

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 29, 1981

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The fifteenth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERTAIION OF SENATE BILL 201:

AN ACT AUTHORIZING THE FILING AND
ENFORCING OF A LIEN UPON CROPS FOR
THE SUPPLIER OF FUEL OR FERTILIZER THAT
IS USED IN THE PRODUCTION OR CULTIVATION
OF THE CROPS.

The bill was introduced by Senator Dover, District 24, Lewistown.

John Braunbeck, Field Representative for the Montana Intermountain Oil Marketers, spoke in support of the bill and offered two amendments which would, he felt, solidify the effectiveness of the bill. First, on page 1, line 10, he suggested striking "person" and inserting "wholesale purchaser"; and also on page 1, line 12, after "in", inserting "all normal business procedures and".

Howard Wheatley, of H-W Distributors Inc., Great Falls, then spoke in favor of the bill. He stated that the dealers' suppliers were tightening the credit on the dealers, so the dealers need the means of assuring payment that the bill provides.

George T. Bennett, lobbyist for the Montana Bankers Association, spoke in opposition to the bill because he felt it would give the suppliers a superior lien over the lending institutions. He further felt that the Uniform Commercial Code already allows the dealers adequate recourse, and that the bill would change the priority of liens already established under the U. C. C., although without specifically amending the U. C. C.

Senator Dover, in closing, said that under the Uniform Commercial Code the fuel dealers are left virtually unable to recover because they come so late in the line of people who can recover. He said that if the dealers don't get a

better chance of recovery they will close down the credit available to the farmers.

When questioned by Senator O'Hara as to what he felt the correct solution to the farmers' tightening credit would be, George Bennett stated that he felt the Uniform Commercial Code addressed the issue adequately, a position with which Mr. Wheatley took issue.

Senator Crippen asked Mr. Bennett whether, in his opinion, except for Section 4 of the bill, the lien created by this bill would have priority over other liens. Mr. Bennett said that this would be subject to judicial interpretation.

CONSIDERATION OF SENATE BILL 203:

AN ACT TO REQUIRE INSURERS TO PAY OR
DENY CLAIMS WITHIN 45 DAYS OF SUBMISSION;
TO PROVIDE FOR PENALTY AND INTEREST ON A
VALID CLAIM REMAINING UNPAID AFTER 45
DAYS; TO ALLOW THE COURT OR THE INSURANCE
COMMISSIONER TO WAIVE THE PENALTY UNDER
EXTENUATING CIRCUMSTANCES; AND TO ALLOW
FOR ATTORNEY'S FEES UPON SUIT TO RECOVER
ON A CLAIM.

Senator Towe presented the bill and described the problem as being that high interest rates make it more profitable to the insurance company to save the money for a period of time while delaying the payment of the claim. He entered into testimony an article taken from the "Billings Gazette" (marked Exhibit A and attached to these minutes).

Mike Meloy spoke in support of the bill.

Josephine Driscoll, representing the Insurance Department of the State of Montana, said that the need for having claims paid promptly was very valid, but that the state already had penalties for insurance companies failing to do so. She said, however, that all health insurance companies should be included under any such legislation, and that Blue Cross and Blue Shield would not be included under this bill. She also voiced a concern that the insurance companies, in order to avoid payment of the penalty, would be forced into a position of denying claims. She also said that she didn't feel that her office should be burdened with the responsibility of deciding whether the penalty should be levied or not.

Pat Melby, representing the Alliance of American Insurers, opposed the bill. He felt that the intent was acceptable, but said that the bill was too broad and made no distinction between first and third party claimants. He also felt that

the bill would put the insurance company in a position of either paying the claim, whether they felt it was fair or not, or denying the claim altogether to avoid the penalty. He said that it would force cases into court that possibly could have been settled out of court if more time had been available. He also felt that if a case were found to be frivolous attorney fees should be recovered on the plaintiff.

Glen Drake, Helena attorney representing the American Insurance Association, said that Section 2 would have to be redone, and that under Section 4 granting attorney's fees would include uninsured motorist claims, third party claims, etc.

Bob James, Great Falls attorney representing State Farm Insurance Co., spoke in opposition to the bill, saying that under subsection (2) if the claim is denied the consumer would have to get a lawyer, whereas perhaps it could have been settled by an insurance adjuster. This would represent an added expense to the consumer.

Bill Romine, of the Montana Land Title Association, felt that the bill might even have the effect of pulling title insurance into its range of effectiveness. For that reason he opposed the bill.

Loy Grimes, Farmers Insurance Group, presented a position paper against the bill (marked Exhibit B and attached to these minutes) and stated that the parent companies handle the time problem adequately over all, and that if specific companies are at fault, then they should be singled out and dealt with individually.

In closing, Senator Towe submitted to the committee a copy of Wyoming statutes similar to his proposed bill (marked Exhibit C and attached to these minutes). He said that in cases where a quick settlement is not indicated permission can be granted to grant additional time. He agreed to bring in an amendment which would include Blue Shield and Blue Cross.

Jess Starnes, speaking for the Montana Insurance Guaranty Association, said that while the intent might be good, the law is bad.

Senator Mazurek expressed a concern that the bill might encourage court disputes over intangible damages such as pain and suffering, but Senator Towe didn't feel that this would be a problem under the bill.

CONSIDERATION OF SENATE BILL 144:

AN ACT TO CREATE THE CRIMINAL OFFENSE
OF FALSE CLAIMS TO PUBLIC AGENCIES AND

TO CREATE CIVIL PENALTIES FOR PERSONS
MAKING FALSE CLAIMS TO PUBLIC AGENCIES.

Senator Hazelbaker presented the bill and read from a letter which outlined the problems which had necessitated this bill, written by the Medicaid Fraud Control Bureau of the Department of Revenue.

Chip Erdmann, of the Medical Fraud Control Bureau, gave the committee a fact sheet (marked Exhibit D and attached to these minutes) on the bill.

Senator Crippen said that he felt the purpose of the bill was mainly to hit fraudulent claims in the medical aid area, and that he felt the bill was too broad and far reaching and should be narrowed down. He also felt that the term "knowingly presents" should be changed to read "knowingly and purposely presents". Mr. Erdmann agreed that "purposely" could be added.

Senator Mazurek felt that the penalty provision should be changed from "\$2,000" to "up to \$2,000."

After a brief discussion of scheduling of bills, and the further handling of Senate Bill 33, the meeting adjourned.

A handwritten signature in cursive script, appearing to read "Mike Anderson", written over a horizontal line.

Senator Anderson
Chairman, Judiciary Committee

SENATE

JUDICIARY

COMMITTEE

BILL S SB 144

VISITORS' REGISTER

DATE 1/29/81

SB 201
SB 203

Please note bill no.

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
W. Grimes	Farmers Ins Group	203		X
Joseph Muciano	USF&G Co	203		X
Dale Zingh	Assurin State	203		X
R. H. King	B.A.B. Insurance Inc.	203		X
Chip Erdmann	Dept of Revenue	144	X	
Pat Malby	Illinois of American Ins	203		X
GEORGE T. DEANETTI	MONT. INS. ASSN	203		X
Ernie Deffert	Law. Ref	203	?	?
Josephine Deffert	" "	203	?	?
Robert W. Linder	United Pacific Ins	203		✓
Ness L. Starnes	MT Ins. Co. of Am. Ins. Assn	203		X
Bob James	State Farm Ins. Co.	203		X
Elmer Deane	Am Ins. Assn	203		X
Walter A. Linder	IND. INS. AGENTS ASSOC	203		
John Braunbeck	Mont. T. O. M. A.	201	X	
Tex Pate	Mont. I. O. M. A.	201	X	
C. T. Blawie	Mont. I. O. M. A.	201	X	
Hayward T. Bentley	Mont. I. O. M. A.	201	X	
Mike Miley	MTIA	203	X	
W. H. C. Adair	MT BANKERS ASSN	201		X
Paula Summer	NORTHWESTERN BANK	201		X
Ed. Deane Jr.	Int. Assoc. of Life Underwriters	203		
Steve Bride	St. Paul Fire & Marine	203		X
W. B. Brunner	W. I. F. E.			

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

(15)

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/29/81

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: John Braambeck DATE: 1-29-81

ADDRESS: 1217 Wilder Helena, Montana

PHONE: 442-6647

REPRESENTING WHOM? Montana Intermountain Oil Marketers

APPEARING ON WHICH PROPOSAL: SB-201

DO YOU: SUPPORT? X AMEND? X OPPOSE?

COMMENTS: Page #1, Line #10, delete "person"
and insert the words "wholesale purchases"

Page #1, Line #12 after the
word "in", insert the phrase "All
normal business procedures and"

NAME: Howard Wheatley DATE: 1/29/8

ADDRESS: 1919 Cherry, Great Falls Mt 59404

PHONE: 453-0971 - 454-2087

REPRESENTING WHOM? N.W. Distributors Inc

APPEARING ON WHICH PROPOSAL: SB 301

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

COMMENTS: Needed Badley

NAME: Geoffrey T. Dunne II DATE: 1/24/71

ADDRESS: 400-Townsend Ave Belmont

PHONE: 447-3644

REPRESENTING WHOM? Mount Pleasant Assoc.

APPEARING ON WHICH PROPOSAL: 5521

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

COMMENTS: _____

NAME: Josephine Driscoll DATE: 1-29-81

ADDRESS: Bellevue

PHONE: 449-2996

REPRESENTING WHOM? Ind. Reps - St of NY

APPEARING ON WHICH PROPOSAL: 203

DO YOU: SUPPORT? ? AMEND? ? OPPOSE? ?

COMMENTS: -

NAME: Pat Melby DATE: 1-29-81

ADDRESS: Fourth floor Montana Club. P.O. Box 1144

PHONE: 442-7450

REPRESENTING WHOM? Alliance of American Insurers

APPEARING ON WHICH PROPOSAL: S.B. 203

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

DATE: 1/29/81

ADDRESS: 430 New Bank Bldg

PHONE: 101-2511

REPRESENTING WHOM? State farm insur. Co.

APPEARING ON WHICH PROPOSAL: SB 203

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS:

NAME: William C. Rame DATE: 1-29-81

ADDRESS: P.O. Box 1691 Helena

PHONE: 442-2220

REPRESENTING WHOM? Mont. Land Title Assn.

APPEARING ON WHICH PROPOSAL: S.B. 203

DO YOU: SUPPORT? _____ AMEND? X OPI OSE? _____

COMMENTS: Sub paragraph (4) should be amended to make sure it
refers to those types of insurance referred to under sub-paragraphs
one & two. Otherwise, may be covering two subjects
land title should be covered under this Bill, but it
appears that title insurance was not intended to be covered.

NAME: Loy Grimes DATE: 1-29-81

ADDRESS: 2500 So 5th Locust St 83201

PHONE: 208 - 233 - 3571

REPRESENTING WHOM? Farmers Insurance Group

APPEARING ON WHICH PROPOSAL: SP 203

DO YOU SUPPORT? AMEND? OPPOSE? X

COMMENTS: Position paper attached

NAME: Chip Erdmann DATE: 1/29/81

ADDRESS: Medicaid Fraud Control Bureau
Dept. of Revenue

PHONE: 449-4632

REPRESENTING WHOM? Medicaid Fraud Control Bureau

APPEARING ON WHICH PROPOSAL: SB 144

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

COMMENTS: This bill was proposed by Revenue
to combat fraud in the Medicaid
area. See attached.

NAME: ROBERT W. PEDERSEN DATE: 1/29/81

ADDRESS: 1611 KENNETT, HALEN, MT.

PHONE: 442 6630

REPRESENTING WHOM? UNITED PACIFIC INS.

APPEARING ON WHICH PROPOSAL: SB 213

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

COMMENTS: 1. EXISTING STATUTES AND LEGAL RIGHTS

PROVIDE ADEQUATE PROTECTIONS ALREADY

2. WILL ADD TO INFLATIONARY CYCLE - THE COSTS
WILL BE PASSED ON TO THE CONSUMER.

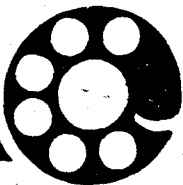
3. @ 5% OF SETTLEMENT + 18% A YEAR THE
CUMULATIVE IS MOTIVATED TO INCREASE THE BILL'S
MINIMUM REQUIREMENT GET DELAY AND OBSTRUCT
THE SETTLEMENT IN SOME CASES TO ENHANCE
THE FURTHER RECOVERY

4. IF PETTER'S LEGAL FEE'S EXPENSES ARE AWARDED
WITH PETTER PREVIOUSLY IN FAVOR OF SHOULD NOT
THE REWARD BE TRIMMED SINCE THE COSTS
THE WAY WILL EVENTUALLY BE BORNE BY
CONSUMER.

at the time laws

Exhibit A

Action Line



Action Line answers questions, solves problems and cuts red tape. Call Action Line at 657-1200 between 8:30 a.m. and noon, or write: Action Line, Box 2507, Billings, Mont. There is never any charge.

ACTION FEEDBACK — Remember the 84-year old woman in Lewistown who was trying to live on \$230 a month and had lost her late husband's VA benefits because she was getting "too much" Social Security? A social worker from Lewistown called and offered to check to see if she qualified for any federal programs, such as food stamps. The Montana VA office in Billings is going to help her fill out any forms necessary to assist her case along, and a man from Billings called to offer her a home in his house — free.

Yes, Virginia, there is a Santa Claus — as long as good people care about other people.



We wonder if you could get our hospital insurance claim paid. We sent all the information to the insurance company, Mutual of Omaha, last July. When we didn't

hear from them, I wrote. In September I got a letter thanking us for our patience and saying we would hear from them as soon as our file was complete. Here it is Oct. 29 and we still haven't heard from them. The doctors and the hospital want to be paid. The claim was for \$7,378.76. E.A. — Lovell

Wow! Talk about action. The Wyoming Department of Insurance sent Action Line a copy of the letter they sent to your insurance company. It reads, "Please advise this department without delay why this claim hasn't been paid. You are in violation of our 45-day period of handling claims. The department expects a reply within 10 days of receipt of this letter."

It really is nice to know that your state government will go to bat for you. Thanks, Wyoming. Looks as if E.A.'s problem will be resolved, pronto.



Can you tell me if there's a place collecting newspapers? D.O. — Sheridan, Wyo.

If you want to haul them as far as Billings, you can bring them to the Billings Recycling Center at 458 Charles St. This is a new location; you can call them at 252-5721 to ask how to get there and what their hours are.

At one time, there was a place in Cody that took newspapers. Will one of the readers down there write Action Line a note to say if it is still in operation?

15



THE

Farmers Insurance Group

OF COMPANIES

Exhibit B-1

2500 S. FIFTH AVENUE • POCA TELLO, IDAHO 83201
MAILING ADDRESS: P.O. BOX 4820

January 28, 1981

Chairman, Judiciary Committee
Room 331 Capitol
Helena, Montana 59601

Gentlemen:

SUBJECT: SB 203

We believe this Bill is not in the best interests of Montana policyholders or the insurance industry.

1. We believe it will encourage litigation to the detriment of policyholders who will ultimately bear the costs through increased premiums.
2. It places the insurance industry in an artificial position in that we are not negotiating on an even basis.
3. Forty-five days is not adequate, in many complex cases, to get Home Office authority for settlement. Our mail service is too slow to meet such a short deadline. In our transient society frequently witnesses and key people in an investigation cannot be located on short notice.
4. No provision exists in the Bill for consideration of valid settlement offers that are rejected prior to filing of suit.
5. No provisions exist in the Bill for valid reasonable and acceptable reasons for not meeting the 45-day time limit.
6. The Bill contains the words "rejected or accepted and paid". Many times we can accept liability but are not in a position to pay.
7. The Bill does not include instructions as to who will administer the penalties to insure they are fair and equitable.

Exhibit B-2

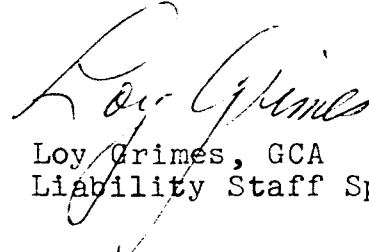
Chairman, Judiciary Committee
Room 331 Capitol
Helena, Montana 59601
Page 2

8. The Bill does not include provision in case of dispute over facts, damages or coverage.
9. The Bill may cause claims to be paid that would not normally be paid because of the time limit in which a decision must be made.



Martin D. Feinstein, GCA
Regional Claims Manager

LG:ca



Loy Grimes, GCA
Liability Staff Specialist

WYOMING STATUTES ANNOTATED

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to such payment or some interest in the policy or contract. (Laws 1967, ch. 136, § 328.)

§ 26-15-126. Claim to be accepted or rejected; attorney fees.

(a) Claims for benefits under a life, accident or health insurance policy shall be rejected or accepted and paid by the insurer or its agent designated to receive such claims within forty-five (45) days after receipt of the proofs of loss and supporting evidence. Exceptions to the time of forty-five (45) days shall be made for accident and health insurance claims where there is any question as to the validity or the amount of the claim and the question is referred to the Wyoming state medical peer review committee for adjudication.

(b) Claims for benefits under a property or casualty insurance policy shall be rejected or accepted and paid by the insurer or its agent designated to receive such claims within forty-five (45) days after receipt of the claim and supporting bills.

(c) In all actions or proceedings commenced against any insurance company on any insurance policy or certificate of any type or kind of insurance, or in any case where an insurer is obligated by a liability insurance policy to defend any suit or claim or pay any judgment on behalf of a named insured, if it is determined that the company has refused to pay the full amount of a loss covered by the policy and that the refusal is unreasonable or without cause, any court in which judgment is rendered for a claimant may also award a reasonable sum as an attorney's fee and interest at ten percent (10%) per year. (Laws 1973, ch. 198, § 1; 1975, ch. 166, § 1.)

Attorney's fees not allowed. — See Bruegger v. National Old Line Ins. Co., 387 F. Supp. 1177 (D. Wyo. 1975).

§ 26-15-127. Minor may give acquittance and discharge; effect of appointment of guardian.

(a) Any minor domiciled in this state who has attained the age of eighteen (18) years shall be deemed competent to receive and to give full acquittance and discharge for a payment or payments in aggregate amount not exceeding three thousand dollars (\$3,000.00) in any one (1) year made by a life insurer under the maturity, death, or settlement agreement provisions in effect or elected by such minor under a life insurance policy or annuity contract, if such policy, contract or agreement provides for payment to such minor. No such minor shall be deemed competent to alienate the right to or to anticipate or commute such payments. This section shall not be deemed to restrict the rights of minors set forth in section 26.1-310 [§ 26-15-107] of this chapter.

(b) If a guardian of the property of any such minor is duly appointed and written notice thereof is given to the insurer at its home office, any such payment thereafter falling due shall be paid to the guardian for the account of the minor, unless the policy or contract under which the payment is made expressly provides otherwise.

Exhibit V

DEPARTMENT OF REVENUE

SENATE BILL NO. 144

SB 144 addresses the problem of false claims to government agencies. The Department of Revenue is interested in this area as a result of its involvement in the Medicaid Fraud Program. It should be noted, however, that the proposed legislation is broad sweeping and encompasses all false claims to government agencies. Present criminal laws addressing the false claim question are Sections 45-6-301, MCA, relating to theft, and 45-7-203, MCA, relating to unsworn falsification. The Department has not found these sections to be useful in the area of medicaid fraud. Consequently, the Department has prepared the new language of SB 144.

Section Analysis

Section 1. New Section. This section creates a criminal offense of false claims to public agencies. It is modeled on the California Penal Code, and has been used successfully in medicaid fraud prosecutions. The offense is classified as a misdemeanor or a felony depending on the size of the claim and the existence of a common scheme of deception.

Section 2. New Section. This section establishes a civil remedy in the case of false claim. The section is taken from the Federal False Claims Act. By imposing substantial penalties on the submitter of false claims, it is hoped that the legislation will act as a strong deterrent.