

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 20, 1997, at
9:00 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: HB 541; HB 543; 3/5/97
Executive Action: None

{Tape: 1; Side: A; Approx. Time Count: 9:18 AM; Comments: N/A.}

HEARING ON HB 541

Sponsor: REP. DUANE GRIMES, HD 39, CLANCY

Proponents: Dennis Casey, Gaming Industry Association
Janet Jessup, Department of Justice
Ellen Engstedt, Don't Gamble With The Future
Kati Kintli, Attorney, MT Tavern Assoc.
Janace Palmer, The Bitterroots
Verna Molinda, Darby
Julie Ippolito, Citizens Against Gambling
Expansion
Arlette Randash, Eagle Forum

Opponents: None

Opening Statement by Sponsor:

REP. DUANE GRIMES, HD 39, CLANCY. I bring to you HB 541. I want to thank the MT Taverns Assoc. for their support of this bill. Under current law, the extension of credit for gambling is a misdemeanor. This bill would take the extension of credit for the purposes of gambling from a misdemeanor to a felony. We need to make it commensurate with the crime. You will see by the proponents' testimony that this extension of credit is having a massive impact on lives. There are, fortunately, only a few bad actors who are doing this extension of credit. But the effects are devastating.

Frequently with the one year misdemeanor, the problem was that the statute of limitations is out in one year. So often, when there is an extension of credit, people don't realize that something can be done about it until it is too late. Under a felony, the statute of limitations would be extended. This is one of the benefits of the bill. We also have occasions where credit is extended in areas that are not clearly established in current statute in various places. And there are various places around the state that county attorneys are not prosecuting the cases just because of the way our statutes work and how they are set up. This bill will straighten these things out. It will become a Title 45 felony offense.

In my original bill, there was a \$300 threshold limit for extension of credit and above that amount it would be a felony. If there were any misdemeanors there also could be a 180 day suspension of license. The gambling groups, lobbyists and **REP. BOB PAVLOVICH** were concerned with this and this is out of the bill now. I felt we could live with this, so there is no license suspension in the case of a misdemeanor. This does not interfere with normal check cashing activity. The bill also does provide some self-help actions for the victims. Thank you for your attention.

Proponents' Testimony:

Dennis Casey, Gaming Industry Association. I would like to compliment the sponsor for his willingness to work with us and others in the industry to come up with a bill that we think is now very good. One of the important things for those of us in the industry and also for the regulators is the definition of credit gambling which appears on page 6 and 7. It would be our intent to work with the gambling control division and separately to make that information available to all those who have gambling operations. In the past, there has been some misunderstanding as to what credit gambling is. This clearly defines it and we like the definition very much. Secondly, as **REP. GRIMES** has told you, the dollar amount of which a felony charge kicks in is \$750. It does raise the level from what it was. It will get county attorneys' attention at that level. One concern we've had is that the person who allows for the credit gambling is the one who

will be prosecuted if necessary. If an employee extends this credit, they will be the one held responsible--not the owner. We are in support of this and hope you pass it.

Janet Jessup, Administrator, Gambling Control Division, Dept. of Justice. I will give my testimony and hand in a written copy (EXHIBIT 1). Thank you.

Ellen Engsted, Don't Gamble With The Future. We support HB 541. I will give my testimony and hand in a written copy (EXHIBIT 2). Thank you.

Kati Kintli, Attorney, MT Tavern Association. The Tavern Association has always opposed credit gambling and it has always supported reasonable steps for its elimination. We did have concerns with this bill as introduced; however, we were able to address these concerns with the sponsor. We greatly appreciate the opportunity to do so. We appreciated the opportunity to participate in the shaping of what this bill has become today. This bill contains reasonable penalties on credit gambling that are imposed on those who participate in this illegal activity. The MTA supports this bill and asks that you do as well. Thank you.

Janace Palmer, Bitterroot. My husband is a gambler. We had a moderately successful log home business. Through our business we met some people who wanted to build a restaurant out of logs. They then got a liquor and gaming license. First he started going in at lunch and then at coffee breaks. After business, it started with one or two dollars in keno or poker machines. Then it went to \$10 and \$20. It rapidly escalated to over \$100 or more a day. The games became a priority to him. He lied, cheated and was never home. He wrote one bad check after another. He thought he had found a friend in his favorite establishment. They took bad checks and let him run a tab. They would give him free drinks to keep him there. The gentle seduction of the clink of coins became as necessary to my husband as the air he breathed. And that is no exaggeration. We never saw him. We would go two or three weeks and not see him at all. I worked for this establishment and found out exactly how much credit gambling goes on and how common a practice it is. There are many ways that credit gambling goes on. In Lincoln, MT there are approximately 300 people. They had almost \$1 million go through in tax casino money last year. And tourist industry is even down.

I watched my husband go from a respected businessman to just another barroom personality. We had to close checking accounts and I had to take out the loans myself for the business. His credit history was no longer any good. He borrowed from family and friends. We had to sell everything we had cared for. I finally learned that there were ways to try and combat this kind of thing. But I found this out far too late. We need to make credit gambling a felony. A misdemeanor does nothing to stop

this practice. This bill is so important to us out here. Addiction to gambling is as bad as any other kind of addiction. There are many people who are in the same position as I. I really hope that you pass this bill. Thank you for your attention.

Verna Molinda, Darby. My son-in-law is addicted to gambling. I had watched and sympathized with my daughter's situation. I saw him turn from a nurturing, loving father and husband into a person that I hardly could recognize anymore. He alienated his son by his first marriage by stopping child support. When he ran out of money, some places would let him charge or run up tabs. I was not aware of the fact that this practice was illegal. Their small business went downhill fast as all the profits were going toward gambling. He would bounce checks and did so as long as the bank would work with him. He felt the only friends he had left were those who would give him credit to gamble. Finally, I encouraged my daughter to get in touch with the gambling regulatory board. I was astounded to learn that although these people had extended a line of credit of thousands of dollars to this man, it was only a misdemeanor offense. This establishment is one of the few in our area that abuse the system. This bill would put some teeth in the law and make those who engage in credit gambling think again. It will really help our families. I urge you to pass this bill. Thank you.

Julie Ippolito, Citizens Against Gambling Expansion. We stand in support of HB 541. Access to the addiction is playing a central role in the addictive behavior. There does exist in this legislature an obvious concern for the compulsive gambler as exemplified by SB 208 regarding treatment for the pathological gambler. On more than one occasion, the House Business & Labor Committee debated similar ideologies with **REP. EWER'S** ATM bill. Specifically that is removing easy access to one's funds. This bill, however, is perhaps less conflicting in that it already exists as a law. It is simply unenforceable as it stands. Misdemeanors have little to no consequences in today's crowded court systems. We need to be absolutely clear that assisting the compulsive gambler in his addiction is a felony carrying severe consequences. Too often the spouses of compulsive gamblers dash to the bank to withdraw the paycheck money to discover that it has already disappeared immediately upon deposit, due to the check that was held by some casino owner. We have to protect these families. These are illegal practices that must bear stiffer consequences if we wish to deter this practice. And there are many victims out there. I have seen them in my practice, my friends and even my own family. We need to do everything possible to help everyone concerned. Please vote yes on HB 541.

Arlette Randash, Eagle Forum. Laurie Koutnik, Christian Coalition, asked me to say for them as well as for us that we are in favor of this bill. The proponents have spoken eloquently to the issue. Please support the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked what happens when a person comes in and cashes a check for money and then it bounces. How is that handled? Ms. Jessup replied that is what we call non-sufficient funds check and that is not impacted by this bill. If the person accepting the check is not aware that the check is going to bounce there is not problem. If they are aware that the check is going to bounce, then under this bill it could be considered credit gambling. SEN. EMERSON said that then maybe the second or third one that came in would trigger this action in this bill. Ms. Jessup said that it is possible. We had to look at the specific facts in that particular case. Obviously, if it happens in a very short period of time, the person receiving the check should have gotten the idea that there are insufficient funds. SEN. EMERSON said that the people working who take these checks, they are the ones who will be charged rather than the owner if the owner doesn't know about it. Ms. Jessup said that if there is no evidence that the boss or manager is unaware of this and did not condone such practices, then they could not prove intent in a criminal case.

Closing by Sponsor:

REP. GRIMES closed. The bill has been substantially reworked in the areas that SEN. EMERSON mentioned. Everything has been gone through with a fine tooth comb in order to get it out. I would encourage a favorable consideration. I want to thank the proponents who got up very early in the morning to drive to Helena to testify. They were a terrific help in explaining the problems. Thank you.

{Tape: 1; Side: A; Approx. Time Count: 10:01 AM; Comments: N/A.}

HEARING ON HB 543

Sponsor: REP. TRUDI SCHMIDT, HD 42, GREAT FALLS

Proponents: REP. MATT BRAINARD, HD 62, MISSOULA
Frank Crowley, Helena Attorney
Jerry Langford, 3-Way Auto Body, Great Falls
Charles Brooks, MT Collision Repair Specialists
Jack Greg, MCRS
Dick Anderson, Superior Auto Body, Great Falls
Diana Anderson, Superior Auto Body, Great Falls
Lloyd Taylor, Procraft Carstar, Great Falls
Tom Daubert, Great Falls Collision Assoc.
Gary Harris, Auto Body Specialist
Ted Mumm, Ted's Body Shop, Great Falls
Todd Litton, American Auto Body, Billings
Jay Nelson, Dillon Collision Center

Mike Connell, Connell Auto Center, Bozeman
Jacki Ayers, Golden Nugget Body & Paint
Donna Fasteneau, Hank's Body Shop
Loretta Miller, Montana Auto Dismantlers &
Recyclers, Helena

Opponents: Ron Ashabraner, State Farm Insurance
Ward Shanahan, Farmers Insurance Group
Roger McGlenn, Independent Insurance Assoc. of MT

Opening Statement by Sponsor:

REP. TRUDI SCHMIDT, HD 42, GREAT FALLS. Last December I received a request for help from a recently formed group of independent body shops in Great Falls and as a result I bring HB 453. A bill designed to correct what has recently become a very anti-competitive and unfair situation for most auto insurance companies openly direct their claimants to a few preferred shops in a city or town leaving all the other competent body shops very little business. This bill both restores consumer choice and levels the playing field of this business. These shops that get all the referrals from the insurance companies are called direct repair shops or control shops, contract shops, tow shops or Farmers Insurance calls them COD, Circle of Dependability, shops. What happens is when you have a collision and submit a claim, the insurance company hands you a short list and directs you to one or two specific control shops. In essence, the quid pro quo between the control shop and the insurance company, the shop agrees to do everything the way the insurance company demands. In return, the company refers all its repair work to the shop. The shop takes on all the responsibility from the company, estimates, appraisals, customer relations, complaints, filling out forms and dispenses with the need for the company to have expensive administrative personnel. In short, the insurance companies save so much money in transaction costs by having the control shop do everything. But the control shop does not have a great deal of controls on its activities. For the company, it is a convenience and a pocketbook issue. For the control shop, it is a gravy train. This lopsided system where a few shops get most of the business is not only choking out the independent shops but it also impacts consumers. The cover story on this January Consumers Report is reporting on the auto insurance business. The article suggests that the use of direct repair shops can sometimes harm consumers. Why, because it puts such great pressure on the control shops to cut corners or use after-market or used parts. I will be passing out the article from this magazine at the end of the proponents' testimony. We also understand in the larger towns of Montana, consumers are also experiencing long delays at many of these control shops because they can hardly keep up with the volume of business the insurance companies send to them. More than 20 states have laws prohibiting or regulating the practice of directing customers to particular shops. This is a bipartisan bill and the many co-signers demonstrate lots of support from both sides of the aisle.

Several amendments were requested by the insurance companies and many were inserted into this bill in the House. You may hear today that some body shops think the bill is too weak whereas the insurance companies may think the bill is too strict. However, the bill, even as amended, is a fair starting point for restoring fairness and competition in this area that affects so many Montana consumers every year. Thank you for your time.

Proponents' Testimony:

REP. MATT BRAINARD, HD 62, MISSOULA. I am a proponent and co-sponsor of HB 543. It is a bipartisan bill. An acquaintance of mine who owns a body shop in western Montana had an accident in his car and his shop didn't do those kinds of repairs. He filed an insurance claim and received a letter from his insurance company telling him there were only three shops that were suitable. He knows most of the shops in western Montana and there are any number of them capable of doing those repairs. The letter implied that if he dealt with one of these three shops, everything would be smooth sailing. However, if he should go to someone else, things might not be as smooth. He has been feeling the effects of the steering that has been going on in his area and to get this letter was an outrage to him. So he came to me to see if something could be done. **REP. SCHMIDT** had this bill so rather than waste a bill draft, I decided I would help her with this bill. It is a good bill. It will help stop the ratcheting of insurance premiums that are going on. If you lower the number of shops that do body work, you build up a large customer base. You prolong the wait for repairs and at some point when you reduce the competition these folks are going to feel free because of the demand placed on their shops to start raising their prices. Of course, the insurance companies will pass that on to the consumer by raising their prices. So it is a self-feeding, ratcheting effect. I encourage you to concur with this bill.

Frank Crowley, Helena Attorney. In January our firm was asked to assist in the drafting and supporting of this bill to remove the insurance companies' control over the collision repair industry in Montana. The premise of this bill is simple. It is an unfair trade practice of insurance companies to require, coerce or influence a customer to a particular body shop. After the bill was introduced I was approached by the insurance companies and after checking with our clients we sat down and had discussions. The amendments that you see on the bill reflect those discussions.

The starting premise is that a company may not direct or influence a person to a particular shop. There are three exceptions to that. The first says that the company may provide the customer with a list of all established shops in a repair business close to the insured person or customer that offers a warranty. The second was actually a request of State Farm Insurance Company which does not have a direct referral program. They said that there are times when a customer will initiate a

request to us and ask us for a recommended body shop. This provision was put in and says that an insurance company may provide a list of body shops when the list is requested by a customer. The third one is that an incentive does not include a warranty issued by an automobile repair business because warranties do come up. These were inserted at the request of the insurance companies. I believe they still maintain the bill intact.

{Tape: 1; Side: B; Approx. Time Count: 10:13 AM; Comments: N/A.}

There are some language changes in the bill. They are not substantive. In summary, the last three sections 4, 5 and 6 were also requested by one or more of the insurance companies. Concerning number 5, it says it is unlawful for an automobile repair business to charge or to agree to charge the insured customer more than an uninsured customer. There have been times when a different price has been charged depending on whether it was covered by insurance or not. In section 7 according to **Frank Cote, Deputy Insurance Commissioner**, the word "exclusively" must be inserted so that the bill would not refer to auto glass shops because they are regulated under another statute.

The amendments that were put on in the House were accepted by all parties and if there were to be other amendments put on in the Senate we would recommend that all parties be in agreement on them also. At this point, we have not been able to come to any additional agreement and we would stand on the bill that you have before you. We request that no weakening amendments be put on this bill.

I would like to distribute a letter (**EXHIBIT 3**) which **REP. BRAINARD** mentioned. This was the letter that **REP. BRAINARD** received and the first paragraph pays lip service to the consumer's choice. But the highlighted language clearly pushes the consumer toward the control shop by suggesting that if the customer doesn't use one of the shops on the list, it is likely that his claim is not going to be processed smoothly or quickly. This letter shows the indirect but highly effective way the customer is directed to the control shop and away from anyone not on the list. The vast majority just want their car fixed so they go along to where they are directed. The objective of this bill is to end the practice of facilitating consumers to the select shops and actually allowing the consumer to be free in choosing who will fix the consumer's own car. Thank you very much.

Jerry Langford, 3-Way Auto Body, Great Falls. I would like to make a very strong statement. Consumer fraud is what we have here. The insurance companies tell the claimant to take his car to one of the shops and get it repaired with quality work. Then they tell the repair shops to use after-market parts and where to buy them. This greatly reduces the value of each individual's car. They have no reimbursement for the devaluation of their car. This whole process is just not fair.

Charles Brooks, MT Collision Repair Specialists. There has been some division in the auto body repair business over this piece of legislation, but our group made the decision just this morning that they would come as proponents of this bill providing that some amendments that we will be offering would be accepted. If the amendments are not acceptable, we would be opposed to the bill as it stands. There are some things that need to be tightened up. Please look at the amendments and I hope that you can support the bill with the amendments. Thank you.

Jack Gregg, Chairman, MT Collision Repair Specialists. I would like to give my testimony and hand in a written copy (**EXHIBIT 4**). I will hand in the proposed amendments (**EXHIBIT 5**) and explain them. Thank you.

Dick Anderson, Superior Auto Body, Great Falls. I have worked for 35 years in the auto business and 5 years at a shop that is now a pro-shop in Great Falls. I provide the same level of service to my customers by providing the best and safest quality work at my business now as I did when I worked at the shop. I do so in order that I remain in business. I support this bill because without it my business as well as numerous small businesses in the state will go out of business--not because of the quality of work that we are doing but because it improves the profit margin for insurance companies. With the insurance companies having the control, the body repair industry is now catering to please the insurance companies rather than the consumer who is the rightful customer of the body repair industry. I have spent my entire life in this industry and have worked hard to build a good reputation. All I am asking is a level playing field. This bill allows me that opportunity. Thank you.

Diana Anderson, Superior Auto Body, Great Falls. She reads a letter from a satisfied customer of theirs that had an accident. The customer used Superior Auto Body, but experienced several problems with the insurance company who directed her to other shops and made the repair shop use after-market parts. The customer was very dissatisfied with the insurance company's tactics.

Lloyd Taylor, Procraft Carstar, Great Falls. I am a member of MCRS, and not a member of the Great Falls association. I am a proponent of the bill as stipulated by our president. I would like to bring out one important thing. Sometimes we can want to do something for some very legitimate reasons and have some opposite effects of what we want. I agree that no one should be required to go anywhere. It is not fair to have an insurance company refer a customer to some other shop because they are cheaper or because they have another agenda; but there are many times there are reasons to refer a customer. People can offer suggestions and then a person should be able to make an educated decision. Thank you for your attention.

Tom Daubert, Great Falls Collision Assoc. Like Mr. Crowley, I am here on behalf of the Assoc. As you can see, some folks would like the bill to be stronger than it is and some would like it to be weaker. This bill is a reasonable starting point. The directing of claimants is happening in every part of the state and I will submit a letter (**EXHIBIT 6**) from Fortine, MT., one of our very smaller towns. He is saying that the insurance companies are telling his people to go all the way down to Kalispell, 60 miles away. This is not in the best interest of the consumer. Next I would like to hand out petitions (**EXHIBIT 7**) that were signed by people in Fortine, Kalispell, Billings, Great Falls, and all over the state with over 1200 signatures saying, "We urge this legislature to protect consumers and ensure fair and open competition between auto body shops by passing HB 543." One other thing that we would like to distribute is the article (**EXHIBIT 8**) from the Consumer Reports, January 1997. There are many of the people who own or work in the auto body repair business here today. I would like them to stand and show their support. They don't feel comfortable in making a statement. (The people then stood. Most of them did stand up.)

Gary Harris, Auto Body Specialist. I am in support of this bill and am a member of MCRS. I would like to see some changes. I wish we had some more time. I will hand in my prepared testimony (**EXHIBIT 9**) and a copy of an article detailing this problem in our industry (**EXHIBIT 9A**). Thank you.

Ted Mumm, Ted's Body Shop, Great Falls. I have been in business for 32 years. I have some letters (**EXHIBITS 10 & 10A**) from around the state that I hope you can look at.

Todd Litton, American Auto Body, Billings. I am a proponent of the bill. As a member of MCRS, if we can get the changes we introduced, I hope this bill can pass. All we want to do is to make sure that the cars are fixed properly and safely.

Jay Nelson, Dillon Collision Center. I would like to give my testimony and hand in a written copy (**EXHIBIT 11**).

Mike Connell, Connell Auto Center, Bozeman. I am a member of MCRS. My main concern is that this bill was intended to eliminate direct repair facilities. Without them we have no choice. It is an individual choice that each business makes whether it works for them or not. I am in favor of the bill as long as the amendments that the Assoc. made are considered and passed. Thank you.

Jacki Ayers, Golden Nugget Body and Paint, Billings. I am a member of MCRS. I believe that consumers have the right to choose. The direct repair in any form is not right and should be prohibited. We all have experienced the consumer that is intimidated, or has fear of repercussion from the insurance company and then the consumer fails to do what they really want

to do. I would ask you to consider the amendments and hope you will pass the bill with amendments.

Donna Fasteneau, Hank's Body Shop, Billings. I am a proponent of the bill. We see that if consumers are directed to take their cars to a shop on the preferred list, they have a fear that they might be cancelled or their rates will go up if they choose someone else. We have been in business 35 years. We have complied with all the criteria on these lists but yet they have frozen their list and we cannot get on. Even if the changes do not go through, I still support the bill.

Loretta Miller, Auto Dismantling Shop, Helena. We support HB 543. My only comments are that the insurance companies already run our lives. They don't need to tell us where we can take our car to get it fixed. We do have brains and we can use them. Thank you.

{Tape: 1; Side: B; Approx. Time Count: 10:42 AM; Comments: N/A.}

Opponents' Testimony:

Ron Ashabraner, State Farm. When we first saw the bill, we didn't think we had a problem. State Farm does not direct traffic. We do not have preferred shops or lists and we simply allow the customer to choose the body shop of their choice. As we started looking at other language, we became concerned. Would we be able, as a company, to give the customer, if he chooses the shop, a warranty on the work if the shop did a quality job? We saw language such as intimidates, threatens or coerce. We read into this the fact that if we give a warranty to a customer, is this a threat? We worked with Mr. Crowley's group and we made tremendous headway. We have three minor amendments (**EXHIBIT 12**). We find out that there is another body repair shop group and they oppose the first body repair shop group. So I am not sure we have been negotiating with the right group. Can we resolve this issue prior to another session of legislature or have a bill that everyone can agree with? We did it with the glass bill. And it has been successful. I would like to explain our amendments. (He then explains the amendments.) I question that at this point much can be done to improve the bill. I would suggest that this bill be tabled.

Ward Shanahan, Farmers Insurance Group. I would like to go through at this time to what has been said in opposition to this bill since we believe the Farmers Insurance Group's Circle of Dependability Program is aimed at providing needed repair service and benefit to the people we insure. We believe this bill is aimed at a good business practice. I will make my statement and hand in the written testimony (**EXHIBIT 13**). There are further exhibits that I would like you to see of how a claim is handled by Farmers Insurance (**EXHIBIT 14**). I am a member of AARP and I have a piece of paper on Saturday from them saying they offer the

same service and were trying to convince me to buy insurance from AARP (**EXHIBIT 15**) because of this particular service. Thank you.

Roger McGlenn, Independent Insurance Association of Montana. As the committee members know, I do not represent insurance companies, I represent independent insurance agents on main street, Montana. We are sympathetic to the concerns that are being addressed by this group. Many of our concerns were addressed with the amendments that were placed by the House and as it arrived before the committee this morning. We did not intend to stand on this bill until we saw some of the proposed amendments before you. We have some strong concerns with those amendments. We worry about the change in definitions on prevailing market price and our initial look at it gives us concern that in small communities with only two or three shops, collusion could occur which could be used in part and parcel to establish prevailing market price in that area. We worked hard with the auto glass bill and we would like to be part of the solution on this current problem. We oppose the amendments that are being presented today. If these are not adopted, we would not take a stand of opposition.

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked what requirements were made for a shop to be on the "preferred list". **Mr. Shanahan** replied that they needed special equipment and the repair shops buy their own equipment. **Terry Hunt, Branch Manager for Farmers Insurance Group,** reaffirmed that the shops buy their own equipment. **SEN. BENEDICT** asked if there was an incentive or bonus given to a shop to purchase that hardware and software? **Mr. Hunt** said there were no incentives or kick-backs.

SEN. DEBBIE SHEA asked **Mr. Crowley** that since this is the "eleventh hour" why don't they wait till the next legislative session? What kind of problems might there be if we wait? **Mr. Crowley** answered that the biggest problem would be that some of the shops which are competent but not on the "preferred list" would probably go under if this bill is put on hold for two years. This is the principle concern. Another concern is that you have heard about after-market parts and this is an issue that should be address as it is not the right way to repair vehicles unless the consumer is aware and gives an okay. Also, to get a bill in perfectly is almost an impossibility. One needs to start somewhere.

{Tape: 2; Side: A; Approx. Time Count: 11:00 AM; Comments: ONE SENTENCE WAS LOST OF MR. CROWLEY'S ANSWER.}

If there needs to be additional refinement, it could be done the next session.

SEN. SHEA stated that the Consumers Report article said that managed care for your car and how the car is fixed is another

matter and speaks to much of what we have heard here today. If what the proponents claim to be happening and it isn't happening as you, **Mr. Shanahan**, suggested, why would this conclusion from Consumers Report be before us today? **Mr. Shanahan** said the author of the article is not listed, nor is there any substantiating data listed that would tell what this is all about. It certainly doesn't pinpoint my client. It just points out that there are some shoddy practices in the industry. That is about the most you can conclude from that.

SEN. BEA MCCARTHY said that **Mr. Anderson** from **Great Falls Collision** had talked about after-market parts. Would you elaborate and tell us what these parts are? **Mr. Anderson** explained that after-market parts are not made here in the U.S. They are not the original equipment that comes on a vehicle. They don't have the rust corrosion prevention on them, they don't have the strength and not near enough tin in the fenders. And those parts don't fit easily onto the vehicle. **SEN. MCCARTHY** then asked if the customer is told if after-market parts are used? **Mr. Anderson** said that he tells his customers. The estimates he gives always uses "oem", original equipment manufacturers', parts and prices. When the insurance company gives an estimate, he has received their estimate back with after-market parts and prices and telephone numbers where he can call and get them. State Farm is finding out that it is better to use "oem" parts.

SEN. BENEDICT rephrased his question and asked **Ms. Jacki Ayers**. **Ms. Ayers** answered that when their repairers, who have been trained by ICAR, AFA, etc., make a bid, in 90% of the cases either an independent adjuster or an adjuster for a particular insurance company will review the estimate and they do negotiate with us. We have bid "oem" parts on a car because that is what our customer has requested and the insurance company will come back and say put after-market parts on the car and demand that they be put on. The only person who can fight for that is the customer. Many do and many do not. When it comes to structural parts of a vehicle, "oem" parts should definitely be used.

SEN. BENEDICT asked **Mr. Anderson** the same question again. **Mr. Anderson** replied that yes he has negotiated with the insurance companies. If he has given an estimate using "oem" parts' prices and the insurance company comes and says use the after-market parts, the estimate charges change and the customer is not necessarily notified.

SEN. EMERSON asked if there was anyone present who had tried to get on Farmers Insurance "preferred list". **Ms. Ayers** answered that her shop has all the necessary equipment to be a Farmers Insurance repair shop but they are not one because Farmers have only a certain number of shops allowed. They had applied. Four and one half years ago, Farmers came and asked them if they met Farmers' standards. They sent in their application and never heard back. **Ms. Donna Fasteneau** said they had been on the

waiting list for about 1½ years. They had purchased all the equipment and met all the criteria but they are still waiting. **Mr. Crowley** responded that in the House hearing on this bill, a **Larry Deshner** from Great Falls had presented a letter (**EXHIBIT 16**) along the same lines as the people the committee had just heard from. The letter shows an insurance company telling him that they are not adding any more shops to their "list" for the time being.

SEN. JOHN HERTEL asked if is it correct to say that there are body shop organizations just within a city and only one state organization or what? **Mr. Crowley** said that the Great Falls Collision Association is a group of competitors in Great Falls who became very frustrated with the situation and organized themselves into a local organization. They were the ones who asked **Mr. Crowley** to give them some assistance with this bill. There has been an MCRS, Montana Collision Repair Specialists, and his sense is the organization has fluctuated in its vibrancy over time. Not all the shops in the state belong; in fact he believed the majority do not. They have come out in strong support of the concept of the bill but they wanted to have some amendments added.

SEN. HERTEL asked **Mr. Jack Gregg** of MCRS the same question. **Mr. Gregg** said that MCRS is the only statewide organization that he was aware of. They have an open invitation to any body shop in the state. The dues are a set amount. They have two meetings scheduled each year. They also have in the by-laws the option for local areas to organize in a chapter. The Great Falls Collision Assoc. is not organized in a chapter under MCRS.

SEN. HERTEL felt there were so many amendments to the bill and especially at the lateness of the hour of the session and asked the sponsor what her feelings were about the bill and the amendments? **REP. SCHMIDT** was glad to see the MCRS in strong support of the concept of the bill. The amendments would strengthen the bill. However, there is a lot of support for the bill as it is. What really matters is that this bill not be weakened. And it is very important that this bill go forward at least in its present form. **SEN. HERTEL** continued in saying that MCRS has proposed a lot of amendments. Was she in agreement with them? **REP. SCHMIDT** replied that she had not even seen them put into the context of the bill. It would be necessary to do that before answering the question.

SEN. BENEDICT asked **Mr. Ted Mumm** to give his opinion on some of the questions and answers just given. **Mr. Mumm** said that he also had a letter from Farmers Insurance telling him that they would put him on the Program at a later date. He used to do a lot of work for Farmers. They have just about shut him off all work. They really hurt his business.

Closing by Sponsor:

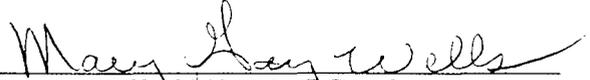
REP. SCHMIDT closed. As you know, we heard in this session a bill on Right to Work. The bill before you is not a right-to-work bill it is an access-to-work bill. All the proponents of this bill are asking for access to the work that they are trained and equipped to do. The insurance companies have moved in and set up the system for their own convenience. The independent repair shops are suffering under this system. I urge you to restore some balance to this industry that touches the lives of so many Montanans. Thank you.

ADJOURNMENT

Adjournment: 11:25 A.M.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW