

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - 2nd SPECIAL SESSION**

COMMITTEE ON INCOME/SEVERANCE TAX

Call to Order: By BOB REAM, CHAIRMAN, on July 13, 1992, at 2:00 P.M.

ROLL CALL

Members Present:

Rep. Bob Ream, Chairman (D)
Rep. Jim Elliott (D)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Marian Hanson (R)
Rep. Jim Madison (D)
Rep. Bea McCarthy (D)
Rep. Tom Nelson (R)
Rep. Bob Raney (D)
Rep. Barry Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Lee Heiman, Legislative Council
Theda Rossberg, Committee Secretary

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

Announcements/Discussion:

HEARING - HB 11

CHAIR. REAM said, he would try to summarize where they were with HB 11. There are about four options: 1) to kill the bill, 2) pass the bill as is, 3) amend out future companies that might go belly-up and 4) making the effective date now upon passage and approval.

REP. NELSON said, he would like to speak against the bill and suggest that we kill it. This bill deals with Life and Health Insurance Guarantee Association. It's not only the life insurance business which is probably more profitable of the two, but also deals with health insurance business which is an extremely volatile business.

One of the things we have been dealing with is available health

insurance for all Montanans. If this bill is passed it would go in the wrong direction as far as availability is concerned. The reason being, we have two types of health insurance taxation in Montana. Blue Cross and Blue Shield which is excused from the 2.75% tax and the rest of them aren't excused from it.

We feel it is extremely important to have honest and fare competition. When one company doesn't pay a premium tax, we have an imbalance in the competitive area. They have a 2.75% price break that the rest of us don't have.

I have a list that shows the 1989 premiums for health insurance written in Montana. Blue Cross of Montana had \$163 million, Prudential had \$12.5 million and Principal Mutual had \$11.5 million. If you total up the companies 2 through 25 collectively they had about \$106 million. If you compare the \$106 million to the top company who had \$163 million you will see that Blue Cross, Blue Shield has a majority of the premiums and yet there is no tax paid on them.

Because of the 2.75% premium advantage is one of the reasons they have so much business. If the remaining companies don't get to offset that, but have to pay the tax it would be like a 5.5% and it wouldn't be long before there wouldn't be any premiums to collect taxes on. I feel it's an unfair advantage in the marketplace because it hurts the buyers of insurance in the State of Montana.

REP. ELLIOTT said, we all know that Blue Cross, Blue Shield is a non-profit corporation and the reason for the premium tax is in lieu of a corporate income tax levied against the insurance companies. If we levy a corporate income tax against the insurance companies as an alternative they still would not pay that because it is a non-profit corporation. Blue Cross, Blue Shield has about 85% of its income into benefits and operates on about 15%. This is nowhere near what the corporations had to put back.

REP. NELSON said, some life insurance companies in Montana are in eminent danger of going under. In the event these corporations do go under, how much debt will they have incurred? I assume the other insurance companies would pick up that debt.

James Borchardt said, we know there are 3 or 4 companies, Mutual Benefit Life, for example, has the 4th largest number of assets in this country to the tune of about \$8 million. Frequently when companies go into rehabilitation such as Mutual Benefit Life they don't file regular annual statements with us, because their commissioners exempt them from that. We don't have a current annual statement from them. To obtain that information, we would have to make a special request probably through the commissioner of New Jersey.

REP. ELLIOTT said, can you give us a round figure of

approximately how much this amounts to?

Mr. Borchardt said, I can't without getting statements from New Jersey.

REP. NELSON said, it seems that in rehabilitation of parts of that company that it is conceivable there would be no loss over a period of time. Is that true?

Mr. Borchardt said, theoretically the larger the deficit the more improbable that would happen.

REP. NELSON said, I wrote a policy some years ago with National Fidelity Bankers of Virginia and I have been getting correspondence from the Virginia Commissioner. According to that rehabilitation plan that life insurance policy is being purchased by Aetna Life and Casualty and after a period of time there would be no loss to that policyholder. Am I reading that correctly?

Mr. Borchardt said, my understanding is that a temporary and maybe a permanent arrangement will be worked out with the Hartford Group and policies will be transferred there. What is unclear is, whether or not there will be guarantee fund involvement.

Tom Hopgood, Health Association of America said, one of my associates is in Chicago with the General Council for all Guarantee Associations from around the country. It would be inappropriate to put a price-tag on it since it is a situation which is developing right now. Therefore, I can't say how much it is going to cost the state. There are no other domestic insurance companies in the state other than the Life of Montana.

CHAIR REAM said, most of the testimony against the bill had to do with contractual obligations. I asked the legal council from the auditor's office to be here today, and I wonder if you could address the issue from the legal perspective of approving the bill as is or amending it upon passage of approval.

Susan Witte, Chief Legal Counsel of the Insurance Department said, We briefly looked at this and introduced this bill in the 1989 session. There is one case I would like to cite for you which was First Federal Savings and Loan verses Department of Revenue in a 1982 case. In that case you got 5 years of operating losses that the Havre Savings and Loan was allowed to carry forward for 5 years. In 1979 the law was amended and they were trying to carry forward for an extra year and were not allowed to do so by the Department of Revenue. Montana Supreme Court held that the law was unconstitutional because it impaired a 5 year contract. You may have a similar situation here, but I don't know if this is a contract. The constitution provision was Article 13, Section 1 and 3, "the Legislature shall pass no law which imposes liabilities".

Mr. Driscoll said, I think we are talking about 2 different issues. I think the Montana Contract aspect is a different issue. The one I was talking about in my testimony before the committee was strict contract law and you stated it is not a contract. In the case I was referring to the Statute itself is treated as a contract.

CHAIR. REAM asked, are you stating that we make the bill retro-active and are you also saying that we make it effective at the end of this tax year?

Mr. Driscoll said, you can make it effective at the end of this tax year.

REP. GILBERT said, we were sent here to balance the budget and this would contribute \$3.5 million. Is this really what we are looking at? It appears to me that because there is an offset for health and life insurance people, that they are not contributing their base of corporate insurance taxes. If that is the case, why doesn't the state of Montana come up with a new system that says anyone who sells insurance in the state of Montana will contribute to this fund. Everyone should contribute to the fund to offset the losses. The blues would still enjoy a 2.5% advantage but it wouldn't be 5%.

CHAIR. REAM said, he would agree that it should be separated out from the insurance premium.

REP. GILBERT said, over the years we have seen premiums continually. It has become very difficult since I pay 70% of those premiums for my employees. The bottom line is in trying to balance the budget we are going to increase the health costs for Montana citizens. I know that Blue Cross, Blue Shield rates as high as everyone else's even though they don't make a profit. That makes me wonder just what they are doing with the money. It took Blue Cross, Blue Shield 4 months to pay a claim I had submitted. They were holding it and drawing interest. I feel the Legislature has to responsibly look at that. Their advantage is not being passed on to the rate payers.

REP. McCARTHY said, what we are doing in this bill is penalizing a company that has been policing themselves. They have been taking care of their own problems and I feel we are going to penalize the companies if we pass this bill.

REP. ELLIOTT said, there is an economy in this insurance bill which is between providing us health insurance. Other companies provide a full line of insurance of which, health insurance is a part.

Mr. Browning said, the question of bailout is who is it you are bailing out? It is the policyholders of the defunct insurance companies. It is not that the insurance companies decided they wanted to bailout those policyholders, it was the state's

decision when it enacted the law which required that.

CHAIR. REAM said, would you agree with **REP. GILBERT'S** suggestion that there should be a separate fund for these defunct companies?

Mr. Browning said, I represent State Farm Insurance and my company does not support these funds. Because, it wants to provide the lowest cost insurance available.

REP. RANEY said, tell me if I have this straight, the insurance company goes broke and the Legislature said to the insurance companies you will take care of the premiums of the company that went broke.

REP. McCARTHY said, let me explain, you have a policy with a insurance company that went broke. The pool will look at that and they will give you a choice; they will continue your policy with one of these companies and you continue paying premiums for your policy. Or, from the pool we will buyout the cash value of your policy.

REP. RANEY asked, is this because the Legislature told the companies to do this because the Legislature didn't have enough money?

REP. McCARTHY said, as I understand it the insurance company is policing themselves.

Mr. Nelson said, they are only allowed to take 20% of that offset each year for 5 years. Therefore, the industry is making an interest-free loan to the state citizens.

REP. RANEY said, so we have decided to support the citizens who made the choice to go with a lousy company.

Mr. Nelson said, if a person had \$100,000 life insurance and the company went defunct and something happened, rather than go on welfare, the Guarantee Association would pay the \$100,000.

REP. RANEY said, you're saying that the Guarantee Association is paying that and offsetting it from the taxes. In reality the taxpayers are paying the \$100,000.

Mr. Nelson said, that is correct.

Mr. Driscoll said, this money comes out of the insurance companies that want to survive and pays the policyholders of the dead insurance company and after five years they recover it. That means there is roughly a 25% interest rate to the state on the entire amount. **REP. ELLIOTT** asked, how much more would that cost the state?

Mr. Driscoll said, roughly about 1/3 more.

Mr. Hopgood said, the insurance companies do not like the Guarantee Association and we are not doing this voluntarily. However, we are doing it because it is the law.

EXECUTIVE ACTION HB 11

Motion/Vote: REP. ELLIOTT recommended to TABLE HB 11 and review it at the full committee. **PASSED UNANIMOUSLY.**

ADJOURNMENT

Adjournment: 2:50 P.M.



BOB REAM, Chair



THEDA ROSSBERG, Secretary

BR/TR

HOUSE OF REPRESENTATIVES

INCOME/SEVERANCE TAX SUBCOMMITTEE

ROLL CALL

DATE

7/13/92

NAME	PRESENT	ABSENT	EXCUSED
REP. JIM ELLIOTT	✓		
REP. MIKE FOSTER		✓	
REP. BOB GILBERT	✓		
REP. MARIAN HANSON		✓	
REP. BEA MCCARTHY	✓		
REP. JIM MADISON		✓	
REP. TOM NELSON	✓		
REP. BOB RANEY	✓		
REP. BOB REAM, VICE-CHAIR	✓		
REP. BARRY STANG		✓	
REP. <u>DAN HARRINGTON, CHAIR</u>			