written and the premium collected. The losses for a given calendar quarter or year arise not only from incidents occurring in that period but also from incidents that occurred several years prior. This resulting mismatch of premium and loss information is particularly acute for many of the so-called "long-tail" classes included in the reports, because losses may not be reported or settled for many years after the policy has expired.

Any analysis of the data shown on the "accelerated" reports must recognize that there is an inherent mismatch of premium and losses reported on a calendar year accounting basis. For example, losses reported during the account or calendar quarter are not necessarily representative of accidents occurring within the account or calendar quarter. As such, the reports are not intended to evaluate the adequacy and fairness of rates. In addition, the value of the data makes this report inappropriate for use in evaluating the need for, or effect of, any changes in the civil justice system or regulatory mechanism used in your state. Neither are the reports necessarily reflective of insurer profitability.

For data to be useful for evaluating adequacy and fairness of rates, premiums and losses for a given set of policyholders and a given time period must be compared and actuarial adjustments (i.e., basic limits, excess limits, credibility, extraordinary events) must be considered. Individual states have addressed the need for comparable premium and loss data for general liability by directing statistical agents to annually compile policy year "statistical" data on their behalf.

In order to demonstrate loss patterns, each "accelerated" statistical report will be supplemented by the previously discussed Policy Year Breakdown of Calendar Year Losses Report. This report allocates the losses from the latest year to the years when the responding policies were actually written. This report clearly illustrates that losses for the latest calendar year are attributable not only to policies written in the latest year but also to many previous years.

The losses in the accelerated report do not include estimates for any losses that have occurred but have not yet been reported to the companies. For general liability lines, these incurred but not reported (IBNR) losses can significantly affect the ultimate loss experience. Obviously, the reported loss experience reflects varying levels of maturity as demonstrated in the Policy Year Breakdown of the Calendar Year report. As noted above, data from any policy effective prior to 1979 is not included in these reports. The significance of this missing information will vary by subline and class and will diminish as more years are added to the report.

Uses of the Accelerated Report

Since the experience included is on a calendar quarter and calendar/fiscal year "accounting" basis, it represents the premium and loss activity in that quarter and year. Therefore, the reports provide the most current "historic" look at experience for specific general liability sublines and classes of business and can be used to monitor market changes and help identify potential problems in advance.

Although the usefulness of the actual values in the accelerated report is limited, an analysis of quarterly premium and loss transactions can provide timely insight into the most current conditions for specific sublines and classes of business and how they are changing. For example, the monitoring of premium writings over time can assist in pinpointing market dislocations.

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

52nd. LEGISLATIVE SESSION -- 1991

Date 1/8/91

NAME	PRESENT	ABSENT	EXCUSED
Senator Bruski	✓		
Senator Franklin	✓		
Senator Gage	✓		
Senator Hager	✓		
Senator Kennedy	✓		
Senator Lynch	✓		
Senator Noble			✓
Senator Thayer	✓		
Senator Williams	✓		
<i>Senator Kennedy</i>	✓		
<i>Senator Lynch</i>	✓		

Each day attach to minutes.

Testimony on Senate Bill 2, the Ratemaking Act
Susan C. Witte, Chief Legal Counsel, State Auditor's Office
Senate Business and Industry, January 9, 1991

For the record, my name is Susan C. Witte. I am the Chief Legal Counsel for the State Auditor's Office, and am here today representing State Auditor and Commissioner of Insurance Bennett, to speak in favor of this bill. I would like to thank our sponsor, Senator Hager, for carrying this bill and the committee for its consideration of this legislation.

We urge passage of this bill, which would make the Ratemaking Act a permanent addition to the Montana Insurance Code. Currently, the Act contains an October 1, 1991 sunset provision.

The Insurance Code contains a "competitive rating law." Insurers must file the rates they intend to use, along with statistical support which demonstrates that those rates are not excessive, inadequate, nor unfairly discriminatory. Once filed, the insurer may use those rates without "formal approval" from the Montana Insurance Department. The express intent of our regulation of insurers' rates is, and I quote, "to permit and encourage competition between insurers on a sound financial basis" 33-16-102, MCA. As long as competition is healthy, market forces should keep rates at reasonable levels.

But when healthy competition does not exist, there is a greater likelihood that the standards applicable to rates will not be met; that is, that rates will become inadequate, excessive or unfairly discriminatory. The Ratemaking Act dictates that in such situations, the insurance department gather some additional information, evaluate that information, and be in a position to know whether the rates of the few active competitors are reasonable in light of the standards. This would apply to lines of insurance designated as "non-competitive."

Similarly, competition may not be an effective regulator of rates if the volume of statistics is insufficient to produce stable and reliable estimates of future results. It is common in these "volatile" lines, for insurers to use country-wide data in their ratemaking to complement Montana data. But use of country-wide data may again result in rates in Montana that do not comply with those standards. For example, regarding liability insurance, some states may be much more litigious than Montana. Suits may be much more frequent than in Montana, and/or settlements may be much larger. If an insurer used the data from such states in developing its Montana rates, the resultant Montana rates would be, or at least could be, excessive. The Act again dictates that in such cases, information be gathered and evaluated by the insurance department, to assure that rates are reasonable in light of the standards.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. A
DATE 1/8/91
BILL NO. SB2

Commissioner Bennett strongly believes that when the next "crisis" comes, the Ratemaking Act will be of great value in assuring that Montana's consumers can get insurance at a reasonable price. The commissioner does not "set" rates. Rather, by this Act, she determines what type of information the insurer can use in setting those rates to cover risks in Montana. Specifically, the Act requires that rates are based as much as possible on Montana experience. The commissioner is not averse to rate increases if they are justified, and in fact has no authority to intervene as long as sufficient statistical data is included to support the filing.

We wish to point out up front that the Act may not be the solution to all such crises. For example, creative court decisions outside Montana may mandate that insurers pay claims that the insurers feel are outside the scope of the policy's coverage. Insurers might become fearful that similar court interpretations would expand the scope of coverage here. Invoking the Act in such a situation may not help.

But in other situations, we believe the Act would benefit Montana consumers. For example, when medical malpractice insurance became unavailable for obstetricians (that is, when it became a non-competitive line), invoking the Act may have helped. The information gathered by the insurance department under the Act may have revealed that insurers' concerns which emanated from other states were unfounded in this state. Such a conclusion, if properly supported, could have encouraged many insurers to make coverage available, and could also have instilled confidence in insurers as to the appropriateness of rates they felt were inadequate.

The intent of the Act has, to date, been used though no lines have been declared volatile or non-competitive simply because competition is working well right now. We have requested companies writing, for example, psychologists' professional liability and medical professional liability with none or few losses in Montana over the past four years to provide a breakdown of their country-wide data into the various states, for our review. Use of country-wide experience may have, for some companies, produced rates which reflect an anticipated frequency or severity of loss totally inappropriate for Montana. We have also drafted proposed rules for use in evaluating a line of insurance that may be volatile or non-competitive. A hearing has been held on these proposed rules, and a final draft for adoption is in the makes. We have hired an actuary to assist us in implementing the Act. We urge you to leave the Ratemaking Act in place, so that it may be used to mitigate or eliminate the next crisis, to the benefit of Montana's consumers.

I, Mr. Borchardt or Mr. Barnhill, would be pleased to respond to any questions.

SW/me(1691)

THE DOCTORS' AGENCY

O F M O N T A N A

LEONARD KAUFMAN, Ph.D.

President

January 7, 1991

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. A-1

DATE 1/8/91

BILL NO. SB2

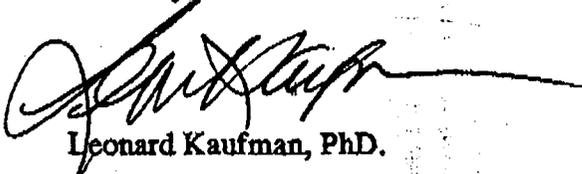
The Senate Business & Industry
Committee and Members
The Montana State Legislature
Capitol Station
Helena, Montana 59624

Dear Members of The Senate Business & Industry Committee.

I want to reiterate my vigorous approval of Senate Bill #2 for the Continuation of House Bill #247, the Regional Rate Making statute.

A Medical Malpractice Crisis Can Be Prevented By This Bill.

Sincerely,



Leonard Kaufman, Ph.D.

LK/dr

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