

MINUTES OF THE MEETING  
BUSINESS AND INDUSTRY COMMITTEE  
MONTANA STATE SENATE

March 15, 1983

The meeting of the Business and Industry Committee was called to order by Chairman Allen Kolstad on March 15, 1983, at 10:05 a.m., in Room 404, State Capital.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF HOUSE BILL 655: An act to exclude line trucks and bucket trucks from the laws regulating hoisting engines and providing an immediate effective date.

Representative John Harp passed around pictures of what a line truck is to the committee. When they introduced the bill they had a time defining a line truck. They needed the Statement of Intent to give the Department of Workers Compensation the authority of rulemaking. They did find a definition of a line truck so the Statement of Intent is no longer needed. There was some concern whether they could exempt the large cranes. They did not want to do this. They just wanted to exempt the line truck and bucket trucks. On line 4 they define bucket trucks. They feel presently all line trucks and bucket trucks fall under a strong apprentice program. They go through several thousand hours training before they go on these trucks. The utilities and private line contractors do not put anyone on that could not run these trucks. With the apprentice program and incentives to keep safe they ask that this bill Be Concurred In.

PROPOSERS TO HOUSE BILL 655: Bob Quinn, Montana Power Company and Pacific Power and Light stated they support House Bill 655.

Gene Pigeon, Montana Dakota Utilities stated they support House Bill 655.

There were no further proponents and no opponents.

The hearing was closed on House Bill 655.

ACTION ON HOUSE BILL 655: Senator Lee made the motion that House Bill 655 Be Concurred In. Senator Dover seconded the motion.

The Committee voted unanimously, by voice vote, that HOUSE BILL 655 BE CONCURRED IN.

Senator Lee will carry this bill on the floor.

CONSIDERATION OF HOUSE BILL 710: 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.

Representative Les Kitselman stated this bill deals with the repeal of countersignature law. A person writing property and casualty insurance with an out-of-state license simply signs his name and receives 50% of the commission. In the past Senator Hazelbaker has objected to this

and this year he has no opposition to the bill in its present form. You will notice that reciprocity is inserted. They will comply with our laws. Where we do not have this agreement the person doing business in Montana must have a nonresident license. The next section, page 4, section 3, deals with nonresident licensees subject to business income. He then must file annually the reported income to the State of Montana within 45 days after January 1st. The next section, section 5, is the penalty section. There is up to \$50,000 fine and/or a suspension of license for up to five years. The reason for the fine is the property and casualty policies. The small policies are not the problem. It is when someone flies in to write a policy. This is going to make them comply. They must have a nonresident license and comply with those same regulations and also report that income and pay the premium taxes on the policy. There will be an increase in the amount of money they will be receiving. It will plug a loophole that is being abused now. The person who is buying the insurance does not realize they are coming in from out of state and is not complying with the laws; however, like most people they are looking for the lowest premium dollar for their policy.

PROPOSERS TO HOUSE BILL 710: Roger McGlenn, Independent Insurance Agents' Association of Montana, stated they support this bill. His written testimony is attached to the minutes. (Exhibit No. 1)

Pat Melby, Alliance of American Insurers stated they support House Bill 710 and all bills in all states intending to eliminate the countersignature law.

Norma Seiffert stated the Insurance Department supports this bill for the reasons set forth by the sponsor.

There were no further proponents and no opponents.

QUESTIONS FROM THE COMMITTEE: Senator Goodover asked how does this bill differ from the one we killed two years ago? Mr. McGlenn stated the Legislative staff was able to make some changes agreeable to all parties. The fee was amended higher in the House to \$50,000 because many policies exceed the million dollar limit in Montana.

Senator Gage asked on page 4, subsection 2, do resident agents also have to file the information on policies written? Mrs. Seiffert stated I think not.

Senator Christiaens asked can you tell me the rate of the premium tax that is currently charged on out-of-state? Mr. McGlenn stated most are 2 3/4% except for fire which is 5%.

Senator Christiaens asked what kind of reciprocity is between the state of Montana and surrounding states right now? Mr. McGlenn stated the reciprocity pertains to countersignatures it is now mandatory.

Senator Christiaens stated as I understand it although the primary purpose is countersignature it has always been to assure that that business was handled correctly. Are those people writing from a nearby

state regulated with the insurance commissioners office and you are taking that responsibility? Ms. Meagher stated well yes. We will take an added responsibility in seeing that the agent himself will pay the tax on his commission.

Senator Goodover stated if I remember correctly the objection Senator Hazelbaker had two years ago were people from Idaho were wanting to sell insurance and they didn't want the countersignature. He felt it was important to have countersignature. Mr. McGlenn stated there are a great deal of insurance agents coming into this state at this time. There is no tracking records to track people for operating in the state illegally. This bill will give added papertrack to find out if Montana insurance codes are being violated.

Senator Goodover stated if this bill passes they don't have to file with anyone to have a local agent to countersign with them? Now they will have to file with the Montana Insurance Commissioners Office. The agent may or may not be aware of the Montana insurance codes at this time. Mr. McGlenn stated he feels it gives better control and protection to the insurance companies in Montana. Agents are also protected because there is some "teeth" in the law.

Senator Gage asked it is your intention to share with the Department of Revenue the information in regard to premiums and commission earnings or are you just accumulating this information in case the Department of Revenue wants this information? Ms. Meagher stated we will notify them that we have this information.

Senator Gage stated it won't serve any purpose to you? Ms. Meagher stated not a lot because we don't have the power.

Senator Gage asked might it be more beneficial to have those figures furnished to the Department of Revenue rather than the insurance commissioner? Mr. McGlenn stated that was discussed in the House Business and Industry Committee. Under Montana statutes they will be required to file a Montana State return.

Senator Gage stated his concern is not for the State of Montana as it is for the taxpayers. If it is not serving a good purpose for the Department of Revenue it just looks like added burden on the taxpayers. Mr. McGlenn stated it is our feeling that many nonresident license agents are not filing within the State of Montana. This will help track down people who are not complying.

Senator Fuller asked for what purpose will you keep those records? Ms. Meagher stated very little. The purpose would only be for the Department of Revenue.

Senator Fuller asked it is your intention to provide it to the Department of Revenue on a regular basis? Ms. Meagher stated we would let them know we have it.

Representative Kitselman stated when we heard this in the House committee we were trying to make sure the agent is complying with the insurance

department. All the Department of Revenue has to do is gather information from the insurance department rather than mandate that two or three copies be done. We would allow this to function for two years if it becomes a problem then we would address it with further legislation. We are looking for the compliance of that agent to comply with the same rules and regulations that we do. An individual flies in from out of state. They will write the business and take off. They are not reporting this as income and they are competing fairly. They should compete the same as the agents are required to in this state. They are also required to pay the 2 3/4% state tax. This will generate more income to the state. That corporation head does not know that agent from out-of-state is not licensed until it is brought to their attention.

Senator Gage stated if you removed the need for the countersignature they can even abuse this fund. The bill does what you do not want it to do. Representative Kitselman stated this comes from the agents association. This is the most important piece of legislation that all the independent agents are requesting at this time. The advantage that the other person has is they are not complying with the 2 3/4% premium tax and they can give lower rates. Mr. McGlenn stated the National Association has requested all states to attempt to standardize the insurance laws from state to state because the states are not complying. 17 states have now totally repealed or passed reciprocity laws that we have here today.

Senator Christiaens asked that Staff Attorney Petesch confer with the Department of Revenue and report back to the committee.

CONSIDERATION OF HOUSE JOINT RESOLUTION 14: A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the United States Congress to enact legislation that provides for annual budget review of the Bonneville Power Administration by the Pacific Northwest Electric Power and Conservation Planning Council.

Representative Mary Ellen Connelly stated the reason for this bill is because of the Anaconda Aluminum Company in Columbia Falls, Montana. This resolution is a joint resolution urging Congress to pass Senator Baucus' bill. The BPA is a federal power agency with substantial influence in the northwest. Congress has given them freedom and this bill would force them to be more responsive to ratepayers. The basic reason is because of the drastic increases to the power company now ARCO in Columbia Falls. They had an increase of 75% and will receive another increase of 25% or maybe more. The Governor has appointed eight people to the council. After they present this budget they would have to review it for public hearings. If the council did not like the budget they could recommend an alternative budget. This way they would have a better handle on what they are doing. They set their rates that come after the fact and that is something they want to stop. They have recently said they will cut the rates to the direct service companies and give them a reduction for the months of March through October. If they did this that would not help Anaconda because it takes them three months to put the potlines back on. They would not gain that much and probably would increase the rates to the other consumers. The Missoulian has come out with an article stating they should be more responsive. In

the hearing in the House Keith Colbo had no objections to this. Right now this would fall under the open-ended authority. She showed the committee all the mail she has received regarding this.

There were no proponents and no opponents.

QUESTIONS FROM THE COMMITTEE: Senator Goodover asked how is this going to affect the people working in the Anaconda plant up there? Representative Connelly stated all it will do is force Congress to have more pressure and control the rates. It will also encourage them. It is obvious it has some affect because they have agreed to the reduction.

Senator Lee stated as far as the BPA lowering their rates, they have a surplus of power and I don't think it is fair to say because of this resolution BPA has lowered their rates. Wouldn't it be more appropriate to have the federal government dispose and turn it over to some other entity so that it would fall into state regulation. You are asking for another review process of what they are doing there. He feels they should dispose and bring them under regulations like everyother power company.

Senator Fuller stated the problem we are running into is BPA has been the most nonresponsive federal agency. Mr. Hoffman stated the basic problem with BPA is the economy. They have fixed costs they have to cover. At this point they have no control over the BPA budgeting or marketing strategy. Federal supremacy rules. All they are trying to do is get BPA to respond in the type of policies they will develop in the future.

Senator Goodover asked in this bill of Senator Baucus' is this the primary function of this council? What kind of price tag is attached to this? Mr. Hoffman stated the funding is coming from BPA. Representative Connelly stated the primary planning is cost effectiveness. They were also mandated to preserve fish and wildlife resources. At the present time, BPA is selling their surplus to California or they are dumping it.

Senator Gage stated if BPA is going to fund this council I assume that cost will be included in the rate at which time the users will be funding the council.

Senator Goodover asked do you see that the resolution of this type helps the council at all? Mr. Hoffman stated if this did not exist BPA would be the sole decisionmaker. There is no legislation on the books that comes close to what this would do.

Senator Goodover stated this resolution does not affect your authority does it? Mr. Hoffman stated right now we have no authority.

Senator Goodover asked this bill won't do it? Mr. Hoffman stated basically it gives support.

In closing, Representative Connelly stated she hoped the committee would concur in this resolution as a lot of people are depending on it for their jobs.

The hearing was closed on House Joint Resolution 14.

ACTION ON HOUSE JOINT RESOLUTION 14: Senator Fuller made the motion that House Joint Resolution 14 Be Concurred In. Senator Christiaens seconded the motion.

Senator Lee thought it might be appropriate to have Staff Attorney Petesch call to see what the status is of Senator Baucus' bill. If they have killed the bill in Washington then we should amend this one.

Senator Goodover stated that would be a good idea.

Senator Fuller withdrew his motion.

ACTION ON HOUSE BILL 464: Senator Regan made the motion to reconsider our action on this bill. Senator Goodover seconded the motion.

The Committee voted 8-2 with Senators Dover and Lee voting no to reconsider action on House Bill 464.

Senator Kolstad stated a subcommittee of Senators Dover, Christiaens, Gage and Regan would look into this bill further and report back to the committee.

ACTION ON HOUSE BILL 465: Senator Kolstad stated a subcommittee of Senators Dover, Gage, Christiaens and Regan would look into the bill further and report back to the committee.

ACTION ON HOUSE BILL 685: Senator Lee made the motion that House Bill 685 Be Concurred In. Senator Lee withdrew his motion. We will hold this bill until we hear the entire package.

ACTION ON HOUSE BILL 701: Staff Attorney Petesch stated it was decided to set the fee by rule and this would cover 80% of the cost. Apparently no one addressed the \$200 per day fee for trust companies. He talked with John Cadby and Representative Fagg. He called the Department of Commerce and talked with Mr. Wood. He didn't want to include that.

ACTION ON HOUSE BILL 638: Senator Dover made the motion to reconsider action on this bill.

The Committee voted 9-1 with Senator Christiaens voting no that we reconsider action on this bill.

We will hold this bill until Senator Christiaens follows up on it.

ADJOURN: There being no further business, the meeting was adjourned at 11:20 a.m.

  
ALLEN C. KOLSTAD, CHAIRMAN

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

48th LEGISLATIVE SESSION -- 1983

DATE 3-15-83

NAME	PRESENT	ABSENT	EXCUSED
PAUL F. BOYLAN	✓		
B. F. CHRIS CHRISTIAENS	✓		
HAROLD L. DOVER	✓		
DAVID FULLER	✓		
DELWYN GAGE	✓		
PAT M. GOODOVER	✓		
GARY P. LEE, VICE CHAIRMAN	✓		
PAT REGAN	✓		
PAT M. SEVERSON	✓		
ALLEN C. KOLSTAD, CHAIRMAN	✓		

# STANDING COMMITTEE REPORT

March 15 19 83

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE Bill No. 655

HARP (LEE)

Respectfully report as follows: That HOUSE Bill No. 655

BE CONCURRED IN

~~DO PASS~~

alc



REGARDING HOUSE BILL NO. 710

To: The Senate Business and Industry Committee  
From: Independent Insurance Agents' Association of Montana  
Date: March 15, 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 Montana urges the Senate 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

---

<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

---

<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.

---

<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.



(This sheet to be used by those testifying on a bill.)

NAME: Bob Quinn DATE: \_\_\_\_\_

ADDRESS: 1507 Hollister Helena

PHONE: 449-2032

REPRESENTING WHOM? Mont Pwr Co + Pacific Power & Light

APPEARING ON WHICH PROPOSAL: HB-655

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

COMMENT: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: GENE PIGEON DATE: 3/15/83

ADDRESS: G/Endive, MT

PHONE: \_\_\_\_\_

REPRESENTING WHOM? M. D. L.

APPEARING ON WHICH PROPOSAL: HB 655

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

COMMENT: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



(This sheet to be used by those testifying on a bill.)

NAME: ROGER MCGLENN DATE: 3-15-83

ADDRESS: Box 5593

PHONE: 442-9555

REPRESENTING WHOM? INDEPENDENT INSURANCE AGENTS ASSOC. OF MONTANA

APPEARING ON WHICH PROPOSAL: HB-710

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

COMMENT: AS PROVIDED

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: PAT MEURY DATE: 3/15/83

ADDRESS: P.O. Box 1144

PHONE: 442-7450

REPRESENTING WHOM? ALLIANCE OF AMERICAN INSUREES

APPEARING ON WHICH PROPOSAL: UB 710

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.