

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 19, 1987

The ninth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on January 19, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF SB 52: Representative Joan Miles of House District #45 introduced SB 52 for Senator Bob Brown because he was delayed. She said the bill will cost \$273,000 more in fiscal year 1988 and \$263,000 in fiscal year 1989. She said the current system is "File and Use", which allows the Insurance Commissioner to regulate insurance rates to insure that they are not inadequate, excessive, or unfairly discriminatory. She stated that the Insurance Commissioner doesn't have the staff or the money to do this. She explained that in the Governor's budget book on page S 24 the modified requests coming from the Commissioner's office has \$230,000 in fiscal year 1988 and \$223,000 in 1989 to implement the power they currently have. Representative Miles felt this program was underfunded because of the liability crisis. She said there is a bill in the House which raises insurance filing fees which will go to this insurance division. She explained that the fiscal note reflects the figure needed now; it is not just for the flex system, but for the office functions now. She explained "file and use" makes all insurers file the rates they are charging. She said then the Commissioner judges the rates. She pointed out that there are currently four ways insurance rates are set: 1) "Open Competition"; they don't even file with the State Commissioners. 2) "File and Use". 3) "Prior Approval"; they have to file and then receive approval before they implement the rates. 4) "Rate Setting"; the state agencies set the limitations on the rates. She said what this bill is a combination of the "File and Use" and "Prior Approval". She explained that it gives the Insurance Commissioner a zone of reasonableness so an insurance company could adjust its rates in this zone and not have to file with the Insurance Commissioner. She said they can work competitively and adjust their rates if necessary. She stated if they go below or above the zone, they have to get prior approval of the rates. She echoed this system would get the insurance companies to be competitive and increase consumer protection. She felt it will inform the public about prices of liability insurance. She thought the bill would avoid the early 1970's problem when the insurance industry engaged in "cash flow underwriting"; this covered poor risks at very low premiums, in order to generate enough funds to deposit in the high interest bearing accounts. She said there was a decline of interest rates, which reduced profits and caused part of the "sky rocketing" liability rates.

PROPOSERS: Tanya Ask, Montana Insurance Department, supported the concept of the bill. She stated California is an "Open Competition State but as of 1986, they adopted a Flex Rating system, which means if an insurance company wants to change its rates plus or minus 25 percent of its current rates, the company must file those with the Commissioner. She told a story about the department asking for documentations on a rate filing, but the department marked it "received" and stored it because it was a huge stack of papers, which no one was available to evaluate because of the lack of staffing. She said the department has a half-time person that looks at rates to see whether they are correct or not; the person is also responsible for approving all the casualty and property forms of the state. She pointed out New York has adopted this form of rate setting. She also said that most of Montana's rate filings are in a band of less than 20 percent.

Karl Englund, Montana Trial Lawyers Association, testified in support of the bill (see Exhibit 1, written testimony).

OPPOSERS: Randy Gray, State Farm Insurance Company, and National Association of Independent Insurers, opposed SB 52 because the old system works well and only 1/3 of one percent of the total insurance market in the U.S. is in Montana. He felt what happens in Montana will not effect the country. He felt it would make insurance less available to Montanans because it would make Montana less attractive place for insurance companies to do business. He stated granting the Insurance Commissioner this much discretion in the new bill will leave insurance companies without any predicability on whether or not their proposed rates will be increased. He suggested if you do consider this bill, to establish a perimeter in which the commissioner can work. He felt the Legislature should establish the bands and not the Commissioner. He said in section four it deletes Montana's competitive rating intent of the current insurance law. He thought there is good competition between carriers in Montana and this substantial shift from the current law will effect it. He pointed out some lines of insurance is more available than others. He suggested the Commissioner or Legislature identify the lines of insurance that are not readily available and have problems. He felt the funding was not adequate because if the Commissioner is going to be reviewing the policies of 1,200 companies that are doing business in Montana, but how is he going to accomplish this with the eight full time employees requested in the fiscal note. He pointed out that states that have the "Prior Approval" approach have a tremendous amount of political pressure to approve decreases and sometimes this does not help the market place.

Bonnie Tippy, representing the Alliance of American Insurers, opposed the bill (see Exhibit 2, written testimony).

Glen Drake, American Insurance Association, opposed the bill (see Exhibit 3, written testimony).

DISCUSSION ON SB 52: Senator Halligan questioned how the Commissioner's office plans to handle over-viewing 1,200 companies. Tanya Ask responded that a lot of the forms and rates submitted to the office for approval or review are submitted by a rating organization. She said companies may deviate off of those rate filings and some companies also develop their own rates. She said about half of the 1,200 are property/casualty companies. She said much of the filing is done by rating organizations, but there is still substantial filings to look at. Senator Halligan asked if any insurance costs in Montana are based on Montana claim experience. Ms. Ask replied that Montana rates are based in part on Montana experience and it is going to depend on the company, and how much of their experience Montana has generated. She said rating organizations keep track of specific Montana experience. She felt the more a company does business in the state, the more the rate will be on Montana experience. Senator Halligan asked if a band is set, could the band reflect the Commissioner's opinion of the Montana claim experience. Ms. Ask stated the companies that have more experience in Montana have their rates already being reflected in Montana experience.

Senator Crippen asked Roger McGlen, Independent Insurance Association of Montana, how the flex system effected other states like Montana with the availability of insurance. Mr. McGlen responded that there is not enough data to tell whether it has effected the availability. He pointed out the bill calls for a hearing and some insurance companies might withdraw from that particular line to get away from the hearing process. Senator Crippen questioned if Mr. McGlen's main concern was the fact the rates now are not adequately monitored and this could lead to some abuse along the way. Mr. McGlen felt it was one of his main concerns because if the system is cumbersome, and being a small market, many will not participate.

Senator Pineseault asked Representative Miles to comment on the Bonnie Tippy and Glen Drake statement of never having enough help in the Commissioner's office to even shake out the "File and Use" system now. Representative Miles stated that it is correct. She said the Commissioner has stated that in order to run the "File and Use" system correctly they will have to have an additional six and half F.T.E's. Senator Pineseault inquired whether Ms. Ask agreed with it. Ms. Ask replied that the modified budget requests were passed out of committee and they don't have adequate funding right now. She said the fiscal note includes investigators and clerical workers, which are desperately needed.

Senator Mazurek asked if the Legislature did adequately fund the F.T.E's under the "File and Use" system, could one rely on information generated from New York or California in applying to the "File and Use" system. Tanya Ask replied that they do look at a nationwide experience and the states' experiences around us.

Senator Crippen questions if the department needs \$50,000 to provide

additional staffing just to run the flex system. Tanya Ask said it goes to the Flex system and to other areas of the office, such as the "complaint handling". Senator Crippen felt if you don't get the F.T.E's and if this more complex system is passed, the department would be in worse shape than it already is. She agreed with that. Senator Crippen asked if the F.T.E's don't come through, would the department want this new system. She said no.

Senator Blaylock asked if the system was working, could the Commissioner make the point stick to insurance companies, not to put their premiums too low. Representative Miles felt the authority was there to do that. She felt there has been no type of review, so there has been no justification for the raising or decreasing of insurance rates. She said she did not know if the Commissioner could stop an insurance company from decreasing its rates.

Senator Crippen asked why would the Commissioner be upset about a rate that is below the range if the company has a willing buyer. Representative Miles felt there probably would not be a big objection to a lower price in our small market. She stated this system is trying to keep us out of the same bind we are in now, but some say that the State is such a small market, we would not have an effect upon the whole system, so if we can offer Montanans lower prices and justify it as a good deal for both parties then it can be done.

Senator Bishop explained that his daughter and himself have practiced law for five years; the first three years the premiums on the Errors policy ran between \$400 \$700. He said last year in March it jumped to \$2,800; this was minimum liability. He said she is by herself now in the practice and is thinking of "going bare" because the premium on the policy now is \$4,500 a year. He asked if this bill would have an effect on this type of insurance. Representative Miles responded there is no one single reason or solution for the increase in premiums. She said people who say nothing will stop the increase of insurance rates also mean the tort reform will not help either. She felt if the bill goes through, the premium holder will at least have justification of why it is going up. Randy Gray replied this bill covers all lines of insurance whether professional or other. He said professionals are becoming more of the target for malpractice suits and like doctors these professionals are getting malpractice type insurance. Mr. Drake pointed out he did not say that the small market in Montana would have no effect on the nation's situation.

Senator Brown closed by saying the bill is designed to promote and restore stability of the insurance market. Representative Miles echoed the fact that if the department doesn't get the F.T.E's then they can't use this bill's system. She pointed out the bill in the House increased

certain insurance fees with the hopes that they would earmark that into these programs, because this is not expected to come out of the general fund.

Adjourned to the table for executive action.

ACTION ON SB 49: Senator Beck asked if the Robischon amendments were really needed. Senator Mazurek responded that maybe it should be limited to charitable organizations. Senator Pinsoneault said he would like to see the conservation districts protected. Senator Mazurek commented the Tort Claims Act protects conservation districts. He also commented to the committee that they should stay away from the illegal acts part of this bill in the first section. He thought the committee should define "volunteer" for future litigation. Senator Mazurek then asked if this should be tax exempted like churches. The committee decided to wait on taking any action on the bill.

ACTION ON SB 16: Senator Pinsoneault moved:

Page 2, lines 14 through 16.

Following: "sale" on line 14

Strike: the remainder of line 14 through "sale" on line 16

The motion carried unanimously. Senator Pinsoneault moved the bill AS AMENDED DO PASS. The motion carried unanimously.

ACTION ON SB 2: Senator Mazurek stated that Roger Tippy said the committee should define "health care provider". Valencia Lane responded the "health care provider" is under Title 37 of the MCA. Senator Pinsoneault said he could see giving them filing rights because it is defined to groups. Senator Crippen felt other groups can amend themselves into the statute because no other groups spoke on this subject, so they must not feel strongly about this. Senator Brown thought the bill should have Chiropractors because they did come to the hearing. Senator Beck said they should come in with their own amendment to get into the bill. Senator Halligan responded they were not at the subcommittee when they worked on this bill. Senator Bishop moved to include the Chiropractors. Senator Mazurek asked what should be done with the dentist because they were represented at the Judiciary hearing. Senator Bishop withdrew his motion. Senator Halligan moved to have Chiropractors and Dentists included in the bill. The motion carried unanimously. Senator Halligan moved the bill AS AMENDED DO PASS. The motion carried with Chairman Mazurek voting no.

ACTION ON SB 20: Senator Mazurek stated the committee has to make sure the 20 days starts on the mailing date in this bill. Valencia said on page 8, line 16 through page 9, line 6, the owner can mail a notice on the 19th day after service, as long as he can prove it, and should still be effective. Senator Mazurek echoed that the statute should have the

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mailing date be the start of counting back. He felt the statute should state "deposit in the U.S. mail" in (3) on page 8. Senator Halligan moved:

Page 8, line 24.

Following: "him."

Insert: "Notice by certified mail in effective on the date the notice is mailed."

Page 8, line 25.

Following "shall"

Insert: "also"

Senator Bishop said we are just giving people notice of what the law is. The motion carried. Senator Halligan asked what is going to happen to the "good, trustful, friend" cases. Senator Mazurek stated if the supplier doesn't file the 20 day notice he can't claim a lien on that 20 days. He felt the committee should wait on action until the groups agreed on the time limit of notices. Senator Mazurek commented they should work on page 12, line 5. He said there should be a revision on the joint accounts because they don't want to run to different places to get signatures. Senator Halligan felt the problem was not a bad one.

ACTION ON SB 40: Senator Halligan stated the committee accidently combined victim and family in this bill and the bill is getting more complicated because of the sexual offense part being brought into it. Senator Mazurek refreshed everyone's memory on this bill and what they had done with it so far. Senator Halligan moved to limit the services to only parents, brothers, or sisters (certain relatives). The motion carried. Senator Halligan moved the bill AS AMENDED DO PASS. The motion carried.

The committee adjourned at 12:00 p.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan 19th

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	✓		
<u>Senator Bruce Crippen, Vice Chairman</u>	✓		
<u>Senator Tom Beck</u>	✓		
<u>Senator Al Bishop</u>	✓		
<u>Senator Chet Blaylock</u>	✓		
<u>Senator Bob Brown</u>	X		X
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	✓		
<u>Senator Dick Pinsoneault</u>	✓		
<u>Senator Bill Yellowtail</u>	X		

Come on 1/2 hour later

Each day attach to minutes.

A bill requiring experience rating is attached as Exhibit I1. Regulations specifying how doctors can be experience rated are attached as Exhibit I2.

3. Establish flex-rating

If insurance companies were fully subject to the antitrust laws, then rate regulation might be unnecessary; the market would determine the proper level of rates.

However, because under the McCarran-Ferguson Act ^{FED GOV'T} insurers may ~~legally fix prices and engage in other anticompetitive activity,~~ ^{DOES NO INSURANCE REGULATION AND THUS THE JOB OF} regulation of insurance rates is ~~essential.~~ ^{LEFT TO THE STATES.}

To allow the market to work as competitively as possible despite McCarran-Ferguson, insurance companies should be permitted to raise or cut their rates without approval by the insurance commissioner within a "zone of reasonableness" - say, 25% above and 25% below the existing rate. Above or below that rate, however, states should not permit a rate to take effect unless and until the insurance commissioner approves the rate. Requiring such prior approval of rates except those within the zone of reasonableness should both smooth out the insurance industry cycle and enhance competition in the industry.

~~A bill requiring prior approval of insurance rates except those within a zone of reasonableness - so called "flex-rating" - is attached as Exhibit J.~~

4. Beef up enforcement

It is well-established that state insurance departments

Ensure none - NY & California Mr. Dept. will have some ability to use who. in these states.

TESTIMONY, SENATE BILL 52

JANUARY 19, 1986

SUBMITTED BY BONNIE TIPPY, REPRESENTING THE ALLIANCE OF AMERICAN INSURERS

The intent of this bill, and indeed of many of you, is to somehow stop the insurance cycle which many believe is what brought us to where we are today in terms of the availability and the affordability of insurance.

What you keep hearing from the Montana Trial Lawyers, both in this session and previously, is that the insurance cycle is solely to blame for our problems, and that the tort system has nothing to do with it at all.

This simply is not true. While the cycle can either mask or worsen the effects of a tort system which is out of control, it is true that insurance losses are driven by the long-term effects of the tort system.

The New York Governor's Advisory Commission On Liability Insurance recently issued Volume 2 of its report on the tort and insurance systems. The commission concluded: "The Short Term Swings and the prices charged for insurance are controlled in substantial part by the business cycle, but the bedrock trends in average underwriting costs around which these cycles gyrate have little or nothing to do with business cycle fluctuations."

The commission found a "surge" in the liability cost base in recent years as prevailing concepts of tort liability have been expanded. And there is ample documentation for these conclusions. According to ISO, after adjusting for inflation, the combined losses and expenses for all lines of insurance increased between 1967 and 1984 almost two times, or 96.4 percent. Commercial liability lines increased well over two times at 131 per cent and general liability including medical malpractice increased more than three times, at 201 percent. The facts show that paid losses, unaffected by reserving or expense loadings, have increased

far faster than the gross national product.

There is no question that long-term premium increases reflect much more than the normal insurance business cycle. For decades, the insurance cycle has swung back and forth around constantly increasing losses. Simply stated, these losses are fueled by abuses of the tort system.

This bill attempts to save the insurance industry from itself, but we must realize that many factors affect the insurance cycle which absolutely no one has any control over whatsoever. Those include interest rates, inflation, taxation of captive insurers, the overall U.S. business cycle, the value of our dollar relative to other world currencies, the stock market and spiralling underwriting losses. Of all of the factors which have controlled surplus decline, the industry had some measure of control over only one--spiralling underwriting losses. The industry has had little choice but to raise premium rates and withdraw from bad lines of business.

So what the companies did that added to today's problems was lower their rates too much, it was cut-throat competition, and the companies which attempted to stop the downward spiral in rates found themselves with catastrophic losses of market share.

This bill attempts to take care of this type of ruinous competition. But what will it really do if you choose to enact it? While chief supporters of this legislation claim that it will control downward rates, what they really seek to do is prevent rates from going higher, and this could drastically affect market stability and insurance availability.

Can this type of system work better than an open, free competition market? We say no, it cannot. Insurance, most particularly automobile insurance, is extremely market sensitive. Under this legislation, any time rates went under the band, a hearing would have to be held. Will this serve to lower prices, or to encourage insurers to keep them the same? Is it really in the best interest of Montana consumers to enact artificial price controls, other than allow a very competitive industry to compete fairly? We

don't think so.

We believe that the Insurance Commissioner has enough authority now to keep insurers in line. However, her office has historically been underfunded, and she has been unable to exercise that authority to the fullest extent. Perhaps you could consider adequately funding her office to fully implement her current authority for the next two years. Then, in 1989, you can more fairly assess whether or not that is enough.

It is true that there is a liability crisis, and it is also understandable that you would want to balance tort reform with some form of adequate regulation of insurance companies. But to unfairly burden a highly competitive industry which is also in great distress at this time will only serve to make a bad situation worse. Help Commissioner Bennett to do the job you have already given her to do. I believe that you will find that with adequate funding, she can do it very well.

I urge that this committee act on this bill with a strong "do not pass" recommendation.

SENATE JUDICIARY

EXHIBIT NO. 2
DATE 1-19-87
BILL NO. S.B. 52

Testimony of American Insurance Association by Glen Drake on SB 52

Flex rating is touted as a regulating means to control insurance rate increases or decreases and this controls future cycles.

Obviously, with only 1 percent of the total commercial insurance market in the country, the state of Montana is not going to have any meaningful impact on the future cycles, regardless of what actions it takes.

Thus, the question becomes, what regulatory approach of the insurance industry is best for Montana.

There are three basic regulatory systems now in use in the county. A.I.A. supports a strong insurance commissioners office with adequate staff to do the job under a file and use system that is best suited for Montanas needs.

The proposed flex system, because of the mandatory hearing requirement would be not only extremely expensive in times of either improved or downward market trends, but would be counter productive in the area of insurance availability. The cost of hearings both to the State and counties will have a chilling effect o those lines of insurance where problems of availability exists.

A.I.A recommends that the Insurance Commission be given additional funds to hire needed personel and that the present file and use system be retained.

There is an old saying "If a thing is not broke - don't fix it"

File and Use which Montana uses in which an insurance company files its rates with the Commisions and then can procedd to use those rates unless topped by action of the commission.

Prior Approval where rates must be approved by the commissioner before they can be used.

Flex rating, an experimental cross between the other two systems.

For Montan, because of our small market share our present system is clearly the best. Under the file and use system the Commisssioner cna address problem areas as needed. The problem with the system has been a lack of funds for auditors or actuaries to properly do the job.

Thank you.

Glen Drake

SENATE JUDICIARY
EXHIBIT NO. 3
DATE Jan 19, 1987
BILL NO. SB 52

STANDING COMMITTEE REPORT

..... January 19 19⁰⁷.....

MR. PRESIDENT

We, your committee on **SENATE JUDICIARY**

having had under consideration..... **SENATE BILL** No. **16**.....

..... **first** reading copy (**white**)
color

**SB 16 Require presale notice to owner of sale to enforce register,
service lien.**

Respectfully report as follows: That..... **SENATE BILL** No. **16**.....

is amended as follows:

1. Page 2, lines 14 through 16.

Following: "sale" on line 14

Strike: the remainder of line 14 through "sale" on line 16

as amended

DO PASS

~~DO NOT PASS~~

.....
Chairman.

STANDING COMMITTEE REPORT

January 20

19 37

MR. PRESIDENT

Senate Judiciary

We, your committee on.....

having had under consideration.....

SENATE BILL

No. 2

first reading copy (white)
color

Providing lien rights for physical theratpists and occupational therapists

Respectfully report as follows: That.....

SENATE BILL

No. 2

BE AMENDED AS FOLLOWS:

1. Title, line 6.
Following: "PHYSICAL THERAPISTS"
Strike: "AND"
Insert: ", "
Following: "OCCUPATIONAL THERAPISTS"
Insert: ", CHIROPRACTORS, AND PERSONS PRACTICING DENTISTRY"
2. Page 1, line 14.
Following: "Therapist,"
Insert: "Chiropractor, Dentist,"
3. Page 1, line 18.
Following: "occupational therapists,"
Insert: "chiropractors, persons practicing dentistry,"
4. Page 2, line 1.
Following: "occupational therapists,"
Insert: "chiropractors, persons practicing dentistry,"
5. Page 2, line 3.
Following: "therapist,"
Insert: "chiropractor, person practicing dentistry,"
6. Page 2, line 6.
Following: "therapist,"
Insert: "chiropractor, person practicing dentistry,"

~~XXXXXX~~

DO PASS

~~XXXXXXXX~~

DO NOT PASS

CONTINUED ON SECOND PAGE

.....CONTINUED.....

Chairman.

January 20

87

19

7. Page 3, line 18.
Following: "therapist,"
Insert: "chiropractor, person practicing dentistry."
8. Page 3, line 1.
Following: "occupational therapist,"
Insert: "chiropractor, person practicing dentistry,"
9. Page 3, line 8.
Following: "therapist,"
Insert: "chiropractor, person practicing dentistry,"
10. Page 3, line 19.
Following: "occupational therapist,"
Insert: "chiropractor, person practicing dentistry,"
11. Page 3, line 23.
Following: "therapist,"
Insert: "chiropractor, person practicing dentistry,"
12. Page 4, line 6.
Following: "therapy,"
Insert: "chiropractic, dentistry,"

AMEND/SB2P.SCR

AND AS AMENDED
DO PASS

.....
Senator Nazarek

STANDING COMMITTEE REPORT

.....January 29..... 1937.....

MR. PRESIDENT

We, your committee on.....SENATE JUDICIARY.....

having had under consideration.....SENATE BILL..... No. 40.....

.....second..... reading copy (yellow)
color

Allow crime victims program to pay for mental health treatment for dependent.

Respectfully report as follows: That.....SENATE BILL..... No. 40.....

is amended as follows:

1. Title, line 7.

Following: "CONDUCT OR"

Insert: "CERTAIN RELATIVES OF"

2. Title, lines 7 and 8.

Following: "CRIME" on line 7

Strike: the remainder of line 7 through "FAMILY" on line 8

3. Page 4, line 23 through line 1, page 5.

Following: "(9)(C)" on line 23

Strike: remainder of line 23 through "CHAPTER 3, OR" on line 1, page 5

4. Page 5, line 2.

Following: "OF"

Strike: "SUCH"

Following: "MINOR"

Insert: "who is a victim of a sexual crime for which a person has been charged and who is not entitled to receive services under Title 41, chapter 3,"

AS AMENDED

a

DO PASS

~~DO NOT PASS~~

.....
Chairman.