

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Rep. Bob Pavlovich, chairman, on January 24, 1989, at 8:30 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

HEARING ON HOUSE BILL 218

Presentation and Opening Statement by Sponsor: Rep. Brown stated that this bill is to revise laws relating to financial institutions.

List of Testifying Proponents and What Group They Represent:

Fred Flanders, Commissioner of Financial Institutions
of the State of Montana

Bob Pyfer, Montana Credit Unions League

George Bennett, Montana Bankers Association

List of Testifying Opponents and What Group They Represent:

None

Testimony: Mr. Flanders stated that the purpose of the proposed bill is to revise our obsolete banking statutes. Initially, if you look at the amendment to statute Section 32-1-215, you will see that we are amending that statute to allow us to recover our cost for conducting special examinations in banks. Now the law requires that we are limited to charging \$100 per day, we are suggesting that we recover the entire cost of examiners salaries and travel expenses. It is primarily the travel expense we are concerned about.

We expect that the financial impact of this particular amendment will be about \$3,000 per year. We are not talking big money, but it is an opportunity to recover some costs. The second amendment is to amend the statute that restricts the bank's investment in corporate stock. Currently we have a very restrictive law with regards to the purchase of capital stock. Banks are not allowed to purchase capital stock. This amendment will allow a bank to invest in such things as the federal national mortgage association. The one that particularly brought this to our attention was the interest for banks to invest in Farmer Mac, the new farm mortgage secondary market. A bank in order to be a seller of farm mortgages to Farmer Mac has to be an investor. This amendment will allow them to invest in Farmer Mac. While we were making that revision we decided to include other quasigovernmental fundings of agencies in which banks could invest in corporations to satisfy the public need. That is the intent of that particular amendment. The next amendment deals with the type of investment vehicles that banks can invest in. Currently there is no limit to the amount that banks can invest in government securities, direct obligations of the federal government or bonds issued by the state of Montana or any municipality or school district in the state. We are recommending a change in that particular statute which would allow us to establish certain limits on those kinds of investments. We are also interested in establishing limits on investments in such things as corporate bonds. Currently there is no limitation on a bank investing in corporate bonds. Under this particular amendment we will have an opportunity to set certain limits which we feel are important because of the high percentage of the bank's asset portfolio invested in bonds. The next amendment to Section 32-1-437 is a housekeeping amendment. It is designed to eliminate a conflict that exists between that statute and the bank's legal lending statute. The last amendment is an amendment to Section 32-3-202 which requires credit unions to prepare a report, a statement of condition, which they will be required to provide to any of their members in the event they are asked for it. Under current law there is no requirement to do so. The researcher pointed out that the bill does not amend 32-2-202. That amendment was split off into a separate bill.

Mr. Bennett stated that this law will affect the state banks under the regulations. This bill has been studied by the Government Relations Committee of the Montana Bankers Association and they support the bill.

Mr. Pyfer stated that he had not really intended to testify but does so by way of clarification on the credit union amendment. This amendment is in another drafting request in the Council.

Questions From Committee Members: Representatives Wallin, Bachini, Thomas, Simon and Stepler had questions which Mr. Flanders answered.

Closing by Sponsor: Rep. Brown waived her closing.

DISPOSITION OF HOUSE BILL 218

Motion: None

Discussion: The bill will be discussed in Wednesday's executive meeting.

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 247

Presentation and Opening Statement by Sponsor: Rep. Whalen explained this bill will allow regional ratemaking for certain lines of insurance that are considered volatile or noncompetitive. It also authorizes the insurance commissioner to assess insurers the cost of providing actuarial services to determine whether or not rates are set on a regional basis opposed to a national basis. Montana represents right now overall approximately three-tenths of one percent of the insurance underwriting market in the United States. In many lines of insurance there just isn't enough actuarial data available in Montana in order for the insurance companies to set a rate based strictly upon the claims paid in Montana. When the insurance companies have that situation, what they will do is set the rate based upon national claims experience rates. As an example, in the medical malpractice area in particular, specialties such as obstetrics, you might have 100 doctors or less buying obstetrics malpractice insurance in Montana. In order to judge something on an actuarial basis you have to have a larger population than that. In addition, your claims may be very low, therefore, since you can't set a base based upon Montana's experience, you have to go outside of that. What the insurance industry usually does, they go to a national rate, so we in Montana end up paying rates

based on claims made in New York City, California, Florida, Boston, and so forth. That tends to make the rates higher in Montana. This bill will allow the insurance commissioner to require insurance carriers to submit actuarial data based upon states similar to Montana, such as Wyoming, North and South Dakota, Idaho and so forth, rather than lumping us together with all the states in the nation. In addition, if the insurance commissioner wanted to check the actual actuarial regional data that was submitted to her, she could then go out and hire an actuary, come up with their data and the insurance carrier would be assessed the cost of that. The purpose of doing this would be in essence to keep the insurance companies honest, make them submit actuarial data that is realistic and in accord with the intent that rates be set on a regional basis as opposed to a national basis when you are talking about noncompetitive and volatile lines of insurance.

List of Testifying Proponents and What Group They Represent:

James W. Borchardt, Chief Examiner, Insurance Division
Mike Sherwood, MTLA

List of Testifying Opponents and What Group They Represent:

Bonnie Tippy, Alliance of Montana Insurance
Jacqueline Terrell, American Insurance Association
Bill Dibert, USF&G Insurance Company

Testimony: For Mr. Borchardt's testimony see exhibits 1 and 2.

Mr. Sherwood stated that his association supported this bill.

Ms. Tippy stated that the purpose for which this bill was drafted is to increase the availability and affordability of volatile, difficult-to-obtain lines of insurance. Enactment of this bill could have exactly the opposite effect from its intended purpose, that is less competition and product. Her group urged a do not pass for this bill.

Ms. Terrell stated that the American Insurance Association is opposed to this bill.

Mr. Dibert stated that his company is opposed to this bill.

Questions From Committee Members: There were extensive

questions from the committee which Mr. Dibert, Mr. Borchardt, and Ms. Terrell answered.

Closing by Sponsor: Rep. Whalen commented that there was a lot of conflicting testimony given. On one hand the insurance industry was telling you that they provide actuarial data based upon different territories in Montana. Then someone else comes in and tells us that if they have to break it down state by state and region by region that it would be very erroneous and something they could not comply with, that it would be tremendously expensive and so forth. I would like you to consider the context of what is going on in Montana right now. I wrote the insurance commissioner in March of 1988 and asked her what we Montanans paid in the form of insurance premiums for the previous 5 to 10 years. In 1987 alone, we paid, individuals and businesses, approximately 1 billion dollars in insurance premiums to out of state insurance companies. That is more than all the tax revenue the state collected for that year. In looking at the burden on individuals and businesses, the focus on the state taxes is misdirected, when you consider what Montanans are paying in insurance premiums.

DISPOSITION OF HOUSE BILL 247

Motion: None

Discussion: No action was taken, executive action will be taken on January 25, 1989.

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 222

Presentation and Opening Statement by Sponsor: Rep. Menahan said to expedite matters, you have a bill similar to this, so I will reserve the right to close.

List of Testifying Proponents and What Group They Represent:

Jeff Brazier, Department of Commerce

List of Testifying Opponents and What Group They Represent:

None

Testimony: Mr. Brazier stated that this is basically a housekeeping bill and the department did support it.

Questions From Committee Members: There were a few questions from the committee which Mr. Brazier answered.

Closing by Sponsor: Rep. Menahan said this bill will give the board authority over the barbers as well as the barber college.

DISPOSITION OF HOUSE BILL 222

Motion: None

Discussion: No action was taken today, executive action will be taken on January 25, 1989.

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 221

Presentation and Opening Statement by Sponsor: Rep. Menahan, district 67. I introduced this bill a few years back, what is known as the driver's insurance bill, where we have the insurance on the driver not the vehicle. Some people have told me that no one in the country has this type of insurance. This may be true, but I was hoping somewhere along the line that someone would take this up. It may not apply in all cases. But I think a person should be able to buy insurance even if that person does not own a vehicle. I know the industry is against this bill and does not see fit that it will work. I urge you to give this bill a do pass.

List of Testifying Proponents and What Group They Represent:

Wally Jewell, Montana Magistrates Association

List of Testifying Opponents and What Group They Represent:

Roger McGlenn, Executive Director, Independent Insurance Agents of Montana

Ron Ashabran, State Farm Insurance Company

Jacqueline Terrell, American Insurance Association

Gene Phillips, National Association of Independent Insurers.

Testimony: For Mr. Jewell's testimony see exhibit 1.

Mr. McGlenn stated that his association has done extensive research on this because of Rep. Menahan's bill. Mr. McGlenn had written testimony, see exhibit 2.

Mr. Asherbran said his company is opposed to this bill and request a do not pass.

Ms. Terrell's and Ms. Tippy's associations both oppose this bill and request a do not pass.

Mr. Phillips stated that his association also oppose this bill as it would create an actuarial nightmare as there are no actuarial experience to handle this type of underwriting.

Questions From Committee Members: The committee had a few questions which were answered by Mr. McGlenn.

Closing by Sponsor: Rep. Menahan stated that we should be able to buy this type of insurance. I tried to buy this type of insurance and there are a couple of companies that write driver's insurance. Your agent will have to find a broker someplace that will find you a company that will do this. I have gone through this in the past and know this to be true.

DISPOSITION OF HOUSE BILL 221

Motion: None

Discussion: There was no action taken, executive action will be on January 25, 1989.

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 251

Presentation and Opening Statement by Sponsor: Rep. Swysgood stated that this bill is an act to clarify the real estate description requisite of the uniform commercial code financing statement covering farm property. In order to file a lien you have to have the legal description of the land attached to the lien.

List of Testifying Proponents and What Group They Represent:

George Bennett, Montana Bankers Association
Tim Gill, President, Montana Livestock Ag. Credit, Inc.

List of Testifying Opponents and What Group They Represent:

None

Testimony: For Mr. Gill's testimony, see exhibit 1. Mr. Bennett stated that MBA supports this bill.

Questions From Committee Members: Representative Simon and Wallin had questions which were answered by Mr. Bennett and Rep. Swysgood.

Closing by Sponsor: Rep. Swysgood stated that HB 251 was a simple bill in the fact that it is trying to alleviate a lot of paper work not only by the person wanting to secure a loan but also by the facility granting the loan. It will make things a lot simpler for all people involved.

DISPOSITION OF HOUSE BILL 251

Motion: None


Discussion: There was no action today, executive action on the bill will be January 25, 1989.

Amendments and Votes: None

Recommendation and Vote: None

ADJOURNMENT

Adjournment At: 11:00 a.m.


REP. BOB PAVLOVICH, Chairman

BP/sp

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DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 1 24 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		
McCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON	✓		
GLASER, BILL	✓		
KELLER, VERNON	✓		
NELSON, THOMAS	✓		
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		

MEMORANDUM

EXHIBIT HB 247 #1
DATE 1/24/89
HB _____

To: Rep. Timothy J. Whalen
From: Jim Borchardt, Chief Examiner
Insurance Division, State Auditor's Office
Phone: 444-2997
Subject: HB247, Section by section analysis
Date: January 23, 1989

Following is an explanation of HB247 on a section-by-section basis.

Section 1

This part merely assigns a handy title to the bill, i.e., "Regional Ratemaking Act."

Section 2

The purposes of this bill are to ensure that rates charged in Montana are not excessive, inadequate or unfairly discriminatory and to ensure that the basis for rates used here is taken from Montana's experience or the experience of a group of states with experience similar to Montana's.

Section 3

The bill is intended to be applied to lines of insurance which are noncompetitive or volatile, i.e., those which few insurers write here or those where few claims for the line result.

Section 4

This bill would allow the insurance commissioner to designate noncompetitive or volatile lines of insurance by rule. On a specific rate filing under these designations, the Insurance Department would then determine whether the insurer's statistics for Montana are sufficiently stable. If the statistics are not, then the commissioner could require the insurer to file experience data on the policy from other similar states. The bill sets forth the actuarial criteria which would be used to identify "similar" states.

Section 5

Under this bill insurers writing noncompetitive or volatile lines would be required to make annual filings with the commissioner containing statistical information on these lines. Such reports must cover at least a 5-year period, with summaries for each year. Trending or other adjustments to the reported data are to be specially noted.

Section 6

So that the regional experience of various combined states is adequately reviewed, the bill provides that the commissioner may contract with actuarial consultants, as she deems necessary, for any rate filing falling under the regional ratemaking criteria. The cost of this actuarial review is to be borne by the insurer whose rates are under review.

Section 7

This section grants rule-making authority to the commissioner in this area.

Section 8

This section preserves the rights and duties in effect before passage of the bill.

Section 9

This section notes that if one part of the bill is invalid, the other valid sections will still apply.

Section 10

This section merely tells where in the Code this bill will appear on passage, i.e., Title 33, Chapter 16.

Section 11

This section of the bill notes an immediate effective date, if passed.

MEMORANDUM

To: Rep. Timothy J. Whalen
From: Jim Borchardt, Chief Examiner
Insurance Division, State Auditor's Office
Phone: 444-2997
Subject: HB247, General Background
Date: January 23, 1989

Over the past several years, the pricing of certain lines of insurance, most notably liability, has given Montana residents problems, because it has become so expensive. Insurers have requested and received permission for large rate hikes, because the Montana Insurance Department has not had adequate personnel to review rate increase requests. Although the Insurance Department was given a budget allocation of roughly \$43,000 to hire an actuary to conduct such rate reviews, the salary level was not high enough to attract any interested actuaries. Without such actuarial expertise, our Department cannot successfully deny proposed rates.

HB247 will help us to get the actuarial reviews necessary on noncompetitive or volatile lines of business. A noncompetitive line is one which few insurers offer. A volatile line is one which has very few claims in this state.

First, the bill allows the grouping of statistical data from Montana and similar states. Insurers often argue that Montana's experience is not sufficiently stable (large enough) for ratemaking purposes. Because we have a small population, this is a valid point. To get around this difficulty, insurers use countrywide data to justify their rates in Montana. Unfortunately, such an approach often includes the experience of states totally different from Montana and skews the rates toward the high side. For example, the medical malpractice experience in Florida and Massachusetts has been horrendous--not at all like Montana's. Yet statistics from those or other states have been included in the countrywide experience, when insurers want rate changes here. This bill would require insurers to use data only from states with similar experience.

Second, the bill has a mechanism for authoritative review of the regional rate data by an actuary. And finally, the costs of such a review must be borne by the insurers seeking the rate change.

As a practical matter, it is interesting to note that this approach has been successfully employed in the state of Iowa, where insurance officials point to a savings of over \$500,000 on medical malpractice rates. It is our hope that similar gains could be made here through passage of this bill. Passage would also be a disincentive for insurers to request huge increases (which may in effect be subsidizing losses in other states with large populations), since those insurers will in the future have justify rates based on experience in similar states.

Montana Magistrates Association

EXHIBIT _____
DATE 1/24/89
HB 221

24 January 1989

Testimony offered in support of HB221, a bill for an act entitled: "An act to provide for motor vehicle liability coverage of persons without regard to the motor vehicles owned or operated by the insured."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The Montana Magistrates Association is in support of HB221 since it would reduce the number of persons appearing in the limited jurisdiction courts on the charge of no liability insurance. A common occurrence in these courts is the person who appears charged with operating a motor vehicle with no proof of liability insurance because they thought the vehicle they were operating was covered under the policy of the owner of the vehicle. If the policy were to cover the person, rather than the vehicle, then there would be no excuse of "but he said his car had insurance."

The proposed legislation should however address the current statute that requires a person to have in their vehicle a current proof of liability insurance certificate or card. Perhaps the bill should mandate the person insured to carry such a card, just like a driver's license.

We urge your support of this legislation as it will possibly decrease the number of offenses charged under the current no proof of liability insurance statutes.

Wallace A. Jewell

HB 221
#2
EXHIBIT
DATE 1/24/89
HB 221

STEERING AUTOMOBILE COVERAGE FROM
OWNERS TO DRIVERS

An Investigation of the Pros and Cons of "Insure the Driver" Auto Policies by
Insurance Services Office, Inc.

PURPOSE

This report investigates the concept of an "insure-the-driver" personal auto insurance policy. Information regarding the history of this approach to providing auto insurance will be provided. The problems experienced by insurers and insureds with the current "insure-the-owner" policy, the advantages and disadvantages of insuring the public with an "insure-the-driver" policy and the feasibility of adopting and implementing such a policy will be explored.

DEFINITIONS

An "insure-the-driver" policy can be defined as a policy providing automobile liability coverage (with attendant provisions for Medical Payments Coverage, Death and Disability, Uninsured Motorists and others, if desired) for an individual with respect to operation of an automobile. In addition, other liability exposures, such as ownership liability, may be present and require coverage, since the driver of an auto may not be the only person to be held liable for damages sustained in an accident involving that auto.

Under the "insure-the-auto" policy concept, which is the basis for providing auto liability insurance today, the named insured buys insurance which provides coverage for himself and others using the insured vehicle. This is done through the definition of insured, which includes any person while using the covered auto.

HISTORY

The concept of insuring the driver was utilized as early as 1915, when autos were first used by the public as a means of transportation. Under this type of insurance, the named insured received coverage. Additional insureds using the auto could be added onto the policy for an additional premium. The "insure-the-driver" approach for insuring auto owners became obsolete, due to the development of the law of agency, around 1920. Under the law of agency, car owners became responsible for the acts of others using the auto with the owner's permission.

In 1932 the National Conference of Commissioners on Uniform State Laws concluded that financial responsibility should be met by drivers rather than owners of vehicles. This decision was made with the concurrence of the American Bar Association and without input from the insurance industry. In 1934, the Department of Commerce sponsored the National Conference on Street and Highway Safety and developed an alternative model financial responsibility law. The Department concluded, with concurrence from the insurance industry, that financial responsibility laws should stress responsibility on vehicle owners, and not on drivers. The Department of Commerce model law developed in 1934 was widely adopted, and the 1932 model was withdrawn, and believed to be obsolete. Note that at that time, there were no computers, more drivers than cars and different moral and judicial climates than we have today. Thus, as far as insurers and regulators were concerned, they probably believed that insurance could be more easily provided by insuring cars than by insuring drivers at that time.

Over the years, various groups have conducted research indicating the advantages and disadvantages of the use of an "insure-the-driver" policy. Each of these groups has rejected the "insure-the-driver" concept.

- Around 1952, the National Bureau of Casualty Underwriters (NBCU) considered and rejected the "insure-the-driver" concept.
- In 1953, representatives of several insurance companies discussed the "insure-the-driver" concept at the request of the Deputy Insurance Commissioner of New Hampshire. The Joint Industry Committee report stated that the drawbacks of such a policy would outweigh the advantages.
- In 1957, the Special Commission of the Commonwealth of Massachusetts considered the question of affording coverage on an "insure-the-driver" basis. The Commission reached conclusions similar to those discovered in the reports of the other various committees researching this subject.
- Research found one insurer that currently offers a "Broad Form Named Driver" policy. The coverage provided under this policy is similar in theory to that provided under the Personal Auto Policy Named Non-Owner endorsement, which provides coverage for an insured who does not own an auto, but provides coverage for owned vehicles. The insurer developed the policy as a marketing technique to provide coverage for youthful drivers in California owning several motor vehicles. Their policy covers only the named insured and no one else; permissive use of vehicles is not covered. The benefit for the insurer is that no one else but the named insured uses the vehicle. The insured also benefits, because the premium that applies to only one of all the vehicles that would otherwise be insured separately, is paid. This is due to the restriction that only the named insured is covered by the policy, and the named insured can drive only one owned vehicle at a time.

This policy was implemented by the insurer in about eight or ten states in 1983. However, due to poor loss experience, the policy is now only used in California.

PROBLEMS WITH CURRENT "INSURE-THE-OWNER" POLICY

The following have been cited by proponents of the "insure-the-driver" auto policy concept as the problems existing with the current method of providing coverage on an "insure-the-owner" basis:

Due to the omnibus definition of "insured", the policy not only covers the named insured, but covers others using the covered auto who are unknown to the underwriter or producer.

When an auto owner purchases insurance under the "insure-the-owner" policy, the policy not only benefits the auto owner, but others who may use the covered auto during the policy period. This coverage is provided by including these other drivers of the covered auto as insureds under the policy. The underwriter or producer who sells the policy and the named insured need not even be aware of who these other insureds are. Although the named insured may appear to be a desirable risk, the underwriter does not know the characteristics of the other persons who may be covered while they operate the auto. Perhaps this is why there is often much criticism on the current criteria for rating, selecting and cancelling policies for insureds.

The public may not be aware that their policy premium could be affected by someone else who uses their auto.

For example, the father of a college student may lend his car to his son. In turn, the son may lend the car to a friend. If the friend is negligent for damages sustained by others in a serious accident, the owner of the car (the named insured) could, under some companies' rating plans, be surcharged for this accident upon policy renewal. The negligent driver's policy and driving record could remain unaffected.

Of course, the named insured needs to be covered for damages caused by others who use the auto, since it is the named insured who could be found responsible for an accident such as the one in this example in a court of law. However, the named insured may not realize that, under some companies' rating plans, the negligent acts of others using his auto may result in a surcharge on the premium he pays.

Keeping up-to-date data on insureds, which requires constant review of the insurance application for changes and which results in changes in the premium charged, is difficult.

The data that insurers receive on insurance applications often changes without the insurer's knowledge. Families get larger or smaller, people move, and insureds age. The insured is not likely to offer information to an insurer that would result in premium increases. Insureds are, however, more likely to offer information that will decrease premiums. Therefore, the rates that are often charged do not correctly reflect the actual criteria that should be used in the rating of the policy.

Since liability insurance often consumes a large portion of some insureds' incomes, insureds may tell their agent that they are living at another address, or that their car is owned by someone else living at another address if the other address is located in a territory rated lower than the one in which the insured actually lives. The insured will be charged a lower premium than is actually appropriate.

When one member of a family is considered a high risk and the rest of the family is composed of otherwise desirable risks, the entire family may be unable to purchase insurance easily or at preferred rates.

If one member of a family is an undesirable risk, such as a seventeen-year-old male with several tickets, his whole family may be unable to purchase insurance, or be ineligible for preferred rates. Although some of the family members may individually be desirable risks, the insurer may decide to nonrenew the entire policy covering the family auto. Many insureds trapped in this kind of situation believe that they are unfairly discriminated against.

When someone other than the principal operator is driving a vehicle at the time of loss, loss experience is charged to the principal operator of a vehicle, which leads to rate classification inequities.

When a loss occurs, and is due to a driver's negligence, points may be assigned to the principal operator of the auto. Even though someone else may have been driving the auto and been determined negligent, the loss experience due to the accident goes on the driving record of the principal operator. Therefore, the loss data that insurers receive is often not always exact, and the class that the principal operator belongs to may be incorrectly rated.

ADVANTAGES OF THE "INSURE-THE-DRIVER" POLICY

The advantages of insuring the public under "insure-the-driver" policies include the following:

A fair premium is charged, since only the insured's own driving history affects the premium that is charged.

Under an "insure-the-driver" policy, each insured is charged a fair premium, since only the insured's driving record is considered in the determination of policy premiums. No one else's negligence can be considered as a factor in the determination of the named insured's premium. The rates used to determine premiums are based on the actual accident record of insureds of each age and sex. The data are unambiguous. Rates are therefore accurate. The spread of premiums from best to worst class of drivers will therefore be larger than under the owner's policy rating system. Also, since precise premiums are charged to each insured, the rating differentials based on the territory in which an insured lives are less significant.¹⁰

The "insure-the-driver" policy is simple and concise, as only the named insured is covered.

This leads to fewer coverage problems, since there is generally no dispute as to who is covered under the policy. Quicker claims settlement also results,¹¹ as there are fewer disputes and delays in the settlement of claims.

Responsibility is placed on every driver, and not just auto owners, as each person's driving record will determine the premium charged.

More responsibility is placed on those drivers who do not own autos and who, under the "insure-the-owner" policy concept, did not have their own insurance but were covered under someone else's policy. Because each driver is required to have their own insurance, more careful driving is practiced by all, as the financial incentive of lower premiums leads to greater efforts to maintain a clean driving record. If an insured does not have a good driving record, the insurability of only that insured - not their entire family - is jeopardized.¹²

The hazard present among one-car families is more appropriately measured.

Currently, one-car families often present a greater hazard than their insurance premium indicates. Under the "insure-the-driver" concept, the hazard that exists among large families with only one or two cars that are used by all members of the family is more appropriately measured.¹³

More underwriting control is possible, as underwriters know exactly who their insureds are.

Greater underwriting and rating precision and control are achieved with the use of an "insure-the-driver" policy. Insurers know exactly who their insureds are under each policy, and they are better able to rely on the law of large numbers in predicting losses.¹⁴

Insurers can work more closely with Driver's License Bureaus in obtaining driving record information of insureds.

Insurers are more able to work in cooperation with Driver's License Bureaus, since a prerequisite for obtaining a driver's license is that the applicant must have a valid insurance policy. This will be beneficial when companies obtain information concerning the driving record of individuals.¹⁵

DISADVANTAGES OF THE "INSURE-THE-DRIVER" POLICY

The disadvantages of implementing and maintaining "insure-the-driver" policies include the following:

Since every licensed driver is required to have insurance, insurer administrative expenses and paperwork are increased.

Under the "insure-the-driver" concept, every licensed driver is required to have an insurance policy. This leads to increased administrative expenses and paperwork on the part of producers and insurers. Also, it necessitates an increase in communication between motor vehicle bureaus and insurers, as underwriters and producers will need information on all licensed drivers.

Auto owners must still be covered for ownership liability in certain situations.

Some problems regarding where coverage will be available to pay damages in certain situations also result. For example, confusion results when a driver of a non-owned vehicle injures a third party. Under the present "insure-the-owner" policy system, the owner's policy applies on a primary basis, and, if available, the driver's policy provides coverage on an excess basis. In order that protection be afforded for the owner's liability of a vehicle being operated by someone else, coverage for the owner should be provided under an "insure-the-driver" concept when the owner is operating an owned vehicle, and also when someone else is operating the owner's vehicle. This seems to dilute the purpose and concept of the "insure-the-driver" policy.

Coverage deficiencies are also created because the "insure-the-driver" policy does not provide coverage for the owner in those situations when the auto is used by someone else and an accident caused by improper maintenance of the vehicle by the owner results. Since the owner is often found to be negligent in this situation, coverage should apply for the owner.¹⁶

All licensed drivers must purchase insurance, which is not fair to the members of society who rarely drive but want to maintain a driver's license.

Since all licensed drivers are required to purchase insurance under the "insure-the-driver" system, it is not fair that licensed drivers who do not own autos have to purchase insurance. Older drivers who want to maintain their licenses or new or young drivers who rarely drive, but use another family member's auto need to carry their own insurance.¹⁷ If these drivers were to be exempt from the requirement to have insurance, on whose policy would they be covered? To cover them under the owner's policy would again defeat the purpose for which the concept of an "insure-the-driver" policy is intended. Also, it would be difficult for an underwriter to determine which senior citizens or new drivers rarely drive and therefore qualify as those who do not need their own policy. Legislation would probably also need to be enacted to exempt these licensees.

The insurance costs for a one-car family are much more excessive than appropriate.

The head of a household also does not appreciate having to pay a separate premium for each family member who has a license. For example, it does not seem fair that a one-car family with many members, when compared to a one-car family with fewer members, pays more in premium dollars, when the autos in both families may be used for equal amounts of time.

Since owners' policies have almost always been in use, statistics are not available on which to base "insure-the-driver" policy rates, and wide ranges of classification exposures exist.

Also, to avoid discrimination, rates that insureds are charged must be classified according to the type of operation the driver performs. A wider range of classification exposures than used under the owner's policy rating plans results, which leads to many inefficiencies in the rating system.

It would not be beneficial to insureds to implement commercial automobile insurance on an "insure-the-driver" basis.

Commercial automobile insurance allows coverage to be provided for motor vehicle owners who own fleets of motor vehicles. The commercial auto exposures are considered to be quite large, due to the nature of the vehicles being covered, and due to laws which mandate certain high limits of liability that must be maintained. Since it would be a burden for drivers of these vehicles to each maintain the required limits of liability, commercial automobile insurance is best afforded on an owner's basis. The owners of a fleet of vehicles should maintain the necessary limits on the vehicles they own.

FEASIBILITY

The following are constraints that exist for the implementation of an "insure-the-driver" policy concept:

"Insure-the-driver" policies will not comply with many of the provisions of current compulsory insurance, financial responsibility and vicarious liability laws.

Compulsory insurance laws in those states having such laws would have to be changed if an "insure-the-driver" policy concept were adopted. These laws require owners of vehicles to purchase liability insurance before registering the vehicle. Since under an "insure-the-driver" policy concept all licensed drivers would need to be insured, instead of vehicle owners, the compulsory insurance laws would need revision.

Several states maintaining financial responsibility laws require owners of motor vehicles to prove security and/or proof of financial responsibility. Since all drivers, and not only owners, would have their own insurance, these laws would need to be changed, perhaps to indicate that all drivers must be able to show proof of financial responsibility as is required under the law.

The vicarious liability laws applicable in several states state that motor vehicle owners are responsible for the bodily injury or property damage that is caused by others legally using the motor vehicle with the express or implied permission of the owner. Therefore, when someone other than the driver is negligent in an auto accident, the "insure-the-driver" policy must provide coverage for the responsible non-driver (owners, parents, for example). Also consider an owner of a car who is not a driver, such as someone who has not learned to drive, is physically impaired and cannot drive, or has no license. This person is not a driver, but as an auto owner, must have coverage for ownership liability.²⁰

The concept of vicarious liability does not apply only to insurance. It is unlikely that the laws would be revised if an "insure-the-driver" auto insurance concept were adopted. Under the various vicarious liability statutes, owners of motor vehicles would still be liable for actions of users of their vehicles²¹ in certain situations, regardless of the auto policy coverage approach used.

Extensive changes to the current rating and classification system would be necessary.

If the "insure-the-driver" concept were adopted, expansive changes to today's rating and classification systems would have to be made. It may be difficult to incorporate into rating of "insure-the-driver" policies the frequency of operation, nature of the vehicle, and the use of the vehicle as well as similar factors that are presently used. The rates that apply to a driver would have to reflect the actual and potential use of all the vehicles that driver may drive. A "loading" would need to be developed and included in the ratemaking formula to consider the age, make, model and other characteristics for any commercial or private passenger car that is or may be used by an insured. Serious rate inequities could develop. The rating of the policy would also have to be based to some extent on the use of vehicles (i.e., regular or incidental). The information provided to underwriters by applicants may not always be factual, and the "loading" made on policies may therefore be inequitable.²²

It would be difficult to include the other auto coverages on an "insure-the-driver" policy.

Disadvantages are foreseeable in attempts to construct an "insure-the-driver" policy that would combine liability and other coverages in a single policy.²³ Due to the omnibus provision in Medical Payments Coverage of owners policies, "insureds" is defined as all occupants of owned autos, including non-drivers. It would be difficult to cover non-drivers under an "insure-the-driver" policy for Medical Payments coverage. Physical damage coverage would also need to be provided for a vehicle and its owners, not for drivers. Lienholders would still require owners to purchase protection for damage to their autos.²⁴

IMPLEMENTING A CHANGE

Although several obstacles would have to be overcome before an "insure-the-driver" auto policy concept could become a reality, ISO can develop this new auto insurance product. However, extensive changes would be necessary in the statistical information collected, the experience gathered and used for determining loss costs and rates, and the forms, endorsements and manuals used. In addition, ISO would probably have to maintain and service two automobile policies for its participating insurers; both "insure-the-driver" and "insure-the-owner" policies.

Additionally, implementation of an "insure-the-driver" policy might not reduce the excessive loss ratios experienced by many insurers. Insurers will still need to charge the appropriate premiums that cover the losses that they experience. Therefore, the implementation of an auto insurance policy which only insures the driver may not be the answer to the question of how insurers can control their losses - it would just introduce a new method of providing auto insurance.

Most insureds would probably be reluctant to purchase a new type of auto insurance policy, especially one in which the way coverage is provided is changed so drastically. To develop such a policy for use in only those states where it is statutorily allowed and accepted would defeat the ISO goal of policy standardization and uniformity.

It may appear that since every driver must have auto insurance before being issued a driver's license, there would be no uninsured drivers. However, note that in states where compulsory insurance laws are in effect, and owners are currently required to show proof of insurance before registering motor vehicles, there are many motor vehicles being driven which are uninsured. For example, in New York, it is estimated that 105,000 motorists are uninsured.²⁵ Therefore, requiring drivers license applicants and those drivers renewing their licenses to show proof of insurance will probably not reduce the number of drivers who are uninsured in states where compulsory insurance laws currently exist.

AN ALTERNATIVE SOLUTION?

Many of the disadvantages of the current owner's policy which would supposedly be solved, according to its advocates, by an "insure-the-driver" policy could probably be achieved by providing coverage for insureds on a "pure" no-fault basis. This would completely eliminate the insureds' right to sue and instead offer comprehensive personal injury protection benefits.²⁶ Insurers, by providing insurance under a "pure" no-fault concept, would be able to control their losses, since they would be able to better forecast what their future losses will be. Damages for injuries that are sustained by an insurer's own policyholder would be paid by the insurer. Defense costs and legal costs would be greatly reduced, as insurers settle their insureds' claims directly for damages for injuries sustained under all coverages without the need to involve third parties. This would lead to greater stability in the payment of insureds' claims. Although the development of a "pure" no-fault policy would require legislative changes, there would be fewer of the radical changes needed for the development of an "insure-the-driver" policy. A no-fault concept is also relatively simple for insurers and producers to explain and for insureds to understand.

ISO DECISION

In light of all this information, and in recognition of the fact that many, if not most, of the problems in the current auto insurance market will not be solved by the "insure-the-driver" policy, the development of an "insure-the-driver" policy will not be pursued by ISO at this time. We will continue to maintain commercial and personal automobile insurance policies that provide coverage on an owner's basis.

FOOTNOTES

1. Research Board, Society of C.P.C.U., "Insure the Driver - A Study" The Annals of the Society of C.P.C.U., 1968, p. 121-122.
2. Ibid, pp. 103-104.
3. Edward S. Beneville Jr., "An Embarrassing Loser", Best's Review, May, 1986 pp. 33-34.
4. Society of C.P.C.U., "Insure the Driver", pp. 124-125.
5. Ben H. Logan, "Insure the Driver", Insurance Law Journal, August, 1968, pp. 682-683.
6. Ibid, pp. 682-683.
7. Beneville, "An Embarrassing Loser", p. 34.
8. Ibid, p. 34.
9. Ibid, p. 34.
10. Ibid, p. 36.
11. Logan, "Insure the Driver", p. 696.
12. Ibid, pp. 697-698.
13. Society of C.P.C.U., "Insure the Driver" p. 122.
14. Beneville, "An Embarrassing Loser", p. 36.
15. Society of C.P.C.U., "Insure the Driver" p. 122.
16. Ibid, p. 127-128
17. Ibid, pp. 129.
18. Ibid, pp. 130.
19. Ibid, pp. 122.
20. Ibid, pp. 131-132.
21. Ibid, pp. 16-18.
22. Ibid, pp. 9-10.
23. Insure the Driver Proposal, Federation of Insurance Counsel Quarterly, Spring 1967, pp. 35.
24. Society of C.P.C.U., "Insure the Driver", p. 132.
25. Journal of Commerce December 12, 1984, p. 7a.

26. Glenn L. Wood, Claude C. Lilly, III, Donald S. Malecki,
Jerry S. Rosenblum Personal Risk Management and Insurance, CPCU 2,
Vol. 1, Second Edition (Malvern, Pennsylvania: American Institute for
Property and Liability Underwriters, Inc., 1980) p.68.

TESTIMONY FOR HB 251

House Business &
Economic Development Committee

8:30 a.m., Tuesday
Jan. 24, 1989

Mr. Chairman & Members of the Committee:

When an ag lender, such as a bank, makes a loan to a farmer to plant a crop for that year, the bank files a lien against the crop with the Secretary of State to protect the loan. There has been debate between attorney's over the necessity of filing a legal description of the real estate where crops are produced.

HB-251 simply makes it clear on page 1, lines 21-24, by removing language that requires a legal description. On page 4, lines 20-25, it also says a legal description is not necessary and only the county in which the farm products are produced or located is satisfactory. This is also adequate for the Federal Food Security Act under which the state's centralized ag lien filing system is certified and approved.

Retailers such as seed, chemical, fertilizer and fuel dealers who also sell products and services to farmers have difficulty finding ready access to legal descriptions of the farm when filing a lien. It is much simpler to write on the ag lien "crops grown and located on John Doe's farm in Beaverhead County."

This is simply a house cleaning bill which will make it easier for ag lenders and suppliers, farmers and ranchers, and the Secretary of State's office.

Thank you.

Witness Statement

Tim H. Gill

President

Montana Livestock Ag. Credit, Inc.

Helena Montana

House Bill 251

"Proponent"

I support this Bill as a simplifying amendment that allows "farm products", or more specifically growing crops to be treated equally with other Agric. commodities. This Bill would clarify the security perfection in a manner that should allow farmers of growing crops equal access to credit at comparable costs to other Ag. products.

I urge your support of House Bill 251.



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Business & Economic

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218 221

BILL NO. 222 247 251

DATE

1/24/89

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ROGER MCGLENN	INDEPENDENT INS. AGENT ASSOC OF MT. HB 218 247		X
Bill Dibert	KSF & INSUR. CO. HB 218-247		X
WALLY JEWELL	MT MANS ASSOC	X HB 221	
Michael Sherwood	MT LA	X 221 247	
James W. Borchardt	2404 Sunlight Cr. Helena	247 ✓	
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Bon Ashman	STATE FARM INS. 221		X
Tim Gill	Montana Livestock Ag. Co. - Helena	251 X	
Bonnie Rippey	Alliance of M. Insurers	247	247 X X
Tammy RBT	MT Ins Dept		X 221
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.