

MINUTES OF THE MEETING  
BUSINESS AND INDUSTRY COMMITTEE  
MONTANA STATE SENATE

March 18, 1981

The regular meeting of the committee was called to order at 10 a.m. by Chairman Hazelbaker in room 404 of the Capitol Building on Wednesday, March 18. All members were present.

Scheduled for hearing were HOUSE BILLS 376, 377, 378, 380 and 448.

HOUSE BILL NO. 448: Representative Nordvedt, District 77. This bill deals with various changes in the regulation of domestic life insurance companies. There are only three in the state. Valuation of single premium life insurance policies for determining the financial condition of insurers will be at 5 1/2% interest. The bill also prescribes methods for valuation of debt securities, for correction of deficiencies in reserve deposits, for investing in the stock of subsidiaries, for investing in real estate mortgages and real estate. The bill also puts a ceiling of 6 1/2% on the interest to be used for computing single premium life insurance cash surrender values. There are between 4 and 500 out of state companies licensed to do business in the State of Montana. Basically, this bill is to remedy some of the problems. We hope the state can create some good regulations so they can compete with out of state companies. He went through the bill and explained it.

Page 5, line 12 deals with the good-will  
page 7, line 8 changed from 4 1/2% to 5 1/2%, the interest rate used for evaluating - premium life insurance policy  
page 10, line 22 This is the most important feature of the bill. Some of the assets would have to be deposited with the insurance office here in Helena. The market value would be down if they had to liquidate today.

This would allow those assets to be valued at something more in line with the actual value paid, amortized to their liquidation value. It puts an undue burden on the domestic companies who do not have to discount.

Page 12, line 20, a technical change in language.  
Page 17, line 8, We are taking out a section. This section forbids insurance companies from participation in mortgages. By striking that section we would allow domestic companies to participate in mortgages.

The next section would allow them to participate in wrap-around mortgages.

Page 19, line 24, this would increase from 5% to 10% of assets that can be invested in real estate.

Page 20, line 14, would increase the total amount of investment in real estate.

Page 21, line 17 would allow them to issue preferred stock.

Page 23, line 10, is the section on borrowed surplus. He explained that it is no longer realistic.

Page 25, line 20, for the purposes of the interest rate it increases from 5 1/2% to 6 1/2%.

To summarize, the changes will allow the one or two domestic life insurance companies to be more competitive.

PROPOSERS:

REPRESENTATIVE NORM WALLIN: I am in support of this bill. He explained the climate in the state concerning insurance companies. I think a bill like this would help the industry.

HERB RICHARDS: Life of Montana Insurance Company. I have some resumes of the bill, which I will pass out to the committee. Life of Montana Insurance Company is one of three domestic life insurance companies domiciled here in Montana. We are asking for some modifications or amendments to the present insurance code which was written during the mid-50's and passed by the 1959 legislature. Certainly, times and economic conditions have changed from the 50's to the 80's. Businesses do not operate today in the same manner and with the same governing restrictions that they operated under in the 50's. We are asking for some updating within a few areas in the insurance code. We are not asking for anything that many of the larger so-called life insurance states do not have the right or flexibility to do. I think that it is very evident that the life insurance climate in Montana has been a big restraint to companies that are domiciled in this state. Montana has had ten life insurance companies since the 50's. We are down to three. Life of Montana is the only truly active company in the state. Great Western Life is wholly-owned by Life of Montana and Montana National Life of Billings is no longer actively soliciting business. This company is owned by a South Dakota company which has offered it for sale and apparently wants out of the state.

The domestic life insurance industry is a clean industry which certainly helps our economy. We do not drain off funds and send the money out of state. The vast majority of our new investments are right here in the state. We employ people, have over sixty home office employees plus the agency force. We bring into the state premiums from most of the other sixteen states we are licensed to do business in, but we need to be competitive with other companies that are licensed elsewhere.

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Because Montana has been so conservative we are asking for very little but it is absolutely imperative that this bill be passed as Montana has a deposit requirement that I believe only two other states in the entire country have and neither one of the other two is as restrictive as Montana. It is because of this requirement for deposits that we are requesting this bill and the necessity of immediate action. We have included in the bill some other items that will help us to be a little more competitive with companies that operate out of the larger life insurance states. This bill does not give us nearly the flexibility that companies domiciled in these other states have but because of the ultra-conservative attitude that Montana has had we are hesitant to ask for an equal opportunity that other companies have that operate in the other older life insurance states such as Wisconsin. We are asking that you delete three sections from the proposed bill, and that you change the 5% to 10% where it said 15% and from 10% to 15%, in lieu of 10% to 25%. EXHIBIT A

Mr. Richards read a portion of an article from a Hawaii newspaper. Copy attached. EXHIBIT B and EXHIBIT C

JAMES MELILLER: Life of Montana Insurance Company. I am the senior vice-president and a CPA by training. He explained what happens if you purchase a subsidiary company and it is amortized and the method used for valuation. We support the 10 year write-off requirement. Our other concern has to do with the deposit of assets. He elaborated further on this.

OPPONENTS:

ED SHEEHY, JR: Montana Association of Life Underwriters. I would like to point out to you that our association consists of most of the agents in Montana, and we are opposing for a number of reasons.

1. Deposit requirements for domestic insurers - what it is doing is changing how you value their assets. The purpose of the deposit requirement is to protect the policy holders. He commented about the exemption on section 5, pages 13 and 14. In effect, we have an indirect method to get around the requirement.
2. We have heard a lot about how Life of Montana wants to be more competitive. We have to decide what you mean by being more competitive. By passage of this bill they can invest more money, and I think that is a key point to keep in mind.
3. Section 2, page 7, lines 8 and 9 will reduce the cash surrender value.
4. Section 3, page 10, lines 20 through 24, this is with regard to how we are going to value those assets that are put on deposit. Now what this section would do, you

can value under this method or you can value the same way that reserves are valued. The Commission would not determine how these are valued.

He went on to talk about the subsidiaries on page 12. Who is going to buy the good-will of a defunct company. I would also call your attention to page 8, line 10, the wrap-around mortgages. How are you going to protect the policy holders of that company.

On page 10, lines 23 and 24, with regard to the deposits of a domestic life insurer. What we are talking about are miscellaneous investments. We are now going to make those eligible for deposits. I think that the main essence of this bill is to make Life of Montana more competitive. I would simply point out that by 1990 there will be 600 less out of state companies in Montana. So I am not sure that they are more competitive. What should they be competitive in, the insurance business or investments.

HARRY MASCHERA: I am representing myself. I want to see good sound investments in Montana. This bill will erode the margin of safety for policy holders. It allows that a company carry a good-will. How can you pay a policy holder with good-will. It also allows a company to invest in a subsidiary and that is not the insurance business. He went on to talk about deficiency deposits at some length. There are several others that are not beneficial to the policy holder and I realize what can happen. I would plead that the bill be scrapped in its entirety.

NORMA SEIFERT: Montana Insurance Department. We are not opposing or supporting the bill. We are not to concern ourselves with the drafting of laws but only to implement them. We do have permission to testify when called by a committee. I would like to answer your questions.

JESS STARNES: United Pacific Reserve Insurance Company. However, I am representing myself. I am aware of the problems in insolvent companies. I am sort of a middle-of-the-roader. He went on to talk further about insolvencies. I am concerned to see any weakening of the asset requirements for any insurance company. This bill really does weaken the Montana law. I am leaning toward opposition of the bill.

QUESTIONS FROM THE COMMITTEE:

SENATOR LEE: What happens if these out of state insurers become insolvent. Why should our state be different from the other states when it comes to good-will. I looked at the reports about why a company has become insolvent. One of the things in common is extremely

poor investments. And the small population in Montana does not attract larger companies.

SENATOR BLAYLOCK: How does the commission feel about this bill.

VALENCIA LANE: The Commission does not oppose this bill but I honestly can't say.

SENATOR BLAYLOCK: It seems to me that we have a right to rely upon the department.

VALENCIA LANE: I think that this bill as written is not in the best interest of the consumer. I think it is dangerous to weaken the law. Insurance accounting is more restrictive. The insurance laws are here to protect the insurance policy holders. This is my personal opinion.

SENATOR BLAYLOCK: I want it very clear that I did ask for her personal opinion.

SENATOR KOLSTAD asked about the second mortgage of a wrap-around mortgage.

HERB RICHARDS: A bank isn't going to take a second position, something that is weak. He talked about the first mortgage where you have control if it is delinquent. One mortgage is not secondary to the other.

SENATOR GOODOVER asked Mr. Sheehy. Would you clarify who you are representing. I am not certain of that. Your testimony seems to say that you agree.

MR. SHEEHY: We are still encouraging selling insurance. The carrier is the one making the investments and not the agents. I am representing the agents.

SENATOR REGAN: On page 23, lines 10 through 18, striking 6% and and saying that they would borrow money at the current usury rate. With the bills we have in the committee now it makes the rate wide open. Is it customary for insurance companies to borrow money at 17% or higher.

TERRY MEAGHER: In my personal opinion. I am a CPA and I am a certified financial examiner. We do have trouble with holding company arrangements. Generally, borrowed surplus is a temporary arrangement. The borrowed surplus is in addition to equity.

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SENATOR REGAN: Is that what is going on in the section on page 11.

MR. MEAGHER: Correct, it does not have connection to the borrowed surplus we were talking about.

MRS. REGAN: Much has been made about how restrictive Montana is as compared to other states. How do we rate. Are we so restrictive or do you feel we need this bill.

MR. MEAGHER: In the majority of areas we are approximately the same. In a few areas we are more restrictive. One area is the investment in real estate. Other states allow some 15 to 20% of their assets to be in real estate.

SENATOR BOYLAN questioned the man who had said he was representing himself, asking him what he had to do with insurance. It turned out the man had been an insurance examiner for the State of Montana.

SENATOR BOYLAN asked Mr. Sheehy again if he was representing insurance companies, and Mr. Sheehy stated "I am not representing insurance companies, only agents."

There was extended discussion about the separation of agents and companies, as to investing and selling insurance.

MR. SHEEHY commented that Life of Montana are competitive in the insurance business. Further discussion by the committee on this.

MR. BOYLAN asked if they didn't have to invest somewhere in order to stay in business. Mr. Sheehy again stated that the companies are making investments. "I only represent agents."

SENATOR REGAN: I am troubled. The single payment insurance, it would seem to me, if the interest rate is high and the premium is lower, its kind of an inverse thing.

MR. RICHARDS: There is the cash dollar you put out.

SENATOR REGAN: Given a choice between 4 1/2% and 5 1/2% which has the higher cash value.

MR. RICHARDS: 5 1/2% has the higher cash value if you bought a \$1000 face amount, it would be less but the protection is secondary to your question. If you pay more money you get more cash value.

MR. MEAGHER: There is an inverse relationship, but Mr. Richards is also correct. 4 1/2% interest will cost you more premium but on the same \$1000 policy at the 5 1/2% you will pay less dollars during the period of the policy.

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SENATOR LEE: I would like to ask if the local insurance companies operate under different regulations from the out of state companies.

VALENCIA LANE: I don't know that our state laws are that far off from other state laws.

SENATOR REGAN: There is another portion of the bill that wasn't mentioned. On page 11, lines 23 through 25, on a mortgage, is the interest on the unpaid value of the mortgage increasing the value.

MR. RICHARDS: The term accrued interest is what you are referring to. I guess you have to define what accrued interest is. He gave an example. There was general discussion of the normal procedure of accrued interest.

SENATOR BLAYLOCK asked Mr. Richards if he was convinced that we are protecting consumers with this bill.

MR. RICHARDS: Yes, I am convinced. We do have the deposit law. He talked about other states and the fact that there is really no incentive for a company to domicile in Montana. The premium tax is a real detriment. Even with this bill we are still way behind the crowd. We compromised with the department on what we thought we could live with. We can appreciate the various opinions. We have to have relief or we will have to leave the state or we will have to liquidate.

SENATOR REGAN: If the premium tax is a problem, why don't we have that bill before us.

MR. RICHARDS: We do not object to it, we are living with it.

SENATOR REGAN: I want each of you from the department to give me your personal opinion if you think Montana is out of line. How do you feel Montana rates with other states. Are we more restrictive.

MR. MEAGHER: It's not that far out of line.

VALENCIA LANE: No, were're not that out of line.

NORMA SEIFERT: We do track very much with the NAIC.

REPRESENTATIVE NORDVEDT: He gave an example of how he obtained his first policy from his father and that he cashed it in for the cash value. The insurance companies are covered by archaic laws. Insurance companies have to be investment companies. They hold assets for many years. You have to give insurance companies the right to invest. He discussed liquidity of assets at some length. I think you should seriously examine the testimony of the life underwriters. They are mostly representing out-of-state companies. This bill can keep our domestic life insurance companies solvent.

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REPRESENTATIVE NORDVEDT: In closing I want to state again what we are attempting to do with this bill. The new procedure for the reserve requirements would take a hearing. It would permit the use of good-will in the value of some assets that are deposited with the state. That would make it easier for the company to meet the reserve requirements. It would allow investments of more assets in real estate and in wrap-around mortgages. They could borrow cash at market interest rates, which are well above the current 6 percent limit. Montana has only three in-state companies while some 400 out-of-state firms operate here. Life of Montana and its subsidiary Great Western Life account for two of the firms. Life of Montana has been a boon to Bozeman economy. It's important that we give our domestic insurance industry a chance to grow. That's \$100 million dollars a year that is leaving the state. Inflation nullifies the claims that this bill increases risk to customers money. The low grade securities are the high grade bonds. They're a guaranteed way to lose the policy holders money.

With no further discussion, the hearing closed on House Bill No. 448.

REPRESENTATIVE HEMSTAD: The four bills I am presenting are all companion bills, but I will go through them one at a time and explain each one and then present them as a package.

HOUSE BILL NO. 376: The bill primarily revises and clarifies part 1 of the Securities Act of Montana. Besides cleaning up the language, the bill expands upon the definition of a security by incorporating risk capital theory. It adds an exemption from registration for securities listed on approved exchanges, it grants the commissioner more review and examination powers with respect to the discretionary exemptions. It revises the isolated transaction exemption. It deletes the manual exemption and substitutes an exemption for secondary trading of securities reported on the quotations system operated by the National Association of Securities Dealers, and, finally it brings together a new section for the review powers of the commissioner with respect to certain exemptions, which are enumerated. This bill, will hopefully, better enable the State Auditor as the Securities Commissioner to regulate the securities industry in Montana. So, there would be more protection for the Montana investor.

RICK TUCKER and BRUCE LARSON, Attorney are here from the department to answer questions.

SENATOR GOODOVER: What was the need for all of the amendments and Representative Hemstad said that they were just to show how the bill was changed, they were not new amendments.

HOUSE BILL NO. 377: The State Auditor as ex Officio Securities Commissioner requests that we pass this bill. The bill generally revises and clarifies Part 2 of the Montana Securities Act. Besides cleaning up the language it also revises securities laws regulating

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the registration of securities and it revises practices and procedures in examining persons involved in the offer or sale of securities. Applications would contain information required.

MR. TUCKER: Some of this is cleaning up the garbage. It just clears it up. Variable annuities are a creature of insurance companies. A lot of the language is antiquated.

HOUSE BILL NO. 378: There are two major changes in this bill. In section 1, the intent of the proposed addition of language in this section is to clarify the jurisdiction of the securities commissioner in regulating securities promoters operating from this state who sell only to customers outside the state. The purpose of the amendment is to prevent Montana from becoming a "safe harbor" for fraudulent promoters, and to allow this state to participate in joint enforcement efforts with other states against this type of fraudulent sales practice.

In section 2, the proposed changes provide for increasing the interest award, from six to ten percent per annum, allowed in civil judgments. The change is requested to keep the interest award current with present inflationary trends.

Actually, the bill revises and clarifies prohibited practices and penalties under the Securities Act. Prohibited practices would apply to securities transactions in the state, coming into the state, or from the state. The penalty on civil liability is increased to 10%.

HOUSE BILL NO. 380: This bill revises the fees charged under the Securities Act by generally doubling the existing fees. Additional fees and increases in existing fees are proposed for this section. Securities registration fees, on new issues, will be raised from \$100 to \$200 on the first \$100,000 of the new issue, and will be raised from 1/20 of 1% to 1/10 of 1% on the excess of the new issue over \$100,000. The maximum fee of \$1,000 remains the same.

Renewal fees on securities registrations will be changed from 1/20 of 1% of the aggregate offering with a minimum fee of \$100 and a maximum fee of \$1,000 to 1/10 of 1% of the aggregate offering with a minimum fee of \$200 and a maximum fee of \$1,000. A late renewal fee of \$50 is also requested to prevent delinquent renewals.

Registration fees for broker-dealers and investment advisors will remain the same, but an increase from \$25 to \$50 is proposed for salesmen registration fees. Fees for filing amendments to registrations are requested to defray record-keeping costs associated with it. Finally, the fee for exemption requests is raised from \$25 to \$50. The fee increases requested in this bill represent the first such increases since 1962, except for salesmens fees.

SENATOR BLAYLOCK: Are these fee increases really needed to keep abreast,

MR. TUCKER: Yes, without this fee increase, we used to average about 40 applications and now we average over 100. We probably exceed a 4 to 5 billion increase. It will probably bring in about \$125,000 per year.

MR. BLAYLOCK: Have you conferred with the people affected by these fees and this bill.

MR. TUCKER: Yes, we have.

SENATOR REGAN: Does it go to the general fund, and the answer was yes.

There was general discussion about a fiscal note for the feed bill part.

Discussion that Ed Smith would carry this on the floor because he is also a sponsor.

With no further discussion and no more questions the hearing closed on House Bills 376, 377, 378 and 380.

SENATOR HAZELBAKER ASKED THE PEOPLE FROM THE DEPARTMENT TO STAY.

SENATOR HAZELBAKER: We would like to ask some questions about House Bill No. 257, since you were not present yesterday when we had the hearing. This is the mechanical breakdown bill.

VALENCIA LANE: We don't have any problem with it. The exam would not cover what they need to know. We have a similar exemption for people who are dealing with insurance.

After some discussion the people from the department left.

ACTION WAS TAKEN ON THE FOLLOWING BILLS:

HOUSE BILL NO. 257: Senator Goodover moved be concurred in. The motion carried with the vote unanimous. Senator Goodover will carry on the floor.

Discussion was held on House Bill No. 574 and House Bill No. 710. The question was raised as to the sharing of a commission with a resident agent. Discussion followed. It was mentioned that the agents do not pay a premium tax, only the company pays the tax.

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The question was raised if they would want to do away with the requirement of the co-signer. It was felt it might have an effect on the larger insurance lines.

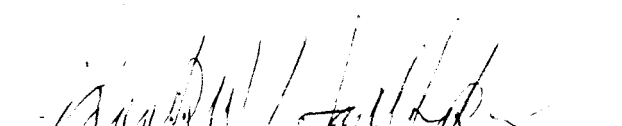
HOUSE BILL NO. 706:

SENATOR REGAN: I don't see how this works. It was mentioned that the department was getting a lot of complaints from the consumers. More discussion followed.

SENATOR REGAN moved that House Bill No. 706 be not concurred in. The motion carried with Senator Lee voting aye. Chairman will carry.

HOUSE BILL NO. 720: Senator Dover moved do pass. The motion failed on a 6 to 2 vote. Senator Regan moved be not concurred in. The motion carried by a vote of 6 to 2. Senator Regan will carry.

The meeting adjourned at 12:05.

  
\_\_\_\_\_  
Frank W. Hazelbaker, Chairman

Mary Ellen Connelly, Secretary

ROLL CALL

BUSINESS and INDUSTRY

COMMITTEE

47th LEGISLATIVE SESSION -- 1981

Date Wed.  
3/18/81

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat - Vice Chairman	✓		
Hazelbaker, Frank - Chairman	✓		
Blaylock, Chet	✓		
Boylan, Paul	✓		
Dover, Harold	✓		
Kolstad, Allen	✓		
Lee, Gary	✓		
Regan, Pat	✓		

Each day attach to minutes.

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date \_\_\_\_\_ Bill No. 720 Time \_\_\_\_\_

NAME	YES	NO
Hazelbaker		✓
Goodover		✓
Dover	✓	
Kolstad		✓
Lee	✓	
Blaylock		✓
Boylan		✓
Regan		✓

Secretary \_\_\_\_\_

Chairman \_\_\_\_\_

Motion: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(include enough information on motion—put with yellow copy of committee report.)

March 18, 1981

BILL NO. 376

# VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

DATE March 18, 1981

COMMITTEE ON B. & I. HOUSE BILL NO. 377

Representative Hemstad

# VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

March 18, 1981

HOUSE BILL NO. 378

Representative Hemstad

## NAME

Check One	
Support	Oppose

"Rick" Tucker

State Auditor / Executive Director

“ “ “ “

(Please leave prepared statement with Secretary)





PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE :

ADDRESS :

PHONE :

## REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: JAMES L. MELVILLE DATE: 3/18/91

ADDRESS: 1815 BRIDGER DRIVE, BOZEMAN, MT

PHONE: 586-3974

REPRESENTING WHOM? LIFE OF MONTANA Inc

APPEARING ON WHICH PROPOSAL: HB 448

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

Herb Richards

DATE:

March 18, 1981

ADDRESS:

415 So WILLSON

PHONE:

586-4321

REPRESENTING WHOM?

Life of Montana Ins. Co.

APPEARING ON WHICH PROPOSAL:

HB 448

DO YOU:

SUPPORT?

☒

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Norma Seuffert DATE: 3/18/81

ADDRESS: Mont. Ins. Dept - Mitchell Bldg.

PHONE: 9-2996

REPRESENTING WHOM? Mont. Ins. Dept

APPEARING ON WHICH PROPOSAL: HB 448

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: Explanation & available for questioning

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: M. Veltre Jr. DATE: 1-2-1

ADDRESS: Mt. Laurel, N.J. - 1000 N. 1st St. - 11-11-11

PHONE: 9-3791

REPRESENTING WHOM? None

APPEARING ON WHICH PROPOSAL: 11/

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: available for review

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ernest J. Mangler DATE: 3-18-81

ADDRESS: 123 So. 4th St, Helena, MT 59601

PHONE: Cell 449-2996, Home 442 0652

REPRESENTING WHOM? Montana Insurance Dept

APPEARING ON WHICH PROPOSAL: HB 165

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: Available for questions at the request  
of this committee

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Harry Maschura

DATE: 3-18-81

ADDRESS: 285 John B. King Rd

Kelso.

PHONE: 458-9336

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: KB 448

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? ☒

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

# STANDING COMMITTEE REPORT

March 18, 1981

MR. **PRESIDENT:**

We, your committee on **BUSINESS AND INDUSTRY**

having had under consideration **HOUSE** Bill No. **257**

**Wallin** (Senator Goodover)

Respectfully report as follows: That **HOUSE** Bill No. **257**

*W.C.*  
**BI CONCURRED IN**

**DO PASS**

# STANDING COMMITTEE REPORT

..... March 12, ..... 19 .. 81 ..

**PRESIDENT:**

MR. ....

**BUSINESS AND INDUSTRY**

We, your committee on .....

**HOUSE**

Bill No. **720**

having had under consideration .....

**Harp (Senator Regan)**

**House**

Bill No. **720**

Respectfully report as follows: That.....

*210*  
**BE NOT CONCURRED IN**

~~XXXXXX~~  
~~DO PASS~~

*Frank W. Hazelbaker*  
.....  
**Frank W. Hazelbaker,**

Chairman.

EXPLANATION OF H.B. 448  
As Proposed to Be Amended

<u>Location of Change</u>	<u>Explanation of Change</u>
Section 33-2-501 (11)	We are withdrawing our proposed amendments to this Section on pages 1, 2, 3, 4 and the top part of page 5 of the Bill.
Section 33-2-502 (4)	<p>Page 5 and the top part of page 6.</p> <p>This is to clarify what goodwill, trade names and other like and tangible assets are in the insurance code. Good will is the amount of value you pay for a going business over and above its actual book value or equipment value. The Montana Insurance Code prohibits goodwill while the National Association of Insurance Commissioners allows good will in this type of valuation. It helps us to be in compliance with the criteria outlined by the National Association of Insurance Commissioners.</p>
Section 33-2-531 (4)	Montana is one of only three states (to the best of our knowledge) out of the entire United States that has these deposit requirements and even the other two states do not have the restriction requirements on deposits that Montana has. There are approximately 1,800 life insurance companies in the United States and three of them, the three Montana companies, have this antiquated requirement to contend with. The insurance code goes to great length to tell you how to value your securities and then because of the deposit requirement all that is thrown asunder and we are told to value them not as the code tells us to value them but to value them at market. We need to change the valuation for deposits to make it the same as the valuation the code prescribes for all other purposes. We cannot comply with the law with this restriction.
Section 33-2-611	These two sections both go with the above Section 33-2-531(4). These are other references in the code to the requirement. The second part of this section is amended to allow the commissioner discretion as to the actions he may take in the event of a deficiency. Most all other states provide the commissioner with this authority and responsibility.
Sections 33-2-523 and 33-2-206	Will allow Montana companies to issue policies with a higher rate of interest to the policyowner and thus a lower premium and allow us to be competitive with a majority of other states.
Section 33-2-532	More correctly defines the section and brings it more into compliance with other sections of the code.
Section 33-2-532 (d)	We are withdrawing our proposed amendments to this Section.

<u>Location of Change</u>	<u>Explanation of Change</u>
Section 33-2-821 (2)	Pertains to subsidiary life insurance companies. In this section there is a prohibition against having over ten percent of your assets in life insurance stocks together with all other subsidiaries you may own. You can only own stocks in life insurance subsidiaries with the Commissioner's consent. We feel this limitation is not practical as the commissioner is the best judge as to the need and amount you may want to hold of other life insurance company stocks. Under some situations you may be deprived of an opportunity to acquire a company and then merge it in.
Section 33-2-822	To help 33-2-822 to better comply with 33-2-821 and to help clarify the section better we have asked for these amendments.
Section 33-2-830 (5)	This allows us to participate in mortgage loans with other institutions such as banks, savings and loans and other insurance companies.
Section 33-2-830 (6)	Because of the change and new methods and innovations in financing we feel the need for what is referred to as wrap-around mortgages. Because of the extremely high interest rates today many owners who have mortgage rates of 6% or 8% do not want to give up that low interest mortgage to put on another higher mortgage on the total new package. We feel it unfair to the consumer to have to do this. Many of the banks and other institutions especially in the East and on the West Coast are doing wrap-around mortgages.
Section 33-2-832 (6)	We are asking to change 33-2-832(6) to increase the amount of our real estate investment proposal from 5% to 10% instead of 15% as we have in the Bill.
Section 33-2-832 (8)	We are asking to increase our overall amount of real estate owned from 10% to 15% not the 25% as we had in the proposed Bill.
Section 33-2-431 (1)	This allows an insurer to borrow money on a surplus note or debenture not with the restriction of being able to only pay 6% interest on funds we borrow as today it is a little difficult to borrow money at 6% but would allow us to borrow at the going rate and the section referred to in the code, Section 31-1-107, is the Montana interest limitation section.
Section 33-3-201 (3)(d)	To allow domestic insurers to issue preferred stock, in order to assist in financing expansion; and to eliminate all differences between insurer's shares and the shares of other Montana corporations except for the requirement of a minimum \$1 par value.



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Review of Amendments:

HB 376

- a. Page 1, line 6: The title of the bill is changed to reflect the correct short title of the Securities Act.
- b. Page 1, line 22 through 24; and Page 2, line 7 through 10: A change in the wording of subsection (2) of Section 30-10-103 is made for clarification purposes only.
- c. Page 6, line 5 through 9: The definition of a security is expanded by incorporating the risk capital test. The risk capital test is an alternate definition of an investment contract. The current trend in many states (for example, California, Ohio, Oregon, Hawaii, and Washington) is to adopt risk capital theory in order to acquire a more flexible concept of a security for regulation purposes.
- d. Page 6, line 20: The definition of a security is clarified with respect to insurance or endowment policies, and annuity contracts. Fixed policies or contracts, unlike variable policies or contracts, are not securities.
- e. Page 8, line 10 through 15: The exemption from registration available for insurance or endowment policies, or annuity contracts which provide variable returns, is clarified. Policies or contracts providing variable returns are securities subject to the registration requirements of the Montana Securities Act. Registration, however, should not be required when the variable policies or contracts are regulated by the insurance commissioner and registered pursuant to the federal Securities Act of 1933.

- f. Page 9, line 13 through 23: An "exchange" exemption is proposed allowing an exemption for all securities listed on various national or regional exchanges. This exemption is not new in that it existed prior to 1978. The Montana Securities Department finds that elimination of the exemption provides minimal additional protection for the investing public and results in the expenditure of much time and effort by the commissioner's staff to assure registration requirements are met. In any case, investor protection is accomplished with this exemption because the approved exchanges require issuers to meet certain minimum listing requirements.
- g. Page 9, line 24 through page 11, line 15: Numbering changes are made because of the insertion of the exchange exemption.
- h. Page 12, line 6: Language pertaining to fees is stricken because of an intent to consolidate all fee matters in 30-10-209.
- i. Page 12, line 23 through page 13, line 17: The discretionary exemption arises in special and unusual situations which require greater supervision by the commissioner to assure protection of the investing public. In this regard, changes are requested to: 1) require persons requesting the exemption to preserve for 5 years all records pertaining to the security so exempted; and 2) to give the commissioner examination powers with respect to the records to be preserved.

Examination costs, other than those costs associated with routine examinations performed in connection with the grant of the exemption, are to be borne by the issuer or broker-dealer requesting the exemption.

Present language in the discretionary exemption (page 13, line 15 through 17) pertaining to fee matters is stricken with the intent to consolidate all fee matters in 30-10-209.
- j. Page 13, line 22 through page 14, line 12: The exemption for nonissuer isolated transactions is amended to eliminate confusion regarding its application. It has been questioned whether the exemption allows only "one" transaction, or whether a person can make as many offers or sales as he/she wants as long as they are "isolated." To resolve the confusion, the State Auditor proposes adoption of language used by other states in regulating this area of concern. Specifically, the proposed language allows an owner of securities, who is not a broker-dealer, salesman, issuer, or underwriter, to dispose of the securities as long as he or she does not do so in repeated and successive transactions of a like character.
- k. Page 14, line 13 through 15: The changes made here are for clarification purposes only.
- l. Page 14, line 16 through page 15, line 4: The "manual" exemption presently found in 30-10-105(2)(a)(i) (see Page 14, line 16 through 20) provides little or no protection for the investing public. An issuer of a security can be listed in a manual merely by paying a fee and submitting a balance sheet. The securities commissioner proposes replacement of the manual exemption with an exemption based on securities which are reported on NASDAQ (Nas-deck) quotation system.

The proposed exemption, like the former "manual" exemption, is a secondary trading exemption (Secondary trading is all trading of a security after its initial issuance). Protection of the investing public is accomplished by the listing requirements of NASDAQ. In other words, securities must meet certain financial requirements before they will be allowed to be reported on NASDAQ.

(reported)
- m. Page 15, line 11 through page 16, line 5: The denial and revocation powers in 30-10-105(2)(b) are stricken with the intent to incorporate all such powers into new section 30-10-106.

- n. Page 16, line 8 through 14: Changes originally proposed by the State Auditor are withdrawn because they would tend to work a hardship on broker-dealers without providing a significant increase in investor protection.
- o. Page 17, line 8 and line 11: The changes are for clarification purposes only.
- p. Page 19, line 8 through 11: Some aspects of this exemption, as it presently reads, have no apparent protective qualities for Montana investors. In addition, it is difficult to determine the proper application of this subsection because of its confusing language. The State Auditor thus proposes striking confusing and needless parts of the exemption in an effort to clarify its meaning and application.
- q. Page 19, line 13 through 16: Sections 4 and 5 of this bill are for renumbering purposes only. Section 5, as it appeared in the first reading of this bill, also proposed changes appearing in the stricken language on page 21, lines 6 and 7. These changes, regarding when an application for registration is considered to be "filed" with the commissioner, are now viewed as unnecessary in light of changes proposed in House Bill 377 pertaining to when registrations become effective. For this reason, the entire language of Section 5 of this bill, following the renumbering instruction on Page 19, line 16, is stricken.
- r. Page 22: New Section The proposed new section granting the commissioner review powers over certain enumerated exemptions is in accord with the securities laws of the majority of other states. These powers are necessary because it is virtually impossible to structure a general exemption to fit every security or transaction that might arise under it. In this regard, it is difficult to assure investor protection by having an inflexible exemption over which the commissioner has no review. The proposed new section combines former exemption review powers and adds additional review powers with respect to exemptions which have proved troublesome.

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