

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 3, 1979

The meeting of the Business and Industry Committee was called to order by Chairman Frank Hazelbaker on the above date in Room 404 of the State Capitol Building at 10:00 a.m.

ROLL CALL: All members were present with the exception of Senator Blaylock who was excused.

SENATE BILL 272: Senator Lowe, sponsor of SB 272, stated this bill is an act amending section 18-1-202, MCA, to amend the bid security requirements for a bid for the purchase of indebtedness.

Senator Lowe called on Mr. Tom Harrison, representing D. A. Davidson & Co., to explain the bill further.

Mr. Harrison in turn called on Mr. Bruce McKenzie also representing D. A. Davidson & Co. to explain the bill to the Committee.

There were no opponents of the bill.

DISPOSITION OF SENATE BILL 272: Senator Lowe moved Senate Bill 272 DO PASS. There was a second to the motion by Senator Goodover. The bill passed unanimously.

SENATE BILL 148: Chairman Hazelbaker introduced Mr. Mike McGrath of the Attorney General's Office to explain SB 148 to the Committee.

Mr. McGrath stated SB 148 is an act to provide for the release of information in the possession of insurers relating to fire losses; requiring insurers to notify appropriate agencies of suspicious fire losses; exempting insurers from civil liability for furnishing such information or notifying an agency; providing for confidentiality of released information; providing for testimony by agency personnel in civil actions; and amending section 50-3-102, MCA.

Mr. McGrath also proposed some amendments to SB 148. These amendments are attached.

Mr. McGrath introduced Bob Kelly, State Fire Marshall, who spoke in support of SB 148.

Other proponents of SB 148 who gave brief statements were:

Mr. Art Korn, representing Montana State Volunteer Firemen's Association

Mr. Dave Fisher of the Montana Fire Chief's Association

Mr. Al Sampson, of Missoula, representing the Montana Fire Chief's Association

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Business & Industry Committee
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Page 2

Mr. Robert Ellis, representing the Montana State Volunteer Firemen's Association
Mr. Boyce Clarke, representing the Independent Insurance Agents of Montana. (His testimony is attached.)

There were no opponents to SB 148.

Mr. Kelly stated this is a model law put out by the insurance companies. It is a proposal that comes from the insurance companies.

Senator Regan asked about the press' "right to know," regarding this bill.

Mr. Kelly stated he thought the amendment would take care of this satisfactorily.

Senator Lowe asked about arson investigation teams in the state. Mr. Kelly stated there were arson investigating teams in the state, and their work had been quite successful; however, the conviction rate is quite low.

Mr. McGrath stated there is not a crime that is more difficult to get a conviction on than arson.

DISPOSITION OF SENATE BILL 148: Senator Dover moved the Committee adopt the amendments. The amendments were adopted unanimously after the Committee instructed Mr. McGrath to get together with our staff attorney, Bob Pyfer, to be certain language is correct in the amendments. The amendments were adopted unanimously.

Senator Goodover moved the bill DO PASS as amended. Senator Peterson seconded the motion. The bill passed unanimously.

ADJOURN: There being no further business, the meeting was adjourned at 11:00 a.m.


Sen. Frank Hazelbaker, Chairman

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

46TH LEGISLATIVE SESSION - - 1979

Date Feb. 3

STANDING COMMITTEE REPORT

February 3 1979

MR. President:

We, your committee on Business and Industry

having had under consideration Senate Bill No 272

Respectfully report as follows: That Senate Bill No 272

DO PASS *J.A.*

Senate Bill No. 148, introduced copy is amended as follows:

1. Page 2, line 15.
Following: "The"
Insert: "insured's right of individual privacy allows"
2. Page 2, line 16.
Following: "1"
Strike: "through 5"
Insert: "and 2"
3. Page 2, line 17.
Following: line 16
Strike: "shall"
Insert: "to"
Following: "confidence"
Strike: "until such time as"
Insert: "unless:
 - (1) the insured waives his right of individual privacy; or
 - (2) "
4. Page 2, line 18.
Strike: "its"
Following: "release"
Insert: "of the information"
5. Page 4, line 25.
Following: "for"
Strike: "the testimony"
Insert: "statements of witnesses"
6. Page 5, line 1.
Following: "and"
Strike: "except as provided in"
Insert: "information to be held in confidence under"
7. Page 5, line 2.
Following: "section"
Strike: "5"
Insert: "3"

NAME: James Harrison Jr. DATE: 2/3/79

ADDRESS: 222-5 11th Ave. Hoboken

PHONE: 442-6350

REPRESENTING WHOM? D A Dandurand

APPEARING ON WHICH PROPOSAL: 513 212

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

NAME: Bruce A. McKenzie DATE: 2/3/78

ADDRESS: 16. 3rd Street, Morton

PHONE: 727-4200

REPRESENTING WHOM? *D. A. Davidson & Co.*

APPEARING ON WHICH PROPOSAL: 572

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

NAME: M M'GRATTI DATE: 2/3/79

ADDRESS: OFFICE OF ATT'Y GARD

PHONE: 449-2026

REPRESENTING WHOM? ATTY BENL

APPEARING ON WHICH PROPOSAL: 50148

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

NAME: Robert E Kelly DATE: 2/3/79

ADDRESS: 2408 Helena Ave.

PHONE: 449 - 2050

REPRESENTING WHOM? State Fire Marshal

APPEARING ON WHICH PROPOSAL: S.B. 148

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENTS: _____

S.B. 148 will allow insurance companies to share information or records they possess with fire and law enforcement officials to combat the crime of arson.

NAME: ART KOHN DATE: 2/3/79

ADDRESS: 1916 SO WASH. ST BOSTON

PHONE: 723-4646

REPRESENTING WHOM? MIAMI STATE VOL. FIREMEN'S ASSOC.

APPEARING ON WHICH PROPOSAL: 5 B. 149

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

NAME: John Smith DATE: 12/3/97

DATE: 2.3.77

ADDRESS: 1908 S. Main St. Suite 700

PHONE: 792-5055

REPRESENTING WHOM? Montana Fish, Wildlife and Parks

APPEARING ON WHICH PROPOSAL: S-13 14/5

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: AL Sampson DATE: 2-3-79

ADDRESS: 828 Rollin Missoula MT

PHONE: _____

REPRESENTING WHOM? Mont State Fire Chief
Asst. Missoula Fire Dept.

APPEARING ON WHICH PROPOSAL: SB 148

DO YOU: SUPPORT AMEND? _____ OPPOSE? _____

COMMENTS: Support with Amendments

This should help control
the Arson problem in
Montana.

NAME: Rebecca J. F. Ellis DATE: 2/3/19

ADDRESS: 1735 Sierra Rd E Halema, MI
59601

PHONE: 453-5596

REPRESENTING WHOM? Mactan Sta. Lab., Cebu, Philippines

APPEARING ON WHICH PROPOSAL: SB 149

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: W. Boyce Clarke DATE: 31-Feb 79

ADDRESS: 3124 Vigilante Dr. Helena, MT 59601

PHONE: 442-6778

REPRESENTING WHOM? Independent Insurance Agents of Montana

APPEARING ON WHICH PROPOSAL: SB-148

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENTS: Reopen with testimony

February 3, 1979

Mr. Chairman, and members of the Committee.

For the record, I am Boyce Clarke, representing Independent Insurance Agents of Montana.

Prior to the present Legislative Session, I made a trip completely around the state and met with legislators and local independent agents in eleven communities. Many subjects were discussed, but particularly in Butte, Missoula, Kalispell and Great Falls, the problem of arson received top billing. The day ^{we} were in Great Falls, a newscast reported an arson fire in one of the public schools and the report went on to say that was the fourth case of arson sustained in the Great Falls schools since the start of the fall term.

In Missoula, Mr John Hayden, head of Glacier General Insurance Group almost implored the creation of legislation to allow insurance companies to investigate suspicious fire losses without the fear of suit for libel and invasion of privacy. You are all probably aware of the extreme difficulty in proving arson under any circumstances, and to be subjected to the fear of litigation upon investigation and discussion of the circumstances, removes all interest in pursuing the case.

Nationally, arson has now become a so called Class I crime. There has been much television focus on the insidious arson plague, particularly in the cities. We believe the enactment of the legislation contained in this bill will ease the fear of legal reprisal in reporting and sharing investigative data by the insurance companies with duly authorized agencies such as the Fire Marshall's office.

Thank you.



Submitted to Committee
by Mr. Al Ferguson, Miss

MODEL ARSON REPORTING - IMMUNITY LAW

--The Need and Purpose

With increasing frequency, arson investigators and criminal prosecutors are recognizing the value of information contained in policy writing and claim files of insurers of property which appear to have been "torched." Failing to realize that there are legal and contractual constraints against companies freely releasing this information, investigators and prosecutors are complaining that insurers are being uncooperative or are refusing to share the information with authorities. Most insurers are eager to assist authorities but, for their protection and the protection of their innocent insureds, will release the needed information only under subpeona.

The insurance industry acknowledges the value of this information to law enforcement authorities. The files contain all the data needed to prepare the insurance policy, the dates and amounts of policyholder's insurance transactions as well as the premium payment record of the insured. The files may also contain applications or declarations signed by the insured, appraisals of the property as well as copies of reports made by the company inspectors. The file may also contain the history of prior claims made by the insured. The claim file will contain the claim adjuster's reports, statements of the insured and possibly statements of witnesses. It may contain pictures and analytical reports prepared by consultants. Before the claim

is paid, the file will contain a Proof of Loss, a legal document signed by the insured, witnessed or notarized and which contains detailed data concerning the cause of loss, the value of the property destroyed and the amount of reimbursement claimed by the insured.

The New York Standard Fire Insurance Policy in use in most states affords insurers the right to examine the books and accounts of the insured and to examine the damaged property as often as may be reasonably required. The policy, also, requires the insured, as often as may be reasonably required, to submit to examinations under oath by any person designated by the company. Additional information developed by the company using these contractual rights could be available to law enforcement authorities if state laws would permit.

Because some of the information in the company files may be unsubstantiated or unproven, even the most cooperative company will be reluctant to provide--much less voluntarily pass--this information to law enforcement authorities. Imprudent disclosure of the information or use of the information in an unsuccessful criminal proceeding could result in criminal charges being made against the insurer or, as is more often the case, a civil action being filed which seeks and can result in judgments against the insurer for punitive damages. Punitive damages awards are in addition to policy limits or claim payments and, though rare, have resulted in judgments against insurers. Fear of legal harassment and unfounded charges of punitive action cause insurers presently to resist the free exchange of information

with law enforcement authorities.

The National Fire Prevention and Control Administration held leadership seminars for developing a coordinated attack on arson during January and February, 1976. The seminars were attended by thirty-six concerned citizens and experts in the field of arson and representing the many disciplines whose work and expertise bear on the total arson problem. The report of the seminar, "Arson: America's Malignant Crime", recommended a legal committee be formed and that "the first order of business--(be) developing recommended legislation for submission to states which would provide appropriate immunity to insurance companies which share arson-related information with public authorities."

The Ohio legislature enacted such legislation in 1976. During 1977, reporting immunity legislation was enacted in the states of Connecticut, Georgia, Illinois, New York, North Carolina and Texas. Similar legislation was considered by failed to be enacted in nine other states during the past two legislative years. Many of the bills failed because they were poorly conceived or drafted; other created jurisdictional problems among responsible agencies; while some would have increased the legal problems of the cooperating insurance companies.

These bills, as well as those already enacted, have been studied and reviewed by the Alliance and its affiliate, the Property Loss Research Bureau. Procedures developed for implementing the laws that have been enacted and some of the unforeseen problems have also been scrutinized. The Alliance-PLRB model law includes the provisions found to be necessary

ingredients in these laws if they are to be effective and avoid the problems which are now resulting from the first attempt at legislation in this area.

Insurers must be obliged to report suspicious fires only to the proper law enforcement authorities. Arson may not be evident at the time of the fire and escape identification by the fire fighters. The possibility of an incendiary fire may become evident only when the insurance claim adjuster views the damage, questions the insured or begins preparing the inventory of damaged property. The model law would require that the investigative authorities be informed of fires suspected of resulting from other than accidental causes.

If insurers are to resist fraud arson and to take the "profit out of arson," the insurer and arson investigating official should freely and without legal encumbrance be able to exchange information developed during their separate investigations. Information developed independently by the law enforcement agencies could be very useful to an insurance company investigating suspected arson. The model law would authorize access to and use of the information developed by the law enforcement agency and would serve to increase the flow of vital investigative information between the insurer and a law enforcement agency, as well as between appropriate law enforcement agencies. Mild reservations have been expressed concerning the two-way exchange provisions which have been included in the model bill. However, the entire trend of procedural law is toward unfettered exchange of information. Whatever risk is

inherent in the two-way or reciprocity provision is outweighed by the fact that the model bill would provide a specific means of accessibility to an insurer which otherwise might be compelled to reach its decision with less than complete information.

Knowledgeable attorneys, who assisted in the drafting of the model bill, believe the two-way provision should cause no problem and that the provision should be retained in the model law.

In any criminal investigation it is vital that the investigators have access to any information that may be relevant to the case under investigation. Much of the information developed by insurance investigators and which is lodged in company claim files may be unproven and unsubstantiated, at least early in the investigation. It may, also, be exactly the information needed by authorities to develop leads and other incriminating evidence. This information may never reach the proper authorities because of legal problems if the insurers must first verify or substantiate the facts before providing the information to the authorities.

To encourage the free flow of all information that may be relevant to the investigation, the insurer must be protected from legal action or harassment and judgments for punitive damages. The insurer must be provided immunity from civil action or criminal prosecution for any information it provides in good faith to investigative authorities if the mutual aid and assistance program is to be successful and operate in the cooperative spirit intended. Without immunity, however, insurers

will be obligated to withhold all but proven facts and data.

Because of the sensitive nature of the information developed during an arson investigation, it is necessary that the material and information be held confidential until it is required pursuant to a criminal or civil proceeding. Both the investigative or prosecuting authorities and insurance company personnel must be held accountable for the premature or improper release of the confidential information.

If fraud arson and arson-for-profit schemes are to be curtailed or controlled, insurers and law enforcement officials must be legally authorized and empowered to mutually aid and assist one another. Only when the full resources of the investigations of both the private insurance industry and the law enforcement agencies are combined in a legally concerted program of detection and prosecution can we hope to reduce the crime of arson, America's Malignant Crime.

"Protecting the Big Sky Country"

MONTANA STATE FIRE CHIEFS' ASSOCIATION

P.O. BOX 1704

HELENA, MONTANA 59601

OFFICE OF SECRETARY-TREASURER
1728 NINTH AVENUE



PHONE (406) 442-8768

February 2, 1979

TO: Senator Hazelbaker, Chairman
Business and Industry

FROM: Jack Reed, President
Montana State Fire Chiefs' Association

SUBJECT: Senate Bill #148

Dear Senator:

This is to inform you that the Montana Fire Chiefs and the Montana State Fire Chiefs' Association has endorsed and supports Senate Bill #148.

We feel it is much needed legislation and should help control the arson problem in the State of Montana.

Sincerely yours,



Jack Reed

President

Montana State Fire Chiefs' Association

JR:med

SENATE Business & Industry COMMITTEE

BILL 148+ 272

VISITORS' REGISTER

DATE 2/3/79

Please note bill no.

STANDING COMMITTEE REPORT

February 6

19 79

MR. President:

We, your committee on Business and Industry.....

having had under consideration Senate..... Bill No. 148.....

URE'S

Respectfully report as follows: That Senate..... Bill No. 148,..... introduced bill, be amended as follows:

1. Page 2, line 15.

Following: "The"

Insert: "insured's right of individual privacy allows"

2. Page 2, line 16.

Following: "1"

Strike: "through 5"

Insert: "and 2"

3. Page 2, line 17.

Following: line 16

Strike: "shall"

Insert: "to"

Following: "confidence"

Strike: "until such time as"

XXXXXX
DO PASS

CONTINUED

February 6

19 79

4. Page 2, line 18.

Following: line 17

Insert: "unless:

(1) the insured waives his right of individual privacy; or"

5. Page 2, line 18.

Following: line 17

Strike: "its"

Following: "release"

Insert: "of the information"

6. Page 2, line 18.

Following: line 17

Insert:

"(2)"

7. Page 4, line 25.

Following: "for"

Strike: "the testimony"

Insert: "statements of witnesses"

8. Page 5, line 1.

Following: "and"

Strike: "except as provided in"

Insert: "Information that may be held in confidence under"

9. Page 5, line 2.

Following: "section"

Strike: "5"

Insert: "3"

And, as so amended,

DO PASS