

MINUTES OF THE MEETING  
BUSINESS & INDUSTRY COMMITTEE  
MONTANA STATE SENATE

March 18, 1987

The thirty-seventh meeting of the Business and Industry Committee was called to order by Chairman Allen C. Kolstad on Wednesday, March 18, 1987 at 10 a.m. in Room 410 of the Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 28: Rep. Jerry Driscoll, House District 92, Billings, said the resolution is in support of the national effort to advance the development of magnetohydrodynamics technology to a commercially viable point.

PROPOSERS: Neal Egan, MSE, Inc., a Butte company with 200 employees and in business for 10 years, said they were very interested in MHD as their primary business area. The time for commercialization has arrived and that will take place in Billings, he said. He strongly urged the unanimous passage of this resolution.

Carla Gray, Montana Power Company, said they were pleased to be a part of the MHD project which is the Corrette plant in Billings and urged favorable consideration of the resolution.

Don Ingels, Montana Chamber of Commerce, wished to add their support to HJR 28.

Kay Foster, Deputy Mayor of Billings and representing the Billings Area Chamber of Commerce, said both the city of Billings and the Chamber wholeheartedly support HJR 28.

Rep. Dave Brown, House District 72, Butte-Silver Bow, appeared in strong support of HJR 28.

R.K. Ripley, who was unable to be present, provided written testimony which is attached to the minutes. (EXHIBIT 1)

OPPOSERS: There were no opposers.

DISPOSITION OF HOUSE JOINT RESOLUTION NO. 28: Sen. Walker MOVED HJR 28 BE CONCURRED IN, seconded by Sen. McLane. The MOTION CARRIED UNANIMOUSLY.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 8: Rep. Harry Fritz, House District 56, Missoula, sponsor, said the resolution urges the ICC to refrain from approving a railroad's divestiture of control or sale of property without a complete study of the fiscal, economic, and environmental impact of divestiture and without public hearings.

PROPONENTS: Joe Brand, representing the United Transportation Union, Brotherhood of Locomotive Engineers, Brotherhood of Maintenance and Weigh Employees and the Brotherhood of Railway and Airline Clerks, said the resolution was self-explanatory. He said they were very concerned about who was going to have the railroad and also concerned about the customers and the condition of the tracks. He felt this resolution would be complimentary to bills which are being introduced in Congress by Montana senators and representatives to help save the rail industry in Montana.

James Murry, Exc. Sec. MT AFL-CIO submitted written testimony in support of HJR 8. (EXHIBIT A)

OPPONENTS: There were no opponents to HJR 8.

DISCUSSION OF HOUSE JOINT RESOLUTION NO. 8: Sen. Williams inquired of Mr. Brand as to what stage the sale to Mr. Washington is presently. Mr. Brand replied that it would be at least two months before they know what they are going to do.

Sen. Neuman said it looked like it could be years before a sale of a branch line could be accomplished. Mr. Brand said that could be true on some of the property. Burlington Northern runs from coast to coast and they make assessments, according to Mr. Brand, every year on the evaluation of their lines. Under that determination they then decide what they should hold onto and what they should sell or abandon. It's on a year to year basis and the PSC, in each state, is supposed to be notified on a yearly basis, exactly what is proposed for that state. Mr. Brand said that most of the resolution that they began with had been stricken and the amendments were made in the House. Sen. Neuman referred to page 4, line 8 and said it appears it has to be approved nationwide; that could take years. Mr. Brand said they notify the PSC in every state on a yearly basis to let us be knowledgeable of their plans.

Sen. Thayer asked if the sale wasn't a better alternative than abandonment. Mr. Brand said they have two problems with the sales and abandonments. The problem with sales is because they are a common carrier and they serve the public, he said they ought to be knowledgeable of who is taking over that railroad. He pointed out the situation of Montana Western, the branch line from Butte to Garrison. He said there are railroad workers that are unemployed and these people are hiring workers from the job service that are unskilled to be railroad workers and the federal government is subsidizing that railroad through wages. He said that the taxpayers are picking up the tab for this carrier. He said they also fear deterioration of the tax base and the service to the customers. These purchasers can also abandon the railroad within 30 days with no hearings whatsoever.

Sen. Thayer said there could be all the hearings and laws possible, but it all boils down to economics. He said they tried every way to keep the Milwaukee Railroad going but it is gone simply because it wasn't a viable railroad. Mr. Brand

disagreed with the statement of Sen. Thayer. Sen. Thayer asked Mr. Brand why his union doesn't try to work to see what could be done to run them more efficiently rather than throw up roadblocks. Mr. Brand said they had tried to negotiate with the cabooses, tried to negotiate all other kinds of things with the management. He said if the management isn't willing to try to work with the workers, they have a problem. He also said the Burlington Northern is making more money than any other entity in business; their productivity per employee is the highest in the nation. Sen. Thayer asked what kind of negotiations took place with the cabooses. Mr. Brand said he was not involved in that and pointed out that the national contract said there would be a reduction of 25%, not a total destruction of the caboose in that contract.

There being no further questions, Rep. Fritz closed his presentation of HJR 8. He said they would like some investigation, as the resolution reads, into the fiscal, economic and environmental impact of divestiture of the shortline and he said the state of Montana is entitled to that information. He urged support of the resolution.

CONSIDERATION OF HOUSE BILL NO. 426: Rep. Bud Campbell, House District 48, Deer Lodge, sponsor, said the bill revises the insurance laws as they relate to governmental insurance programs. It provides that the code does not apply to the workers' compensation provisions in Title 39, the state employees group insurance program under Title 2, or to insurance funded through the state self-insurance reserve fund. The bill also amends the definition of insurance to include agreements between political subdivision of the state or an agreement under a political division offering insurance to officers and employees.

PROPONENTS: Robert Throssell, State Auditor's Office, said the bill was introduced at the request of the insurance commissioner. Mr. Throssell submitted written testimony which he explained to the committee (EXHIBIT 2) The insurance commissioner asked that the bill be introduced to bring it to the legislature's attention that there are, in fact, programs which are being operated and being touted as insurance which do not come under the guidelines of the legislature which have been established for insurance programs. The opponents, he said, would make very persuasive arguments why these local government run programs should be exempt from the insurance code. The insurance office wants a decision from the legislature as to how they want these programs to be operated.

Glen Drake, representing the American Insurance Association, said they supported the state auditor's efforts in this to make a determination of whether or not these governmental insurance programs are in fact insurance and thus come under the jurisdiction of the insurance commissioner or if they are something else.

Mr. Drake said he believed they appear to be in the nature of insurance and they should be regulated under the insurance provisions. However, he said, they did have a problem with their being regulated and that related to the guaranty fund. They did not believe they should come under the guaranty fund because of their funding and their structure. Even though they might come under the insurance code otherwise, their funding mechanism is such that they believe they would be high risk and ultimately the insurance carriers would end up bailing them out when they go broke. Mr. Drake presented proposed amendments to exclude them from that guaranty fund and asked that the committee exclude them from that fund if they should consider passing the bill. (See EXHIBIT 3)

Randy Gray, State Farm Mutual Insurance and the National Association of Independent Insurers, Great Falls, advised that the position of his principles was the same as Mr. Drake's testimony. He also agreed with Mr. Drake that they be excluded from the guaranty fund and supported Mr. Drake's amendments.

OPPONENTS: Alec Hansen, Montana League of Cities and Towns, said they didn't want to get into the insurance business but when they found out cities in the state of Montana couldn't buy liability insurance at any cost, they were forced to initiate a program. They put together what they considered to be a very solid, professional program with a lot of protection and safeguards built in. They issued \$6.25 million in bonds, with permission of the legislature, to secure those programs. That provides considerable security, not only for the program, but for the bondholders, he said. He said they didn't feel their type of insurance should be regulated. According to Mr. Hansen, they were successful in the House in getting an amendment to exempt them from taxes and fees. The premiums to fund the program come from taxes; property taxes. He said they had met with the insurance commissioner's office to possibly set up some way of providing them with some basic information, some record keeping and some kind of reporting system. It appears from those conversations that they want the legislature to make a decision as to whether or not this insurance should be regulated, taxed and subject to the provisions of the insurance code. He said this is not insurance in the traditional sense. Mr. Hansen offered a proposed amendment (EXHIBIT 4) to provide that this is not a regulated program.

DISCUSSION OF HOUSE BILL NO. 426: Chairman Kolstad called for questions from committee members. He then asked Mr. Throssell what the primary reason was for the commissioner requesting this bill. Mr. Throssell replied that the programs were set up and called insurance and under the statutes the commissioner is charged with the duty of regulating those programs and seeing that they comply with the insurance codes. The bill is to ask the legislature to give direction to the insurance commissioner,

as to whether this program should be regulated or exempt.

Sen. Thayer asked Mr. Hansen if his group would be the only one affected by this bill. Mr. Hansen said he thought the counties did have a liability insurance program. He said his program was unique and was the first one of its kind in the U.S.

Sen. Thayer asked Mr. Gray if he supported the bill with Mr. Drake's amendments. He said that was correct and he agreed fully with the application of the guaranty fund and they were vitally concerned with that fund.

Chairman Kolstad asked if the Drake amendments preclude the local government programs from participating in this guaranty fund. That was correct, Mr. Gray said. It was his understanding if the bill was passed with Mr. Drake's amendment, the program would still be subject to the regulation of the commissioner's office for review purposes and violation purposes. They would be regulated in some areas but they would not be brought into the coverage area of the guaranty fund, so if one of them went insolvent, the rest of the industry would not be called on to cover that insolvency.

Sen. Williams asked what the auditor's office thought of the Drake amendments. Mr. Throssell said it was the position of the commissioner of insurance that the programs are insurance; the piecemeal of it defeats the purpose of the insurance code. The purpose of the insurance code is to assure people that they do have insurance and pieces cannot be picked out of this type of code.

Sen. Thayer said, what the auditor's office wants is either this bill, the way it is, without the Drake amendments, or accept Mr. Hansen's suggested amendments which would give an either/or choice. Mr. Throssell said for the regulation to mean anything it has to be a package.

Mr. Drake said in view of Mr. Throssell's testimony, it would be the view of the American Insurance Association, that the amendments proposed by Mr. Hansen, if adopted, would say in effect, that these funds are not insurance. If they are called insurance, which they basically are, when they go broke, the whole industry is associated with them. If they are not going to be excluded from the guaranty fund, they would support Mr. Hansen's position that they be declared not to be insurance by the legislature.

Chairman Kolstad asked Mr. Hansen when their program was first started, if they structured their premiums at approximately the same level that the premiums were costing them prior to the time that they weren't able to buy insurance. Mr. Hansen said it varied; some were a pretty high rate. They based their premiums on what they thought was necessary to make the program work.

He said, for the information of the committee, they are required to submit reports, file statements, under the terms of the bond program. Those bondholders have a very compelling interest in the program and, for that reason, it has to be run right and be secure and the premiums have to be adjusted in accordance with the losses, he said. They think the program is running very well and they have a good solid program.

There being no further questions, Rep. Campbell closed his presentation of HB 426.

CONSIDERATION OF HOUSE BILL NO. 437: Rep. Charles Swysgood, House District 73, Dillon, sponsor, said the bill gives the insurance commissioner the power to issue cease and desist orders. The bill establishes time limits in which the respondent must request a hearing on the order and in which a hearing must be held. The bill also gives the parties a certain period after the hearing in which to submit proposed findings of fact, conclusions of law, and supporting briefs to the hearing examiner and an additional period in which to respond to the other party's materials.

PROPONENTS: Andrea Bennett, State Auditor and Insurance Commissioner, said that many of those present had heard or read of the problems of the company known as Life of Montana of Bozeman and read her written testimony concerning the order to rehabilitate. (EXHIBITS 5, 6, 7 and 8) Those exhibits contain a letter to the president of the Life of Montana Company, a news release and a news article from the Bozeman Chronicle dated August 1, 1985. She said the legislation provides both an effective and fair enforcement method that allows for consumer protection and fair treatment of the violator and urged the committee's favorable consideration.

Roger McGlenn, Executive Director of the Independent Insurance Agents Association, said they stood in support of HB 437. They felt there was ample protection and due process under the statute for agents and companies and they felt the bill was in the best interests of Montana insurance consumers.

Glen Drake, American Insurance Association, said the Association supported the commissioner's efforts in attempting to regulate illegal acts of insurance companies through this cease and desist process and recommend the bill.

OPPONENTS: There were no opponents.

DISCUSSION OF HOUSE BILL NO. 437: Sen. Thayer asked if this was the only problem they had had. Mrs. Bennett said there had been many, many instances and they could give instances where they would have used the cease and desist order. She said it was usually in the marketing area or having agents that were not licensed.

There being no further questions, Rep. Swysgood closed on HB 437.

Chairman Kolstad announced that there were some problems with the bill, therefore, it would be held in committee for further action.

CONSIDERATION OF HOUSE BILL NO. 537: Rep. John Patterson, House District 97, Custer, sponsor, said the bill does away with the present requirement that a farm mutual insurer and benevolent association file an annual statement and report with the local county clerk and recorder in the county where its chief business office is located.

PROPOSERS: There were no proponents.

OPPOSERS: There were no opponents.

DISCUSSION OF HOUSE BILL NO. 537: Sen. Neuman said the legislature allowed these mutual companies now to sell liability insurance and asked if that put them under the regulations under the department and they now have to file reports with the auditor. Rep. Patterson said he had a list of the farm mutuals that this bill would affect. Sen. Neuman said they knew who they were but stated that they had expanded their authority this session.

Mr. Borchardt of the State Auditor's office said they are already required to file annual financial statements with their office. The bill is proposing to eliminate this additional requirement that they also file a copy with the local county clerk and recorder and he said, in their opinion, this serves no useful purpose.

There being no further questions, Rep. Patterson closed on HB 537.

CONSIDERATION OF HOUSE BILL NO. 622: Rep. Ray Brandewie, House District 49, Bigfork, sponsor, said the bill revises the insurance laws that relate to financial regulation of insurance companies. It provides that a suspension of a certificate of authority may continue until the commissioner removes it. The bill also provides a new method of valuing real estate and land acquired under a mortgage loan or contract for sale. The bill also provides for a fine if an insurer fails to file an annual statement.

PROPOSERS: Jim Borchardt, State Auditor and Commissioner of Insurance Office, briefly went through the sections of the bill which is included in a memo to Rep. Brandewie and a copy of that is attached to the minutes as EXHIBIT 9. He said they felt the bill would result in improved financial regulation and he asked the favorable consideration of HB 622.

OPPOSERS: There were no opponents.

DISCUSSION OF HOUSE BILL NO. 622: Chairman Kolstad then called for questions from the committee. Sen. Weeding asked if section 2, the value of real estate, applied to farm land. Mr. Borchardt said it would apply to any land. Sen. Weeding asked if they are required to carry the value on their books of that land that they got by acquisition or foreclosure or whatever, that has now depreciated down to 30% of that value. Mr. Borchardt replied that the company would, in the future, be required to reflect it at the cost when acquired, or in the event of buildings, at a reasonable depreciated cost. This bill only relates to Montana companies. He said that outside of Life of Montana, they were not sure there would be any problem but they want to make sure that that doesn't occur again.

Sen. Weeding asked if he was talking about companies domiciled in Montana or companies licensed to do business in Montana. Mr. Borchardt replied it was domiciled in Montana.

Sen. Hager asked if they had considered a limit on the penalty of \$100 per day. Mr. Borchardt said the bill stated up to \$100 per day but Sen. Hager said he was considering a limit of not over \$1,000. Mr. Borchardt said they had not considered that. The proposal does not say they must impose the \$100 per day fine but they may impose a penalty up to that figure. Sen. Hager asked if he would object to a limit of \$1,000. Mr. Borchardt said he would not.

Sen. Neuman said he was concerned with the liability that the commissioner's office might acquire by saying they can invest the additional 5% and the company goes broke and they come to the commissioner's office and say they were given permission to invest that. He said he was also concerned about a case where they get down to specific funds, then the auditor's office would need an investment department. Mr. Borchardt said, with respect to the 5% proposal for money market funds, if they wish to go beyond that then they would have to specifically request it from the commissioner. Then they would look at a number of things, such as the overall financial condition of the insurer, the nature of the money market fund, etc.

Sen. Meyer asked if they would tell them which investments to make. Mr. Borchardt said not at all; they don't want to dictate what they may or may not invest in.

There being no further questions from the committee, Rep. Brandewie closed his presentation of HB 622.

EXECUTIVE ACTION:

DISPOSITION OF HOUSE JOINT RESOLUTION NO. 8: Sen. Walker MOVED HJR 8 BE CONCURRED IN. No second to the motion was received.



Sen. Thayer MOVED SUBSTITUTE MOTION HJR 8 BE NOT CONCURRED IN, seconded by Sen. Hager. Sen. Thayer said everytime they try to tell some company how to run their business, all we do is drive them farther away from doing business in Montana. He felt it was poor legislation and there would be better ways to handle it.

Sen. Walker felt that Burlington Northern had run the Milwaukee out of the state and left the state with one rail line and spoke in favor of the resolution. It would give some checks and balances before eliminating their lines further, he said.

The question being called, the MOTION TO DO NOT CONCUR CARRIED with Sen. Walker voting "no".

Sen. Neuman MOVED TO TABLE HJR 8, seconded by Sen. Meyer. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL NO. 537: Sen. Neuman MOVED HB 537 BE CONCURRED IN, seconded by Sen. Meyer. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL NO. 426: Sen. Walker had talked with Mrs. Bennett about killing the bill but she said they wanted a statement from the legislature so he felt the proper thing to do was amend out the municipalities. It was suggested that the committee adopt the Hansen amendment. Sen. Walker said he felt that would be a benefit to the cities and local governments.

Sen. Thayer MOVED TO ADOPT THE HANSEN AMENDMENT (Exhibit 4), seconded by Sen. Meyer. The MOTION CARRIED.

Sen. Neuman asked Mr. Drake if the communities could apply for reinsurance. Mr. Drake said he thought there was a provision for reinsurance in their program.

Sen. Thayer MOVED HB 426 BE CONCURRED IN AS AMENDED. Chairman Kolstad said that Ms. McCue would like to have the committee hold the bill until she can check the amendments.

DISPOSITION OF HOUSE BILL NO. 622: Sen. Hager MOVED an AMENDMENT on page 5 to put a \$1,000 limit on the penalty, seconded by Sen. McLane. The MOTION CARRIED.

Sen. Thayer said he was surprised there were no opponents to the bill, to which Chairman Kolstad agreed. Sen. Thayer MOVED TO TABLE HB 622, seconded by Sen. Walker. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL NO. 806: Sen. Meyer MOVED TO TABLE HB 806, seconded by Sen. Thayer. Sen. Meyer said Les Loble had a lot of amendments proposed and the bill would charge each insurance company, it goes into a fund, and then these people can travel all over to their meetings, and he didn't feel the bill was necessary. He didn't know what the Loble amendments would do to the bill.

The question being called, the MOTION TO TABLE CARRIED UNANIMOUSLY.

The next meeting of the Business & Industry Committee was set for 9:30 a.m. in Room 325 on March 19, 1987. Executive action will be taken before the hearing at 10 a.m.

There being no further business, the meeting adjourned at 12:21 p.m.

  
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SEN. ALLEN C. KOLSTAD, CHAIRMAN

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Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/18/87

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.



NAME: R. K. Ripley DATE: Wed. 18th

ADDRESS: 1709 Cypress Ct, Missoula, MT SENATE BUSINESS & INDUSTRY

PHONE: 721 3370 EXHIBIT NO. 1

REPRESENTING WHOM? Self DATE 3/18/87

APPEARING ON WHICH PROPOSAL: HT 28 - Dravick BILL NO. HT 28

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENTS:       

MHTD is a successful <sup>new energy</sup> project in Montana that has finally come of age. The Congress of the US, led by Senate, now Arkansas, Mansfield have supported this project through funding to now. We in Montana should be proud to do whatever is necessary to support prototype development & test through commercial application. Our entire nation will benefit in this sophisticated use of Montana coal to bring us <sup>more</sup> efficient & ~~lower~~ cost electric electricity in the future. Support this bill strongly - Bob Ripley

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



JAMES W. MURRY  
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

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SENATE BUSINESS & INDUSTRY

EXHIBIT NO. A

DATE 3/18/87

BILL NO. HJR 8

TESTIMONY OF JIM MURRY ON HJR 8 BEFORE THE SENATE BUSINESS AND INDUSTRY  
COMMITTEE, MARCH 18, 1987

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My name is Jim Murry and I am here today on behalf of the Montana State  
AFL-CIO to express our support for House Joint Resolution 8.

Mr. Chairman, Montana is subject to a virtual rail monopoly which is controlled  
by Burlington Northern. While HJR 8 does not have the force of law, we  
believe that it sends a positive and necessary message to the Interstate  
Commerce Commission. That message is: the legislature of Montana cares  
about the impact that BN rail line sales have on grain and cattle producers,  
communities, businesses and workers.

BN has publicly expressed its intention to sell any or all of its trackage.  
In a July 1986 speech in Albuquerque, New Mexico, Darius Gaskins, chairman  
of Burlington Northern Railroad said, "any of you in the audience with extra  
change who always wanted to be a railroader, come see us. We may have a  
deal for you." As evidence of this desire, in 1986 the Burlington Northern  
sold more than 600 miles of track to four independent contractors, including  
52 miles of track from Butte to Garrison. BN has also expressed interest  
in selling 600 miles of track from Laurel to Sandpoint, Idaho, as well as  
700 miles of line from Billings to Denver.

Members of the committee, Montanans have a right to know if BN is in the  
railroad business or the real estate business.

Because the ICC has no requirement to conduct hearings on rail line sales,  
we are concerned about the lack of investigation into the effects of these  
sales. Our concerns are two-fold. We are disturbed that certain railroad  
unions have charged that these rail line sales are in name only. That is  
to say, Burlington Northern may still effectively control the operations  
of these railroads once they are sold. The primary purpose of these sales  
then becomes the abrogation of union contractual agreements and the gutting  
of wages for railroad workers. These pay cuts will pose a significant hardship  
not only for these workers, but for communities all across Montana. Drastic  
wage reductions impact our local economies no less significantly than major  
plant closures.

Our second concern over rail line divestiture is whether or not rail service  
will continue after the lines are sold. Our major industries such as agriculture,  
timber and mining, as well as Mainstreet businesses depend on uninterrupted  
rail service to survive and prosper. Since BN has been reluctant to give  
any assurance that rail line sales will not mean discontinuation of services,  
any future rail line sales must not be made in haste.

Senator John Melcher stated in December 1986 that he would introduce legislation in Congress requiring stiff Interstate Commerce Commission review of all future rail line sales. We applaud Senator Melcher for his concern over the impact of rail line sales on Mainstreet businesses, shippers and railroad workers. We believe that complete ICC reviews and studies are necessary to assess the impacts that rail line sales will have on communities. We urge the rest of the Montana congressional delegation to join with Senator Melcher in seeing that this legislation is carried through both houses of congress.

Montana's history parallels the emergence of rail service in the state, and our economic development was in large part created by railroads. In order to maximize profits and increase shipping of commodities, branch lines were built into local communities. Now these communities, which are dependent on branch lines, are being abandoned as BN finds it expedient to do so.

Mr. Chairman, members of the committee, let's make sure that rail line sales are in the best interests of Montanans. We can prevent possible wage cuts, job losses and serious impacts on Montana businesses and communities by calling for strict review of all rail line sales. Montana's history is one of being dominated and controlled by large out-of-state companies. It's time now to protect our interests and assure local communities that future rail line sales by Burlington Northern will not result in abandonment.

We urge you to support HJR 8.

SENATE ~~AUXILIARY~~ *and In*  
EXHIBIT NO. A  
DATE 3-18-87  
BILL NO. HJR. 8

WRITTEN TESTIMONY OF THE STATE AUDITOR'S OFFICE  
HOUSE BILL 426  
MARCH 18, 1987

Purpose/Background

The Legislature over the years has created various governmental insurance programs administered by state and local governments. An example of this type of program is the state fund plan of Workers' Compensation Insurance. The state fund plan of the Workers' Compensation Insurance is operated in the same fashion as an insurance company. An employer obtains coverage by paying a premium to the state fund. The other style of insurance programs operated by the state are those currently used to fund the self-insurance reserve for tort claims and the state employees group insurance plan. In these two programs, the state creates a reserve or funds the claims that come in.

As a result of the state of Montana becoming involved in the provision of insurance benefits, specific acts have been passed to create these programs. At times, like the state employees group insurance program, the Legislature has specifically stated that Title 33, the Insurance Code, will not apply to the program. But in the case of Workers' Compensation and the State Self-Insurance Reserve Fund, no specific exclusions were provided. The purpose of this HB 426 is to have the Legislature clarify if it intends for the Insurance Code to apply to these types of programs. This bill addresses five specific governmental insurance programs.

Section by Section Discussion

Section one exempts Workers' Compensation Plan Number One, the employer or employers' association self-insurance plan and Workers' Compensation Plan Number Three, the state plan, from regulation by the Insurance Code. While not clearly stated in the law, the effect of current law is to exempt them from regulation under the Insurance Code. The Workers' Compensation law already addresses many of the same areas of insurance regulation found in the Insurance Code. In addition the Legislature has provided that the Workers' Compensation Division oversee the programs. It would be redundant for the Insurance Commissioner to oversee an agency of state government that is accountable to the Legislature. The enactment of this bill will specifically exclude the self-insured and the state fund portion of Workers' Compensation Insurance from regulation under the Insurance Code.



Section one also exempts the State Employee Group Insurance Program from regulation under the Insurance Code. In Section 2-18-812(6), MCA, Chapter 555 of the Laws of 1979, the Legislature previously exempted the State Employees Group Insurance Program from the provisions of Title 33. By placing this exemption in the Insurance Code, the provisions of Title 33 will contain the exemption for easy reference.

Section one also exempts from the Insurance Code the state comprehensive insurance plan under Section 2-9-202, MCA. This statute allows the Department of Administration to develop a self-funded program. The state may elect to purchase insurance from an admitted insurance carrier. That carrier will be regulated under the provisions of Title 33. If the state self-insures, the self insurance plan would not be regulated by the Commissioner of Insurance. The Legislature in conjunction with the Department of Administration, Tort Claims Division, are responsible for administering the program. There is no need for another state agency to become involved.

Section two would regulate under the provisions of Title 33, insurance programs arranged by political subdivisions of this state. Under Section 2-9-211, MCA, political subdivisions of this state are given the authority to buy insurance or elect to use a deductible or self-insurance plan. In addition the law allows them to enter into self-insurance plans with other political subdivisions. It is this pooling activity the bill would put under the existing insurance regulatory laws.

The concern is that the joint self-insurance plans are not reviewed by any regulatory body. These programs are designed to act as the first line of insurance protection for the public. Someone injured as a result of the negligence of a political subdivision must rely on the self-insurance plan for payment. It is also important to taxpayers that the plans be organized and operated in accordance with sound insurance financial requirements. If a self-insurance plan fails, taxpayers would be forced to make up the obligations.

Section two makes the provisions of the Insurance Code apply to employee group benefit programs offered by political subdivisions of this state. While it is clear the Legislature has given the Department of Administration the authority to administer a self-funded insurance program for state employees, the same authority has not been extended to political subdivisions of this state. At least one political subdivision has instituted a self-funded program.

SENATE *Business and Ind*  
EXHIBIT NO. 2  
DATE 3-18-87  
BILL NO. H.B. 426

The basic principal of insurance is to spread risk among many people. There is the potential danger that the political subdivision with a relatively small number of employees could be faced with a sizable claims. It is essential that any program establish and maintain adequate reserves to pay claims. Controls are necessary to assure the employees that they will receive benefits that are promised. Controls also assure that the taxpayers of the political subdivision will not be hit with tax levies to make up deficiencies.

Section two will have an impact on the insurance programs currently offered by political subdivisions. The programs will have to comply with the Insurance Code. In general the requirements mandate that the programs maintain adequate reserves to cover anticipated losses. This requirement will not let the political subdivision expend the reserves for other purposes. If the plan provides for reinsurance or excess loss coverage, the financial regulation will make sure that any such coverage is obtained from reliable sources. The cost of this regulation will add to the cost of providing the coverage. The question is whether the cost is worth the protection afforded by financial regulation.

The second area of regulation which will apply to the programs is the payment of the premium tax. As an insurer under the insurance code, contributions to the program would be considered premiums. All direct premiums received on risks located in the state are subject to the premium tax. The levying of the premium tax will increase the cost of the plans. At this time, since the plans are not regulated there is no way of estimating the premium tax impact.

The third critical area that would apply to the political subdivisions' plans would be the guaranty fund laws. Inclusion under the Insurance Code would provide political subdivisions with the protection of the fund and the responsibility of supporting it. When other insurers are declared insolvent, the political subdivisions would be assessed their proportional share of the money owed to policyholders. If for some reason the political subdivisions plan became insolvent, its obligations would be covered by the fund.

The costs to the plans for belonging to the guaranty funds would be those costs associated with paying the assessments. In the property and casualty fund, rates can be increased cover the assessment. In the life and health fund, an assessment is offset against the premium tax obligation. In return for these expenses, the policyholders, claimants and the taxpayers would receive protection in the event a plan failed. Because the costs of participation in the guaranty fund vary from year to year, it is impossible to estimate the impact on the plans.

SENATE ~~BUSINESS~~ *and Industry*

EXHIBIT NO. 2

DATE 3-18-87

PAGE NO. 11 12 1171

## Amendments

After this bill was heard in Committee, an amendment was added during House debate. The amendment inserts a new section in the bill which exempts any arrangement, plan, or interlocal agreement of political subdivisions providing insurance from any taxes and fees imposed by Title 33. The State Auditor has requested that this amendment be deleted from the bill. The intent of the bill is to clarify that the programs operated by political subdivisions be treated like any other insurance. To exempt them from various portions of the insurance regulations results in the current situation of them not being regulated.

## Summary

House Bill 426 clarifies the law concerning the regulation of governmental insurance programs. For sound reasons, those insurance plans already being operated by the state under direction by this Legislature are exempt from further regulation of the Insurance Code. The insurance plans now being operated by political subdivisions with no specific Legislative guidance are placed under existing insurance regulation. There are costs associated with the decision to regulate insurance plans operated by the political subdivisions. The costs represent the protection afforded the policyholders, claimants and taxpayers by having the plans operated in accordance with existing insurance law.

SENATE Business & Inquiries  
EXHIBIT NO. 2  
DATE 3-18-87  
BILL NO. H.B. 426

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 3/18/87

BILL NO. HB 426

AMENDMENT OF STATE AUDITOR  
House Bill 426

1. Page 4, line 20  
Strike: section 3 in its entirety  
Renumber: subsequent sections

PROPOSED AMENDMENT  
TO THIRD READING (BLUE) COPY OF  
HB 426

1. Title, line 8

Following: 33-1-102

Strike: "AND"

Insert: " , "

Following: "33-1-201"

Insert: "33-10-101, AND 33-10-102,"

2. Page 4

Following: line 19

Insert: "Section 3. Section 33-10-101, MCA, is amended to  
read:

**"33-10-101. Short title, purpose, scope, and construction.** (1) This part shall be known and may be cited as the "Montana Insurance Guaranty Association Act".

(2) The purpose of this part is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

(3) This part shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage, guaranty, and ocean marine insurance:

- (a) life insurance;
- (b) title insurance;
- (c) surety insurance;
- (d) disability insurance;
- (e) credit insurance;
- (f) mortgage insurance;
- (g) guaranty insurance;
- (h) ocean marine insurance;

(i) any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan; and

(j) any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(4) This part shall be liberally construed to effect the purpose under subsection (2) which shall constitute an aid and guide to interpretation.""

Renumber: subsequent sections

3. Page 4

Following: line 19

Insert: "Section 4. Section 33-10-201, MCA, is amended to read:

**"33-10-201. Short title, purpose, scope, and construction.** (1) This part shall be known and may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing such policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

(4) This part shall apply to direct life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this state at any time.

(5) This part shall not apply to:

(a) any such policies or contracts or any part of such policies or contracts under which the risk is borne by the policyholder;

(b) any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued; or

(c) any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(6) This part shall be liberally construed to effect the purpose under subsections (2) and (3) which shall constitute an aid and guide to interpretation.

(7) Nothing in this part shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

Renumber: subsequent sections

Amendments to HB 426      Third reading (blue) copy

1. Title, line 8.  
Strike: "SECTIONS"  
Insert: "SECTION"  
Strike: "AND 33-1-201"
2. Page 2, following line 12.  
Insert: "(7)(a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.  
(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."
3. Page 2, line 13 through line 25 on line 4.  
Strike: sections 2 and 3 in their entirety  
Renumber: subsequent section



SENATE BUSINESS & INDUSTRY  
EXHIBIT NO. 5  
DATE 3/18/87  
BILL NO. H.B. 437

Testimony of State Auditor Andy Bennett  
H.B. 437 - Cease and Desist authority  
Senate Business and Industry Committee  
March 18, 1987

Many of you may have heard or read something about the problems with Life of Montana Insurance Company of Bozeman, which culminated with that company being ordered into rehabilitation last month. The involvement of the Montana Insurance Department with Life of Montana goes back a number of years to August 1984, when E.V. "Sonny" Omholt first filed a petition for an order of rehabilitation and temporary restraining order. Since that time, we have been in litigation with the company continuously over its financial condition, and related problems.

Our problems with Life of Montana provide a very clear example of exactly how the use of cease and desist provisions could have prevented some very serious problems for insurance consumers. Everyday, they thought, did, or said something that is considered an unfair trade practice. At one point in our long dealings with Life of Montana, we became aware of some deceptive marketing practices in violation of the Montana

illegal activity. In the Life of Montana case I have just mentioned, cease and desist orders could have been issued to specifically prohibit the company from continuing to engage in its deceptive marketing actions. The Insurance Department could have taken an action to prevent further abuses and protect consumers from further risk with the company.

The provisions of this bill assure that an opportunity for full hearing is provided. Due process is fully protected and only a particular action is targeted.

At least 25 other states use cease and desist orders to enforce their insurance laws. The Montana Securities Department also uses this method to stop illegal activities under the Securities Act of Montana, providing protection for Montana investors until a final determination is reached in the hearing process. This legislation provides both an effective and a fair enforcement method that allows for consumer protection and fair treatment of the violator. I would urge your favorable consideration of this bill.

SENATE ~~BUDGETARY~~ *Auditing & Insurance*  
EXHIBIT NO. 5  
DATE 3-18-87  
BILL NO. H.B. 437

insurance Code. One such practice involved advertising in writing to policyholders that customers should not be concerned about doing business with the company, despite its shaky financial condition. The company claimed that policyholders would receive a 10.6% annual return at a time when the company was unable to pay its bills. It was totally unrealistic that a company with no income-producing assets could realize such a high rate of return. Further, in that same letter to policyholders, the company blamed all its financial problems on the court and my office. This was neither truthful nor in the best interests of the policyholders.

Our options in halting these deceptive practices were limited. We could take administrative action against the company and fine them if the hearing upheld our allegations. But fining the company for disseminating such information did nothing to force them to halt their actions, and they would have stayed and appealed our administrative action. Another alternative was to revoke or suspend their license completely, which was unrealistic. A third alternative, a court order, was certain to be appealed. I called Al Ambs, the company president, followed by a strongly worded letter to the company about these violations, knowing that the company would ignore me and continue these unlawful practices. They did. That meant my only other alternative was to go through the press in order to alert the public to these problems. It was most unfortunate to use the media in this manner, but there was no other way to let the public know about these violations.

The purpose of a cease and desist order is to prohibit and stop a specific unlawful activity or practice. It is not a revocation or suspension, and is directed only toward a certain

SENATE ~~HEARING~~ *Business & Industry*  
EXHIBIT NO. 5

DATE 3-18-87

BILL NO. H.B. 437

WRITTEN TESTIMONY OF STATE AUDITOR'S OFFICE  
HOUSE BILL 437  
March 18, 1987

I. Background

Currently, the only enforcement tool available to the Montana Insurance Department is administrative action, which may result in a fine but does not cease the violation of Montana insurance law. Consequently, an insurance company or agent who has been proven at a hearing to be engaged in some unlawful activity in connection with his insurance license, must pay the fine but may continue the unlawful activity. The Montana Insurance Department should be able to issue cease and desist orders to stop violations of the Montana Insurance Code from continuing.

II. Purpose

The purpose of HB 437 is to permit the use of the cease and desist order to enforce the Montana Insurance Code. HB 437 does not authorize the Montana Insurance Department to deprive an insurance company, agent, or person of his livelihood. A cease and desist order may be used only to stop a specific activity or practice that is unlawful under the Montana Insurance Code. A cease and desist order may be issued only after reasonable notice and opportunity for hearing.

III. Section by section explanation

Subsection (1)(a) authorizes the commissioner of insurance to issue a cease and desist order after reasonable notice and opportunity for a hearing.

Subsection (1)(b) authorizes the commissioner of insurance to issue a temporary cease and desist order, pending hearing, that remains effective until 10 days after the hearing is held and that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receiving the notice.

Subsection (1)(c) authorizes the commissioner of insurance to bring an action for an injunction in a court of competent jurisdiction.

SENATE *Business & Industry*

EXHIBIT NO. 5

DATE 3-18-87

RII NO 4 R 427

Subsection (2) spells out an expedited hearing process for each cease and desist order, whether it is temporary or not.

Subsection (3) authorizes the commissioner of insurance to impose a \$5,000 fine to be deposited in the state general fund only if reasonable notice and an opportunity for hearing has been given. In other words, the commissioner of insurance may impose a fine under this subsection only as a result of an administrative hearing. Imposition of a fine after notice and hearing is an appealable order. If the person does not pay a fine that has been determined appropriate by a hearing examiner (or, if appealed, by a judge), then the fine (1) results in a lien on the person's assets and property in this state; and (2) constitutes forfeiture of the person's right to do business in this state. A fine constitutes a forfeiture of a person's rights to do business ONLY IF (1) the hearing examiner rules that the fine is appropriate; (2) the fine is either NOT appealed or appealed and upheld as being appropriate; AND (3) the person does not pay the fine.

#### IV. Conclusion

At least 25 other states use cease and desist orders to enforce their insurance laws. The Montana Securities Department also uses this method to prohibit illegal activities under the Securities Act of Montana and provide protection for Montana investors until a final determination is reached in the hearing process. House Bill 437 provides both an effective and a fair enforcement method that allows for consumer protection and fair treatment of the violator.

SENATE Business & Industry

EXHIBIT NO. 5

DATE 3-18-87

H.B. 437

# State says American Plan is 'misleading' customers

EXHIBIT NO.

BILL NO.

3/18/87  
HB 437

By CRAIG JOHNSON  
Chronicle Staff Writer

American Plan Life Insurance Co. is pressuring customers not to cash in \$6 million in policies by offering high-return investments it may not be able to pay, the state's top insurance official charges.

State Auditor Andrea Bennett said the Bozeman-based company's action is improper and misleading.

American Plan Life — under fire by Bennett's office, which alleges the company is insolvent — is offering some customers a 10.6 percent investment plan if they don't cash in their policies.

Bennett said the company, formerly Life of Montana, is not able to pay on the \$6 million in policies that customers want to cash in and is misleading customers by telling them the state is to blame.

Company President Al Ambs said

today he would not comment on the specific charges.

"I'm not going to get into a public squabble with" Bennett, Ambs said. "We've been trying to accommodate her. I do disagree with some of (Bennett's) points ... but I don't want to get into a squabble in the newspaper."

Bennett said the company stopped paying "surrendered" policies — policies customers cash in — last September. Insurance companies have a six-month grace period after policies are cashed in before they have to pay.

Ambs told Bennett recently the company has nearly \$26 million in assets to back up claims and cashed-in policies. But Chief Examiner Jim Borchardt warned that only \$4 million of the assets are "reasonably liquid," or easy to convert to cash.

Borchardt added that "disposal of any of the assets is likely to cause a

further deterioration of the company's net worth."

Complaints from customers who cashed in their policies and weren't paid touched off the examination that led to a district court suit alleging the company is insolvent, Bennett said.

The auditor's office, which regulates the insurance industry, asked a district court judge to place the company under state supervision last October.

"Not paying on surrendered policies is usually the first sign that a company is in trouble," Bennett explained. "The examiners came out of the examination and said, 'This company is insolvent.'"

State examiners concluded that the company's liabilities exceeded its assets by \$9.7 million.

See INSURANCE, page 2

## Insurance / from page 1

The company denies that charge, and has been fighting a court battle in Helena since former state Auditor E.V. "Sonny" Omboit filed the suit last October.

The company sent letters two months ago to many customers who wanted to cash in their policies, saying the state's lawsuit is to blame for American Plan Life's cash flow problems.

"The American Plan Life Insurance Company has been under the supervision of the Montana Insurance Department for a period of several months," Ambs wrote in one letter to policyholders, dated May 30. "The matter is now scheduled for litigation in court."

"Whatever the decision, the Company management will require a period of several months to reconstruct normal business operations. Cash value payments will be delayed for this indefinite period."

Ambs' letter also said life insur-

ance policies that customers cashed in were cancelled as of May 30 and cashed-in annuity investments would be held by the company without accruing interest.

Life insurance policies pay a beneficiary in case of death, while annuities pay the policyholder a steady income, as in a retirement plan. Both plans have a dollar value that can be cashed in.

"As of this date, if you held a life insurance policy your life insurance is cancelled, and your life cash values (the value of the policy) earn no interest or dividends," Ambs wrote. "If you held an annuity with the company your annuity cash values have earned, or will earn, interest at the current rate for six months after surrender, then will be held without interest."

Bennett said the letter was followed up by personal visits by company representatives, who of-

fered customers 10.6 percent interest on an annuity plan if they agreed not to cash in their policies.

Bennett sent a stern warning to Ambs on Wednesday, telling him to stop pressuring customers to not cash in policies.

"It is my feeling that these offers only make a difficult situation worse and hamper our attempts to resolve the litigation," Bennett wrote. "Policyholders contacted by APLIC (American Plan Life Insurance Co.) report to us they feel they're being pressured to revoke their surrender requests or not receive interest they may be owed."

"The applicable time and amount of interest that will be paid on surrendered policies has not been resolved. This is a matter for the court to decide. It is not a decision to be made by APLIC alone."

"You are requested to cease the practice of telling policyholders they will not receive interest" on their

cashed in policies.

Bennett also said the company should not be offering those customers annuities at 10.6 percent, a figure that one insurance broker characterized as too high for current market conditions.

"APLIC is offering policyholders single premium deferred annuities at 10.6 percent annual return," Bennett continued. "This office is having a difficult time reconciling the fact that APLIC is not able to pay policies which have been surrendered yet is now able to offer a 10.6 percent return."

"You are requested to submit to me documentation which supports the promise of a 10.6 percent return. This should include specific identification of assets which will support this liability."

Bennett concluded the letter with an order that American Plan Life stop blaming the state or the suit for the company's actions.

"Finally, and of great concern, is that APLIC is indicating to policyholders that decisions by this office and the court are the reasons it is not paying surrenders," she said. "This is misleading and false."

"If APLIC has sufficient funds to pay surrendered policies, we would allow it to do so."

In a telephone interview Wednesday, Bennett repeated her willingness to allow the company to pay customers who want to cash in their policies.

"They're trying to point out that we're holding all their money," Bennett said. "Anything over \$1,000 must be approved by me, but they haven't asked me."

"If they asked me to approve paying on a cashed-in policy, I would ..."

Friday, August 2, 1985

Great Falls Tribune 17-A

# Insurance firm told to stop pressing customers

BOZEMAN (AP) — American Plan Life Insurance Co. is pressuring customers not to cash in \$6 million worth of policies by offering high-return investments that it may not be able to pay, the state's top insurance official charges.

Bozeman-based American Plan Life, which State Auditor Andrea Bennett contends is insolvent, is offering some customers a 10.6 percent investment plan if they don't cash in their policies.

Bennett has ordered the company to stop pressing its customers to hang on to their policies, stop telling them they will not be paid interest on

cashed-in policies, show how it's going to pay 10.6 percent interest on their investments, and stop blaming her office for the company's actions. Bennett said the company, formerly Life of Montana, is unable to pay on the \$6 million in policies that customers want to cash in and is misleading customers by telling them the state is to blame.

Company President Al Ambros declined to comment, saying he did not want "to get into a public squabble" with Bennett.

Ambros told Bennett recently the company has nearly \$26 million in assets to back up claims and cashed-in

policies, but Chief Examiner Jim Borchardt warned that only \$4 million of the assets is "reasonably liquid," or easy to convert to cash.

Borchardt added that "disposal of any of the assets is likely to cause a further deterioration of the company's net worth."

Bennett said the company stopped paying "surrendered" policies last September. Insurance companies can delay payment six months after policies are cashed in.

Complaints from customers who cashed in their policies and weren't paid touched off the examination that led to a district court suit alleging

the company is insolvent, Bennett said.

Former Auditor E.V. "Sonny" Omholt filed suit last October asking district court to place the company under state supervision.

"Not paying on surrendered policies is usually the first sign that a company is in trouble," Bennett explained. "The examiners came out of the examination and said, 'This company is insolvent.'"

State examiners concluded that the company's liabilities exceeded its assets by \$9.7 million. The company denies the charge.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 6

DATE 3-18-87

FILE NO. 4 R 437

STATE AUDITOR  
STATE OF MONTANA



Andrea "Andy" Bennett  
STATE AUDITOR

SENATE BUSINESS & INDUSTRY  
EXHIBIT NO. 7  
DATE 3/18/87  
BILL NO. HB 437

COMMISSIONER OF INSURANCE  
COMMISSIONER OF SECURITIES

NEWSRELEASE

-For Immediate Release-

July 31, 1985

In a letter to Al Ambs, President of American Plan Life Insurance Company (APLIC) of Bozeman, State Auditor and Insurance Commissioner Andy Bennett demanded immediate changes in information considered to be misleading that is being supplied to APLIC's Montana policyholders.

The Montana Insurance Department, under former State Auditor E.V. "Sonny" Omholt, placed American Plan (formerly Life of Montana) under supervision on in the fall of 1984. This action was taken because of the alleged evidence that the company did not have the financial assets required in Montana to support the Company's potential claims and policy surrenders.

Commissioner Bennett requested that APLIC cease pressuring policyholders to revoke their surrender requests by implying they might not receive interest they may be owed on their policies. "Whether interest is to be paid is not a decision of American Plan



Life Insurance Company," said Bennett, "its financial affairs are now in the hands of the court and it is the court that will set the time and amounts of interest payments if it deems them appropriate."

In addition to her concern over the pressure policyholders have reported getting from APLIC, Bennett also requested justification for the 10.6% interest return offered policyholders on single premium deferred annuities. In her letter to Ambs, the Insurance Commissioner said, "This office is having a difficult time reconciling the fact that APLIC is not able to pay policies which have been surrendered yet is now able to offer a 10.6% return. You are requested to submit to me documentation which supports the promise of a 10.6% return and include specific identification of assets which will support this liability."

SENATE

EXHIBIT NO. 7

DATE

3-18-87

BILL NO.

H.B. 437

Commissioner Bennett also pointed out that APLIC was ignoring the changes of coverage to alternative insurance carriers some policyholders have chosen. APLIC has been offering these policyholders special options (like the single premium deferred annuity) for their policies. As Bennett pointed out to Mr. Ambs, any assignment of an insurance policy to another company automatically places that company in the position of authority over any decision affecting the option choices. "Rather than addressing the policyholder who has made an assignment of their policy, you are legally required to address the new insurance company," said Bennett.

In her final instruction to Ambs, Bennett required an immediate halt to his or his company's statements intimating that either the Montana Insurance Department or the District Court were

responsible for delays in the payment of policy surrenders. It is false and misleading to tell policyholders that this office is holding a reserve which would permit surrenders to be paid. You know as well as any insurance agent in this state that a reserve is required of every insurance company doing business in Montana. Without this reserve, APLIC would not be allowed to do business here."

"One of the main points I sought to make with Mr. Ambs," Bennett explained, "is that this office does hold APLIC's reserve on deposit, but that reserve is not readily convertible to cash and would not therefore permit all policyholders to be paid immediately, as they contend. The sale of the assets on deposit with the Montana Insurance Department would result in a loss to APLIC which would further reduce the company's net worth."

In a final statement to Ambs, Bennett said, "I have made my concerns clear. I believe the actions I've described are not in the best interest of policyholders. Misleading and false statements only create a more difficult climate in which to resolve the problems faced by American Plan Life Insurance Company."

AAB/cal: A23, 24, 25

B and I

SENATE  
EXHIBIT NO. 7  
DATE 3-18-81  
BILL NO. H.B. 437

SENATE BUSINESS & INDUSTRY  
EXHIBIT NO. 8  
DATE 3/18/87  
BILL NO. HR 437

July 31, 1985

Al Ambs, President  
American Plan Life Insurance Co.  
P. O. Box 9000  
Bozeman, MT 59715

Dear Mr. Ambs:

A number of issues concerning American Plan Life Insurance Company (APLIC) have come to my attention. These issues concern APLIC contacting policyholders with various offers of settlement. It is my feeling that these offers only make a difficult situation worse and hamper our attempts to resolve the litigation. The following paragraphs outline my specific concerns and I am requesting your immediate action.

Policyholders contacted by APLIC report to us they feel they're being pressured to revoke their surrender requests or not receive interest they may be owed. The applicable time and amount of interest that will be paid on surrendered policies has not been resolved. This is a matter for the court to decide. It is not a decision to be made by APLIC alone. You are requested to cease the practice of telling policyholders they will not receive interest.

APLIC is offering policyholders single premium deferred annuities at 10.6% annual return. This office is having a difficult time reconciling the fact that APLIC is not able to pay policies which have been surrendered yet is now able to offer a 10.6% return. You are requested to submit to me documentation which supports the promise of a 10.6% return. This should include specific identification of assets which will support this liability.

Further, APLIC seems to be ignoring valid assignments of their policies executed by their policyholders. For example, if an APLIC policyholder wishes to change his coverage to another insurer, that insurer may accept an assignment of the old policy in lieu of payment by the individual. The new insurer then surrenders the policy to APLIC and replaces the coverage with its own policy. The original APLIC policyholder no longer has the right to the APLIC policy and does not have authority to sign the APLIC Special Option Letter. The surrender request can only be changed by the insurer holding the assignment.

Al Ambs, President  
Page Two

July 31, 1985

Finally, and of great concern, is that APLIC is indicating to policyholders that decisions by this office and the court are the reasons it is not paying surrenders. This is misleading and false. If APLIC has sufficient funds to pay surrendered policies, we would allow it to do so. It is also misleading to tell policyholders that this office is holding the reserve which would permit surrender values to be paid. The amount of the reserve is insignificant when compared with the total amount of surrender requests that have been made. In any case, the reserve is held as a condition of APLIC doing business in this state (the same as is required of other insurance companies). Without this reserve APLIC would not be allowed to do business in Montana. You are to cease immediately from intimating that this office or the court are delaying surrender of payments.

I have made my concerns clear. I believe such actions by APLIC are not in the best interests of policyholders. Misleading and false statements only create a more difficult climate in which to resolve the problems faced by American Plan.

With best personal regards, I am

Very truly yours,

Andrea "Andy" Bennett  
State Auditor and  
Commissioner of Insurance

AAB:cal:3M-D11,12

SENATE Bill  
EXHIBIT NO. 8  
DATE 3-18-87  
BILL NO. H.B. #37

CC: Jim Borchardt  
Subject: House Bill 622

From: Jim Borchardt  
Date: 02/11/87

Rep. Brandewie:

Since the earlier memo I gave you on this bill is rather lengthy, you may want something shorter to introduce the bill before the Committee. For that purpose I propose the following, if you wish to use it:

Mr. Chairman and Members of the Committee:

House Bill 622 treats five different sections of law affecting the financial regulation of insurers. Here is a brief recap of the proposed changes.

In Section 1 of the bill, when the insurance commissioner suspends an insurer's license in Montana, the suspension will no longer be for just one year but for an indefinite time period. Numerous recent cases have required that suspensions continue beyond one year. Then the insurance department must issue continuation orders, all at considerable extra work. This amendment eliminates the reissuance problem.

In Section 2, the bill proposes requiring a Montana insurer to value its real estate at acquisition cost instead of at appraised value. Using appraised values in the past has resulted at times in inflated real estate values and a distorted picture of the insurer's net worth. Acquisition cost presents a more conservative and objective basis of valuation.

In Section 3, the bill imposes a penalty of up to \$100 per day for each day an insurer is late in filing its annual statement. This fine will penalize an insurer more appropriately for tardiness in filing. The other penalties available, suspension or revocation of license, seem too severe for such a violation.

Section 4 of the bill addresses money market funds. Recently several Montana insurers invested in money market funds. Insurance currently sets a limitation on this kind of investment which is very restrictive. Unfortunately, the law does not allow the commissioner to make a discretionary exception, when appropriate. This amendment permits more investment flexibility to Montana insurers while preserving the safeguards.

Section 5 of this bill tightens the definition of "extraordinary dividends." These are dividends which cannot be paid by an insurer to its

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 9

DATE 3-18-87

BILL NO. HB 622

CC: Jim Borchardt  
Subject: House Bill 622

From: Jim Borchardt  
Date: 02/11/87

-----  
shareholders without the insurance commissioner's prior approval. Extraordinary dividends in this bill would be defined as dividends exceeding 10% of an insurer's net worth. In the definition, comparisons to net income or investment income would be eliminated. The new definition of extraordinary dividends will provide a better basis for determining which dividends the commissioner must approve.

The commissioner's office believes that improved financial regulation will result from passage of this bill. Therefore, I ask for your positive consideration of this measure and thank you for your support.

SENATE *B and I*  
EXHIBIT NO. *9*  
DATE *3-18-87*  
BILL NO. *H.B. 622*

HB-622

MEMO

TO: Representative Raymond J. Brandewie  
FROM: Jim Borchardt, Chief Examiner  
State Auditor's Office  
SUBJECT: ~~LC 1097~~ HB 622  
DATE: February 2, 1987

Since this bill addresses various areas, I will discuss each separately.

AMENDMENT OF 33-2-121

As this law is presently written, when the commissioner of insurance issues an order suspending an insurer's certificate of authority in Montana, that suspension runs for a period of one year and then terminates. Recently, a number of cases arose wherein it was necessary to continue the suspension of the license beyond one year. Examples are:

Cherokee Insurance Company  
Associated Life Insurance Company  
University Life Insurance Company of America  
National Investors Life Insurance Company  
Independent Liberty Life Insurance Company  
Mission Insurance Company  
Mission National Insurance Company  
Mission Reinsurance Corporation  
Enterprise Insurance Company

Reasons for extending the suspensions were:

1. The insurers remained under rehabilitation plans by their home states' insurance departments.

SENATE

EXHIBIT NO. 9

DATE 3-18-87

HB 622

B and I

2. The insurers were in liquidation but their domiciliary insurance departments requested our forbearance in revoking, while attempts were made to sell the insurers' corporate shells.

The problem for the Montana Insurance Department is that for each of the above insurers, it had to spend additional valuable time preparing follow-up orders. The solution, which this bill proposes, is to make suspensions for an indefinite time period. Then it is not necessary to issue continuation orders later.

AMENDMENT of 33-2-806

Money market funds have been a very popular investment for domestic insurers in recent years. They are safe (I know of no failures) and very liquid. In Montana insurance law, they fall under 33-2-824, together with mutual funds.

The problem the insurance department noted in 1986 in connection with the examination of First Montana Title Insurance Company was that there is a special limitation on this type of investment in 33-2-806 (6). That limitation is that an insurer may not invest more than 10% of its assets in the sum of common stocks, insurance stocks and the investment trust securities mentioned in 33-2-824, i.e., money market and mutual funds.

It is understandable that a restriction might be placed on excessive investment in stocks because of the volatile nature of these securities. However, to include money market funds in this same category seems inappropriate and overly restrictive.

For this reason the insurance department proposes the amendment to 33-2-806. The amendment provides insurers more flexibility in their investments by creating a separate category for mutual funds and money markets and allowing investment up to 5% of the insurers assets. Also noteworthy in this amendment is that with the commissioner's permission, mutual fund or money market

SENATE

EXHIBIT NO. 9

DATE 3-18-87



investments may exceed 5%. The current law imposes an ironclad lock on the amount of such investments by an insurer. Under the proposed amendment there is some discretionary judgment which the commissioner may exercise.

SENATE

EXHIBIT NO.

DATE

BILL NO.

B and I

9

3-18-87

H.B. 622

AMENDMENT of 33-2-534

Under present insurance law, a Montana insurer is permitted to value real estate on its balance sheet at current appraised value. This liberal valuation method can result in a serious misstatement of an insurer's net worth. A graphic example of this is Life of Montana's treatment of its home office building. Between 1984 and 1985, this insurer increased the carrying value of its home office building from \$5,050,000 to \$5,700,000, almost 13%. This at a time when real estate values were leveling off or even dropping. Yet, by law it seemed permissible. To disallow the real estate write-up, our office would have had to obtain one or more appraisals which clearly contradicted the company's appraisal. Additionally, it is well-known in real estate circles that appraisals with a desired valuation are available for a "price."

The answer to this kind of abuse is to eliminate the temptation to "play" with real estate values by requiring real estate held by a Montana insurer to be valued at its original acquisition cost, less appropriate depreciation. This amendment accomplishes that.

AMENDMENT of 33-2-701

Each insurer licensed in Montana is required to file its annual statement by a stipulated deadline. Most insurers comply without problems. Occasionally, an insurer fails to submit its statement by the due date. When this happens, the commissioner already has the authority to suspend or revoke the insurer's license. But such a severe penalty is appropriate only when the insurer never sends in the required statement.

This amendment proposes a monetary penalty of \$100 for each day the

statement is late. It should make insurers more conscientious about their filings and provides a more meaningful penalty for late filings.

#### AMENDMENT of 33-2-1114

Current insurance law requires that any dividends from an insurer to its shareholders which exceed a certain threshold are considered "extraordinary dividends" and require the commissioner's approval before they may be paid. Obviously, if too large a dividend is paid to stockholders, the insurer's financial condition may be jeopardized.

The current law allows some loopholes whereby an insurer may be permitted to pay a sizable dividend without the commissioner's prior approval. For example, a property and casualty insurer may have a large underwriting loss yet have a large investment income. The size of the dividend which the insurer may pay without the commissioner's approval is based on its investment income without regard to the large underwriting loss.

The proposed amendment closes this loophole. It says that any dividend which is more than 10% of the insurer's net worth requires the commissioner's advance approval.

#### CONCLUSION

We feel these amendments will greatly assist in the financial regulation of insurers. If you have questions on any parts of this bill, please call me at 444-2997. I'd be happy to answer them.

JB/vf(875)

SENATE

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EXHIBIT NO. 9

DATE 3-18-87

BILL NO. HR 177

# STANDING COMMITTEE REPORT

MARCH 12, 19 87

MR. PRESIDENT

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

having had under consideration..... **HOUSE JOINT RESOLUTION** No. **28**

**THIRD** reading copy ( **BLUE** )  
color

**DRISCOLL ( KEATING )**

**SUPPORT FOR EFFORTS TO DEVELOP COMMERCIAL MHD TECHNOLOGY**

Respectfully report as follows: That..... **HOUSE JOINT RESOLUTION** No. **23**

**BE CONCURRED IN**

~~XXXXX~~  
~~DO PASS~~

~~XXXXXXXXX~~  
~~DO NOT PASS~~

.....  
**SENATOR ALLEN C. KOLSTAD**, Chairman.

# STANDING COMMITTEE REPORT

MARCH 18, 1937

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 537

THIRD reading copy ( BLUE )  
color

PATTERSON ( BENGTSON )

ELIMINATING FILING ANNUAL STATEMENTS WITH COUNTY CLERK

Respectfully report as follows: That HOUSE BILL No. 537

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

SENATOR ALLEN C. KOLSTAD, Chairman.