

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 3, 1987

The twenty-sixth meeting of the Business and Industry Committee was called to order by Chairman Allen Kolstad on Tuesday, March 3, 1987 at 10 a.m. in Room 410 of the Capitol.

ROLL CALL: All members were present with the exception of Sens. McLane and Walker who were excused.

CONSIDERATION OF HOUSE BILL NO. 228: Rep. Charles Swysgood, District 73, sponsored the bill which was requested by the State Auditor and said the bill provides that if a party appeals an order or action of the insurance commissioner to the district court, the appeal no longer automatically stays (stops) the order or action appealed from. This bill gives authority to the district court to decide if the order or action will be stayed pending the appeal. This would then give the insurance commissioner the opportunity to respond, stating why the order or action should or should not be stayed.

PROPOSERS:

Andrea Bennett, State Auditor and Insurance Commissioner, went over EXHIBIT 1 with the committee.

Roger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, said he had reviewed the bill and said there is adequate protection of due process under the hearing process of our statutes and supported the bill.

Bonnie Tippy, representing the Alliance of American Insurance, wished to be on record as being a proponent of the bill and said it simply mirrors the powers the commissioner has as the securities commissioner.

OPPOSERS: There were no opposers.

DISCUSSION OF HOUSE BILL NO. 228: Chairman Kolstad asked for questions from the committee.

Sen. Boylan asked why we couldn't go back to the restraining order. Kathy Irigoin from the state auditor's office said that once action is taken against an individual or a company which revokes or suspends the license, that person may appeal and that negates what they have done.

Sen. Neuman asked about other licenses (for example, cosmetologists) being appealed and if that automatically reverses the decision of the board. Ms. Irigoin said that state agencies

are governed by the Montana Administrative Procedures Act and their system is different. The decisions from the state auditor's office are automatically stayed and they are not given the opportunity to give the reasons why they should not be stayed as is the case with the other agencies.

DISPOSITION OF HOUSE BILL NO. 228: Sen. Williams MOVED HB 228 BE CONCURRED IN, seconded by Sen. Thayer. The MOTION PASSED UNANIMOUSLY and Sen. Weeding will carry the bill in the Senate.

CONSIDERATION OF HOUSE BILL NO. 278: Rep. Ed Grady, District 47, chief sponsor, said that the bill provides that if an insurance company cancels a motor vehicle policy because the insured did not pay a premium, the insurer must return whatever unearned premium is due under this policy. This means the insurance company must process the cancellation on a pro-rata basis. Many insurance companies presently process this type of cancellation in this manner but some do not. He then turned the presentation over to Tanya Ask from the Montana Insurance Department.

PROPOSERS:

Tanya Ask, Montana Insurance Department, went through EXHIBIT 2 with the committee. She asked favorable consideration because the bill would be in the best interests of the merchant hauler and does bring into uniformity what most insurance companies are now doing.

OPPOSERS: There were no opponents.

DISCUSSION OF HOUSE BILL NO. 278: Chairman Kolstad then asked for questions from the committee.

Sen. Weeding questioned why there would be money left and Ms. Ask answered that when the company requires a 40% down-payment, if one misses the next payment, they have already paid more than the company deserved. Even in the short-rate cancellation, one is entitled to some money back.

Sen. Kolstad asked how it is presently handled. Ms. Ask replied that most of the problems come from two companies with numerous complaints against them and in one instance where the difference was \$1,000 they did change their short-rate cancellation to a pro-rata cancellation because an attorney was involved in the complaint.

There being no further questions, the hearing was closed on HB 278.

DISPOSITION OF HOUSE BILL NO. 278: Sen. Thayer MOVED HB 278 BE CONCURRED IN, seconded by Sen. Meyer. The MOTION PASSED UNANIMOUSLY. Sen. Hager will carry the bill.

CONSIDERATION OF HOUSE BILL NO. 441: Rep. Ed Grady, District 47, chief sponsor, stated this bill is similar to HB 278. It provides that if an insurance premium finance company cancels an insurance agreement the insurer must cancel the policy on a pro-rata basis, i.e., the insurer must return the part of the original premium, including the deposit, not yet earned by the insurer. The insurer must return the amount to the premium finance company for the account of the insured. An insurance premium finance company is one that finances an insured's insurance contract. This type of financing generally involves commercial insureds.

PROPOSERS:

Tanya Ask, Montana Insurance Department, submitted EXHIBIT 3.

Roger McGlenn, Executive Director of Independent Insurance Agents Association of Montana, stated his firm is in support of the bill and submitted a letter from a client who is requesting the bill, EXHIBIT 4.

OPPOSERS: There were no opposers.

DISPOSITION OF HOUSE BILL NO. 441: Sen. Williams MOVED HB 441 BE CONCURRED IN, seconded by Sen. Meyer. The MOTION PASSED UNANIMOUSLY and Sen. Farrell was assigned to carry the bill.

CONSIDERATION OF HOUSE BILL NO. 439: Rep. Ed Grady, District 47, sponsor, stated the bill implements the federal Liability Risk Retention Act of 1986 by regulating the formation and operation of risk retention groups and purchasing groups in this state. A risk retention group is an insurance company formed by group members with similar liability exposure. A purchasing group is made up of members with similar liability exposure that forms to buy insurance coverage from an insurance company or risk retention group. A risk retention group that wants to be chartered in this state must be chartered and licensed as a casualty insurer. A risk retention group must submit a plan of operation or feasibility study (terms defined in section 2) to the insurance commissioner. A risk retention group chartered in another state must meet certain requirements in this state (section 4). A risk retention group may not join or contribute to an insurance insolvency guaranty fund.

Sections 7 through 9 deal with purchasing groups. Section 7 exempts a purchasing group from certain local laws. Section 8

contains notice and registration requirements of purchasing groups. Section 9 provides restrictions on a purchasing group in buying insurance from a risk retention group.

Section 10 sets forth the insurance commissioner's administrative and procedural authority regarding risk retention and purchasing groups. Section 11 is a penalty provision. Section 12 requires that agents of risk retention and purchasing groups are enforceable in state courts. Section 14 grants rule-making authority to the commissioner regarding this legislation.

PROPOSERS:

Kathy Irigoin, State Auditor's Office, went over the two exhibits which she submitted, EXHIBITS 5 and 6.

Roger McGlenn, Independent Insurance Agents Association of Montana, said that without the bill there is no regulation of risk retention groups in Montana.

OPPOSERS: There were none.

DISCUSSION OF HOUSE BILL NO. 439: Chairman Kolstad asked for questions from the committee.

Chairman Kolstad asked if the bill required a statement of intent. Ms. Irigoin said they had prepared one and submitted it to the committee which is EXHIBIT 7.

Sen. Thayer asked if there were any risk retention groups set up yet in Montana. Ms. Irigoin replied there are none at the present but they have received correspondence from a number of them who want to operate in the state.

Chairman Kolstad asked why the Cayman Islands in Bermuda were included in the risk retention groups and she replied that they once could be but now cannot.

Sen. Weeding asked for an explanation of the difference between a self-insured group and a risk retention group. Ms. Irigoin explained that a risk retention group is made up of members who form their own insurance company; self-insurers don't form an insurance company; they insure their own risks.

Sen. Neuman asked if a group could get together to form a risk retention group here for the purposes of workers' compensation and Ms. Irigoin said she thought they could. She also said that liability insurance is a subcategory for what they call casualty insurance and so is workers' comp. Ms. Irigoin stated that on page 2, line 24 is a clarification of the definition of liability.

In closing, Rep. Grady stated the bill is quite important and is being pushed by the securities people and he encouraged favorable consideration by the committee. He also requested that Sen. Thayer carry the bill in the Senate.

CONSIDERATION OF HOUSE BILL NO. 440: Rep. Ed Grady, District 47, sponsor of the bill, said it provides authority to the insurance commissioner to disapprove a casualty insurance form if it has a provision permitting the costs of defending a claim to be included in the coverage limits of the insurance contract. It would be left to the commissioner's discretion to determine if this kind of provision would be allowed (for example, if the insured is not able to obtain coverage in any other way). If an insurer is allowed to include defense costs within the limits of a contract, those costs may consume the coverage before the insured's claim has been satisfied.

PROPONENTS:

Tanya Ask, Montana Insurance Department, submitted written testimony, EXHIBIT 8, and went over it with the committee.

Roger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, said that through the processes of defending and litigation, the amount of coverage may be reduced by the amount spent on the defense cost and possibly exhausted by the process. It is also important to know the insurance company controlling that claim and the litigation on that claim, and said it is important that the legislature allow the insurance department's discretion to disapprove these forms.

OPPONENTS: There were none.

DISCUSSION OF HOUSE BILL NO. 440: Chairman Kolstad asked for questions from the committee members.

Sen. Boylan said the result of the bill would be increased premium rates to which Tanya agreed but felt it was a good bill.

Sen. Neuman clarified with Tanya that the insurance companies would just have to change the form.

The hearing was closed on House Bill 440.

EXECUTIVE ACTION ON HOUSE BILL NO. 440: Sen. Hager MOVED that HB 440 BE CONCURRED IN, seconded by Sen. Meyer. The MOTION PASSED UNANIMOUSLY.

CONSIDERATION OF HOUSE BILL NO. 433: Rep. Jack Sands, District 90, sponsor, said the bill contains numerous general "cleanup" amendments to the insurance laws and provides a definition of "motor vehicle liability policy." Section 1 contains a single word change on line 21 of page 1. Section 2 clarifies that fraternal societies must comply with the chapters regulating life and disability insurance. Section 3 inserts a comma in line 19, page 3. Section 4 clarifies that group coverage for newborns applies to individual disability policies. Section 5 makes minor word changes at lines 14 and 15 of page 5. Section 6 provides a definition of "motor vehicle liability policy." The amendments in sections 7 through 15 make numerous minor word changes and clarify that those sections apply to motor vehicle coverage.

PROPOSERS: Kathy Irigoin said they support the bill and she would answer any questions. She submitted EXHIBIT 9 to the committee.

OPPOSERS: There were no opposers.

DISCUSSION OF HOUSE BILL NO. 433: There were no questions from the committee.

EXECUTIVE ACTION ON HOUSE BILL NO. 433: Sen. Hager MOVED that HB 433 BE CONCURRED IN, seconded by Sen. Weeding. The MOTION PASSED UNANIMOUSLY. Sen. Hager will carry the bill in the Senate.

There being no further business before the committee, the meeting was adjourned at 11:16 a.m.



SEN. ALLEN C. KOLSTAD, CHAIRMAN

PUBLIC SERVICE COMMISSION

2701 Prospect Avenue • Helena, Montana 59620

Telephone: (408) 444-6199

Clyde Jones, Chairman
Howard Ellis, Vice Chairman
Judy Dwyer
Burt Macpherson
Dorothy Cheng

March 3, 1987

Senator Bob Williams
Capitol Station
Helena, MT 59620

Dear Senator Williams:

As you know, HB691 is scheduled for hearing before the Senate Business and Industry Committee on Friday March 5, 1987. This bill decreases rate regulation of some Montana telephone companies. The bill was introduced on February 11, 1987. A hearing was held in the House Business and Labor Committee on February 16, 1987. The Commission was not allowed to testify on the merits of this bill at that level due to a policy in that Committee limiting the testimony of state employees. This bill has developed a very fast schedule and the Commission would urge you to carefully consider the public policy decisions being made in this legislation. I have attached some points that the Commission feels should be carefully considered before a vote on this bill.

The Commission staff would be glad to answer any questions you might have on these telephone companies or on our position. Please call Dan Elliott if you would like to meet with us at any time or with any questions. His telephone number is 444-6180.

Thank you for your time and consideration in this important matter.

MONTANA PUBLIC SERVICE COMMISSION

Howard L. Ellis
Howard L. Ellis
Vice Chairman

THIS BILL IS BAD PUBLIC POLICY. HERE ARE FIVE REASONS WHY THE PSC FEELS IT IS NOT DESIRABLE.

1. IT PLACES THE MONTANA CONSUMER COUNSEL IN THE SHOE OF THE PSC, AND MCC DOESN'T HAVE THE SAME STATUTORY MANDATE AS THE PSC. THE MONTANA CONSUMER COUNSEL LOOKS AFTER CONSUMER INTERESTS. THE PSC LOOKS AFTER THE PUBLIC INTEREST, JUST AS THE LEGISLATURE DOES. WE THINK THE LEGISLATURE IS WELL AWARE THAT CONSUMER INTERESTS AT TIMES ARE DIFFERENT THAN THE PUBLIC INTEREST. ALTHOUGH THE PSC CAN STILL INVESTIGATE RATES, PRACTICALLY SPEAKING THIS WILL PROBABLY NOT OCCUR DUE TO THE PSC'S SMALL STAFF SIZE AND MORE PRESSING PRIORITIES.

2. THIS BILL ERODES STATUTORY PROVISIONS AGREED TO BY ALL PRIVATELY OWNED MONOPOLIES WITH THE STATE OF MONTANA. THE AGREEMENT IS THAT IN EXCHANGE FOR BEING ALLOWED A MONOPOLY STATUS THE MONOPOLY OWNERS AGREED TO REGULATION AND SUPERVISION OF THEIR BUSINESS BY THE PSC. THIS BILL ERODES AND PARTIALLY DESTROYS THAT AGREEMENT ENTERED INTO BY THE VERY SAME MONOPOLIES DURING ITS PASSAGE. THESE FIVE UTILITIES ARE NOT COOPERATIVES.

3. THIS BILL DISCRIMINATES AGAINST SOME MONTANANS. CUSTOMERS IN HUNTLEY, FOR EXAMPLE, WHO ARE SERVED BY PROJECT TELEPHONE COMPANY, WOULD HAVE FEWER RIGHTS AND PROTECTION THAN THOSE IN HELENA, WHO ARE SERVED BY MOUNTAIN BELL. ALL CUSTOMERS OF PRIVATELY OWNED MONOPOLIES SHOULD HAVE THE SAME.

4. IF THIS BILL PERTAINED TO COMPETITIVE OR PARTIALLY COMPETITIVE TELEPHONE SERVICES, THE PSC WOULDN'T BE OPPOSED. BUT THIS BILL PERTAINS TO BASIC MONOPOLY LOCAL TELEPHONE SERVICE. ALL CUSTOMERS, INCLUDING HUNDREDS OF BUSINESSES, HAVE NO OTHER ALTERNATIVE.

5. THIS BILL PRESUMES PSC REGULATION HAS BEEN SUFFICIENT. IT HAS NOT. THE VAST MAJORITY OF REQUESTS PUT BEFORE THE PSC BY THESE 5 TELEPHONE UTILITIES HAVE BEEN GRANTED WITHOUT HEARING. ADDITIONALLY, THE PSC ALREADY REQUIRES FAR LESS INFORMATION FROM THESE UTILITIES THAN BIG ONES DURING RATE INCREASE CASES. ALTHOUGH THESE UTILITIES HAVEN'T FORMALLY ASKED THE PSC, THE PSC HAS MADE IT KNOWN THAT IT WOULD LOOK AT RECEIVING EVEN LESS. ADDITIONALLY, ALL EXPENSES INCURRED BY UTILITIES TO APPEAR BEFORE THE PSC HAVE ALWAYS BEEN PASSED THROUGH INTO RATES. THIS IS REASON ENOUGH FOR THE PSC TO BE CONCERNED THAT THEIR COSTS ARE KEPT TO A MINIMUM. FINALLY, WE URGE YOU TO ASK THE REPRESENTATIVES OF THESE FIVE MONOPOLIES HOW MANY MILLIONS IN REVENUES THEY HAVE COLLECTED OVER THE PAST TEN YEARS COMPARED TO THE LEVEL OF EXPENSE INCURRED FOR PSC OVERSIGHT.

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/3/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE			✓
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER			✓
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

Business & Industry

3/3/87

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Sergeant)

WRITTEN TESTIMONY OF STATE AUDITOR
HB 228 (REMOVAL OF AUTOMATIC STAY)DATE 3-3-87BILL NO. HB 228

A. Background

The Montana Administrative Procedures Act (MAPA), which governs the procedures of most state agencies, does not provide for an automatic stay of the agency decision if the agency decision is appealed to the district court. (Section 2-4-702(3), MCA.) If a person appeals an agency decision to the district court under MAPA, the agency may grant or the reviewing court may order a stay upon terms which it considers proper after providing notice to the affected parties and an opportunity for hearing. Id. The only time an agency decision is automatically stayed under MAPA is when an agency appeals a district court judgment reversing an agency decision. (Section 2-4-711(2), MCA.)

Unlike MAPA, the Montana Insurance Code provides an automatic stay if the agency decision is appealed. The automatic stay provision of the Montana Insurance Code permits an insurance agent or insurance company to continue selling insurance in this state by simply appealing a suspension or revocation order by the insurance commissioner. An insurance agent or insurance company who appeals from an order by the insurance commissioner gets an automatic stay without having to provide reasons for one to the district court. The insurance commissioner has no opportunity to present arguments to the district court as to why a suspension or revocation of an insurance license should not be stayed. The current insurance law, in permitting an automatic stay of an appealed agency decision, prevents the insurance commissioner from protecting Montana insurance consumers from insurance agents and insurance companies who have had their licensed suspended or revoked and who are likely to harm consumers if permitted to continue selling insurance pending the outcome of an appeal.

B. Proposed change to law

If House Bill 228 is passed, an order by the insurance commissioner will not be stayed simply because it is appealed to the district court. Instead, an order by the insurance commissioner will not be stayed unless (1) the insurance commissioner and the appellant agree to a stay; or (2) if, after hearing arguments from the appellant and the insurance commissioner, the district court determines that the insurance commissioner's order should be stayed pending its judgment. If House Bill 228 were passed, the appellant would present arguments as to why the appealed order should be stayed; and the insurance commissioner would have an opportunity to presents arguments as to why he order should not be stayed.

House Bill 228 is not retroactive because it does not include an applicability section that makes the provisions of the bill apply retroactively. "Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed [in the bill]." (Section 1-2-201(1), MCA.) If House Bill 228 were passed, it would be effective on October 1, 1987, because no effective date is included in it.

House Bill 228 does not affect a person's right to appeal an order by the insurance commissioner. It simply provides that an order by the insurance commissioner is not AUTOMATICALLY stayed just because it was appealed.

C. Justification/Conclusion

1. The Montana Administrative Procedures Act (MAPA), which governs the procedures of most state agencies, does not provide for an automatic stay of an appealed agency decision. (Section 2-4-702(3), MCA.)

2. The only time an agency decision is stayed under MAPA is when an agency appeals a district court judgment reversing an agency decision. (Section 2-4-711(2), MCA.)

3. Under the current law, an insurance agent or insurance company who appeals from an order by the insurance commissioner gets an automatic stay without having to provide reasons for one to the district court. The insurance commissioner has no opportunity to present arguments as to why the suspension or revocation of an insurance should not be stayed. The current insurance law, in permitting an automatic stay of an appealed agency decision, prevents the insurance commissioner from protecting Montana insurance consumers from insurance agents and insurance companies who have had their licenses suspended or revoked and who are likely to harm consumers if permitted to continue selling insurance pending the outcome of an appeal.

4. If House Bill 228 were passed, the appellant would present arguments as to why the appealed order should be stayed; and the insurance commissioner would have an opportunity to present arguments as to why the order should not be stayed.

5. House Bill 228 is not retroactive because it does not include an applicability section that makes the provisions of the bill apply retroactively. If House Bill 228 were passed, it would be effective on October 1, 1987, because no effective date is included in it.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 3-3-87

BILL NO. H.B. 228

6. House Bill 228 does not affect a person's right to appeal an order by the insurance commissioner. It simply provides that an order by the insurance commissioner is not AUTOMATICALLY stayed just because it was appealed.

D. Short summary

House Bill 228 makes procedures under the Montana Insurance Code the same as they are under the Montana Administrative Procedures Act. House Bill 228 makes procedures for the insurance commissioner the same as they are for most other state agencies. If House Bill 228 were passed, a person who appeals a suspension or revocation order by the insurance commissioner would have to present arguments to the district court as to why the commissioner's order should be stayed pending the its decision. The insurance commissioner would have an opportunity to present arguments to the district court as to why her suspension or revocation order should not be stayed pending the its decision.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 3-3-87

BILL NO. H.B. 228

TESTIMONY HB 278

Submitted by Tanya Ask
Montana Insurance Department
March 3, 1987

We support House Bill 278. The insurance industry generally views cancellation for nonpayment of premium as cancellation by the company since they are the ones who send out the cancellation notice. Return premium, if there is any, is therefore calculated on a pro rata basis meaning the insured pays for only the actual time coverage was in place.

In the commercial auto insurance market (primarily long-haul truckers) a deposit premium of 40% is usually required of the insured. The balance is then due on an installment basis. If an installment is missed, the company cancels, and the insured gets back the unearned balance of the premium paid.

We have recently run into situations where a company does not go along with the general industry practice and short rates the cancellation. (This means the individual pays an amount greater than the earned premium for the time coverage was in place.) The difference between pro rata and short rate on some of these commercial auto policies is over a thousand dollars. For commercial truckers operating on a very thin profit margin, this amount of money becomes even more important. We want to see all members of the insurance-buying public treated equally, and we think this bill would benefit our trucking industry.

TESTIMONY HB 441

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 3-3-87

BILL NO. HB 441

Prepared by Tanya Ask
Montana Insurance Department
March 3, 1987

We support this bill. Commercial insurance is not a small portion of a business budget, and frequently the premium must be financed through a premium finance company. If the insured misses a payment, the premium finance company, having power of attorney, has the right to cancel that contract. This bill would codify a general insurance industry practice of making that cancellation pro rata, the insured pays only for the coverage actually received.

As in the pro rata cancellation of a motor vehicle policy, we feel this bill is in the best interest of the commercial insurance-buying public.

Associates Acceptance Corporation

130 First Avenue West • P.O. Box 460 • Kalispell, Montana 59903-0460 • 1-406-755-7110

February 27, 1987

W. Roger McGlenn
Independent Insurance Agents of Montana
P. O. Box 5593
Helena, MT 59604-5593

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 3/3/87

BILL NO. HB 441

Re: HB 441

Dear Roger,

There isn't that much to say about this bill, it seems to be a question of fairness.

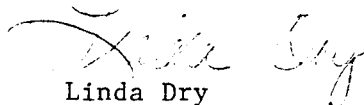
If an insurance company does not get paid and they cancel an insurance policy, it is cancelled on a pro rate basis. If a premium finance company requests cancellation for non-payment, some companies have been short rating the cancellation.

In all fairness, it is only a few companies doing this. Most companies agree on the theory that a cancellation for non-payment should be processed pro rate. Recently, however, we have encountered several companies (mainly truck insurers) who have decided that there is no statute prohibiting it, so they are cancelling short rate.

A premium finance company can adjust to this situation by requiring a higher down payment to cover the penalty. But on the average trucker's policy we are talking about \$250 to \$400 that the guy would not have to pay otherwise. It is just seems unfair to penalize an insured simply for using a premium finance company, especially when the company itself does not offer financing.

Roger, I appreciate you speaking on behalf of this bill. If you feel that we should come to Helena, or if things change in any way, please let us know.

Sincerely,



Linda Dry
Vice President

INFORMATION SHEET

HOUSE BILL 439--RISK RETENTION AND PURCHASING GROUPS

Sponsor: Representative Ed Grady

I. Background

The Product Liability Risk Retention Act of 1981 preempted certain state laws that tended to inhibit the formation of risk retention groups and purchasing groups for purposes of insuring product liability. The Liability Risk Retention Act of 1986 expands the scope of the 1981 preemption to enable risk retention groups and purchasing groups to provide not only product liability insurance but all types of liability insurance.

II. Purpose

HB 439 implements the Liability Risk Retention Act of 1986 and clarifies the Montana laws with which a risk retention group operating in Montana must comply. HB 439 sets out the conditions under which a purchasing group that has a Montana member may purchase insurance in Montana.

III. Section by Section Explanation

Section 1 states the purpose of HB 439, which is to regulate formation and operation of risk retention groups formed in this state pursuant to the Liability Risk Retention Act of 1986.

Section 2 lists definitions.

Section 3 requires a risk retention group seeking to be chartered in Montana to (1) be chartered and licensed as a casualty insurer pursuant to Montana law, (2) comply with Montana insurance laws and with section 4, and (3) submit for approval to the commissioner a plan of operation or a feasibility study and revisions of the plan or study if the group intends to offer any additional lines of liability insurance.

Section 4 lists the Montana laws with which a risk retention group not chartered in Montana must comply.

Section 5 provides that a risk retention group may not (1) join or contribute financially to a guaranty fund; or (2) receive benefits from a guaranty fund. It also provides that a risk retention must participate in Montana joint underwriting associations, mandatory liability pools, and similar mechanisms.

Section 6 exempts policies issued to a risk retention group or member from Montana's countersignature law.

Section 7 exempts purchasing groups from Montana laws prohibiting the formation of groups for the purpose of insurance or discriminating against a purchasing group or its members.

Section 8 sets forth the notice and registration requirements of purchasing groups that intend to do business in Montana.

Section 9 sets forth the restrictions on insurance purchased by purchasing groups. It provides that insurance purchased for a purchasing group that has a member who has a risk resident, located, or to be performed in Montana must be purchased (1) from a risk retention group chartered in a state; (2) from an insurer authorized to transact insurance in Montana; or (3) through a licensed agent acting pursuant to Montana surplus lines laws and regulations.

Section 10 provides that the commissioner may use any powers established under the Montana Insurance Code to enforce Montana law as long as those powers are not specifically preempted by the federal Liability Risk Retention Act of 1986. The commissioner may investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties.

Section 11 provides that a risk retention group that violates a provision of the bill is subject to fines and penalties applicable to licensed insurers generally, including revocation of its license to do business in this state.

Section 12 an person who acts as an agent or offers to act as an agent for a risk retention group or purchasing group, who solicits members, sells insurance coverage, purchases coverage for members located in Montana must first obtain an Montana insurance agent license.

Section 13 provides that an order by any district court of the United States enjoining a risk retention group from soliciting or selling insurance or operating in any state is enforceable in Montana courts.

Section 14 authorizes the commissioner to make and amend reasonable rules relating to risk retention groups and purchasing groups.

IV. Amendments

The State Auditor's proposed amendments to HB 439 simply correct problems and typographical errors that Legislative Council agrees need correction.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 3-3-87
BILL NO. H.B. 439

BACKGROUND:

The Product Liability Risk Retention Act of 1981 preempted certain state laws that tended to inhibit the formation of liability risk retention groups and purchasing groups for purposes of insuring product liability. The Liability Risk Retention Act of 1986 expands the scope of the 1981 preemption to enable risk retention groups and purchasing groups to provide not only product liability insurance but all types of liability insurance.

RISK RETENTION GROUPS:

The state in which a risk retention group is chartered retains authority to regulate it while the non-chartering states in which a risk retention group operates have limited regulatory authority over it. A non-chartering state has more authority to regulate a risk retention under the 1986 Act than it had under the 1981 Act.

A risk retention group must have only members who are engaged in businesses or activities similar or related with respect to liability by virtue of similar or common business, trade, product, services, premises, or operations. A risk retention group must be licensed as an insurer under the laws of one of the 50 states. The chartering state may regulate the formation and operation of a risk retention group.

A. Laws from which a risk retention group is exempt:

1. Laws inhibiting the operation of risk retention groups
2. Laws requiring participation in the state guaranty fund
3. Countersignature laws
4. Laws that discriminate against a risk retention groups or its members

B. Laws with which a state in which a risk retention group operates may require the risk retention group to comply:

1. Agent licensing laws
2. Laws requiring the submission of information (plan of operation or feasibility study and annual financial statement)

C. Laws with which ANY state may require a risk retention group to comply:

1. Unfair settlement practice laws
2. Premium tax laws
3. MAP and JUA laws
4. Laws requiring service of process through the commissioner of insurance
5. Examination laws
6. Orders by the commissioner
7. Deceptive, false, or fraudulent acts laws
8. Laws requiring compliance with court injunctions regarding hazardous financial condition or financial impairment
9. Laws requiring notice to consumers

PURCHASING GROUPS:

Purchasing groups are not an insurer. They can be comprised only of members with similar or related liability exposure by virtue of common business, trade, product, services, premises, or operations. A purchasing group may be domiciled in any state. A purchasing group purchases only for its group members and only to cover their similar or related liability exposure.

A. Laws from which a purchasing group is exempt:

1. Laws prohibiting the establishment of purchasing groups
2. Laws prohibiting the issuance or offer of insurance based on loss and expense experience
3. Laws prohibiting a purchasing group to purchase insurance on a group basis
4. Laws prohibiting a purchasing group from purchasing insurance on a group basis if not in existence for a minimum period or because a member has not belonged to the group for a minimum period of time
5. Laws requiring a purchasing group to have a minimum number of members, common ownership or affiliation, or certain legal form
6. Laws requiring a certain percentage of the members of a purchasing group to obtain insurance on a group basis
7. Countersignature laws
8. Laws discriminating against a purchasing group

H.B. 439
3-3-87
6
BILL NO. ON FILE
DATE
EXHIBIT NO.
SEN. J. B. HARRIS

B. Laws with which a state may require a purchasing group to comply:

1. Agent licensing laws
2. Laws requiring the submission of notice of intent
3. Laws requiring the purchasing group to designate the commissioner of insurance as agent for service of process

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 3-3-87
BILL NO. H.B. 439

50th Legislature

STATEMENT OF INTENT

HB BILL NO. 439

A statement of intent is required for this bill because section 14 authorizes the Commissioner of Insurance of the state of Montana (commissioner) to make and amend reasonable rules relating to risk retention groups and purchasing groups as may be necessary or desirable to carry out the provisions of the bill. The Legislature intends that the rules, which the commissioner adopts to implement this bill, be designed principally to protect Montana insurance consumers while making liability insurance more available in this state. The Legislature further intends that the commissioner adopt those rules in accordance with 33-1-313, MCA, which grants the commissioner general rule-making authority and which permits the commissioner (1) to make only reasonable rules that do not extend, modify, or conflict with any law of this state or with any reasonable implication of those laws; and (2) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703, MCA.

TESTIMONY HB 440

Submitted by Tanya Ask
Montana Insurance Department
March 3, 1987

We support this bill and oppose the general use of "defense cost within policy limits" provisions since they are not in the best interest of the general commercial insurance buying consumer. When an insured purchases liability policy limits, he or she purchases that much insurance protection. If my business purchases liability protection in the amount of \$1 million dollars, and a valid claim is entered against me which amounts to \$1 million dollars, that claim would now be paid. If my policy includes defense within limits and the cost of the defense was \$250,000, the \$250,000 would apply towards my policy limits leaving a balance of \$750,000 in the policy for claim payment.

There are certain lines where coverage simply does not exist. At that point it may be necessary to allow a contract with this provision to be offered simply so there is some insurance for the insurance buying public.

The general concept of defense costs within policy limits is one the industry through the Insurance Service Office has put forth for consideration by all insurance commissioners. The proposals have been rejected by those commissioners through their national association in December. This provision, which was to act as a cost containment mechanism, appears to instead become a cost transference to the insured.

Before such a transference should ever be considered, the insured must know he/she is accepting that additional burden. The insured must be allowed a reasonable degree of control in the defense of the case. The insured must also, through reduced premium, be able to share in the cost-containment.

WRITTEN TESTIMONY OF THE STATE AUDITOR
HOUSE BILL 433
Senate Business and Industry
March 3, 1987

I. Purpose

The purpose of House Bill 433 is to clean up minor errors and irregularities in the Montana Insurance Code.

II. Section by Section Explanation

Section 1 deletes "as" in line 21, page 1.

Section 2 makes chapters 20 (life) and 22 (disability) apply to fraternal benefit societies (see page 3, line 4).

Section 3 removes a comma in line 19, page 3 (between the words "mortgage" and "guaranty").

Section 4 clarifies that 33-22-301, MCA, (newborn infant coverage) applies to every individual disability policy, not just to family policies (see page 3, line 25).

Section 5 replaces "service plan corporation" with "health service corporation" (see page 5, lines 14 and 15).

Section 6 defines "motor vehicle" and "motor vehicle liability policy" (see page 7, lines 11 through 18).

Sections 7 through 15 replace "automobile" and "auto" with "motor vehicle" (see page 7, line 19 through line 25, page 15).

III. Amendments:

In response to the recent Montana Supreme Court decision, State Farm Mutual Automobile Company v. Taylor, 43 St. Rptr 1667 (September 12, 1986), State Farm proposed and the House approved an amendment to define "uninsured motor vehicle" to mean "a land motor vehicle, neither the ownership, nor the maintenance, nor the use of which is insured or bonded for bodily injury liability at the time of the accident." The facts of the Taylor case were as follows: Mr. Taylor was the driver of a vehicle with Mr. Hanson and Mr. Calloway as passengers. Mr. Taylor and Mr. Hanson had State Farm automobile liability insurance policies. Mr. Moss, the driver of an uninsured motor vehicle that he did not own rearended the

car carrying the three men. Mr. Moss had personal liability insurance that paid to the policy limit but left the judgments obtained on behalf of the three men partially unsatisfied. Noting that the Montana Insurance Code did not contain a definition of uninsured motor vehicle, the Montana Supreme Court held that the State Farm automobile insurance policies insuring Mr. Taylor and Mr. Hanson provided uninsured motor vehicle coverage under these circumstances.

We proposed and the House approved an amendment to define "motor vehicle liability policy" to mean "any policy of automobile or motor vehicle insurance against liability now or hereafter required by Title 61, chapter 6, parts 1 and 3."

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 9

DATE 3-3-87

BILL NO. H.B. 133

STANDING COMMITTEE REPORT

March 3, 1937

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 228

THIRD reading copy (BLUE)
color

SWYSGOOD (WEEDING)

REMOVE AUTOMATIC STAY OF INSURANCE COMMISSIONER'S ORDER

UPON APPEAL

Respectfully report as follows: That HOUSE BILL No. 228

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXX~~

Kelley

STANDING COMMITTEE REPORT

MARCH 3,

19 87

MR. PRESIDENT

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

having had under consideration **HOUSE BILL** No. **278**

THIRD reading copy (**BLUE**)
color

GRADY (HAGER)

VEHICLE LIAB. -- PROCESS CONCELED POLICY PRO RATA BASIS;

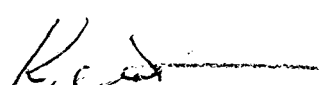
RETURN UNEARN. PREM.

Respectfully report as follows: That **HOUSE BILL** No. **278**

BE CONCURRED IN

~~**DO PASS**~~

~~**DO PASS**~~


.....
SENATOR KOLSTAD, Chairman.

STANDING COMMITTEE REPORT

MARCH 3,

19. 37

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 433

THIRD reading copy (BLUE)
color

SANDS (HAGER)

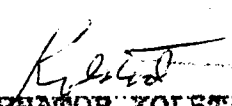
GENERALLY REVISE INSURANCE LAWS

Respectfully report as follows: That HOUSE BILL No. 433

BE CONCURRED IN

~~XXXXXX~~
DO PASS

~~XXXXXXXXXX~~
DO NOT PASS


SENATOR KOLSTAD,

Chairman.

STANDING COMMITTEE REPORT

MARCH 3,

19 87

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 440

THIRD reading copy (BLUE)
color

GRADY (PINSONEAULT)

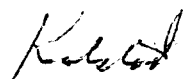
**DISAPPROVE INSURANCE POLICY WITH "DEFENSE COSTS WITHIN
LIMITS" PROVISION**

Respectfully report as follows: That HOUSE BILL No. 440

BE CONCURRED IN

~~XXXXX~~
DO PASS

~~XXXXXXXXX~~
DO NOT PASS


SENATOR KOLSTAD,

Chairman.

STANDING COMMITTEE REPORT

MARCH 3, 1987

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 441

THIRD reading copy (BLUE)
color

GRADY (FARRELL)

PRO RATA CANCELLATION OF FINANCED INSURANCE POLICY

Respectfully report as follows: That HOUSE BILL No. 441

BE CONCURRED IN

XXXXXXXX

XXXXXXXXXX


SENATOR KOLSTAD, Chairman.