

49th LEGISLATURE, SECOND SPECIAL SESSION

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 28, 1986

The Business and Industry Committee meeting was called to order on the above date in Room 410 of the State Capitol, at 8:30 p.m. by chairman Mike Halligan.

ROLL CALL: All members present.

CONSIDERATION OF HOUSE BILL 16: Representative Ron Miller, HD 34, Great Falls, and chief sponsor of the bill, introduced it saying the Montana Insurance Assistance Plan is a voluntary short-term plan and will provide help to Montanans in obtaining insurance when they are unable to obtain an insurance quotation from the regular insurance market. Full testimony attached as exhibits #1a and #1b.

PROPONENTS: Andrea Bennett, State Auditor and Insurance Commissioner, said HB 16 is probably the only piece of legislation giving any immediate relief to the insurance crisis as it pertains to liability. There has been some concern in two areas. One is that some people felt the insurance commissioner has the authority to do this program already. This is not true. Legislation provided in this bill will allow insurance agents, that come with licenses with a company, and still be able to provide insurance through any company which will offer insurance through the Montana Insurance Assistance Plan. The law reads now that only an agent that is appointed with a company may be able to sell insurance. So, if that agent is unable to find insurance through their own markets, they will turn this over to the Marketing Assistance Program and we will be able to provide insurance for them. It probably would not be through the same company. Another reason we need this insurance is that the insurance industry could be accused of an anti-trust violation by banding together and providing insurance for those unable to have insurance in the traditional market. By this legislation we would be able to clearly show that there would not be an anti-trust violation. The third reason is that last July she issued some emergency rules which prohibited mid-term cancellations and premium increases. When she provided that emergency regulation, which later did become permanent, she was considered heavy handed by the industry people because she used a provision in the statutes that says the commissioner can pretty much do whatever she might want to do. Since there is a special session, she is putting before the committee the rules and laws that would provide

for this legislation. The original bill asked for a Joint Underwriting Association which is a mandatory program. She thought providing this in the bill was absolutely essential because if the voluntary program of the Marketing Assistance Program did not work, then immediately the insurance commissioner could go through the regular administrative process and set up a Joint Underwriting Association which would mandatorily provide for coverage for those people unable to get insurance. She included this in the bill because she thought it gave a very strong incentive for insurance companies to take the responsibility and that if they did not provide insurance through the voluntary program, there would be a hammer over their heads. Insurance companies don't want to have a Joint Underwriting Association, but the threat of one, she thought, would give a clear indication of what the legislature and the commissioner of insurance wanted to see, a very good and effective voluntary program. There are safeguards built into this bill which allows public hearings and also a report to the 50th Legislature.

There are 34 voluntary programs in place at this time with 32 medical malpractice Joint Underwriting Associations, so this is not anything new in the state. The insurance industry agreed with the compromise and are on record in agreement with the Joint Underwriting language that is in the bill. Those on record are the American Insurance Association, the Alliance of American Insured and the Independent Insurance Agents of Montana. Representatives of the industry were instrumental in preparing the amendment which has been deleted in the House, the JUA language. She feels the industry did not bargain in good faith with her in her efforts to help the Montana consumers. That is why she thinks the language needs to be put back in. She is afraid that the industry's action in the JUA may be an indication of their lack of support for the voluntary program. She feels the JUA language is needed to hold the industry to their word. She presented an amendment to follow Section 13 and be the new Section 14. Amendment is exhibit #2.

Representative Ben Cohen, Representative from Whitefish. He said he runs a garbage service there and has become associated with other garbage haulers around the state. Their industry is having affordability and availability problems. He knew Commissioner Bennet has been working on this bill for a considerable time because he had been having trouble getting insurance and had contacted her office. He wasn't sure if they were directly of assistance or not, but his insurance company did renew his insurance at a much higher rate. The original bill was good and he was bothered by the effective date for the JUA being moved from immediately.

Commissioner Bennett negotiated with the insurance companies and they wanted a chance at a 1 year voluntary program. He wasn't sure if it was a year to see if it would work or a year to see if it wouldn't work. In the House, Representative Harbin moved to take the language of the JUA out. Rep. Harbin's intention was that since it wouldn't become effective until July 1, 1987, why put it in. If we needed it, Commissioner Bennet could come in next January and put that language in the bill. They assumed there were enough votes in the House to remove that language. On page 11 it says new section 14 and it will now become section 15. Someone in the House stood up and deleted from line 17 "participating insurer or its agents or" and with no discussion that was passed. By putting that amendment in there are now some people who are eligible for immunity and some people working in this program who aren't eligible. The concern of attorneys he spoke with thought the original language was fine, but with that small amendment, it has the same effect as removing the whole section, meaning it no longer provides protection for all participants. He thinks that violates the people protection clause in the Constitution. He suggested that if the committee restores the JUA, they might want to consider restoring an immediate effective date so that if we are going to have a stick, it would be a big stick. He also wanted to restore the words on page 11, line 17. Leaving these words out weakens the legislation.

Chip Erdman, Montana School Board Association said they have a real availability crisis in the political subdivisions. A lot of them are pulling out and a lot of school districts won't have insurance. They like the idea of it being a voluntary mechanism and support the JUA.

Roger McGlenn, Executive Director of the Independent Insurance Agents of Montana said they support HB 16. Their members have been experiencing withdrawals from the market and moratoriums on new business by companies. They are having difficulty finding insurance in some lines for their clientele. A number of their agents are in serious conditions from marketing capabilities. It was said in the House that if one major company terminated their contract with an agent, as many as 1/3 of their agency force, which is 213 agencies all over the state, representing all 56 counties, would be forced to sell their agencies, submerge or close their doors because they don't have the marketing capabilities. He said they appreciated the commissioner's activity in putting the Marketing Assistance Plan, a voluntary program, in front of the legislature and urged in the House, and urge this committee that this be given favorable consideration prior to instigating any governmental intervention in the free enterprise system. His association is aware of as many

as 14 states having a plan as proposed here and it has been successful in these states as far as helping the availability problem on insurance. They were present at the meeting when JUA was discussed. They agreed to the compromise and still do. The Independent Insurance Agent's Association took no action to encourage an amendment on the floor of the House and still support the language originally in the bill on a JUA authority being allowed on July 1, 1987 with the opportunity of the 50th Montana Legislature looking into it. They pledge their support and efforts to make this program successful.

Glen Drake, American Insurance Association said the insurance commissioner was correct in that there was a meeting between the industry and the commissioner's office and at that meeting there was free exchange. The American Insurance Association expressed their dislike of the JUA provision in the bill and as a result of that meeting, it was basically agreed that if the commissioner would put in a delayed effective date that as far as they were concerned, they would support the bill as far as the MAP portion was concerned. Prior to the hearing in the House, a representative had approached him and asked him to prepare an amendment to delete the JUA. He advised the representative that he had agreed that the bill was acceptable with the delayed effective date and he said he knew that but wanted an amendment to delete the JUA. Mr. Drake said he had never talked against the JUA or this bill at any time. He did draw the amendment at the request of a legislator, as all lobbyists do. Regarding the JUA and its effective date, the American Insurance Association would oppose the bill if the effective date is made effective immediately as proposed. If the bill is put back into the form it was in when it entered the House, the AMIA would not oppose the bill. They believe the very fact of JUAs will cause a disincentive for insurance companies to do business in this state at a time of unavailability and with the delayed effective date they felt it could be lived with and hopefully things would be in such a state that by the end of the year there would be no need for either program. If the JUA is returned to an immediate effective date, the AMIA would oppose it. Otherwise they would accept.

Bonnie Tippy, Alliance of American Insurers, wanted to be on record as supporting the master plan and the plan in other states where it is in effect. As far as the JUA is concerned, they also asked if the commissioner could tighten it up by adding in some Idaho language which made the JUA much easier to live with should it go into effect. The Idaho language is not in there and she has a real problem with the way it is worded. She said they had agreed with the compromise but would be happier without it. However, they would support

the bill with the delayed effective date on it.

Bob James, lobbyist for State Farm Insurance Company and National Association of Independent Insurers. Both of these organizations support the master plan but would oppose the JUA. They oppose the JUA primarily for two reasons. One, if it goes into effect the homeowners policy and auto policy premiums may increase because they may have to up premiums to support the problem in the commercial area. Their second concern is that it might send a signal to the out-of-state companies who might come back in to the state to do business. State Farm has no intention of leaving the state of Montana. They are the largest homeowner and auto writer in the state.

OPPONENTS: None.

COMMITTEE QUESTIONS: Senator Gage to commissioner Bennett; It would indicate with your proposed amendment that your intention with it adopted, the JUA would have an immediate effective date. Bennett answered that she originally wrote the bill with an immediate effective date in good faith. The amendment was written for an insurance agent who is also a legislator. She said she would beg the committee to please put in the JUA language with an immediate effective date.

Senator Christiaens to Bonnie Tippy regarding tightening up the JUA language, asked if she has any specific language in mind. Tippy did not have a copy with her but said it was straight out of the Idaho bill. She had taken the Idaho bill to the Legislative Council and it was many pages long, very comprehensive and solely a bill on JUA. It was determined by the Legislative Council, and she agreed with the Council, that because of its length and specificity that it was entirely too long at this time to be added into this bill and would be more appropriate for it to be provided, if need be, in language for the next legislature.

Senator Goodover - yesterday at the House hearing of the liability bill he was struck by the comments of Peter Waquines, the Billings insurance man who explained that there is no shortage of insurance in the states around us. The companies who have insurance money available are allocating that money into the states that surround Montana and have taken the Montana allocation away from us. They are now putting it into the other states. He wanted to know if that is a true statement.

Andrea Bennett replied that was true, but the surrounding states, such as Idaho, have a JUA authority.

Senator Thayer feared the mandatory provision and felt it would provide an opportunity for more companies to leave the state. Rep. Cohen responded by saying it was his personal belief that the reason the insurance companies wanted to delay the effective date on the JUA is because they don't want Commissioner Bennett, or this legislative body, to do anything that will successfully help with the availability problem or the affordability problem before they can have something on the ballot in November.

Bonnie Tippy said that the JUA is a negative signal to insurance companies. They don't have to stay here. They can only write so much insurance, period. They are going to say they can do business at a much more profitable level than they can do in Montana.

Bennett asked how often have you heard this statement from insurance companies, that "if you don't do this, I am going to pull out of the state?" Over and over. It is about time Montanans stand up and say this is a voluntary program. This is not a mandatory program, but if the voluntary program doesn't work, we will force them to do so.

Senator Kolstad asked about the 3 committees set up under this legislation, the Advisory Committee, the Agent's Committee and the Underwriting Committee, and who makes up these committees. Bennett replied The Advisory Committee which oversees the entire plan, is made up of one member from the Insurance Department, one from the insurance agents of the state of Montana and three from the underwriters or companies. That was also a compromise that was added. The Agent's Committee is made up of 2 independent agents from the 11 AM organization, one from the professional insurance agents, 1 member representing excess and surplus funds, and one representing direct writers such as State Farm. The Underwriting Committee is made up of a member from the American Insurance Association, 1 member from the National Association of Independent Insurers, 1 member from Alliance of American Insurers, 1 representing unaffiliated insurers, 1 representing excess and surplus alliance underwriters, a total of 15 altogether.

Roger McGlenn was concerned with the line of questioning and questions asked earlier. It is the opinion of the independent insurance agents on behalf of their clients for whom they have been having extreme difficulties finding coverage for, that this program is necessary. With initial contacts to insurance companies, (he believed the number 16 was used), and with the original JUA language in it prior to the compromise, all 16 responded affirmatively. He believed the program will work and his membership tells

him it is very necessary to assist some of these commercial business persons for whom they are having difficulty finding coverage.

Senator Goodover asked Mr. McGlenn which form of the bill they favored. McGlenn answered they favor the bill very strongly with the JUA in it before it was amended by the House, where the effective date was July 1, 1987.

Drake - for clarification - the language, as proposed now would put back an early effective date. The language of the bill coming from the House has a delayed effective date. The bill, as far as the Amercian Insurance Association is concerned, is acceptable in the form in which it went to the House, with the delayed effective date. It would be unacceptable with the immediate effective date the commissioner is now proposing.

Senator Weeding heard that under the JUA the premiums from there would not be sufficient to cover the claims because of the high risk and the other insurers would, of necessity, be subsidizing the JUA program. Bennett - those companies would then have to refile their rates in the personal lines if they are going to raise those rates.

Hearing closed on HB 16.

Seantor Halligan said the committee will meet at 9:00 a.m. tomorrow, March 29, 1986 to take executive action of HB 16.

RECONSIDERATION OF HB 14: Senator Neuman moved to concur in HB 14. Senator Goodover made a substitute motion to go to the amendments to see what they will do. It was seconded. The committee was referred to exhibit 3a which shows the amendments being proposed and to exhibit 3b showing how they would look in the bill.

Mary McCue explained the form she put them in, saying she took the amendments Mr. LaFaver was proposing and made some punctuation and form changes. There was nothing substantive in that sheet.

Mr. LaFaver explained the intent of the amendments. They would free any action on any of the proposals such as closing stores, altering agencies, etc., and mandates that the DOR Oversight Committee bring a proposal to the special session in June. The closed stores would remain closed. If you wanted them reopened, you would insert the retroactive section.

Senator Neuman asked Mr. LaFaver if we drop the amendments, would he, as a part of his recovery plan, look at whether it

would be profitable to reopen the stores again. LaFaver answered that if the 13 percent and 15 percent objectives remain in, he thought the Department and Revenue Oversight Committee would look at all options, including what the committee has in front of them, and probably several other options.

Goodover asked Mr. LaFaver if there was any way until a decision is made on all of these stores, he could put these people back in their stores. LaFaver said if it is the legislature's wish that those people remain employed and the stores remain open, the retroactive section should be reinserted. They would then reestablish those stores as they were before the closure. It would be a complex and time consuming task to also try to convert those stores to an agency basis within the next few weeks.

Senator Goodover moved the amendments with the retroactive date be reinserted so they will have the opportunity to work with these people to study this thing for the period we are talking about and come up with answers by the next session.

Senator Halligan thought that was a reasonable compromise. The retroactive provision puts these people back into business and it sets a sunset provision so that the Revenue Oversight Committee can work with Mr. LaFaver.

Senator Halligan re-explained the motion and how the proposed amendments would work, saying it means you reopen all the existing stores that have been closed; you allow the closure of the unprofitable stores, and you reinsert the language expressing the 13 percent intent, and it is intent only, not a mandate.

Senator Kolstad called for the question on Senator Goodover's motion regarding the amendments.

Senator Gage referred to line 2, page 3 and said you need to strike the underlined language. It should read "at least 13% of net sales" and not \$13% of the profit on". Mary McCue agreed.

Senator Halligan asked the committee's vote on reinserting the retroactive amendment. Motion carried.

Senator Goodover moved that House Bill 14 as amended BE CONCURRED IN. It was seconded.

Senator Neuman supported the amendments, but said he was going to vote against the bill because he felt we were postponing

Business and Industry
March 28, 1986
Page 9

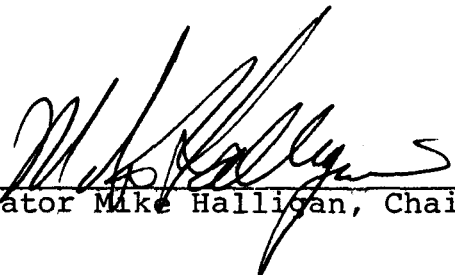
the inevitable.

Senator Halligan called for the vote. Motion carried.
HOUSE BILL 14 AS AMENDED, PASSED.

Senator Neuman wanted the record to show that he voted NO.

Senator Lynch will carry the bill on the Senate floor.

ADJOURN: There being no further business before the
committee, the meeting adjourned.



Senator Mike Halligan, Chairman

ROLL CALL

BUSINESS & INDUSTRY

COMMITTEE

49th LEGISLATIVE SESSION -- 1986

Date 3/28/86
Time: 8:30 p.m.

NAME	PRESENT	ABSENT	EXCUSED
#40 <u>SENATOR HALLIGAN, Chairman</u>	✓		
#16 <u>SENATOR CHRISTIAENS, V. Chrmn.</u>	✓		
#50 <u>SENATOR BOYLAN</u>	✓		
#43 <u>SENATOR FULLER</u>	✓		
#12 <u>SENATOR GAGE</u>	✓		
#24 <u>SENATOR GOODOVER</u>	✓		
#10 <u>SENATOR KOLSTAD</u>	✓		
#17 <u>SENATOR NEUMAN</u>	✓		
#33 <u>SENATOR THAYER</u>	✓		
#39 <u>SENATOR WILLIAMS</u>	✓		
<u>SENATOR WEEDING</u>	✓		

Each day attach to minutes.

The Montana Insurance Assistance Plan is a voluntary, short-term plan will provide help to Montanans in obtaining insurance when they are unable to obtain an insurance quotation from the regular insurance market.

This plan provides for a voluntary plan for insurers, agents and the Montana Insurance Department to work together to find insurance coverage for Montana consumers who have been unable to find that coverage.

To be eligible to participate a consumer must first demonstrate that he cannot find insurance coverage elsewhere. Areas initially considered in this legislation are (1) liability coverage for political subdivisions; (2) liability coverage for daycare facilities; and (3) liquor liability insurance. Others can be added by administrative rule once it has been determined that coverage cannot be found. Possible inclusions could be recreational coverage, such as for outfitters and guides, and directors and officers liability.

This plan is temporary and will function only so long as its services are necessary. The plan will be terminated on July 1, 1987 unless the Legislature determines that it should remain in effect. This plan can be discontinued at any time prior to the termination date if it is determined to no longer be necessary.

Membership of the plan is made up of insurers writing commercial coverages in Montana. The plan calls for three committees made up of agents, companies and insurance department staff who will review applications for coverage. All available markets will be explored to place the coverage. If that is unsuccessful, participating insurers will review the applications on a rotating basis. Each participating insurer is expected to quote on at least one out of every five applications received from the committee, providing the insurance requested is compatible with the lines regularly offered by that insurer.

The bill requires the Commissioner to report to the Fiftieth Montana Legislature on the effectiveness of this plan in providing insurance coverage. The Legislature will then have an opportunity to review the current market situation, the success of the voluntary assistance program and determine if additional measures are needed.

This bill also contains a provision authorizing the Commissioner to create a mandatory joint underwriting association if she determines, after public hearing, that the voluntary plan is not providing essential insurance coverage. The authority to create the joint underwriting association would become effective July 1, 1987, following legislative review and would terminate July 1, 1989.

This bill requires an appropriation to the State Auditor's Office from the insurance earmarked account of \$5,325.00 for the fiscal year ending 6/30/86 and \$31,798.00 for fiscal year 1987, for one staff position in the Montana Insurance Department to assist with the plan.

This bill becomes effective upon passage and approval by the Legislature. This plan, although only a partial solution to the insurance crisis, will provide immediate help for some Montana insurance consumers. While this bill may not make insurance more affordable, it will make insurance more available. Let me stress again that the Montana Insurance Assistance Plan is a temporary, voluntary plan which will make insurance more available to Montana consumers and will help some of them locate coverage which they are unable to locate at the present time.

(01,2)

MONTANA INSURANCE ASSISTANCE PLAN

- Short Title: This act may be cited as the "Montana Insurance Assistance Plan."
- Purpose: The Montana Insurance Assistance Plan (Plan) is a temporary plan to assist insurance consumers in this state in obtaining needed commercial liability insurance when no quotation is available from regular sources of insurance.
- The Plan is constituted to assist in resolving market availability problems or to determine that a non-availability of coverage does exist for those risks desiring insurance coverage not otherwise available in voluntary insurance markets. This Plan is not constituted to act as an insurer capable of assuming insurance risk.
- Authority: The Plan will operate in conformity with the Montana Insurance Code. For purposes of this Plan:
1. Insurers may agree among themselves with respect to the equitable apportionment among them of insurance which may be afforded applicants who are entitled but, in good faith, unable to procure such insurance through ordinary methods, provided that such apportionment agreements are approved by the commissioner.
 2. An insurer that enters into an agreement as provided in the preceding paragraph may accept applications from an agent who has not been appointed by the insurer; and an agent may place business, for any kind of insurance as to which he is then licensed, with an insurer as to which he does not then hold an appointment. Every insurer accepting an application from an agent who has not been appointed by the insurer must pay the agent a commission in conformity with the insurer's filed rates, rating plans, or forms for the kind of insurance effected.
- Eligible Risks: Any risk resident, located, or to be performed in this state is eligible for assistance upon submission of the set fees, a properly executed application form, and documentation of the unavailability problem by a Montana licensed insurance agent; provided that the coverage is of the type covered by the Plan.
- Ineligible Risks: Coverages which could be written through the Montana Automobile Assigned Risk Plan, Montana Workers' Compensation Insurance Plan, or Montana Medical Liability Joint Underwriting Association, if activated, are not eligible.
- Insurance Coverages: The Plan shall assist in the individual placement of, but not limited to, the following coverages:

1. liability insurance, coverage for political subdivisions, defined in 2-9-101(5), excluding pollution coverages;
2. liability insurance coverage for day-care facilities, defined in 53-4-501(1)(b), which satisfy the requirements of 53-4-508 and 53-4-509, excluding damages from sexual abuse;
3. liquor liability insurance; and
4. other commercial lines liability coverages with respect to which the commissioner has found in writing, after consultation with the Plan's Advisory Committee, that there are severe availability problems in the marketplace and for which a plan of this nature is likely to provide assistance with a reasonable probability of success.

Application Referral: 1. The application fees must be paid in advance as follows:

- a. liability insurance for political subdivisions, defined in 2-9-101(5), \$300;
 - b. liability insurance for family day-care homes, defined in 53-4-501(2)(h), \$25;
 - c. liability insurance for day-care centers, defined in 53-4-501(2)(c), \$100; and
 - d. liability insurance for liquor liability, \$50.
2. The Advisory Committee may adjust these fees or set new fees when necessary, upon approval of the commissioner.
 3. All properly executed applications should be addressed to:

The Montana Insurance Assistance Plan
c/o Montana Insurance Department
P. O. Box 4009
Helena, MT 59604

4. Information regarding this Plan will be available from the following:

Independent Insurance Agents Association
of Montana
c/o Roger McGlenn, Executive Director
P. O. Box 5593
Helena, MT 59604

or

Professional Insurance Agents
Riley Johnson, Executive Secretary
9 North Last Chance Gulch
Helena, MT 59601

Application Forms: ACCORD applications and supplemental forms, if appropriate, should be completed in their entirety. Incomplete applications may be returned.

Limits on Term
of Operations:

1. The Plan is established as a temporary market assistance Plan which shall function only so long as its services are deemed necessary to relieve perceived insurance market problems in this state.
2. The Advisory Committee shall review the necessity for continuation of the program six months after the Plan becomes operational. That functional review shall be repeated on each six month anniversary thereafter.
3. If, after review, the Advisory Committee finds that a need exists for continued operation, it shall report that finding to the commissioner.
4. The Advisory Committee is empowered to recommend dissolution of the Plan and discontinuance of its services. While it is empowered to make such recommendation, such dissolution shall be authorized only by written consent of the commissioner.

Structure:

The Plan consists of three committees appointed by the commissioner. The committees are:

1. Advisory Committee which consists of one member of the insurance department, one member representing agents, and three members representing company underwriters.
2. Agents Committee which consists of two members representing the Independent Insurance Agents of Montana (IIAM), one member representing the Professional Insurance Agents (PIA), one member representing the excess and surplus lines agents, and one member representing direct writer agents.
3. Underwriting Committee which consists of one member representing American Insurance Association (AIA), one member representing National Association of Independent Insurers (NAII), one member representing Alliance of American Insurers (AAI), one member representing unaffiliated insurers, and one member representing excess and surplus lines underwriters.

Mechanics of
Operation:

1. Membership:

A listing of participating insurers shall be developed in the following manner: The commissioner will mail to each admitted property and casualty insurer and eligible surplus lines insurer a bulletin outlining the conditions of the

Plan and advising that each is considered to be a voluntary participant. An insurer may request permission not to participate by providing to the commissioner reasons why its participation should be waived.

2. Advisory Committee:

The Advisory Committee, assisted by the Insurance Department staff, is the principal operations committee and will function to receive the initial application from risks that have encountered an availability-related insurance problem.

An initial application will not be accepted by risks which have another insurance or have not yet been rejected from markets to which they have applied.

Information of the initial contact shall be maintained on a standard form which contains the following information:

- a. Name, address, telephone number, and other risk information.
- b. Kind of coverage and limits needed.
- c. Name, address, and telephone number of the current or most recent insurance agent for the risk.
- d. Name and address of current or most recent insurance company; information about and identity of the underwriting office and persons involved, if known; and reasons for cancellation or non-renewal.
- e. Names of other insurers contacted for coverage.
- f. Summary of Advisory Committee actions.
- g. Other information as deemed necessary to document the risk's availability problem.

The Advisory Committee is empowered to give direction to the entire Plan and to the committees operating within the Plan. It shall meet as needed and review the activity of the Agents and Underwriting Committees and all other operations of the Plan.

The Advisory Committee shall review and authorize any and all letters stating that the Plan is unable to be of assistance.

3. Agents Committee:

The Agents Committee assisted by the Insurance Department staff will process properly executed applications accompanied by appropriate underwriting information.

Each application will be reviewed to determine the availability problem and, depending on the nature of the problem, the Committee may:

- a. Resubmit the application to the present or most recent insurer for reconsideration.
- b. Check other sources of insurance of the submitting agent.
- c. Check all other known sources of insurance.
- d. Check the excess and surplus lines markets.
- e. Negotiate extensions of coverage with the prior insurer to permit additional exploration of other sources of insurance or accumulation of essential underwriting data.
- f. If all the above fails, the chairman shall refer the application, with appropriate comments to the Underwriting Committee.

4. Underwriting Committee:

- a. The Underwriting Committee shall have authority to provide technical assistance on those lines of business for which member insurers have agreed to participate.
- b. The Underwriting Committee shall have authority to consider and act only upon applications referred to it by the Agents Committee.
- c. The Underwriting Committee shall establish a rotation system that permits insurers to quote risks that they are qualified to write in the voluntary market. The system shall contain the following:
 - A. A participating insurer may provide a quote on the same basis for which it normally provides insurance in the State of Montana using its filed rates, rules, and forms. Each participating insurer shall have the right to evaluate the risk individually and develop premiums in accordance with its filed rating plans. Upon approval of the Advisory Committee, a participating insurer may develop "A" rates for risks that do not fall within the rules or rates filed by the participating insurers. Participating insurers shall indicate their willingness to offer or refusal to offer insurance on an application to the Chairman of the Underwriting Committee within ten (10) working days of receiving the application. A reasonable extension may be granted by the Chairman of the Underwriting Committee.

A participating insurer must offer to insure at least one out of every five applications received from the Underwriting Committee. The insurer shall notify the applicant's insurance agent of any quotations and the administrative procedure to be followed if the applicant accepts coverage from the insurer at the price quoted.

B. Under this Plan, an applicant will not be eligible to reapply to the Plan for the same coverage for the same risk if the insurer under this Plan previously cancelled for nonpayment of premium.

d. If the Underwriting Committee finds that it cannot assist an applicant, the Chairman shall draft a letter to the commissioner with an explanation. Such letter shall be transmitted through the Advisory Committee for review.

Commissions: An agent who countersigns a policy, when a countersignature is required by 33-17-1111, shall be paid a countersignature commission as provided in 33-17-1113.

Premiums: Premium for risks accepted under the Plan will be paid in advance.

Joint Underwriting Assoc.: If, after a public hearing, the commissioner determines that a voluntary plan would, in her judgment, fail for any reason to provide essential insurance coverage, she may, by rule, establish a nonprofit unincorporated legal entity known as a joint underwriting association. Each insurer authorized to write and engaged in writing within this state, on a direct premium basis, the kind of insurance covered by the association shall remain a member of the association as a condition of its authority to continue to transact the kind of insurance in this state.

Commissioner's Report: The commissioner shall report to the 50th Montana Legislature on the effectiveness of the Plan in providing insurance coverage for risks resident, located, or to be performed in this state and on whether the authority to create a joint underwriting association continues to be necessary.

Immunity: There shall be no liability on the part of, and no cause of action of any nature shall arise against, any participating insurer or its agents or employees, members of the Advisory Committee, members of the Agents Committee, members of the Underwriting Committee, or the commissioner or her representatives for any action taken by them in the performance of their powers and duties under this Plan.

Rules:

1. The commissioner shall make or may approve and adopt reasonable rules, consistent with this Plan for any or all of the following purposes:
 - a. effectuation of the Plan;
 - b. establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement in the Plan;
 - c. establishment, procedures, and operations of the Plan's agents and others designed to assist such agents to comply with the Plan.
2. Such rules shall be subject to the procedures and carry the penalty provided by 33-1-313.

Effective Date:

This Plan is effective on passage and approval.

Appropriation:

There is appropriated to the State Auditor's Office from the insurance earmarked account \$5,325 for the fiscal year ending June 30, 1986 and \$31,798 for the fiscal year ending June 30, 1987, for one staff position to assist in the Plan.

NEW SECTION. Section 14. Joint underwriting association
-- rules. If, after a public hearing, the commissioner determines
that a voluntary plan would, in his judgment, fail for any reason
to provide essential insurance coverage, he may, by rule, establish
a nonprofit unincorporated legal entity known as a joint under-
writing association. Each insurer authorized to write and engaged
in writing within this state, on a direct premium basis, the kind
of insurance covered by the association shall remain a member of
the association as a condition of its authority to continue to
transact that kind of insurance in this state.

Renumber as appropriate.

HOUSE BILL NO. 14 EXHIBIT # 3 a.

AMENDMENTS

Page 1, line 7
Following "PROFIT"
Strike "AND"
Insert "OR"

Page 1, lines 8 through 11
Following "LEGISLATURE"
Strike "IN REGULAR SESSION" and lines 9 through 11
~~in their entirety~~ through "CLOSURES"

Page 1, line 14
Following "JULY 1,"
Strike "1987"
Insert "1986"

Page 1, line 14
Following "TO ALLOW THE"
Strike "50TH"
Insert "JUNE SPECIAL SESSION OF THE 49TH"

Page 1, line 16
Following "COMMISSIONS;" ~~THE DEVELOPMENT~~
Insert "PROVIDING FOR A LIQUOR DIVISION RECOVERY
~~TO BE SUBMITTED~~ PLAN, FOR CONSIDERATION BY THE JUNE SPECIAL
SESSION;"

Page 1, line 18 ~~_____~~ Following "DATE"
Following "AND" strike "1"
Strike "A RETROACTIVE APPLICABILITY DATE,"

Page 2, line 12
Following "next"
Strike "regular"

Page 3, lines 1 through 18
Reinsert all stricken material and strike
all new material.

Page 3, line 24
Following "JULY 1,"
Strike "1987"
Insert "1986"

Page 4, line 8

Insert NEW SECTION. Section 5. Recovery plan.
The ~~Department~~ shall work with the ~~Revenue~~
~~Oversight Committee~~ of the 49th ~~Legislature~~
to develop a ~~Liquor Division~~ recovery plan for
consideration by the June 1986 special legislative
session.

Page 4, line 8

Following "Section"
Strike "5"
Insert "6"

Page 4, lines 8 and 9

Following "Effective date --"
Strike "retroactive applicability --"

Page 4, lines 10 and 11

Following "approval" *through "1985" on*
Strike the remainder of line 10 and ~~all of~~ line 11.

Page 4, line 12

Following "JULY 1,"
Strike "1987"
Insert "1986"

*Reinsert all stricken material
and strike all new material.*

1 the 1987 biennium, the Division shall attempt to return at
2 least--13--percent--of a profit on net sales. Net sales are
3 gross sales less discounts and all taxes collected. The
4 Division--shall--limit--operational--expenses--of--the--liquor
5 merchandising system--to--not--more--than--15--percent--of--net
6 sales--operational--expenses--may--not--include--product--costs,
7 freight--charges--or--expenses--allocable--to--other--divisions--or
8 licensing--bureau--expenses.

9 The Division retains full authority to determine store
10 operating hours and--the--number--and--location--of--stores--and
11 employees. Nonprofitable--or--marginally--profitable--state
12 stores--shall--be--closed--or--converted--to--agency--stores--in--an
13 orderly--manner--Agency--stores--shall--be--closed--if--the
14 Division--considers--them--marginally--profitable--and--other
15 state--stores--or--agencies--are--located--within--a--reasonable
16 distance ~~and location of stores and employees~~.

17 ~~NONPROFITABLE STATE STORES MAY BE CONVERTED TO AGENCY STORES~~
18 ~~IN AN ORDERLY MANNER.~~

19 NEW SECTION. SECTION 3. CHANGE PROHIBITED IN RATE OF
20 COMMISSIONS PAYABLE FOR OPERATION OF AGENCY LIQUOR STORES --
21 LEGISLATIVE CONSIDERATION. TO FACILITATE LEGISLATIVE
22 EXAMINATION OF THE OPERATION OF AGENCY LIQUOR STORES, THE
23 DEPARTMENT OF REVENUE MAY NOT CHANGE THE RATE OF COMMISSIONS
24 PAYABLE FOR SUCH OPERATIONS UNTIL JULY 1, 1986. ALL SUCH
25 COMMISSIONS MUST REMAIN IN EFFECT AS THEY WERE ON JANUARY 1,

1 1986.

2 NEW SECTION. Section 4. Severability. If a part of
3 this act is invalid, all valid parts that are severable from
4 the invalid part remain in effect. If a part of this act is
5 invalid in one or more of its applications, the part remains
6 in effect in all valid applications that are severable from
7 the invalid applications.

8 NEW SECTION. Section 6. Effective date -- ~~severability~~
9 ~~applicability~~ TERMINATION. (1) This act is effective on
10 passage and approval and ~~applies retroactively to that time~~
11 ~~is used in 1-2-1987, to occurrences after December 31, 1987.~~

12 (2) THIS ACT TERMINATES ON JULY 1, 1986.

-End-

*NEW SECTION, Section 5. Recovery
Plan. The department shall work with
the Revenue oversight committee of
the 49th legislature to develop a
liquor division recovery plan for
consideration by the June 1986
special legislative session.*

BUSINESS & INDUSTRY COMMITTEE
MAR. 28, 1986 (8:30 pm)
HB 14
EXHIBIT # 3 b.

49th Legislature
Special Session 3/86

HB 0014/02

HOUSE BILL NO. 14

INTRODUCED BY DRISCOLL, GOULD, HARRINGTON,
GARCIA, LYNCH, NELSON, D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT PREVENTING THE CLOSURE
OF LIQUOR STORES OPERATED BY THE DEPARTMENT OF REVENUE
UNLESS A STORE IS NOT OPERATING AT A PROFIT ^{OR} SUCH CLOSURE
HAS BEEN APPROVED BY THE LEGISLATURE IN ~~REGULAR SESSION~~
~~SELECTING PROVISIONS RELATING TO THE DEPARTMENT OF REVENUE'S~~
~~APPROPRIATION-SETTING FORTH PROFIT REQUIREMENTS, LIMITS ON~~
~~OPERATIONAL EXPENSES, AND AUTHORITY FOR STORE CLOSURES;~~
PROVIDING THAT THE DEPARTMENT OF REVENUE MAY NOT CHANGE THE
RATE OF COMMISSIONS PAYABLE FOR THE OPERATION OF AGENCY
LIQUOR STORES UNTIL JULY 1, ¹⁹⁸⁶ ~~1987~~, TO ALLOW THE ^{JUNE SPECIAL} ~~LEGISLATURE~~
LEGISLATURE TO EXAMINE THE ISSUE OF AGENCY STORE
COMMISSIONS; AMENDING SECTION 16-2-101, MCA, AND SECTION 17,
HOUSE BILL 500, LAWS OF 1985; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE, AND ~~RETROACTIVE APPLICABILITY DATES~~ AND A
TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-2-101, MCA, is amended to read:
"16-2-101. Establishment and closure of state liquor
stores -- kinds and prices of liquor. (1) (a) The department
shall establish and maintain one or more stores, to be known

→ PROVIDING FOR THE DEVELOPMENT OF
LIQUOR DIVISION RECOVERY PLAN TO BE
EXHIBIT B, MCA, IN
JUNE SPECIAL SESSION;

BUSINESS & INDUSTRY COMMITTEE
MAR. 28, 1986 (8:30 pm)
HB 14
EXHIBIT # 3 b.

HB 0014/02

as "state liquor stores", as the department finds feasible
for the sale of liquor in accordance with the provisions of
this code and the rules made thereunder.
(2)(b) The department shall enter into an agency
agreement or employ the necessary help to operate said
stores and shall designate the duties to be performed by the
agent or employees.

(c) Once established, a store may not be closed by the
department unless:

(i) the store is not operating at a profit; and OR
(ii) the closure is approved by the legislature at the
next ~~regular~~ session of the legislature following the
department's announcement of intent to close the store.

(3)(2) The department may from time to time fix the
prices at which the various classes, varieties, and brands
of liquor may be sold, and prices shall be the same at all
state stores."

NEW SECTION. Section 2. The narrative to the
appropriations for the Department of Revenue, in Section A
of Section 17, House Bill 500, Laws of 1985, at page 20 of
the enrolled bill and page 1780 of the 1985 Montana Session
Laws, is amended to read:

"Liquor Division proprietary funds necessary to
maintain adequate inventories of liquor and wine and to
operate the state liquor operation are appropriated. During

THIRD READING
HB 14

STANDING COMMITTEE REPORT

PAGE 1 of 2

March 28

86

19.....

MR. PRESIDENT

BUSINESS AND INDUSTRY

We, your committee on.....

HOUSE BILL

14

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

third

reading copy (blue)
color

Respectfully report as follows: That.....

HOUSE BILL

14

be amended as follows:

1. Page 1, line 7.

Following: "PROFIT"

Strike: "AND"

Insert: "OR"

2. Page 1, lines 8 through 11.

Following: "LEGISLATURE" on page 8

Strike: remainder of line 8 through "CLOSURES" on line 11

3. Page 1, line 14.

Following: "JULY 1,"

Strike: "1987"

Insert: "1984"

Following: "TO ALLOW THE"

Strike: "50th"

Insert: "JUNE SPECIAL SESSION OF THE 49TH"

4. Page 1, line 16.

Following: "COMMISSIONS;"

Insert: "PROVIDING FOR THE DEVELOPMENT OF A LIQUOR DIVISION
RECOVERY PLAN TO BE SUBMITTED FOR CONSIDERATION BY THE JUNE
SESSION;"

5. Page 2, line 12.

Following: "next"

Strike: "regular"

~~DO NOT PASS~~

~~DO NOT PASS~~

(continued page 2)

Chairman.

6. Page 2, line 18 through line 18, page 3.
Strike: section 2 in its entirety
Renumber: subsequent sections

7. Page 3, line 24.
Following: "JULY 1,"
Strike: "1987"
Insert: "1986"

8. Page 4, line 8.
Insert: "NEW SECTION. Section 4. Recovery plan. The department of revenue shall work with the revenue oversight committee of the 49th legislature to develop a liquor division recovery plan for consideration by the June 1986 special legislative session."
Renumber: subsequent section

9. Page 4, line 12.
Following: "JULY 1,"
Strike: "1987"
Insert: "1986"

As amended, be concurred in



SENATOR MIKE HALLIGAN

NB14