

## HOUSE BUSINESS & INDUSTRY COMMITTEE

Chairman, Rep. Jerry Metcalf, called the Business & Industry Committee to order on February 16, 1983, in Room 420 of the Capitol Building at 8:00 a.m. All members were present except Rep. Fabrega and Rep. Harper who were excused.

### HOUSE BILL 727

REP. JOHN SHONTZ, District 53, sponsor, opened by saying this bill is designed to help stop the theft of crude oil in Montana. It provides what kind of documentation the transporter must have when transporting crude oil. Representatives of the oil industry say it's OK because it does not conflict with federal regulations. Montana is losing millions of dollars a year with the theft of crude oil.

PROPOSERS: none

#### OPPOSERS:

B. G. HAVDAHL, Montana Motor Carriers: This legislation is unnecessary because all of the requirements are set forth under Title 69 of the PSC. I am not here to oppose enforcement and safeguarding against theft of crude oil, but we wish that you would amend this legislation so the burden of moving crude oil does not fall on the mover but perhaps on the owner of it. We have three agencies in the state right now empowered to enforce these laws. This would add subject to inspection by a local police officer or sheriff in addition to the other enforcers. The carrier has to have this documentation to receive payment for his commodity and this just adds another burden on the truck driver. We would suggest the PSC be granted the option to strengthen the regulations in this particular area.

CARL RIECKMANN, Rocky Mountain Oil & Gas Association: Our association has not had time to approve or disapprove this legislation, but I agree with Mr. Havdahl that this looks like a paper jungle to add to the trucker.

REP. SHONTZ: It does not put the burden on the driver. The owner has to provide documentation. Law enforcement has no way of bringing conviction on oil theft because the commodity is easily shifted and difficult to track.

#### QUESTIONS:

REP. FABREGA: You mentioned that this is the same as in other states. Rep. Shontz: The Attorney General's office was helpful in developing this legislation. The federal government is changing the law concerning this and we modeled this bill after the state where they just put this in place...Texas.

REP. METCALF: On page 3, subsection 5, it says a person who transports shall keep documentation for at least 3 years. Why? Rep. Shontz: Many times a case doesn't come to court for a year or so.

### HOUSE BILL 710

REP. LES KITSELMAN, District 60, sponsor, opened by saying if

someone comes into Montana and writes a policy and I counter sign, I am entitled to 5%. This bill eliminates this practice. This bill requires that any agent should have a Montana license and pay the premium tax on the policies he sells. If the commissioner isn't aware of a policy being sold, we don't receive any tax dollars. There is a penalty for this of up to \$10,000. I would amend this to \$50,000.

PROPONENTS:

TERRY MEAGHER, Chief Examiner, Montana Insurance Department:  
We take no position on this. We surely do not oppose it.

OPPONENTS: none

QUESTIONS:

REP. METCALF: This bill was before the House in the last session.  
Rep. Kitselman: It was in the form of two bills. I combined them. Last session we had a problem with the Senate in that one member received quite a little income from co-signing policies and it died there.

REP. SCHULTZ: Have you had alot of trouble with this in the past? Mr. Meagher: Yes. We hope if this passes, appropriations will recognize the extra work that it will create.

REP. HARPER: Mr. McGlenn, what is your position on this bill?  
Mr. McGlenn, Independent Insurance Agents of Montana: We support this bill because countersignatures are not necessary today to protect the agents or the consumer. The threat of federal regulation of insurance is always present. Counter-signature laws are frequently referred to by critics of state regulation as protectionist. (Exhibit #1)

REP. FABREGA: If you are a licensed non-resident agent but the state where you are licensed allows Montana agents to write in that state then it can be done without countersignature?  
Rep. Kitselman: Yes.

REP. FABREGA: If we are presently licensing non-resident agents, where do you see the extra costs coming up? Mr. Meagher: They will have to submit a report to the department disclosing their business in Montana. Rep. Fabrega: Do you think they will submit the report if they are subject to Montana income tax? Mr. Meagher: We don't have authority to collect tax. It will have to be done by the Dept. of Revenue.

Mr. McGlenn: Some suggested amendments are on Page 4, line 22, strike: "this part" and insert: "33-2-705". Also, you may want to request that these forms be transmitted to the Dept. of Revenue.

HOUSE BILL 716

REP. JERRY METCALF, District 31, sponsor, opened by saying the needs of local government are great. This bill would ease some of the problems. It would make minor changes in the way you can market bonds.

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Business & Industry Committee

PROPONENTS:

WILLIAM VERWOLF, City of Helena: This bill provides a way to make the bonds of cities, counties and school districts more attractive to buyers. It allows the redemption of general obligation bonds when they're called ahead of the maturity schedule at a premium. This is a thing we now have in revenue bonds but not in general obligation bonds. We are also proposing to sell these bonds at a discount. This is currently being done with industrial revenue bonds. The purpose is so the bonds can be bid by a bond buyer and they pay a discount sealed at 97% of the par value and then resell them to investors at par. An important aspect is that the city should be able to hire a financial consultant to help them prepare the official statement and ready the bonds for public sale. Another thing it does is allow the city council a small amount of flexibility in the interest payment dates. Also, under the serial bond definition, it allows the city commission to determine the schedule at which these bonds will be redeemed. A protection written into this to avoid abuse is that no principal payment may be more than 3 times as large as the immediately preceeding payment.

BRUCE McKENZIE, D. A. DAVIDSON: This bill arose from a sub-committee of I-95 concerning revenue bonds and which had the concern that local governments had difficulty marketing small issues. First - redemption of premium. Buyers want protection against bonds being called ahead of maturity and if they don't see that protection, they want a higher interest rate. This provides for redemption at a premium and thus lower interest rates. Second - Even small communities have access to professionals to help them with bonding so we no longer need to fix the maturity and tie the hands of local communities. There will be a flexible repayment schedule. Third - this provides for flexibility for the first interest payment date. Fourth - There is a resistance in the market place to pay a premium. If we paid the discount, we sell it at par. We don't have the resistance factor that way. Every one of these provisions is empowering the local municipalities and school districts with no more power than what is presently empowered to the state when they sell their general obligation bonds. There should not be a distinction between the state's power and the municipalities.



AL THELAN, City Administrator, Billings: Basically, this bill will allow local government to use some of the professional fiscal management skills that are out there and are currently being used by the state to our betterment. The law prevents us from using consultants to structure bonding in general obligation, which is ridiculous. This bill will try to make the bonds more marketable.

OPPONENTS: none

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Business & Industry Committee

QUESTIONS:

REP. WALLIN: This law doesn't contain any specifications as to the length or term of the bonds? Mr. McKenzie: That is in another section of the code and we are not changing that.

EXECUTIVE SESSION

HOUSE BILL 716

REP. HARPER moved DO PASS HOUSE BILL 716.

Question: Motion carried unanimously.

HOUSE BILL 710

REP. KITSELMAN moved DO PASS HOUSE BILL 710. He moved the amendment on Page 5, line 1 to raise the penalty to \$50,000.

Question: Motion carried with Rep. Pavlovich voting no.

Rep. Kitseleman moved the amendment to insert "33-2-705" on Page 4, line 22.

Question: Motion carried unanimously.

QUESTION: Motion of DO PASS AS AMENDED carried unanimously.

REP. HARPER moved the statement of intent.

Question: Motion carried unanimously.

HOUSE BILL 727

REP. HART moved that House Bill 727 be tabled.

Question: Motion carried unanimously.

HOUSE BILL 147

REP. HARPER: The Senate reported the bill out of committee with height restrictions on it and then they took the bill back and put in the 50/50 provision and then on the floor they put in the pre-fab provision. The height amendment died.

REP. METCALF: Our option is probably to table 147 and go with the Senate bill.

REP. ELLISON moved to TABLE HB 147.

Question: Motion carried unanimously.

HOUSE BILL 691

REP. PAVLOVICH moved the amendments prepared by the Dept. of Commerce.

REP. SCHULTZ: The Board shall meet a minimum of two times a year. Will they do that even if there is nothing going on?

Rep. Pavlovich: We can strike that amendment altogether.

Question: The amendments carried unanimously.

REP. ELLISON: Is it the concensus that they not meet on the fight day? (general agreement)

REP. SCHULTZ: I move on page 2, line 1 that the board shall meet to elect officers before April 1.

Question: Motion carried unanimously.

REP. ELLISON: I move we adopt the amendments of the Department of Commerce as revised.

Question: Motion carried unanimously.

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REP. PAVLOVICH: About the amendments of Kathleen McBride, we want to strike amateur and insert semi-professional. Amateurs are regulated already.

REP. FABREGA: Is semi-pro defined anywhere in the law?

REP. METCALF: The difference between pro and amateur is that pros get paid.

REP. HARPER: I don't think we should strike amateur because they are talking about conflict of interest.

Rep. Pavlovich: I move we add semi-pro to the amendments.

Question: Motion carried unanimously.

REP. FABREGA: I move the amendments as amended.

Question: Motion carried unanimously.

REP. FABREGA: I move we take out principal and put in contestant.

Question: Motion carried unanimously.

REP. METCALF: We will put into the statement of intent that the board may not meet within 48 hours of any wrestling or boxing match or exhibition over which it has jurisdiction.

REP. HARPER: I move the amendments as revised.

Question: Motion carried unanimously.

REP. HARPER: I move HOUSE BILL 691 DO PASS AS AMENDED.

Question: Motion carried unanimously.

REP. HARPER: I move the Statement of Intent be amended as per our discussion on time limitations.

Question: Motion carried unanimously.

REP. HARPER: I move the Statement of Intent as Amended.

Question: Motion carried unanimously.

#### HOUSE BILL 662

REP. JENSEN moved DO PASS HOUSE BILL 662. When the Northwest Power bill came into being, it made it mandatory that utilities buy power from small hydro power plants. The Federal Regulatory Commission says you have to put in for a permit. Now they are swamped with applications. The ones who are given first priority are the municipalities. Chester had no intention of putting in an application for a power plant until this out-of-state company enticed them. They are using Chester and other small communities as fronts for these power plants.

REP. SCHULTZ: This is a deviation from any law we have had before us as to what an irrigation district can do. They want to come up 83 miles to Tiber Dam and completely disrupt the farmer's land. I don't think districts should be able to go outside their district.

REP. FABREGA: The law now reads that unless a district was engaging in power generation before March 30, 1981, they cannot do it now. This bill would open it up again.

REP. HARPER: If we pass this bill does it tip the scale in favor of anyone or does it put the irrigation district in the same standing as the town to get a permit? I don't think we should step into that application process and wipe someone out.

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REP. JENSEN: The bill I passed two years ago is what is throwing the cloud on this. Before that, the district would have had just as much right to develop as the cities.

REP. LYBECK: Should we give out-of-state companies the opportunity to develop this plant, or do we want to keep it here in Montana?

REP. HARPER: Does the legislature now encourage big entities to get into power generation in Montana when, in fact, our public entities are able to do it?

REP. METCALF: This bill is strictly that the irrigation district may engage in the sale of electrical power. That's why I suggest an amendment of "within the district."

REP. JENSEN: If we were to amend this and allow them to only within their districts it would not be fair either. The City of Kalispell has put out applications all over the state. Why should irrigation districts be restricted?

REP. METCALF: That is a good point. The reason they want to do this is to help them pay for the canal. This may not enable them to pay for the canal anyway.

REP. JENSEN: Is there anything in the law that prohibits cities from doing this? No, there is not. If this was not put in two years ago there would not be any question. It puts it back where it was in 1981.

REP. METCALF: They were able to engage in the generation of power before 1981.

REP. JENSEN: But there was nothing that restricted them. Our only worry was Montana Power. I see no reason to restrict them when we don't restrict other entities. The Federal Regulatory Commission defines irrigation district as a municipality. It would be too bad if the language would restrict irrigation districts when the 1981 bill was only meant to clarify things.

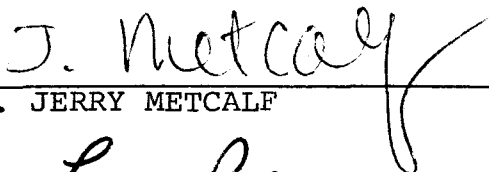
REP. HANSEN: There is nothing more compatible than irrigation and hydro power. Why don't we leave it to them and let them figure it out?

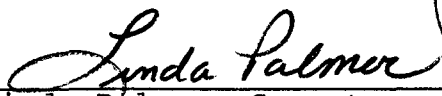
REP. HARPER: What's wrong with competition?

REP. METCALF: If cities can do it and out-of-staters can do it, why can't irrigation districts?

QUESTION: Motion to DO PASS HOUSE BILL 662 carried with Rep. Kitselman, Schultz and Ellerd voting no.

The hearing adjourned at 11:00 a.m.

  
\_\_\_\_\_  
REP. JERRY METCALF

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

# STANDING COMMITTEE REPORT

FEBRUARY 16

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

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

having had under consideration ..... **HOUSE** ..... Bill No. **710** .....

first reading copy ( white )  
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO NONRESIDENT INSURANCE AGENTS AND POLICIES WRITTEN THROUGH SUCH AGENTS; PROVIDING FOR RECIPROCAL REQUIREMENTS FOR COUNTERSIGNATURE OF RESIDENT INSURANCE AGENTS ON POLICIES OF INSURANCE WRITTEN THROUGH NONRESIDENT AGENTS; REQUIRING THE FILING OF AN ANNUAL BUSINESS REPORT; IMPOSING CERTAIN MONTANA TAXES; AND PROVIDING PENALTIES FOR VIOLATIONS; AMENDING SECTIONS 33-17-404, 33-17-1001, 33-17-1004, AND 33-17-1111, MCA."

Respectfully report as follows: That ..... **HOUSE** ..... Bill No. **710** .....

**BE AMENDED AS FOLLOWS:**

Page 4, line 22

Following: "provided in"

Strike: "this part"

Insert: "33-2-705"

Page 5, line 1

Strike: "\$10,000"

Insert: "\$50,000"

AND AS AMENDED

**STATEMENT OF INTENT ATTACHED**

DO PASS

MR. SPEAKER:

WE YOUR COMMITTEE ON BUSINESS & INDUSTRY, HAVING HAD UNDER CONSIDERATION HOUSE BILL NO. 710, FIRST READING COPY WRITE, ATTACH THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT  
HOUSE BILL 710

A statement of intent is required for this bill because it authorizes the Insurance Commissioner to prescribe forms for reporting of business written by nonresident agents. The report must include the name of the company, the policy number, premium earned and commission earned, and any other information as the Commissioner may direct.



# STANDING COMMITTEE REPORT

Page 1 of 8

February 16 1983

SPEAKER:  
MR. ....

## BUSINESS & INDUSTRY

We, your committee on .....

having had under consideration ..... HOUSE ..... Bill No. 691

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A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A BOARD OF ATHLETICS RESPONSIBLE FOR PROTECTING THE PUBLIC FROM FRAUD IN BOXING AND WRESTLING EVENTS AND FOR ISSUING LICENSES TO PROMOTERS, REFEREES, AND OTHERS INVOLVED WITH THOSE EVENTS."

Respectfully report as follows: That ..... HOUSE ..... Bill No. 691

### BE AMENDED AS FOLLOWS:

1. Page 1, line 19  
Following: "through"  
Strike: "11"  
Insert: "13"

2. Page 1, line 25  
Following: "compensation"  
Insert: "-meetings-department to keep records"

3. Page 2, line 1  
Following: "shall"  
Insert: "meet to"

4. Page 2, line 4  
Following: "and"  
Insert: ", except as provided in [section 6],"

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5. Page 2

Following: line 7

Insert: "(3) The department shall keep a record of the board's proceedings which are public records subject to public inspection.

Section 4. Enforcement of rules by board member -- board designees. (1) In absence of a quorum of the board, any board member in attendance at and supervising a contest or exhibition has the full power of the board in enforcing rules of the board.

(2) The board may designate in writing representatives to act specifically on behalf of the board but only within the scope of the written authority.

Section 5. Board member conflict of interest. No board member may:

(1) serve as a manager, promoter, or trainer of a professional or semi-professional boxer or wrestler or an amateur boxer;

(2) have a financial interest or affiliation in a professional or semi-professional boxing or wrestling match or an amateur boxing match;

(3) serve as ring official, timer, referee, or judge at a professional or semi-professional boxing or wrestling match or an amateur boxing match; or

(4) participate in a professional or semi-professional boxing or wrestling match or an amateur boxing match."

Renumber: subsequent sections.

6. Page 2, line 10

Following: "professional"

Insert: "or semi-professional"

7. Page 2, line 12

Following: "purse"

Strike: "or"

Insert: "and"

8. Page 3, line 4

Following: "professional"

Insert: "or semi-professional"

9. Page 3, line 6

Following: "unless"

Insert: "he is licensed by the board and"

10. Page 3, line 9

Strike: "10"

Insert: "13"

11. Page 3, line 12

Strike: "11"

Insert: "13"

12. Page 4, following line 2

Insert: "(3) The rules shall meet or exceed the safety codes required by recognized professional boxing and wrestling organizations and provide reasonable measures for the fair conduct

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of the matches or exhibitions and for the protection of the health and safety of the contestants. The rules shall require a physical examination of each contestant prior to each match or exhibition and the attendance of a licensed physician at ringside and shall provide for the qualifications of judges, referees, and seconds and for the payment of such officials by the promoter."

13. Page 4, line 9

Following: "professional"

Insert: "or semi-professional"

14. Page 4, line 11

Following: "professional"

Insert: "or semi-professional"

15. Page 4, line 13

Following: "managers,"

Insert: "boxers, wrestlers, seconds, trainers,"

16. Page 4, line 19

Following: "amateur"

Strike: "or"

Insert: ","

Following: "professional"

Insert: ", or semi-professional"

17.

17. Page 4, line 22

Following: "professional"

Insert: "or semi-professional"

18. Page 5, line 1

Strike: "11"

Insert: "13"

19. Page 5, line 15

Strike: "11"

Insert: "13"

20. Page 5, line 22

Strike: "11"

Insert: "13"

21. Page 6, line 3

Strike: "11"

Insert: "13"

22. Page 6, line 10

Following: "through"

Strike "11"

Insert: "13"

23. Page 6, line 13

Following: "through"

Strike "11"

Insert: "13"

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24. Page 6, line 15

Following: "amateur"

Insert: ", "

Following: "professional"

Insert: ", or semi-professional"

25. Page 7, line 1

Following: "through"

Strike: "11"

Insert: "13"

AND AS AMENDED+  
DO PASS

STATEMENT OF INTENT ATTACHED

MR. SPEAKER:

WE YOUR COMMITTEE ON BUSINESS & INDUSTRY, HAVING HAD UNDER CONSIDERATION HOUSE BILL NO. 691, FIRST READING COPY WHITE, ATTACH THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT  
HOUSE BILL 691

A statement of intent is required for this bill because it grants rulemaking authority to the Board of Athletics. Qualifications for licensure to conduct boxing or wrestling events or to act as a referee, manager, or judge should be based primarily on particular knowledge required for the particular license and the integrity of the applicant, as indicated by past activities. To this end, the rules should address means of determining knowledge and integrity, such as affidavits or references evidencing experience and good reputation in the particular field.

A Board should also look to the regulations established by the World Boxing Association for guidance.

The intention of the legislature is that the Board may not meet within 48 hours of any wrestling or boxing match or exhibition over which it has jurisdiction.

# STANDING COMMITTEE REPORT

FEBRUARY 16

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**SPEAKER:**

MR. ....

**BUSINESS & INDUSTRY**

We, your committee on .....

having had under consideration ..... **HOUSE** ..... Bill No. **716**

first reading only White  
Color

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REDEMPTION OF COUNTY GENERAL OBLIGATION, MUNICIPAL GENERAL OBLIGATION, AND SCHOOL DISTRICT BONDS AT A PREMIUM; ALLOWING SUCH BONDS, TOGETHER WITH SPECIAL IMPROVEMENT DISTRICT BONDS, TO BE SOLD AT A DISCOUNT; ALLOWING THE PAYMENT OF FEES IN CONNECTION WITH THE SALE OF SUCH BONDS; REDEFINING THE TERM "SERIAL BONDS" AS IT RELATES TO SUCH GENERAL OBLIGATION BONDS; AND ALLOWING FLEXIBILITY AS TO THE FIRST INTEREST PAYMENT DATE ON ALL SUCH BONDS; AMENDING SECTIONS 7-7-2207, 7-7-2211, 7-7-2251, 7-7-2254, 7-7-4206, 7-7-4210, 7-7-4251, 7-7-4254, 20-9-408, 20-9-410, 20-9-430, AND 20-9-432, MCA.?"

Respectfully report as follows: That ..... **HOUSE** ..... Bill No. **716**

DO PASS

# STANDING COMMITTEE REPORT

FEBRUARY 16

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MR. SPEAKER:.....

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

having had under consideration HOUSE..... Bill No. 662.....

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color

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE AUTHORITY  
OF IRRIGATION DISTRICTS TO ENGAGE IN ELECTRICAL POWER OPERATIONS;  
AMENDING SECTION 35-7-1961, MCA."

Respectfully report as follows: That HOUSE..... Bill No. 662.....

DO PASS

## REGARDING HOUSE BILL NO. 710

To: The House Business and Industry Committee  
From: Independent Insurance Agents' Association of Montana  
Date: February 16, 1983  
Re: Support of House Bill No. 710

Countersignature laws are not necessary today to protect the Montana insurance agents, or the Montana insurance consumer. Other state laws and regulations assure that the practices of insurers, agents, and brokers and the coverages extended fully conform to the laws of the particular state. Today, countersignature laws have become a formality, unnecessarily adding cost and delay to deliver the insurance product.

This bill will provide a more workable form of regulation on policies written by out-of-state firms or agents on risks in Montana. We feel the Montana insurance consumer can best benefit from an open insurance market, not a market closed in by false, provincial legislation designed to "protect" the agents of the state. Proper safeguards and requirements have been written into this bill to prevent abuses by out-of-state agents, collect the taxes rightfully due on all such insurance commissions, strengthen the enforcement muscle of the Insurance Commissioner's office on this business and yet allow an honest, open, and competitive insurance market to exist for our Montana consumers.

Passage of this bill will cost the agents of Montana income from countersignature fees. Most, if not all, of the agents receive some countersignature fees in Montana. The reason the members of our association favor the passage of this bill is the continued threat of federal regulation of insurance. Countersignature laws are frequently referred to by critics of state regulation as



protectionist, anti-competitive, possible restraint of interstate commerce, and justification for greater federal involvement. The Department of Justice was highly critical of them in its 1977 Report on Insurance which concludes that the McCarran-Ferguson Act should be repealed. The Department of Commerce mentions countersignature laws as a reason for passage of its Products Liability Risk Retention Act, this law was passed in 1982, it pre-empted state insurance law and lodged regulatory authority for products liability self-insured groups in the Department of Commerce. We feel that insurance is best regulated by the individual states where their individual needs are understood.

The Independent Insurance Agents' Association of Monntana urges the House Business & Industry Committee to give a do-pass recommendation to House Bill 710.

Roger McGlenn    Lobbyist

To: IIAA Officers and Executive Committee

Date: 7/15/80

From: David G. Colman

Copies: Messrs. Perin,  
Yates & Cantoni

## COUNTERSIGNATURE LAWS

### Background

Countersignature laws require that business produced outside the state be countersigned by a resident agent of the state where the business is located. Many of these statutes were enacted at the turn of the century. At that time, state legislators believed that countersignature laws would provide protection to the local insured on the premise that the countersigning resident agent would assure that the forms and conditions of the policy conformed to the laws and practices of the locality. In addition, the insured would have recourse in the event of a claim by suing the out-of-state insurance company through its resident agent.

The resident countersigning agent also benefits under the countersignature laws, since in many instances the countersigning agent receives part of the commission on the business produced.<sup>1</sup> Consequently, these statutes often have the effect of protecting resident agents from competition since out-of-state agents are discouraged from producing business in other states because of the inefficiency associated with coordinating the business with the resident agent, and the potential loss of part of commission.

The legality of countersignature laws was confirmed by the United States Supreme Court in Osborn v. Ozlin,<sup>2</sup> which upheld the Virginia countersignature statute that mandated division of commissions between resident and out-of-state agents. However, the Osborn decision was rendered four years before United States v. South-Eastern Underwriter's Association,<sup>3</sup> which found insurance to be interstate commerce. Accordingly, there is no assurance that a countersignature law would withstand a similar challenge today.

### Current Need for Countersignature Laws

With the enactment of the McCarran-Ferguson Act,<sup>4</sup> the insurance industry has become highly regulated on the state level. In contrast to conditions existing

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<sup>1</sup>Many but not all states with countersignature laws require that the out-of-state agent share part of his commission with the resident agent.

<sup>2</sup>310 U.S. 53 (1940)

<sup>3</sup>322 U.S. 533 (1944)

<sup>4</sup>15 U.S.C. §1011 et. seq.

70 or 80 years ago, states have the regulatory capability to assure that business produced by an out-of-state agent conforms to local laws and practices without resorting to the countersignature requirement. In states that do not require the physical countersignature of a policy, the need to engage a resident agent is even more questionable because often the countersigning agent will not even see the policy to examine it. To the extent that the resident agent is receiving a commission under these circumstances, the insured is paying for services that he is not receiving. The need to provide the local insured with an adequate recourse in event of a claim against the out-of-state insurance company through the countersigning resident agent is dubious since state insurance laws extend such protection by requiring out-of-state insurance companies to name the state insurance commissioner as their agent-in-fact.

Therefore, it appears that the rationale for states retaining countersignature laws is to prevent the local agent from losing local business to out-of-state agents.

#### Survey of State Countersignature Laws

Increasingly, states are recognizing that countersignature laws are anachronistic. The following states no longer require countersignatures:<sup>5</sup> California; Colorado; Connecticut; Michigan; Minnesota; New Mexico; New York; Oregon; Tennessee<sup>6</sup>; Vermont and Washington. The following states have waived their countersignature requirements to the extent of reciprocity<sup>7</sup>: Delaware; Iowa; Maryland; Utah and Virginia. The following states have retained their countersignature requirements: Alabama; Alaska; Arizona; Arkansas; District of Columbia; Florida; Georgia; Hawaii; Idaho; Illinois; Indiana; Kansas; Kentucky; Louisiana; Maine; Massachusetts; Mississippi; Missouri; Montana; Nebraska; Nevada; New Hampshire; New Jersey; North Carolina; North Dakota; Ohio; Oklahoma; Pennsylvania; Rhode Island; South Carolina; South Dakota; Texas; West Virginia; Wisconsin and Wyoming.

#### Anti-Competitive Effect Recognized by the Federal Government

The anticompetitive aspects of countersignature laws have been recognized by the Federal government. A recent Department of Justice study on insurance characterized state countersignature laws as "another form of artificial restraint

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<sup>5</sup>Except some of these states have retaliatory provisions which require countersignature if the nonresident agent's state has a countersignature requirement.

<sup>6</sup>Required only for fidelity, surety, bonding (except bid bonds).

<sup>7</sup>These statutes eliminate or reduce the countersignature requirement depending on the countersignature requirements in the nonresident agent's state.

on the marketing of insurance".<sup>8</sup> Similarly, in a statement accompanying the proposed Product Liability Risk Retention Act of 1979, which grants the Department of Commerce regulatory authority for product liability self-insured groups, countersignature laws were cited as one justification for the act's passage.<sup>9</sup> Accordingly, state regulatory excesses such as a countersignature law provides a forceful argument for increasing federal regulation of insurance.

The increasing criticism of these laws has led the National Insurance Producers Council, representing every national producer organization, to take a position urging the repeal of the countersignature laws.

In the long term, state regulation of the insurance business will prevail only if steps are continually taken to improve it where possible, including the discarding of laws that have anticompetitive effects and have outlived their useful purpose. Commissioner Wesley Kinder of California, President of the National Association Insurance Commissioners, made the point at the June, 1980 NAIC meeting: "The fate of our system of regulation at the state level remains primarily in our control".<sup>10</sup>

#### IIAA Position on Countersignature Laws

In 1972, the National Board of State Directors recognized that countersignature laws were outmoded. Accordingly, the National Board adopted a position favoring total abolition of countersignature laws.<sup>11</sup>

#### Conclusion

Retention of countersignature laws under the present regulatory climate on the state level cannot be justified. The states have adopted other laws and regulations to assure that the coverages purchased by the insurance consumers meet their legal requirements. Countersignature statutes serve no useful purpose, increase the cost of insurance, are protectionistic, and result in lessening competition. IIAA should increase its effort to seek their repeal before a federal solution is imposed.

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<sup>8</sup>"The Pricing and Marketing of Insurance," A Report of the Department of Justice to the Task Group on Antitrust Immunities, January 1977, p. 328, n. 584.

<sup>9</sup>Department of Commerce, "Product Liability Risk Retention Act of 1979, Statement of Purpose and Need", Tab A, Attachment p.3.

<sup>10</sup>National Association of Insurance Commissioners, News Release dated June 16, 1980.

<sup>11</sup>See pp. 3-5 Minutes of the January 1972 Meeting of the National Board of State Directors.

# WITNESS STATEMENT

Name Al T. Helton  
 Address 1818 Park Hill  
 Representing city  
 Bill No. \_\_\_\_\_

Committee On \_\_\_\_\_  
 Date 2-16-83  
 Support ☒  
 Oppose \_\_\_\_\_  
 Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Comments:

1. Bill will bring portions of municipal bond legislation with the 1980 CS
2. Will allow local gov. to use professional fiscal management
3. Bills available through consultants.
4. Bill came from an I-95 subcommittee looking at a state bond bank - attach new criteria to monitor we must make the bonds as marketable as possible to the wider market

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

# VISITOR'S REGISTER

HOUSE

Bus. Ind.

COMMITTEE

BILL

710

DATE \_\_\_\_\_

2-16

SPONSOR

K. Wolman

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITOR'S REGISTER

HOUSE Bus. & Incl.

COMMITTEE

BILL 716

DATE 2-16

SPONSOR Metcalf

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Bus. Incl.

COMMITTEE

727

2-16

Shentz

Carl Rieckmann

# Bill days

Mant. Petr. Assoc.

SUP-  
PORT

OP-  
POSE

X?

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.