

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 20, 1997, at
8:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 376; SB 378; 2/17/97
SB 381; 2/18/97
Executive Action: SB 343; HB 131;
SB 347 TABLED

{Tape: 1; Side: A; Approx. Time Count: 8:06 AM; Comments: N/A.}

EXECUTIVE ACTION ON SB 343

Motion: SEN. DEBBIE SHEA MOVED DO PASS SB 343.

Amendments: SEN. CASEY EMERSON MOVED to Amend SB 343 (EXHIBIT 1)
sb034303.abc.

Discussion: Ms. Mona Jamison, American Automobile Manufacturing
Assoc. was asked to explain the amendment. Mr. Tom Harrison,
Helena Attorney for car dealers, was also asked to give his view
of the amendment. (The same four amendments that are being
presented were spoken on at great length yesterday 1/19/97.)

SEN. EMERSON asked if there could possibly be any middle ground. Mr. Harrison said that there could be no compromise. Ms. Jamison offered a compromise that seemed to be acceptable to Mr. Harrison. Mr. Bart Campbell responded that the idea was very conceptual and to fashion an amendment that would stand the scrutiny of the courts would be quite difficult. SEN. STEVE BENEDICT suggested that the parties should try to come to a compromise after the bill goes to the House Business and Labor Committee.

Vote: The motion to AMEND SB 343 FAILED UNANIMOUSLY: 0-6

Amendments: SEN. CASEY EMERSON MOVED TO Amend SB 343 (EXHIBIT 2) sb034304.abc.

Discussion: Mr. Campbell explained the amendment.

Vote: The motion to AMEND SB 343 FAILED UNANIMOUSLY: 0-6

Amendments: SEN. EMERSON MOVED TO Amend SB 343 (EXHIBIT 3) sb034305.abc.

Discussion: Mr. Campbell explained the amendment. SEN. CRISMORE asked if there could be any compromise on this issue. Ms. Jamison said that they had offered a compromise and that was there would be no change in dualing for a dealer that has it already in place but that in the future, there would have to be a mutual consent. This had not been acceptable to the dealers. Mr. Harrison stated that there is no middle ground.

Vote: The motion to AMEND SB 343 FAILED with SENATOR CRISMORE voting YES: 1-5.

Amendments: SEN. EMERSON MOVED TO Amend SB 343 (EXHIBIT 4) sb034306.abc.

Discussion: SEN. BENEDICT asked Mr. Harrison if he had prepared any amendment that addressed this issue? Mr. Harrison said that he saw no middle ground. Ms. Jamison stated that this is against the Constitution. If the bill is not amended, it allows the dealers to break any contract they sign if they decide that it is unreasonable or for whatever other reason they want. The bill as it is written is UNFAIR. SEN. EMERSON wanted to ask that the two sides get together and see if they could come to a compromise for the House Business & Labor Committee. Ms. Jamison stated that not to accept this amendment is bad lawmaking and urged the committee to take that responsibility. And further, the proponents have gotten their way with the other amendments but this amendment cuts to the heart of the problem. The law should try to reach a balance in fairness.

Vote: The motion to AMEND SB 343 FAILED with SENATOR CRISMORE voting YES: 1-5.

Amendments: SEN. CRISMORE MOVED TO Amend SB 343 (EXHIBIT 5)
sb034307.abc.

Discussion: Mr. Bart Campbell explained the amendments. The amendments were simple. SEN. EMERSON asked how long has the \$25,000 bond been in effect? Mr. Steve Turkiewicz, MT Auto Dealers Assoc. said that the change was four years ago, from \$10,000 to \$25,000.

Vote: The motion to AMEND SB 343 CARRIED UNANIMOUSLY: 6-0

Motion/Vote: SEN. BENEDICT MOVED DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY: 6-0.

{Tape: 1; Side: A; Approx. Time Count: 8:41 AM; Comments: N/A.}

EXECUTIVE ACTION ON HB 131

Motion: SEN. CRISMORE MOVED HB 131 BE CONCURRED IN.

Amendments: SEN. CRISMORE MOVED to Amend HB 131 (EXHIBIT 6),
hb013101.abc.

Discussion: Mr. Campbell explained that Frank Cote and Ward Shanahan had gotten with him and showed him where they were in agreement. The amendments were put together from this meeting. Mr. Campbell's understanding from Mr. Cote was that he and Mr. Shanahan were in agreement.

Vote: The motion to AMEND HB 131 CARRIED UNANIMOUSLY: 6-0.

Motion/Vote: SEN. CRISMORE MOVED HB 131 BE CONCURRED IN AS AMENDED. The motion CARRIED with SENATOR EMERSON voting NO: 5-1.

EXECUTIVE ACTION ON SB 347

Motion: SEN. CRISMORE MOVED DO PASS SB 347.

Amendments: SEN. CRISMORE MOVED to Amend SB 347 (EXHIBIT 7)
sb034701.asm.

Discussion: Mr. Campbell explained the amendments that were prepared by Stephen Maly. SEN. MCCARTHY felt that the amendments changed the tenor of the bill. SEN. EMERSON asked if the fire marshall had been dropped as to getting into the decision making concerning elevator power shut down circuits. Mr. Campbell said no because subsection (3) strikes that idea. SEN. EMERSON thought that the Department of Commerce could put some of this

into effect, right? Mr. Campbell said yes they could change that rule right now.

Vote : The motion to AMEND SB 347 CARRIED with SENATORS HERTEL and CRISMORE voting NO: 3-2. SEN. BENEDICT was absent.

Motion/Vote: SEN. BEA MCCARTHY MOVED TO TABLE SB 347. The motion TO TABLE CARRIED UNANIMOUSLY: 5-0.

SEN. CASEY EMERSON asked to pass a resolution that the committee direct CHAIRMAN JOHN HERTEL write a letter to the Commerce Department so that they will incorporate the device that will allow the elevator(s) to stop at the first available floor and discharge the patrons. CHAIRMAN HERTEL agreed to write this letter.

{Tape: 1; Side: B; Approx. Time Count: 8:53 AM; Comments: ONE SENTENCE WAS LOST IN THE TURN. .}

{Tape: 1; Side: B; Approx. Time Count: 9:06 AM; Comments: A 13 MINUTE BREAK WAS TAKEN.}

HEARING ON SB 378

Sponsor: SENATOR STEVE BENEDICT, SD 30, HAMILTON

Proponents: Tom Hopgood, Health Insurance Assoc. of America
Kate Cholewa, MT Women's Lobby
Claudia Clifford, Auditor's Office
Laurie Ekanger, Governor's Office
Jim Malgram, MT Independent Living Program
Al Smith, Montana Advocacy Program
Bill Jensen, Blue Cross and Blue Shield of MT and
Chairman, Montana Comprehensive Health
Association
Jim Mitchell, Director, Student Health Service,
MSU, Bozeman
Ed Grogan, Montana Medical Benefit Plan

Opponents: None

Opening Statement by Sponsor:

SENATOR STEVE BENEDICT, SD 30, HAMILTON. I bring to you today SB 378. I would like to give you a bit of history. Insurance has been regulated historically at the state level. With the increased popularity of self-funded health plans, the federal government through the Employment, Retirement, Income Security Act more commonly known as ERISA, has preempted state regulation of many larger health plans. Now, for the first time, the federal government is inserting itself into the state process and the standards for which individual states have adopted will now apply to these self-funded plans as well. SB 378 brings Montana law into compliance with the federal Health Insurance Portability and Accountability Act commonly known as K-K or

Kennedy-Kassebaum. The federal law imposes a uniform set of regulations on health benefits both insured and self-funded and this bill will allow Montana to regulate the insurance industry providing health benefits to Montana consumers. I want to make sure that Montana consumers are protected by Montana laws. Enforcement should be local and not out of Washington, D.C. That is the reason for this bill. If we don't adopt a bill like this, we are going to put ourselves at the mercy of the federal government. That is not in the best interest of the State of Montana.

The bill falls into five main parts: Protections in the health and insurance industry; Long term care benefits; Viatical settlement regulation; Mental health expansion; and Minimum hospital stays following childbirth.

The health insurance protections are the area that are the most complex. I will divide that into a number of subsections. Amendment of current law or pre-existing waiting periods; credit for qualifying previous coverage; small group reform expansion; anti-discrimination of the large group market; guaranteed renewal non-cancellation in the large group market; and state opt-out provisions for federally qualified individuals.

Pre-existing waiting periods: except for certain limited disability policies such as disability income, pre-existing condition waiting periods have been redefined. For individual coverage, a pre-existing condition is one for which medical advice or treatment has been given within the last three years. The condition can only be excluded for up to 12 months. For group coverage, a pre-existing condition is one for which medical advice or treatment was provided within the previous six-month period and can only be excluded for up to 12 months. So we have the 12 month forward looking and the 6 month look back periods. As is already the case, under the Montana law, there are not pre-existing waiting periods for newborns continuously covered or for adopted children continuously covered.

Credit for qualifying previous coverage: individuals who have been covered under health plans, insured and self-insured groups and insured individuals, are given credit for having met a pre-existing waiting period if they remain continuously covered and have less than a 63 day break in their coverage.

The small group reform expansion includes guaranteed issue of health benefits regardless of health status or claims experience; guaranteed renewal of coverage, credit for pre-existing waiting periods of continually covered; and some waiting restrictions. The law will be amended to include employer groups between 2 and 50 employees.

Anti-discrimination in the large market group, the MEWAS, the large group insured coverage which is 51 plus employees and MEWAS, these are Multiple Employer Welfare Arrangements. This

particular committee does not deal often with these types of laws so I will try to explain as much as possible as I go through the bill. These two groups cannot discriminate against an individual because of health status or claims history. This is a provision which has been in place for the small group market as a result of previous Montana law.

Guaranteed renewal and non-cancellation in the large group markets and MEWAS: The guaranteed renewal provision which went into place for small group coverage with the Small Employer Health Insurance Availability Act and the Individual Guaranteed Renewal Non-cancellation passed in the last session are extended to large and shared group coverage and MEWAS as well.

State opt-out provisions for federally qualified individuals: This provision was perhaps the most talked about but least understood provision of the federal act. Combined with predator qualifying previous coverage, continuity of coverage discussed already, the federal law provides the individuals who have been previously covered by any health benefit plan or self-insured can continue some form of coverage without meeting another waiting period. If the individual goes to work for another employer providing health benefits, the individual is to be immediately covered. If an individual leaves a group health plan situation, they can apply for individual coverage. If they are accepted by the individual insurer according to the insurer's underwriting criteria, the person is given credit for pre-existing waiting periods met. If the individual cannot get individual health insurance because of medical conditions or claims experience, the state can provide another method of insurance. This is the state opt-out provision. The provision that I am recommending is the use of the Montana Conference Health Association, which is our high risk pool. It is a good example where Montana was ahead of its time in providing access to health benefits for Montanans who otherwise could not be covered. Federal law allows this mechanism to be used in meeting federal requirements.

Long term care amendments that qualify long term insurance contracts which receive favorable tax treatment by the IRS are added to Montana insurance law. The benefit triggers will be established by rule but will require the mandatory provision of long term care benefits when a covered individual meets certain requirements. These would be established by rule. Several provisions of existing law were amended as well to bring them into compliance for long term care benefits paid to a life insurance policy. Quarterly reporting requirements are changed to monthly.

Viatical settlements: I won't go into that because we did hear a viatical settlement bill and **SEN. MCCARTHY** now knows how to pronounce viatical.

Mental health expansion and mental health benefits are expanded for groups with more than 50 employees who offer mental health

coverage. In Montana's mandate, this is all large insured groups.

The coverage aggregates may not be more restrictive than for (?) health generally. This expansion is effective until September 30, 2001 and does not apply if the increased cost of coverage is more than 1%. Health insurance policies regulated by the State must provide for a minimum in-patient hospital stay following childbirth. This is basically the intent of the bill. The bill has been worked on by a lot of people in the industry. I would commend the Insurance Commissioner's office for their availability and expertise. This at least gives us the basic framework.

{Tape: 1; Side: B; Approx. Time Count: 9:17 AM; Comments: N/A.}

Proponents' Testimony:

Tom Hopgood, Health Insurance Association of America. SEN. BENEDICT stated that this is a bill that has had a lot of work put into it since early last fall. The Kennedy-Kassebaum legislation is indeed a complex and lengthy piece of legislation. As a result, this bill is lengthy and complex. It deals with numerous facets of the health insurance industry. In concept this bill maintains control of the insurance industry in the State Auditor's Office rather than forfeiting that control to the federal government. I believe that this is a good idea and believe that the committee would agree with that concept.

Operatively, I would like to talk about the requirement of "K-K", and that is continued health insurance be available to persons who already have insurance. In one or two sentences, that is what this bill is about. In so far as that single issue is concerned, it is contained in Section 17, 18, 19 and 20 which creates a portability pool for people under the Montana Comprehensive Health Association. That is the high risk pool that exists for people who are not able to obtain insurance otherwise in the State of Montana. This would create a separate pool under the auspices of the MCHA. This is an innovative type of mechanism for complying with "K-K" and there are a number of states who are following the lead of Montana.

What would happen is that there would be a separate pool in the MCHA and the premiums would be charged to the individuals who are in that pool and to the extent that the premiums, with caps placed on those premiums, are not sufficient to cover the claims and administrative costs, the insurers who are doing business in the state would be subject to an assessment to cover the unfunded liabilities. I realize that is a word that I should not be using but that is what it is. It would be paid by the insurance companies. Under the regular pool, the companies are allowed to take a premium tax offset for their assessments. That would not be allowed under the affordability pool. Basically, that is what

this bill does in so far as compliance with the individual market reforms. I would ask for a Do Pass.

Kate Cholewa, MT Women's Lobby. We rise in support of this bill. We have one concern and a suggested amendment (**EXHIBIT 8 and 9**).

Claudia Clifford, Auditor's Office, Insurance Department. I come as a proponent of SB 378. The Federal Act has consumed our office since its passage. The Act was amended twice by Congress in September which resulted in provisions that deal with maternity length of stay and mental health mandated benefits. I will hand out a copy of the Act (**EXHIBIT 10**). There are a lot of conflicts, questions and gray areas in the federal act. What we have done in the Insurance Dept. is what I bring to you as our best guess at implementing the provisions of the Federal Act. It is not a perfect bill. Attorney's will make a career out of interpreting various portions of the Act. You can expect Congress in the future to be doing both clean up language and perhaps expansion of this Act. It is true that insurance has been traditionally regulated at the state level and SB 378 allows us to implement the provisions of the Act and in essence helps our consumers here in Montana.

There are three federal agencies that have oversight over provisions of the Congressional Act. That is confusing for our consumers and for us as a Dept. None of these three agencies has the background or experience in the insurance field and so they are just learning terminology to basics. We are fortunate to have the National Association of Insurance Commissioners that help organize model acts which you may have heard before your committee. They serve as a very significant resource to the federal agencies and I cannot underestimate how important that is. The federal agencies have had numerous meetings with the NAIC on the training of what these issues are about. We receive information from the NAIC who are in direct communication with the federal agencies on the unclarified issues. We have a significant rule making that will be issued in April which, hopefully, will start to answer many of the questions that the states have put before Congress.

Back to SB 378, what we need to show in this session is our best effort as the State of Montana to bring ourselves into compliance with the Act and it is my belief that this bill will meet their muster and they will not preempt our state authority to regulate insurance and help our consumers. With this bill, we will have a new arrangement with the federal government, for good or bad. The provisions of the bill are broad; they affect all kinds of insurance plans. If you are use to dealing with state insurance law we are more narrow in our scope; we could not affect what are called the risk related exempt plans in the past. The Federal Act basically affects all kinds of insurance plans. I do have some very good background material. I have a one page handout that is a summary of provision in the Act the affect large group,

small group and individual plans (**EXHIBIT 10A**). This is a quick reference of how this bill affects our coverage in Montana.

There are four sections of this bill. There are sections on viatical settlements. Frank Cote can answer questions on this. There are provisions that deal with long term care insurance. Clyde Dailey can answer questions on this. I focus mostly on the group and individual market affordability provisions and also on the maternity length of stay issues.

I have a handout to help illustrate what **Tom Hopgood** covered in terms of what we did to design a mechanism for individual portability (**EXHIBIT 11**). The federal government gave the state choices in how they wanted to address the issue of an individual who is leaving a group plan and must have access to individual coverage called guaranteed issue: no waiting periods on their pre-existing conditions, no riders conditions, no rejections for coverage. We looked at alternatives. The one we settled on for this bill is the use of what we already have which is called the Montana Comprehensive Health Association. We will keep in place the traditional program under the MCHA. We are in essence creating a new book of business. This chart explains it. One of the reasons that it was set up as a new book of business was we needed to look at assessments as being separate from traditional assessments and we do not allow for assessments to be offset against premium tax for the new book of business. Therefore it will not affect the bottom line of your budget. This bill allows for the MCHA to be a revenue neutral bill.

We have an interesting relationship with the governor through the Congressional Act. In most states, the Insurance Commissioner is appointed by a governor and in only 13 states is the insurance commissioner separately elected. Congress designed this bill so that the Governor communicates to Congress on various issues of compliance. We are working closely with the Governor's office and our first big hurdle is to certify to the federal government that we selected to do a state alternative individual market mechanism which is this bill. We hope they will adopt our compliance as proposed.

I have one amendment to the bill (**EXHIBIT 12**). Various insurance agents agree that this is an important clarification for your consideration. It brings into compliance our definition of small group.

Laurie Ekanger, Director, Department of Public Health and Human Services, on behalf of the Governor's Office. I am here on behalf of Governor Racicot to urge your support of this bill. The governor has a small role in bringing the state into compliance. He urges your support.

Jim Malgram, Executive Director, MT Independent Living Project. We support the bill. We do have an amendment (**EXHIBIT 13**). We

would like to see the continuation of coverage for handicapped people.

Al Smith, Executive Director, MT Advocacy Program. We are in support of this legislation but would echo what **Mr. Malgram** has said.

Bill Jensen, Blue Cross and Blue Shield of MT., and Chairman of Montana Comprehensive Health Association. We appreciate all the work that has been done on this bill. The MCHA Board of Directors at the time of the "K-K" passage began looking at what kind of changes would be necessary to Montana law in order for MCHA to be available as an alternative mechanism. One thing we felt was important was to protect our currently insured people under MCHA. There are 400 Montanans insured under MCHA. They would be in a separate pool. We appreciate the innovative idea of a second pool.

Jim Mitchell, Director, Student Health Service, MSU-Bozeman. I will give my testimony and hand in a written copy. (EXHIBIT 13A)

Ed Grogan, MT Medical Benefit Plan. I commend the work of **SEN. BENEDICT** and the others who have worked on this bill. This is a good bill and urge your support of it.

Opponents' Testimony: None

{Tape: 1; Side: B; Approx. Time Count: 9:39 AM; Comments: N/A.}

Questions From Committee Members and Responses:

SEN. BEA MCCARTHY asked **SEN. BENEDICT** a series of questions. (1) On page 69, on viatical settlement, is this section 58 the same as **SEN. VAN VALKENBURG'S** bill? **SEN. BENEDICT** answered, "Substantially the same." (2) On maternity length of stay, has this been taken care of? **SEN. BENEDICT** answered, "Yes." (3) On page 8, line 8, what does transferring mean? **SEN. BENEDICT** explained that it means picking someone up and putting them into a wheelchair or onto a bed or to a bath chair, etc. It is different for a patient who can walk even with a walker. (4) On page 41, line 18, you spell out mammography and the mammogram treatment as a specific category, but where is the prostate program addressed? Both should be understood or both should be addressed. **SEN. BENEDICT** replied that evidently this was not a question to be answered and he was correct in that assumption.

SEN. DEBBIE SHEA asked about portability and would like to know if any of this bill is retroactive? Her ex-husband left his job and went into his own business. During that time period he was under the COBRA law which gave him 18 months. Also during that time, he developed MS. Now he cannot find insurance. Can he go back? **SEN. BENEDICT** said that it would depend on the break in the coverage. But ultimately he should be able to find insurance under the MCHA. Portability means from one insurance coverage to

another. A break in coverage is 63 days and then he could do something.

SEN. CASEY EMERSON related that when he sold insurance, the private industry handled their end of it. When government gets into the insurance business, this is not good and the Kennedy-Kassebaum Act is a bad bill. Do you feel the "K-K" is contrary to the aim of the U. S. and Montana State's Constitutions? **Mr. Hopgood** replied that is a complicated question which he is incapable of answering with a specific yes or no. It is a policy debate over the delivery of health care in the country and this state which has been on-going for some time and the subject of a great deal of deliberation and consideration by many people and he would decline to judge on that particular question. **SEN. EMERSON** said that he thinks it is a bad bill and does help ruin both constitutions. He further asked if the Legislature is legitimizing "K-K" by passing this bill? **Mr. Hopgood** replied that what is being done with this bill is maintaining control of the health insurance industry with the State Auditor's office rather than forfeiting that control to the federal government. **SEN. EMERSON** stated that **SEN. BENEDICT** has done a tremendous job on this bill and he is not putting either the **SENATOR** or the bill down. What the Legislature should be doing is challenging the federal government.

{Tape: 2; Side: A; Approx. Time Count: 9:49 AM; Comments: N/A.}

SEN. JOHN HERTEL asked if there are any conflicts with this particular piece of legislation at the federal level? **Ms. Clifford** replied that to the best of their knowledge, there are none.

Closing by Sponsor:

SEN. BENEDICT closed. This bill will alleviate for us great consternation what other states will find when they try to bring themselves into compliance with the "K-K" federal act. We are a bit ahead of the power curve having in 1993 and 1995 passed legislation aimed at "K-K". We are not being unduly forced to do a lot of things other states are going to have to grapple with. We have already made some of those policy decisions. This bill will just tweak a little bit and prove to the federal government that we have the ability to regulate insurance in our own state. That is a strong message to the federal government.

{Tape: 2; Side: A; Approx. Time Count: 10:02 a.m.; Comments: N/A.}

HEARING ON SB 381

Sponsor: SEN. STEVE BENEDICT, SD 30, Hamilton

Proponents: Ed Grogan, Montana Medical Benefit Plan

Tom Hopgood, Health Insurance Association of America
Tanya Ask, Blue Cross & Blue Shield of Montana
Tom Ebzery, Yellowstone Community Health Plan
Riley Johnson, National Federation of Insurance
Benefits

Opponents: Al Smith, Montana Advocacy Program
Diane Gray, Montana Optometric Association

Opening Statement by Sponsor:

SEN. STEVE BENEDICT, SD 30, Hamilton. This bill is a very simple bill. All it does is rectify a mistake regarding the placement of the uniform benefit health plan into the proper section of law. This law was a policy decision passed in the last legislative session.

Proponents' Testimony:

Ed Grogan, Montana Medical Benefit Plan. We are a proponent of this bill and it is simply a bill to correct a mistake made in the codification two years ago. We ask you allow it to be recodified properly so we can have a uniform health plan. I believe the original intent of the uniform health plan was to have every insurance company have a plan so the consumer could compare apples with apples. This is an excellent bill and we'd like you to do whatever is necessary to recodify it.

Tom Hopgood, Health Insurance Association of America. SEN. BENEDICT was correct when he said SB 381 was to correct codification. The intent of the legislature was the uniform plan should be a mandate-free plan, but its placement in the law made it mandatory. This bill corrects that.

Tanya Ask, Blue Cross & Blue Shield of Montana. We would also support the clarification and correction of the codification.

Tom Ebzery, Yellowstone Community Health Plan. We agree with the previous speakers. The way the law now stands, a state of limbo exists because no one can offer participation; therefore, no policies would be sold unless the codification is made.

Riley Johnson, National Federation of Insurance Benefits (NFIB). We support the bill.

Opponents' Testimony:

Al Smith, Montana Advocacy Program. Persons with disabilities opposed this legislation last session because we feel folks should get mandated benefits as provided in this law. Cost savings are negligible when compared to the effective denial benefits for persons with disabilities.

Diane Gray, Montana Optometric Association. We oppose SB 381 because it seems to be discriminatory against certain classes and categories of providers. I have no problems with the mandated benefits but I do have one with the categories excluded. I suggest an amendment which would exclude language in Section 3. (EXHIBIT 14)

Questions From Committee Members and Responses:

SEN. BEA MCCARTHY referred to Line 23 and asked Tom Hopgood to explain it in plain English. He said what this would do is state the uniform plan is mandate-free (benefit required by law to be included in a health insurance policy). SEN. MCCARTHY said "for any category of licensed health practitioner." Tom Hopgood said what we have in statute is a "freedom of choice" provision that says if your policy covers a certain service which is within the purview of the practice of certain enumerated providers you have to reimburse those providers.

Closing by Sponsor:

SEN. STEVE BENEDICT. I'm sensitive to what we did in the last legislative session and I appreciate the Committee's willingness to look at this bill as a simple bill to put the policy in place in the right section of law.

{Tape: 2; Side: A; Approx. Time Count: 10:21 a.m.; Comments: N/A.}

CHAIRMAN JOHN HERTEL relinquished the chair to VICE CHAIRMAN STEVE BENEDICT and SEN. CASEY EMERSON who shared the chair while he presented SB 376.

HEARING ON SB 376

Sponsor: SEN. JOHN HERTEL, SD 47, Moore

Proponents: Gordon Vance, Montana Power Sport Dealers
Association
Cliff Gullett, TEAM, Bozeman
Matt Krsul, Redline Sports, Butte
Jeff Penrod, Adventure Motorsports

Opponents: Ken Hoovestal, Montana Snowmobile Association

Informational: Dean Roberts, Department of Motor Vehicles,
Department of Justice
Greg Overturf, Department of Commerce

Opening Statement by Sponsor:

SEN. JOHN HERTEL, SD 47, Moore. The title of the bill states it is an act transferring the licensing of dealers of personal water

craft, snowmobiles and off-highway vehicles and the regulation of sales and distribution of them to the Department of Justice. There are also amendments. I think parts of the bill are clean-up. Section 2 eliminates much old statute and places the requirements of being a licensed dealer under another code. Section 5 explains a person must be licensed before off-highway vehicles can be sold. Section 6 adds these vehicles to 61-4-101 and what is really dealt with is the application for dealers' or wholesalers' licenses. Section 7 describes the fees which will have to be paid. Sections 8, 9, 10, refer to those vehicles, which are included in the definitions of motor vehicles.

Proponents' Testimony:

Gordon Vance, Montana Powersport Dealers Association. We want to see SB 376 enacted into law because Chapter 4, Parts 2,4,5, all deal with the sale of these vehicles. They have to do with the licensing of the dealer. Section 2 affords a franchised dealer protection with regard to the investment he makes in order to be a dealer. Section 4 addresses freedom of choice regarding the financing of these products. Section 5 deals with warranty remedies currently not available to the purchasers of these products. Currently, the purchasers of the products have no recourse when they buy their new products which do not meet the manufacturers' standards. If they return the products and repairs are unsuccessfully made because of a defect in manufacturing, they have no other recourse. This section allows for a mediation process which involves the customer and the manufacturer directly, taking the dealer out of the process. That is the extent of the bill. It does not go into any other areas of Chapter 23. The bill was intended to address the situation between the dealer and consumer as it relates to the sale of the vehicle.

Cliff Gullett, TEAM, Bozeman. A lot of us feel you don't understand just how big the outdoor sportsmotor business is; several dealers in the state do \$3-\$4 million worth of business a year. The products are financed for 60-72 months, so we would like to see manufacturers take some of the responsibility. Also, we as dealers are making a substantial investment both in the products and building and now manufacturers can do what they want in setting up another dealer so we have no protection. We ask your support.

Matt Krsul, Redline Sports, Butte. We can use some protection because we dealers have a major investment in our business. We run into cases where small dealers can obtain licensing to sell these products, which takes some of the exclusivity away from us. Customers can go down the street to buy, but they are not offered the protection a dealer like us can give. We would like to have the protection with the manufacturers that would better enable us to put more investment into our business so we could do a better job of offering and servicing our customers with the products they use. We're asking for support on this bill.

Jeff Penrod, Adventure Motorsports. We are currently doing about a \$4 million business. Our products are licensed in the same manner as car dealers, we have financing sales people, we employ about 20 people -- it has gotten to be a big business. We feel motorcycles are the only things that fall under this category, which is old-fashioned. We feel the other products we sell need to be brought into the bill. We would like some protection from manufacturers putting in more dealers without a hearing. Motorcycles are the only things which are protected. Protecting the customers is another good point. I personally take good care of my customers but often the manufacturers don't stand behind it. I would appreciate your support.

Opponents' Testimony:

Ken Hoovestal, Montana Snowmobile Association and Montana Boating Association. I am glad to see there is a Motorsports Dealers Association Forum; it's a new organization of which we were not aware until this morning. Until about an hour ago, we didn't see there was a problem that needed to be solved, and we are still not totally convinced. We haven't had time to work on this and identify the problems specifically. I think their concerns could have been solved in a different way but the time crunch won't allow it. We are concerned with the present form of SB 376 because it seems boat dealers who sell personal watercraft would have to buy an additional license, which doesn't seem to have much logic. We have jealously protected snowmobiles from being classified as motor vehicles. In all fairness, this bill does not do that, except for dealer purposes. Our concern with the motor vehicle thing is if it were to be extended to all snowmobiles, riding in the streets (like in West Yellowstone) would require motor vehicle codes. We're not totally sure this bill is necessary. Another problem is this bill takes away the provision for dealer plates. I'm not so sure the bill should be killed; yet, I'm not so sure it should be passed. In its present state, we would oppose its passage.

{Tape: 2; Side: A; Approx. Time Count: 10:38 a.m.; Comments:
N/A.}

Informational Testimony:

Dean Roberts, Motor Vehicle Division, Department of Justice. At present there are 117 boat dealers in Montana, 69 snowmobile dealers and 29 Off Highway Vehicle (OHV) dealers. Some are the same dealers who have more than one license. This bill attempts to pull away from vessel (watercraft or boat) the personal watercraft. Personal watercraft is something you sit on and a vessel or boat is something you sit in. They want to pull "snowmobile" out of the boat definition but would have to meet all the requirements of Title 23. It is pulled out only for dealer purposes (which means they say we should have a personal watercraft dealership) and puts it into Title 61, which gives them some protections with the manufacturer and puts us into the

process. Other vehicles we regulate do not have this huge block of statute that new car dealers have. There are a few protections, such as warranty, right for them to have tested case hearing with the Department of Justice and do a better job of how these vehicles are financed. At present, sometimes you are tied to the manufacturer and this gives them a little more freedom in financing the vehicles.

Presently, snowmobile and OHV dealers are not bonded; boats have a \$5,000 bond. When boat and snowmobile dealers are brought across and put into Title 61, it will require a \$10,000 bond to be a dealer. It will also raise the fee from \$5 to \$40 to get a dealers license. The fiscal note is not a big impact on us because we already license all three of these categories, but not the pull-out personal watercraft.

Greg Overturf, Department of Commerce. I would like to address Section 10 of the bill, which revises the definition of the motor vehicle under the new Motor Vehicle Warranties Act to include the vehicles. This section gives people who buy these vehicles the same protection as those who buy new cars, under a law known as the "Lemon Law." If you have any questions, I'll be glad to answer them.

{Tape: 2; Side: A; Approx. Time Count: 10:44 a.m.; Comments: N/A.}

Questions From Committee Members and Responses:

SEN. BEA MCCARTHY referred to Page 10, Line 16, and asked about the dealer plates. **Dean Roberts** said there were two different kinds of plates a dealer received -- dealer plates and demo plates. He went to Page 3, Line 29, and said demo plates allowed customers to try out the vehicles. It seems that was unintentionally left out.

SEN. MCCARTHY asked if that language needed to be reinserted. **Mr. Roberts** said it did.

SEN. DEBBIE SHEA asked about the potential problem in West Yellowstone as suggested by one of the testifiers. **Dean Roberts** said he did not agree because this only makes the motor vehicles for dealer licensing.

SEN. MCCARTHY asked **Cliff Gullett** about his remark he had no franchise security. **Mr. Gullett** said he had dealer agreements and also separate dealer agreements with the manufacturer of every line he handled. There was no franchise protection, except for motorcycles. **SEN. MCCARTHY** asked if "exclusive dealership for your area" could not be put into the agreements with all manufacturers. **Mr. Gullett** said it could not. **SEN. MCCARTHY** then commented an agreement between dealers and manufacturers could not be legislated. **Mr. Gullett** said what they wanted was

to have the same protection they had with motorcycles extended to these other vehicles.

SEN. MCCARTHY asked the sponsor if this was what he intended the Committee Bill to do. **SEN. HERTEL** said getting these vehicles on the same caliber as motorcycles was what he envisioned.

SEN. CASEY EMERSON asked what the cost for a \$10,000 bond would be. **Dean Roberts** said \$100 a year.

SEN. EMERSON commented the fees would go from \$5 to \$45 and **Mr. Roberts** agreed. **SEN. EMERSON** asked about adding \$300 if a certain number of vehicles were sold. **Dean Roberts** said it referred to the car business -- if a certain number was not sold, the dealers license would cost \$300 more. He said according to Title 23, fees on the vehicles addressed in this bill would increase also, if a certain requirement was not met, but it was not \$300.

SEN. EMERSON asked if the above-mentioned vehicle dealers wanted to get into the same problem as the automobile dealers. **Gordon Vance** said these dealers had to deal with a trade-off in terms of the precarious nature of their financial situation; it was a trade-off they were willing to make.

SEN. EMERSON asked if the dealers had really tried to talk to the manufacturers to see about a better agreement. **Matt Krsul** said they had talked at length with the manufacturers and they have offered no sympathy or help. It seems it's gotten worse over the past year.

SEN. EMERSON commented SB 376 was a bit of "keep your competition away."

{Tape: 2; Side: B; Approx. Time Count: 10:55 a.m.; Comments: N/A.}

Matt Krsul said the manufacturers' demands can be unreasonable for the area (dealer must sell 60 snowmobiles when he knows he can only sell 40, so the manufacturer says he'll give the dealership to the person across the street). He said he had nothing to lean back on.

SEN. DEBBIE SHEA asked **Jeff Penrod** what he wanted to share and he told her his dealer representative had been in and he had written letters to the dealers expressing his concern. The dealer wanted him to purchase more product and **Mr. Penrod** said he would not because it was his investment and not the dealers'; also, the dealer said he could not touch him on motorcycles but he could on the other vehicles. **Mr. Penrod** was not asking protection from competition but he would like the ability to make the decision based on statistics and not emotion.

SEN. MCCARTHY asked if when the dealers made the threat were they going to take all 60 vehicles to another dealer or would they split them up. **Jeff Penrod** said they would allow the dealer to purchase his amount as well as that of the other dealer.

SEN. EMERSON read part of (EXHIBIT 15) to the group.

SEN. EMERSON asked about the number of people in the business. **Gordon Vance** said the number varied, depending on whose list was checked, but it ran from 45 - 60. Some of the people who were snowmobile dealers might deal with other products as well; or maybe they include those who sell only a few out of their garage, so they don't have the investment others have.

SEN. EMERSON asked **Greg Overturf** the same question and was told he didn't have the answer but there was a significant fiscal impact on the Department of Commerce. **Dean Roberts** repeated his former numbers and reminded the Committee some of the overlapped. He suspected the figures **Gordon Vance** used were in the ballpark.

{Tape: 2; Side: B; Approx. Time Count: 11:03 a.m.; Comments:
N/D.}

Closing by Sponsor:

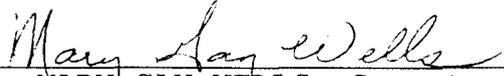
SEN. JOHN HERTEL. There is a definite need for the protection for which they are asking. I have been in contact with **Mr. Vance** and **Mr. Hoovestal** and I think they're willing to work on this even though we are at the end of this time period. However, I must tell them they can work on that today and come with something tomorrow.

ADJOURNMENT

Adjournment: 11:04 A.M.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW