

## HOUSE BUSINESS & INDUSTRY COMMITTEE

Chairman, Rep. Jerry Metcalf, called the Business & Industry Committee to order on February 8, 1983, at 9:00 a.m. in Room 420 of the Capitol Building, Helena, Montana. All members were present.

### HOUSE BILL 571

REP. LES KITSELMAN, District 60, sponsor, opened by saying this bill is basically in the best interest of the consumer. It is a model bill which was adopted by the National Association of Insurance Commissioners (NAIC). This bill permits the policy loan interest rates on a life insurance policy to be adjusted according to rules provided in the bill. Policy loan interest now is stipulated in the policy and is usually lower than current market rates.

### PROPOSONENTS:

LESTER H. LOBLE, II, American Council of Life Insurance, said whole life insurance policies must contain a provision permitting the policy owner to borrow money from the insurance company and secure the loan by the cash value of the policy. It is only fair that the interest on policy loans reflect current market conditions. A policy with an adjustable loan rate will have a bigger dividend than a policy with an 8% loan rate. Small policyholders are subsidizing the borrowing of the large policyholders. HB 571 proposes a dynamic measure of the maximum loan rate. On new policies, the loan rate could be structured so that its maximum rate is the Moody's composite index. If the index went up, the interest rate could go up. If the index came down then interest rates would have to come down. Lowering the rate is mandatory under this bill. A company may choose to remain under the existing law or insert the adjustable loan rate in its policies. (Exhibit #1)

ED HAUSKEN, Montana Association of Life Underwriters, said his organization supports this bill.

NORMA SEIFFERT, Montana Insurance Department, said she heartily endorses this bill.

OPPONENTS: none

### QUESTIONS:

REP. WALLIN: If the interest rate goes down is a person locked into the premium so the company gets a greater spread?

WILLIAM CARROLL, American Council of Life Insurance: This bill does not deal with premiums. The customer may make a loan securing it with the policy. The law makes it 8% whether the interest rate goes up or down. The bill would give the company a choice of selling those policies or a new policy with a variable interest rate so the maximum interest rate the company could charge would follow the market place rate.

REP. FABREGA: Moody's is a pretty good rate of interest. It's generally lower than commercial loans? Mr. Carroll: Yes.

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Business & Industry Committee

REP. ELLISON: What percentage of the policy statewide is actually loaned back to the policy holder:

REP. KITSELMAN: I sold two one million dollar policies which had premiums of \$53,000. After it was done, he only had to come up with \$8,000 out of his pocket. It has no relation to the face amount unless it's an endowment policy.

REP. JENSEN: What percentage of the face value can you borrow against the policy? REP. KITSELMAN: At the 6% rate you can borrow up to 94% of the cash value. There is no relation to the face amount of the policy.

REP. METCALF: On page 3, subsection 5 it provides for notifying the policy holder if the interest rate increases but it says nothing about notifying if the rate goes down. Why?

ED ZIMMERMAN, American Council of Life Insurance: Advance notice should be given if the rate is going to increase so a policy holder can look elsewhere. If the rate is going down, the policy holder will just be pleasantly surprised when they get their regular notice.

REP. METCALF: You could take a loan out on a current policy and it would apply?

Mr. Lobel: No. this is just on "new" policies.

REP. KITSELMAN: There cannot be any changes on a policy once you are accepted as a risk. It's a contract.

#### HOUSE BILL 592 and HOUSE BILL 572

REP. KITSELMAN, District 60, sponsor, opened by saying these two bills go together and one will not work without the other. House Bill 572 revises the provisions and mathematical formulas used in the valuation for all insurance policies. House Bill 592 revises the provisions of the standard non-forfeiture clause required to be included in life insurance policies issued in Montana.

#### PROPOSERS:

WILLIAM CARROLL, American Council of Life Insurance, said these bills set the standards and interest rates actuaries must follow. Because we live longer, a new mortality table has been introduced into this bill. Also, the interest rates are being changed. Currently, the interest rate allowable is 4% and for forfeitures it's 5%. These seem low. It takes a while for the company to see that these rates are out of line. We have a system for automatically changing the rates in the future. It doesn't set the interest rates equal to the index. It gets a weighted average. The affect of this lowers the cost of insurance to the consumer. We won't have to hold reserves as they will come from the premiums. This makes it possible to lower the premiums.

NORMA SEIFFERT, Montana Insurance Department, said they would like to recommend "do pass" on these bills.

ED HAUSKEN, Montana Association of Life Underwriters, said they strongly encourage passage of these bills.

QUESTIONS:

REP. JENSEN: If these bills must go together, why weren't they they one bill? Mr. Loble: These affect two parts of the insurance code and the law says you have to deal with each subject separately.  
REP. METCALF: On page 2, line 10 of HB 572 you refer to the operative date...  
Mr. Carroll: There is a need for a reference to the operative date which appears in HB 592, page 20, subsection 11.  
The idea is to give until 1989 as the outside operative date to implement this.

EXECUTIVE SESSION

HOUSE BILL 572

REP. FABREGA: I move to amend the operative date to coordinate with HB 592. Question: Motion carried unanimously.  
REP. FAGG: I move DO PASS AS AMENDED HOUSE BILL 572.  
Question: Motion carried unanimously.

HOUSE BILL 571

REP. FAGG: I move DO PASS HOUSE BILL 571.  
Question: Motion carried unanimously.

HOUSE BILL 592

REP. FABREGA: I move DO PASS HOUSE BILL 592.  
Question: Motion carried unanimously.

HOUSE BILL 563

REP. FABREGA: I move DO NOT PASS. The fiscal impact is great. I seriously doubt it would give that much more business to overcome the fiscal impact. 5% gross takes 25% volume to make up.  
REP. PAVLOVICH: I move a substitute motion DO PASS. There is a fiscal impact but there are also people in the state who are bootlegging liquor into the state because it's cheaper. A 10% discount would stop alot of that. I would like to suggest an amendment which would give a 10% discount on a \$500 purchase on unbroken cases.  
REP. FAGG: That would be a break for the guy who can write big checks.  
REP. BACHINI: I don't feel Malmstrom should get a 20% discount. They are in direct competition to Great Falls.  
REP. FABREGA: I am going to have a talk with the folks at Malmstrom and tell them I think this should stop.  
REP. ELLERD: I have a problem with this bill. Every year they ask for an discount. If they get it, their prices won't come down.  
REP. PAVLOVICH: If I owned a bar in Bozeman or Billings it would be different. I don't get the price they do - I can't.  
REP. FABREGA: I could see a 10% discount where they are over quota.  
REP. PAVLOVICH: There were 221 licenses with a population of 60,000. We are now at 38,000 and we have 37 all-beverage licenses. Beer is going to go up 30-40 cents a case. There is no way I can charge \$1.05 for a beer.

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Business & Industry Committee

Question: Motion failed 13-6. (Roll call vote attached)

REP. FABREGA: I move to reverse the vote to DO NOT PASS.

Question: Motion carried unanimously.

#### HOUSE BILL 578

REP. KADAS: Are the companies this bill is aimed at illegal?

REP. KITSELMAN: They are fly-by-night people who come in and get to senior citizens, etc.

REP. FABREGA: How do they differ from Blue Cross who is not regulated?

REP. KITSELMAN: They are a provider. They are non-profit.

REP. FABREGA: I move the prepared amendments with the exception of No. 5. (Exhibit #2)

Question: Motion carried unanimously.

REP. FABREGA: I move HOUSE BILL 578 DO PASS AS AMENDED.

REP. METCALF: If they are under no other jurisdiction, then they will come under the jurisdiction of the state.

REP. KADAS: Why can't we say if they don't offer to pay for the audit, we get an order to cease and desist?

REP. METCALF: That would put the burden of proof on the company.

REP. FABREGA: The legitimate ones will provide documentation.

Question: Motion carried unanimously.

#### HOUSE BILL 607

REP. KITSELMAN: I move DO NOT PASS. Many people send their checks all over the country. I don't see how we can ask Texas or Iowa to issue this type of interest. The larger mortgages that would stand to benefit the most from this are generally handled by a commercial loan.

REP. FABREGA: Jan Brown realizes the technical problems with this bill. I make a substitute motion to TABLE the bill for public relation reasons.

REP. HARPER: Everyone of us knows that the banks are making money from these charges.

Question: Motion to TABLE HOUSE BILL 607 carried unanimously.

#### HOUSE BILL 290

REP. FABREGA: I visited with Don Allen and we are beginning to understand this...if we have a refinery that sells all its product to wholesale distributors or importers, they should not pay the \$200. But if they also use their own trucks to deliver directly to service stations, then they should pay the \$200. This fee overcomes the cost of bringing in the new people.

REP. METCALF: This makes it possible for them to forego paying that big tax up front? Rep. Fabrega: Yes. We need a good definition for separating each of these people. It's very confusing

REP. KADAS: There is going to be some who do not opt to pay the \$200 fee. How are they going to pay the tax?

REP. METCALF: If all wholesalers opt to become distributors then the tax is sent on to the retailer.


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Business & Industry Committee

REP. METCALF: We will let Paul Verdon work up the language of these amendments.

The hearing adjourned at 11:00 a.m.

  
\_\_\_\_\_  
REP. JERRY METCALF, CHAIRMAN

  
\_\_\_\_\_  
Linda Palmer, Secretary

# STANDING COMMITTEE REPORT

February 8

19 83

## SPEAKER:

MR. ....

## BUSINESS & INDUSTRY

We, your committee on .....

## HOUSE

having had under consideration ..... Bill No. 572

first

reading copy ( white )  
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA INSURANCE  
CODE STRAIGHT VALUATION LAW; AMENDING SECTIONS 33-2-523 THROUGH  
33-2-526, MCA."

## HOUSE

Respectfully report as follows: That ..... Bill No. 572

### BE AMENDED AS FOLLOWS:

1. Page 2, line 10  
Following: "date of"  
Strike: "[section 8]"  
Insert: "[section 6 of House Bill 592]"
2. Page 2, line 17  
Following: "date of"  
Strike: "[section 8]"  
Insert: "[section 6 of House Bill 592]"
3. Page 8, line 20  
Following: "date of"  
Strike: "[section 8]"  
Insert: "[section 6 of House Bill 592]"

### AND AS AMENDED

DO PASS

# STANDING COMMITTEE REPORT

February 8

83

19.....

**SPEAKER:**

MR. ....

**BUSINESS & INDUSTRY**

We, your committee on .....

**HOUSE**

**563**

having had under consideration ..... Bill No. ....

**first**

reading copy ( **white** )  
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE FROM 5% to  
10% THE DISCOUNT ON THE PURCHASE FROM THE STATE LIQUOR STORE  
OF UNBROKEN CASE LOTS OF LIQUOR; AMENDING SECTION 16-2-201, MCA."**

**HOUSE**

**563**

Respectfully report as follows: That ..... Bill No. ....

**DO NOT PASS**

**XXXXXX  
DO PASS**

# STANDING COMMITTEE REPORT

February 8

83

19

## SPEAKER:

MR. ....

## BUSINESS & INDUSTRY

We, your committee on .....

## HOUSE

592

having had under consideration ..... Bill No. ....

first

reading copy ( white )  
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
MONTANA INSURANCE CODE STANDARD NONFORFEITURE LAW FOR LIFE  
INSURANCE; AMENDING SECTIONS 33-20-202 THROUGH 33-20-204,  
33-20-206, 33-20-207, 33-20-211, AND 33-20-212, MCA."

## HOUSE

592

Respectfully report as follows: That ..... Bill No. ....

DO PASS



# STANDING COMMITTEE REPORT

Page 1 of 2

February 3

83

19.....

MR. **SPEAKER:**.....

We, your committee on **BUSINESS & INDUSTRY**.....

having had under consideration **HOUSE**..... Bill No. **578**

first reading copy ( white )  
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO GIVE THE MONTANA INSURANCE DEPARTMENT JURISDICTION TO DETERMINE JURISDICTION OVER PROVIDERS OF HEALTH CARE BENEFITS; TO MAKE SUCH A PROVIDER SUBJECT TO THE MONTANA INSURANCE CODE IF IT CANNOT SHOW THAT IT IS SUBJECT TO ANOTHER JURISDICTION; AND TO REQUIRE DISCLOSURE TO PURCHASERS OF SUCH HEALTH CARE BENEFITS CONCERNING WHETHER OR NOT THE PLANS ARE FULLY INSURED."**

Respectfully report as follows: That **HOUSE**..... Bill No. **578**

## **BE AMENDED AS FOLLOWS:**

### **1. Title, line 7**

**Following: "BENEFITS?"**

**Insert: "TO INDICATE HOW EACH PROVIDER OF HEALTH CARE BENEFITS MAY SHOW UNDER WHAT JURISDICTION IT FALLS; TO ALLOW FOR EXAMINATIONS BY THE STATE IF THE PROVIDER OF HEALTH CARE BENEFITS IS UNABLE TO SHOW IT IS SUBJECT TO ANOTHER JURISDICTION;"**

### **2. Page 2, line 14**

**Following: "agency"**

**Insert: "of this state or a subdivision thereof or the federal government"**

### **3. Page 2, line 16**

**Following: "person"**

**Insert: "or entity"**

**XXXXXX  
XXXXXX  
DO PASS**

4. Page 2, line 17  
Following: "person"  
Insert: "or entity"

5. Page 2, line 18  
Following: "person"  
Insert: "or entity"

6. Page 3, line 1  
Following: "and"  
Insert: "that"

AND AS AMENDED

DO PASS

# STANDING COMMITTEE REPORT

February 8

19 83

MR. **SPEAKER:**

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

having had under consideration **HOUSE** Bill No. **571**

first reading copy ( white )  
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE REGULATION  
OF INTEREST RATES ON LIFE INSURANCE POLICY LOANS; AMENDING SECTION  
33-20-112, MCA."**

Respectfully report as follows: That **HOUSE** Bill No. **571**

DO PASS

ROLL CALL VOTE ----- BUSINESS & INDUSTRY COMMITTEE COMMITTEE

HB 513

Date: 2-8-83  
No: DO PASS

Date: REVERSE  
No:

Date: No:

Date: No:

Date: No:

Date: No:

Date: No:

Date: No:

PAVLOVICH, Bob	yes						WALLIN, Norm	no				
BACHINI, Robert	yes						METCALF, Jerry	no				
ELLERD, Bob	no											
ELLISON, Orval	no											
FABREGA, Jay	no											
FAGG, Harrison	no											
HANSEN, Stella Jean	yes											
HARPER, Hal	no											
HART, Marjorie	yes											
HOWE, Romona	yes											
JENSEN, William	no											
KADAS, Mike	no											
KITSELMAN, Les	no											
LYBECK, Ray	no											
NISBET, Gerald	yes											
SAUNDERS, Glenn	no											
SCHULTZ, Jim	no											

13-6

HB 571 -- ADJUSTABLE POLICY  
LOAN INTEREST RATE LEGISLATION

Mr. Chairman, ladies and gentlemen of the Committee. My name is Lester H. Loble, II. I represent the American Council of Life Insurance. ACLI has more than 500 member companies who write 95% of the life insurance in force in the United States. The bill I am supporting today is a model bill which was adopted by the National Association of Insurance Commissioners (NAIC), of which our Insurance Commissioner is the senior member in terms of service and is on the Executive Committee. Attached to my remarks is Example 1. It is a resolution adopted November 4, 1981 by the Conference of Insurance Legislators (COIL). This is an organization of state legislators such as yourselves who are interested in insurance legislation.

It must be remembered that an insurance policy is a contract. It is a contract in which the policy owner agrees to pay periodic premiums to the insurance company and the insurance company agrees to pay the face value of the policy when the insured dies. The insurance company is not a bank which holds the money for the insured. The insurance company will pay the full amount of the policy whether the insured dies in the second year the policy is in force or the 40th year the policy is in force. It is not returning the same premium dollars collected from each individual insured.

Whole life insurance policies must contain a provision permitting the policy owner to borrow money from the insurance company and secure the loan by the cash value of the policy.

Given this requirement, it is only fair that the interest on policy loans reflect current market conditions.

Let us consider the following:

1. Companies must make loans.
2. The loan rate currently cannot exceed 8%.
3. When cash is diverted to low interest rate loans the cash cannot be invested at market rates.
4. The overall return on investments is then reduced.
5. The investment return has a direct and immediate effect on premiums charged to the policyholder and dividends paid to the policyholder. Example 2 shows a policy with an adjustable loan rate will have a bigger dividend than a policy with an 8% loan rate. This is because all of the company's investments backing this policy, including policy loans, will be made at the current market rate.
6. Premiums and dividends affect all policyholders whether they borrow or not.

Studies done by ACLI show that, by and large, the large policyholders borrow and the small ones don't. This means, in effect, that the small policyholders are subsidizing the borrowing of the large policyholders.

Of more dramatic concern to Montana, though, is this. Insurance companies have a most important role in capital formation here and elsewhere. There has been a great deal of interest this session in finding funds to invest in Montana, whether those be coal tax funds or other type funds. Example 3 shows the dollar value of mortgages owned by life insurance companies in Montana. As you can see there was practically \$540,000,000 of mortgages of various

types owned in Montana by life insurance companies. These are loans for farms, ranches, homes, office buildings and hotels. If a life insurance company is forced to loan its funds to policyholders at rates well below market then this very important source of capital for Montana will not be available.

Accordingly HB 571 proposes a dynamic measure of the maximum loan rate. The loan rate for policies issued after October 1, 1983 could be structured so that it corresponded to the Moody's Composite Average Yield on Corporate Bonds. This bill would not affect existing policies. But for new policies the policy loan rate could be structured so that its maximum rate is the Moody's composite index. If the Moody's composite index went up, the interest rate could go up. If the Moody's composite index came down then interest rates would have to come down. Raising the interest rate is optional under this bill but lowering it is mandatory.

As you can see from page 2, Section 4 of the bill, the bill provides for an option. A company may choose to remain under the existing law requiring a maximum interest rate of not more than 8% or it could insert the adjustable or flexible loan rate in its policy. Note on page 3 of the bill at line 2 the maximum rate must be calculated at least once a year but not more than four times a year. Unless the rate moved up or down half a percent or more, there could be no change in the interest rate of the policy. Note that at line 7 if there is an increase it is discretionary with the insurance company but at line 10 if there is a decrease then it is not discretionary. The interest rate must come down. The balance of the bill sets forth the notice

requirements so that the policy holder understands exactly how the policy loan will work.

Adjustable policy loan rates are permissible in 39 states either by law or regulation, including all of our neighboring states. We solicit your support on HB571 and thank you for your time and attention.

I have with me Mr. Ed Zimmerman, an attorney with ACLI and Mr. Bill Carroll, an actuary with ACLI. We will be happy to respond to your questions.



RESOLUTION NO. 3

Variable Loan Interest Rates

WHEREAS, our economy has for the past two years continued to experience extraordinarily high market interest rates, while interest rates on loans against whole life insurance policies are generally limited by statute to a maximum of 8%; and

WHEREAS, this spread between market interest rates and policy loan interest rates has created an unprecedented demand by policyholders for loans, which demand has in turn caused severe cash flow problems for life insurance companies, and an increased subsidization by small policyholders of large policyholders; and

WHEREAS, in response to these problems the National Association of Insurance Commissioners at its December 1980 meeting adopted a Model Policy Loan Interest Rate Bill which permits life insurance policies to contain a provision for a fully adjustable interest rate tied to a corporate bond index which reflects market rates as an alternative to the 8% maximum rate; and

WHEREAS, in June 1981, committees of the National Association of Insurance Commissioners and the Conference of Insurance Legislators jointly issued a statement urging support of the new Model Policy Loan Interest Rate Bill;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Insurance Legislators, in convention assembled this 4th day of November, 1981 in Kansas City, Missouri, recognizing these events and the continuing problems resulting from statutorily fixed policy loan interest rates, adopt the National Association of Insurance Commissioners Model Policy Loan Interest Rate Bill as a Conference of Insurance Legislators Model Policy Loan Interest Rate Bill and support and urge its enactment in each state.

# Illustrative Dividends Based on Current Dividend Scale

## NEW YORK LIFE INSURANCE COMPANY

Whole Life Non-Smoker  
 AGE: Male 35  
 Annual Premium: \$1,482  
 Face Amount: \$100,000

<u>End of Policy Year</u>	<u>8% Rate</u>	<u>Adjustable Rate</u>	<u>% Increase</u>
1	\$ 0	\$ 0	0
2	0	0	0
3	194	194	0
4	237	272	13.0%
5	284	355	20.0%
6	332	440	24.5%
7	381	528	28.0%
8	432	620	30.0%
9	484	712	32.0%
10	535	807	34.0%
11	591	904	35.0%
12	681	1,005	32.0%
13	775	1,111	30.0%
14	874	1,220	28.0%
15	973	1,331	27.0%
16	1,074	1,447	26.0%
17	1,178	1,565	25.0%
18	1,283	1,685	24.0%
19	1,389	1,807	23.0%
20	1,500	1,933	22.0%

1981 MORTGAGES OWNED BY LIFE INSURANCE COMPANIES  
IN MONTANA

Farm Loans	\$374,500,000
Non Farm Loans - FHA	17,400,000
Non Farm Loans - VA	3,200,000
Non Farm Loans - Conventional	144,800,000
	<u>\$539,900,000</u>

Source: Life Insurance Facts, American Council  
of Life Insurance, Washington, D.C.

H.B. 578

Exhibit #2

1. Title, line 7 ..... 19 .....  
Following: "BENEFITS"

Insert: "TO INDICATE HOW EACH PROVIDER OF HEALTH CARE BENEFITS MAY  
SHOW UNDER WHAT JURISDICTION IT FALLS; TO ALLOW FOR EXAMINATIONS BY  
THE STATE IF THE PROVIDER OF HEALTH CARE BENEFITS IS UNABLE TO SHOW  
IT IS SUBJECT TO ANOTHER JURISDICTION;"

2. Page 2, line 14  
Following: "agency"

Insert: "of this state or a subdivision thereof or the federal  
government"

3. Page 2, line 16  
Following: "person"  
Insert: "or entity"

4. Page 2, line 17  
Following: "person"  
Insert: "or entity"

5. Page 2, line 17  
Following: "code"

Insert: "The person or entity being examined shall pay the  
charges and expenses directly to the person appointed by the  
commissioner to perform such examination in accordance with the  
provisions of Section 33-1-413(1), MCA."

omit #5

6. Page 2, line 18  
Following: "person"  
Insert: "or entity"

7. Page 3, line 1  
Following: "and"  
Insert: "which"

# VISITOR'S REGISTER

HOUSE

COMMITTEE

BILL

DATE \_\_\_\_\_

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# VISITOR'S REGISTER

BILL HB 572 HOUSE \_\_\_\_\_ COMMITTEE \_\_\_\_\_  
DATE \_\_\_\_\_  
SPONSOR \_\_\_\_\_

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITOR'S REGISTER

HOUSE

COMMITTEE

BILL

HB 571

DATE \_\_\_\_\_

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.





*Rep. Jerry Metcalf*

# STATE OF MONTANA

OFFICE OF

**E. V. "SONNY" OMHOLT**

**STATE AUDITOR**

COMMISSIONER OF INSURANCE  
SECURITIES COMMISSIONER  
CENTRAL PAYROLL SYSTEM

HELENA, MONTANA 59604

February 8, 1983

TO: Representative Ron Miller

FROM: Terry Meagher, Montana Insurance Department

RE: Summary of Testimony in Support of HB578 -  
To Determine Jurisdiction of Health Care Trusts.

This legislation is necessary for the benefit and protection of Montana residents to plug a loophole created by the federal government when they passed the Employee Retirement Income Security Act (ERISA) of 1974. Prior to that, Congress felt that regulation and taxation of the insurance business by the states was in the public interest with the McCarran-Ferguson Act which was passed on March 9, 1945, as Public Law 15. This law specifically exempted the insurance companies from the Sherman Act, the Clayton Act, and the Federal Trade Commission Act until July 1, 1948. After that date, the fair-trade and antitrust acts became applicable to the insurance business to the extent that such business was not regulated by state law. Congressional deference to state regulation in any areas of interstate commerce can be justified only as long as regulation by the states continues to be in the public interest.

Apparently, Congress felt that there was a need to provide for trusts to act as unlicensed accident and health insurers when they passed the ERISA ACT of 1974 (copy attached as Exhibit A). When this was passed, it really did not provide for eligibility criteria nor enforcement by the U.S. Dept. of Labor. This opened the loophole for large numbers, possibly hundreds, of unscrupulous entrepreneurs who promote trust arrangements offering health care benefits and to cleverly side-step state regulation and certification by claiming to be an ERISA-exempt Multiple Employer Trust (MET). The U. S. Dept. of Labor requires no prior approval or certification BEFORE that entity can begin selling its insurance program. Information on the "Preemption Under ERISA" is found in the Catholic University Law Review Volume 28:168, pp 187 through 199 (copy attached as Exhibit B). A discussion of METs is found on p. 193 and five basic criteria for a qualified plan are found at footnote 180 on p. 195.

The only other current method by which a trust can legally operate in Montana is:

1. if it meets the group eligibility requirements of Sec. 33-20-1001 and 33-22-501, MCA; and
2. if licensed agents solicit the program; and
3. if a licensed insurer indemnifies the liabilities of the coverage.

Then the funds merely flow through the trust from the payees to the insurer and the trust becomes the master policyholder. Each individual participant receives a certificate of coverage with only a summary of provisions and benefits.

The unscrupulous and illegal operators have cost the American public millions of dollars (estimated) in unpaid claims and have caused legitimate operations to be in favor of some sort of regulation. (copy of letter from the Kemper Insurance Group counsel, Douglas A. Doty, is attached as Exhibit C). Copies of other states' concern to this affect are attached as follows:

Exhibit D: California press release dated 9/13/82  
Exhibit E: Illinois press release dated 11/29/82  
Exhibit F: Utah law and supporting regulation 82-2  
dated 8/25/82

Other states, of which I am aware, that have passed versions of the NAIC Model Jurisdiction Act are: Utah, California, Michigan, and Illinois.

I am still concerned with the means of implementing the examination provision of H.B. NO. 578 at p.2, Section 4. Having the authority to examine a trust without some provision to pay an examiner doesn't have much teeth in it. However, after discussing it with the Commissioner after the hearing, he asked that we withdraw the proposed language for a committee amendment to reference such costs and procedures to Section 33-1-413 (1), MCA. This will leave the bill essentially as a copy of the NACI Model Act but without the financial ability to perform any examinations. Possibly the budget appropriation committee may see fit to fund this by increasing the Department's contracted services budget in the 1986-87 biennium or sooner if the present legislative committees desire to make some provision for earlier implementation. This concern stems from the fact that Montana's examiners are hired on a contract basis and are paid directly by the person being examined rather than actually being on the state payroll as employees.

In addition to the problems and financial losses that these illegal METs are causing the state residents, the State of Montana is losing its 2-3/4% premium tax on every illegal premium dollar that they collect and take out of state.

Several court cases that may be of interest are attached as follows:

Exhibit G: St. Paul Elec. Workers Welfare Fund vs. Michael D. Markman, Minnesota Commissioner of Insurance, 490 Federal Supplement, Civ. No. 3-78-269, pp. 931-935.

Exhibit H: Hewlett-Packard Co. vs Willie R. Barnes, California Commissioner of Corporation, 571 Federal Reporter, 2d Series, pp 502-505.

CALIFORNIA DEPARTMENT OF INSURANCE  
100 Van Ness Avenue  
San Francisco, CA 94102

Contact: Jorge A. Sandoval  
(415) 557-3245  
Home: (415) 221-6697

FOR IMMEDIATE RELEASE  
September 13, 1982

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LEGISLATION TO REGULATE MULTIPLE EMPLOYER TRUSTS (METs)

Insurance Commissioner Robert C. Quinn said effective immediately, the Department of Insurance will take a close and careful look at all Multiple Employer Trusts (METs) operating in California.

Legislation signed by Governor Brown gives the department "jurisdiction to determine jurisdiction" over METs.

METs which are supposed to be regulated by the U.S. Department of Labor were established under the Employee Retirement Insurance Security Act (ERISA) of 1975. Under the law, employers with a commonality of interest are allowed to form a trust for health care benefits for their employees. They provide health care benefits for businesses who could not otherwise afford to purchase such benefits from insurance companies.

During the past several years, 45 METs in California have gone bankrupt leaving many Californians with millions of dollars in unpaid health care bills. The exact number of these trusts in the state is not known. Estimates run as high as 150.

The bill, AB 2670 by Assemblyman Alister McAlister (D-San Jose), allows department investigators and examiners to review the books, records and documents of METs to determine whether or not they are bona fide Multiple Employer Trusts or an illegal insurance company.

In praising the new law, Commissioner Quinn said, "Far too many people have been victimized by illegal METs and this new legislation will go a long way in helping us solve this problem, while allowing legitimate trusts to operate pursuant to federal law."

The National Association of Insurance Commissioners, made up of the nation's insurance regulators, adopted a model MET bill based on the California law at its annual meeting in Philadelphia last June.

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WITNESS STATEMENT

Name Lester H. Loble, II Committee On Business & Industry  
Address POBox 176 Helena Date 2/8/83  
Representing American Council of Life / Insurance Support XXX  
Bill No. HB571, HB572, HB592 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

Statement on HB571 attached.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Edward J. Zimmerman Committee On Business & Indust  
Address 1850 K St NW, Washington, DC Date 2/8/83  
Representing American Council of Life / Insurance Support xxx  
Bill No. HB 571, HB572, HB592 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name William Carroll Committee On Business & Industry  
Address 1850 K St NW, Washington, DC Date 2/8/83  
Representing American Council of Life / Insurance  
Support XXX  
Bill No. HB571, HB572, HB592 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.