

JUDICIARY COMMITTEE
January 28, 1977

The meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana on Friday. All members were present except the following representatives, Colburn, Hand and Kennerly. Representative Hand came in later.

Scheduled for hearing were House Bills 316, 399, 408 and 476.

THE HEARING OPENED ON HOUSE BILL #408:

REPRESENTATIVE QUILICI, DISTRICT #84:

This bill requires that information concerning the competency and conduct of licensed physicians be reported to the State Board of Medical Examiners. This information would appear to show if a physician were medically incompetent, mentally or physically unable to engage in the practice of medicine or guilty of unprofessional conduct.

JERRY LEINDORF, MONTANA MEDICAL ASSOCIATION:

They must report to the board, suspensions or prohibitions on the privilege to practice. In sections 4 and 5 it allows for immunity for persons submitting information and the power to revoke, suspend, etc. We support the bill.

DR. JOHN McMAHON, MONTANA FOUNDATION FOR MEDICAL CARE:

We are concerned about the problem of the physicians policing themselves. He went on to discuss the PSO law and that they had tried to get this changed. I am a past member on the State Board of Medical Examiners. I would like to leave a statement with your committee explaining my position and the present status of quality health care in Montana. (copy attached)

REPRESENTATIVE QUILICI:

The medical profession wants to know if there are incompetents among them. We also talked with nurses and other health care people. There was no opposition. They support this kind of legislation.

REPRESENTATIVE DUSSAULT:

As I understand this bill it deals primarily with reporting. What happens once it is reported.

REPRESENTATIVE QUILICI:

The Board of Medical Examiners reviews whatever it may contain. It seems to me that the suspension of right or privilege is very light. It is only one month.

DR. McMAHON:

In the case of a hospital one month might be a long time. That is the penalty for failure to report.

January 28, 1977

Page 2

MR. LEINDORF AND REPRESENTATIVE EUDAILY held a discussion about the title, the competency and incompetency of a physician. It was noted that they do have to pass the flex test.

There was a general discussion about the licensing of out-of-country physicians, what was required, etc., has to be a citizen within 5 years, and could get a temporary license but only if they pass the flex test.

REPRESENTATIVE ROTH:

What about releasing patient information. She asked about the federal law, the PRSL law.

DR. McMAHON:

We can't get particular information, anyhow. This bill addresses that. It does say that PRSL cannot release. We can still accomplish that by the out-patient system.

It was asked what the PRSL stood for. Professional Standard Review Organization. There are 212 districts in the United States and 153 of them are functioning.

REPRESENTATIVE DAY:

What recourse does the doctor have before the board?

MR. LEINDORF:

You could suspend the report, without administrative procedure.

The hearing closed on House Bill #408.

THE HEARING OPENED ON HOUSE BILL #399:

REPRESENTATIVE SCULLY, DISTRICT #76:

This is treating transfers of property in contemplation of death as assets of the decedent's estate and would be subject to claims by the department of social and rehabilitation services. It would be a lien on real property. If you record the deed within 3 years of death it is assumed that death was anticipated. It would help cut down on the improper transfer. He went on to describe how it might be possible to try to circumvent the law by not recording a deed, holding it, etc.

PAT MELBY, SOCIAL AND REHABILITATION SERVICES:

I am concerned mainly with the recipients of Medicare and Medicaid. There are certain properties that can still be retained and still be eligible, such as a home up to \$26,000 and personal property up to \$1500. He commented that under Social Security - federal - there is no limit on the home and personal property can be up to \$2200. The purpose of this bill is to provide that any gift within 3 years is in contemplation of death and will still be eligible.

January 28, 1977
Page 3

REPRESENTATIVE CONROY:
What about accidental death?

REPRESENTATIVE SCULLY:
Federal law as it applies to gifts, death triggers that presumption. That doesn't mean that that is the final conclusion. This would not apply, it would depend on circumstances. It is presumed an accidental death unless you can apply some type of suicide attempt.

REPRESENTATIVE COURTNEY:
How many homes are involved?

MR. MELBY:
\$200,000 a year on all claims. 1 our of 4 or 1 out of 5.

REPRESENTATIVE EUDAILY:
ON page 1, line 18, what is general relief?

MR. MELBY:
County assistance for indigent people who are not eligible. Does not involve any medical assistance.

REPRESENTATIVE HAND:
Does this apply other than if they are given assistance?

REPRESENTATIVE SCULLY:
It only applies if the county has given assistance.

REPRESENTATIVE DUSSAULT:
This was changed because of a federal law?

MR. MELBY:
Yes, we used to be able to file a lien first but now we have to be in there with all other creditors until it is probated.

REPRESENTATIVE SCULLY:
It merely means that it is included in your estate.

REPRESENTATIVE RAMIREZ:
This amendment really concerns me. By the amendment you are creating a very general remedy that no other creditor has.

MR. MELBY:
In a transfer of property we would have a prior right, but other creditors can go to court at any time but we can't prior to death.

REPRESENTATIVE HAND:
Can you come back on an innocent third party purchase?

REPRESENTATIVE SCULLY:
No, and then he went on to explain why this was so and how it would work.

January 28, 1977

Page 4

REPRESENTATIVE DAY made the comment that when you are dead you can't defend yourself.

A general discussion followed about the presumption going against the state.

REPRESENTATIVE DUSSAULT:

This excludes those persons who have dependent children?

MR. MELBY:

It is a specific fund in the SSI.

REPRESENTATIVE ROTH:

Is this only for persons who are on Medicaid?

MR. MELBY:

It is designed so that they can keep their home.

REPRESENTATIVE RAMIREZ:

Do you have any idea how much you are losing?

MR. MELBY:

We have no real idea.

REPRESENTATIVE RAMIREZ:

What would it cost?

BILL ECKERT, CHIEF OF MEDICARE SERVICES:

Of the assistance program, 61% is federal and 31% state. He commented on the federal statute that eliminated the lien.

No further discussion the hearing closed on House Bill #399.

THE HEARING OPENED ON HOUSE BILL #316:

REPRESENTATIVE E. GUNDERSON, DISTRICT #8:

This bill will provide for motor vehicle liability protection for owners and operators of motor vehicles as a condition of operation of those vehicles upon the highways or property open to use by the public. I would suggest two amendments, on page 6, line 16, Strike: "5,000", and insert: "10,000", and on page 15, line 4, strike "5,000 and insert "10,000". And then on page 17, line 25, after section 2, insert section 8, paragraph 2, "proof of liability before a motor vehicle is operated."

TOM DOWLING, MONTANA TRIAL LAWYERS:

Generally, we support the concept, but the bill has a lot of technical problems, that could lead to abuses. Section 17, I cannot support at all.

January 28, 1977
Page 5

JIM HUGHES, MOUNTAIN BELL, PUBLIC AFFAIRS MANAGER:

Basically we have a self-insured company. I ask you to look at section 4, subsection (3), on page 4 and also section 9 on page 11, line 21, who determines whether a claim is valid?

W. BOYCE CLARK, INDEPENDENT INSURANCE AGENTS:

I am a proponent on a qualified basis. I see problems with page 17, section 19 subsection (3), lines 2 through 12.

CAPTAIN TOOLEY, MONTANA HIGHWAY PATROL:

I am a proponent, We support in general principle. We would tend to favor the idea of making the bill self-policing. In section 5 I am curious as to the definition of a non-resident.

CHAD SMITH, AMERICAN MUTUAL INSURANCE ALLIANCE:

One of the problems that should be faced by the committee is that traditionally insurance companies have been opposed to compulsory insurance. Also, there are some problems with the enforcement against the uninsured motorist. This is the last page of the bill. There should be a means whereby the law enforcement officer can pick up the license immediately, to try to get that individual from having the privilege to drive. He shouldn't be allowed to go along. I am not sure how section 19 is going to operate. There should be some system of adjudication to say what the crime actually is. Some type of minimum exclusion. What about the 5, 10 or 20 dollar claim. There should be some type of cut-off that makes sense. With these considerations we generally support the bill.

REPRESENTATIVE WALDRON, DISTRICT #97:

It is not a no-fault insurance law. What it does is take the existing law and puts some teeth into it. This bill does not attempt to attack the problem by attacking the people that don't have drivers licenses. On page 4, line 8, the word may should be taken out and another word inserted. It is my feeling that this bill has the only proper, managable way to require insurance and that is by showing proof of insurance before licensing the vehicle. I urge and recommend a "do pass".

OPPONENT, GLEN DRAKE, AMERICAN MEDICAL INSURANCE ASSOCIATION:

I represent about 80 stockholder-owned companies. I think the committee should be aware of the ramifications and what they might be. On page 3, lines 3 and 4, the consent judgment. I would suggest that on pages 8, line 10 you insert "exclusive". If you take away the right to exclude coverage when the policy is written the premium will have to go up. He gave examples of how the base cost would be raised.

On page 8, line 19, for how long a period, is it forever that there can be no premium increase. The enforcement problem is one of the

January 28, 1977

Page 6

basic problems. If it is not mandatory there will be no enforcement. If you change the may to shall then there will have to be people put on to enforce it. You can now cover yourself against the uninsured motorist.

OPPONENT, H. E. PARKE, UNITED STATES FISH AND GAME:

I have lived in a number of other states and I can tell you what happens with this type of legislation, this type of insurance. There is now a study being done on compulsory insurance. The cost to implement in New York State was over 6 million dollars. In most states it is totally unworkable because it is not being enforced. Our assigned risks in Montana is less than \$3,000. There are markets available to Montana now and I wonder if the market would stay as good. He went on to talk about the unsatisfied judgment pool. I think this is the way you should go rather than have the state spend its funds. He commented to Mr. Shafer, this is only to bodily injury, not to property damage. These points should be taken into consideration.

REPRESENTATIVE RAMIREZ presented a statement from an insurance company for the record.

REPRESENTATIVE GUNDERSON:

She named a list of people who last session were opposed but are now proponents. The enactment of this bill will prevent many of the tragedies of the uninsured motorist.

There was discussion about page 4, section 3, paragraph 3, whether the wording should be changed.

REPRESENTATIVE CONROY:

What about the Indian who is a ward of the state and does not have to buy insurance. There was general discussion about this.

There was discussion about the present cost compared to state costs if the bill passed.

The insurance people stated they did not know what the cost would be or how it would compare, because it had not been done yet.

Discussion about the installment plan, and possible insurance cancellations.

REPRESENTATIVE CONROY:

It is conceivable under this bill that a person could have his insurance taken away before he lost his drivers license. The insurance people agreed this might be so.

REPRESENTATIVE DUSSAULT:

The insurance industry all say they are in favor of this bill but are actually opposed to it.

January 28, 1977

Page 7

There was discussion about insurance companies, whether they were trying to keep their costs down and if they could continue to write a policy the way the client wanted it if this bill should pass.

The hearing closed on House Bill 316.

THE HEARING OPENED ON HOUSE BILL 476:

REPRESENTATIVE HUENNEKENS, DISTRICT #68:

This bill is part of the package on medical malpractice. It would require insurers transacting professional liability insurance to include in their annual statement to the insurance commissioner certain statistics and information.

GERALD NEELY, MONTANA MEDICAL ASSOCIATION:

This bill is not complex. It would provide that with regard to insurance that they include in the annual report all claims made to lawyers, accountants, etc. It is crucial to know who has done what and to who and when. Even the most basic information on a year to year basis is not readily available. Aetna initially opposed the bill.

He discussed section 2, subsection (2), line 25, the amount of earned premiums.

He suggested that on page 2, line 2, subsection (3) the committee strike: "filed" and insert: "made".

There was general discussion about the penalty.

REPRESENTATIVE KEYSER asked about the records and the destruction of records, how long they must be kept, etc.

MR. NEELY:

At least 10 years.

REPRESENTATIVE EUDAILY asked about the definition of earned premiums.

MR. NEELY:

These are usually paid in advance so that as time goes along you gain on the earned.

There was no further discussion and the hearing closed on House Bill 476.

The committee then went into executive session after a short recess.



SYNOPSIS: Revises financial responsibility laws, Title 53, Chapter 4, to provide for motor vehicle liability protection as a condition of operation of vehicles upon highways or property open to use by the public. The key provision of the bill, which is contained in Section 3, requires that a motor vehicle may not be registered unless it is covered by a suitable motor vehicle liability policy.

COMMENT: The major provisions of this bill will not have any adverse impact on the Company, since the bill provides that vehicles owned by self-insurers such as Mountain Bell are exempt from the requirements of liability insurance coverage. Section 4 (3), page 4. However, there are two amendments that should be made in the self-insurer provisions. First, Section 4 - the exemption section - provides: "The following vehicles and their drivers are exempt from the provisions of this act:". I think that "owners and operators" should be substituted for "drivers" in this phrase, since the former term is defined in the definitions section, page 2, whereas the latter term, "drivers," is not. Second, and more important, Section 9 of the bill, which sets forth the requirements for self-insurers, provides that failure to pay a valid claim within 90 days of its submission is a reasonable ground for the cancellation of a certificate of self-insurance. Section 9 (3), page 11. This is an addition to the present law on self-insurers, which is contained in 50-451, and which provides that failure to pay a final judgment within 30 days is a reasonable ground for cancellation of a certificate of self-insurance. The problem with the "valid claim" addition is: "Who determines whether or not a claim is valid?" Under the bill as written, the validity of a claim would have to be determined by the Department of Justice, yet this is not the business of the Department. On the contrary, the determination of the validity or non-validity of a claim can be made only by a court. In short, self-insurers should not be singled out for subjection of their claims policies to the Department of Justice. The public is adequately protected under the present law, which is preserved by this bill, and which provides that a self-insurer may have its certificate of self-insurance revoked for failure to pay final judgments

Montana H. B. ³¹⁶
~~305~~
(Page 2)

within 30 days. I would strongly recommend that the phrase "valid claim within 90 days of its submission or" be deleted from Section 9 of this bill, page 11, line 21.

MOUNTAIN BELL

HISTORICALLY, THE ATTITUDE OF INDEPENDENT INSURANCE AGENTS ON THE GENERAL SUBJECT OF COMPULSORY AUTO LIABILITY INSURANCE HAS BEEN NEGATIVE. WE HAVE A NUMBER OF REASONS FOR THIS ATTITUDE, BUT BEFORE GOING INTO THEM IN A GENERAL WAY, LET ME SAY THIS IF, IN THE WISDOM OF THIS COMMITTEE, AND ULTIMATELY THIS LEGISLATIVE ASSEMBLY, IT IS DETERMINED THAT THIS LEGISLATION, MODIFIED OR OTHERWISE, IS TO BE THE LAW OF THE LAND, WE, INDEPENDENT INSURANCE AGENTS OF MONTANA, WILL DO OUR BEST TO MAKE IT WORK.

IN THE MEANTIME, HOWEVER, WE DO HAVE SOME RESERVATIONS AS TO THE PRACTICAL APPLICATION OF THE CONDITIONS OF THIS PROPOSED LAW. FIRST, THERE IS EXPERIENCE WITH COMPULSORY AUTO LIABILITY INSURANCE LEGISLATION IN OTHER STATES. MASSACHUSETTS STARTED BACK IN 1929 AND HAS, FROM THAT DAY TO THIS, NEVER SOLVED THE PROBLEM. NEW YORK ATTEMPTED COMPULSORY AUTO LIABILITY INSURANCE A NUMBER OF YEARS AGO AND, IF MY MEMORY SERVES CORRECTLY, THEIR EXPERIENCE PROVED THAT REGARDLESS OF EXTREME EFFORT, THE MAXIMUM NUMBER OF MOTORISTS THEY COULD GARNER UNDER THE LAW WAS ABOUT 80%. INTERESTINGLY ENOUGH, BOTH OF THESE STATES NOW HAVE NO FAULT STATUTES, EFFECTIVE OR OTHERWISE, BUT WHICH MEANS TO US, THAT THE COMPULSORY FORM OF AUTO LIABILITY INSURANCE DID NOT SOLVE THEIR UNINSURED MOTORIST PROBLEM. THESE STATES HAVE FOUND THAT THE ADMINISTRATIVE WORK, BOTH FROM THE STANDPOINT OF THE INSURANCE COMPANIES AND THE RESPONSIBLE STATE DEPARTMENTS, PLUS THE ADDED EXPENSE OF ENFORCEMENT, WAS DEVASTATINGLY EXPENSIVE, . . . AND NOT PARTICULARLY EFFECTIVE SINCE THE UNINSURED MOTORISTS CONTINUED TO DRIVE AND TO HAVE ACCIDENTS.

IN THIS PARTICULAR BILL, THERE ARE MANY TIME LINES THAT WILL BE DIFFICULT, IF NOT WELL NEIGH IMPOSSIBLE, TO MEET UNDER THE COMPUTER TYPE PROCESSING SYSTEMS NOW IN GENERAL USE.

INDEPENDENT INSURANCE AGENTS OF MONTANA, PROBABLY AS MUCH AS ANY SEGMENT OF OUR POPULATION, ARE ACUTELY AWARE OF THE UNDERLYING REASONS HB-316 AND SB-185 HAVE BEEN INTRODUCED TO THIS LEGISLATIVE ASSEMBLY. WE HANDLE A LOT OF AUTO LIABILITY CLAIMS AND MORE AND MORE, WE FIND THAT OUR CLIENTS ARE BEING INVOLVED IN ACCIDENTS WITH UNINSURED MOTORISTS. EVEN WORSE, MANY OF THESE UNINSURED MOTORISTS ARE REPEATERS AND MANY DON'T EVEN HAVE DRIVERS LICENSES. THIS COMMITTEE NOW HAS UNDER CONSIDERATION FIVE DWI BILLS, ALL MORE OR LESS RELATED TO THE UNINSURED MOTORIST PROBLEM.

WE KNOW THERE ARE A LOT OF UNINSURED MOTORISTS IN MONTANA. I'D WAGER MANY OF THEM ARE HIGH RISK PEOPLE FOR WHOM LIABILITY INSURANCE PREMIUMS WOULD BE HIGH. AS AGENTS, WE PROBABLY SHOULD SUPPORT THIS LEGISLATION FROM A PURELY SELFISH STANDPOINT, FOR, IF IT IS PASSED, THERE WILL BE A LOT OF ADDITIONAL AUTO LIABILITY INSURANCE WRITTEN AND IN HIGH PREMIUM LEVELS. AND SPEAKING OF JUST WHAT IS INVOLVED PREMIUM-WISE FOR JUST A FEW REPRESENTATIVE CLASSES OF DRIVERS IN VARIOUS PARTS OF MONTANA, HERE ARE SOME INDICATIONS. FOR AN 18 YEAR OLD UNMARRIED MALE WITH A CLEAN DRIVING RECORD WITH \$25/50 BI LIMITS AND \$10,000 PD, RESIDING IN BILLINGS, THE ANNUAL PREMIUM WOULD RANGE BETWEEN \$400 AND \$500. IN HAVRE, THE RANGE WOULD BE \$225-\$250 WITH TWO OTHER MONTANA TERRITORIES IN BETWEEN. FOR A 23 YEAR OLD MARRIED MALE, UNDER THE SAME CIRCUMSTANCES, RESIDING IN BILLINGS, THE RANGE WOULD BE \$160-\$185 AND IN HAVRE, \$75-\$100. FOR THE AVERAGE FAMILY MAN OVER 30 WITHOUT CHILDREN OF DRIVING AGE, RESIDING IN BILLINGS, THE RANGE OF \$125-\$145 AND IN HAVRE, \$65-\$85. NOW, ADD TO THESE BASIC PREMIUMS THE CHARGES FOR TRAFFIC VIOLATION AND ACCIDENTS, OR EVEN SUBTRACT FOR CREDITS ALLOWED FOR DRIVER TRAINING, GOOD STUDENT, OR EVEN MULTIPLE CARS AND YOU WILL SEE THAT A LOT OF MONEY IS INVOLVED.

A DISTURBING AREA OF THE BILL HAS TO DO WITH THE ASSIGNED CLAIMS PLAN REFERED TO UNDER SECTION 19 (3), LINES 2 THROUGH 12 ON PAGE 17. I DON'T KNOW IF THIS PARTICULAR ARRANGEMENT HAS EVER BEEN TRIED ELSEWHERE, BUT THERE ARE SOME THINGS ABOUT THE SECTION THAT RAISE QUESTIONS. FIRST, UNDER JUST WHAT CIRCUMSTANCES IS A CLAIM ELIGIBLE FOR PROCESSING. DOES ANY PERSON WHO FEELS AGRIEVED, WITHOUT DETERMINATION OF FAULT, IN WHOLE OR IN PART, HAVE ACCESS TO THE ASSIGNED CLAIMS PLAN? WOULD THIS APPLY TO FIRST DOLLAR LOSS, OR TO BE MORE SPECIFIC, TO MINOR LOSSES SAY, PARKING LOT CLAIMS FROM \$5 TO \$50? SECONDLY, IT SEEMS THAT ANY LOSSES PAYABLE UNDER THIS SECTION WOULD BE ADJUDICATED UNDER A PLAN DEVELOPED BY THE INSURANCE COMMISSIONER REQUIRING PARTICIPATION BY ALL COMPANIES AUTHORIZED TO WRITE AUTO LIABILITY INSURANCE IN MONTANA BUT THERE ARE NO GUIDELINES. IT WOULD SEEM TO US THAT THE EFFECT OF THE ARRANGEMENT OF CHARGING THE UNINSURED CLAIMS BACK TO THE INSURANCE COMPANIES WILL SIMPLY HAVE TO BE PASSED ON BY INCRASING THE PREMIUMS OF CONSUMERS WHO ALREADY COMPLY WITH THE LAW BY PURCHASING AUTO LIABILITY INSURANCE.

SOMEHOW, IT SEEMS TO US, IF LEGISLATION OF THIS SORT IS GOING TO BE SUCCESSFUL, THE RESPONSIBILITY FOR ENFORCING AND POLICING IS GOING TO HAVE TO BE SHIFTED TO THE UNINSURED MOTORIST HIMSELF, RATHER THAN BACK TO THE LAW ABIDING CITIZEN WHO VOLUNTARILY PURCHASES INSURANCE AS A MATTER OF SOCIAL RESPONSIBILITY.

INDEPENDENT AGENTS HAVE GIVEN THIS SUBJECT MUCH THOUGHT OVER THE YEARS, MORE ESPECIALLY IN THE IMMEDIATE PAST, BUT A FAIL SAFE SOLUTION ELUDES US. WE ARE OPEN MINDED AND COMMITTED TO TRYING TO MAKE A PRACTICAL REFORM PROGRAM WORK.


M. Bayor Cole
LEGISLATIVE COUNSEL
INDEPENDENT INSURANCE AGENTS OF MONTANA