

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By CHAIRMAN GENE THAYER, on JANUARY 6, 1989,
at 10:00 A.M.

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Darryl Meyer, Senator Noble, Senator Williams, Senator Hager, Senator McLane, Senator Weeding, Senator Lynch

Members Excused: Senator Boylan

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON SENATE BILL 36

Presentation and Opening Statement by Sponsor: Senator Sam Hofman, District 38, said he thought he was asked to carry the bill because of a problem arising over an insurance agent in his area. The agent did some rather indiscreet things that were not only unethical, but also illegal.

The Insurance Department, in the State Auditor's Office, is the state level agency responsible for overseeing ethics involving insurance business in Montana. He stated, he was asking passage of the bill to establish the Insurance Department as a Criminal Justice Agency. Senator Hofman said the bill's passage would allow the Insurance Department to do a far better job of investigating reported problem areas.

List of Testifying Proponents and What Group They Represent:

Tanya Ask - Montana Insurance Department/State Auditor

List of Testifying Opponents and What Group They Represent:

Tom Harrison - Montana Sheriffs & Peace Officers Assoc.

Testimony:

Tanya Ask cited Section I, of the bill as making the Insurance Department an eligible recipient of criminal justice information. She stated, the bill stipulated the Department is required to retain the confidentiality of any criminal justice information received during an investigation.

Tanya stated, the only criminal justice activities applying to the Department, were detection, collection, storage, and dissemination of criminal justice information. She cited the Department's authority to investigate, is provided in 33-1-311(3), MCA, with 33-1-401, and 402 as examples. Section 401 required the Department to examine insurers, and 402 examination of agents, managers, and such. She said, the Department's being designated as a criminal justice agency would allow it to receive confidential criminal justice information from agencies such as sheriffs departments, the FBI, the U.S. Postal Service, and even the Montana Securities Department. Presently, we can share information with any of the agencies but they cannot share confidential information with the Department. The cooperative effort of sharing information, allowed by SB 36, would result in a cost savings for local government.

She pointed out the second part of the bill provided a person's immunity from prosecution for having furnished us with information about known or suspected fraudulent insurance or reinsurance transactions. It also provided the Insurance Department with immunity from prosecution for the lawful discharge of their duties in connection with investigations of alleged fraudulent insurance or reinsurance transactions. She felt this section was very important because it provided a number of people with protection. (SEE EXHIBIT 1).

List of Testifying Opponents and Who They Represent:

Tom Harrison stated, he did not classify himself, or his organization, as an opponent at that time, but said they did have some concerns. One concern we had, was having heard of a second bill in the process, addressing a restrictive part of the Insurance Department. We have heard, it is to be nominated the security division, and is intended, I think, to do the same thing. He stated a desire of their organization to see the two bills in concert, to know what is actually occurring.

He cited their second concern as pertaining to intelligence information being held by other criminal justice agencies, within the State of Montana. That concern being the sharing of confidential information with other criminal justice agencies, who have personnel untrained in the handling of such information. Unsecured handling of confidential information could lead to public dissemination, or it's undesirable use.

Questions From Committee Members: Senator Thayer asked Mr. Harrison if he was aware of the bill number for the second bill he spoke of. Harrison said, "No, it's totally hearsay on my part, Mr. Chairman."

Chairman Thayer then asked if Mary McCue, Tanya Ask or anyone else at the hearing was aware of a second bill. Kathy Irigoin, of the State Auditors Office, stated knowledge of a second bill draft having been presented to Legislative Council, and as yet, not issued a bill number. She said, Senator Walker was a co-sponsor of the bill. What it proposed to do, was to have the Securities Department designated a criminal justice agency, by statute, rather than by executive order of the Governor, which the Securities Department had been since 1983.

Chairman Thayer addressed Tanya Ask in regard to Mr. Harrison's second concern. Should delicate intelligence information be coming into a department where people might be untrained and possibly become public? Tanya said, "Yes, the bill specifically designates the Insurance Department be required to comply with the rest of the Criminal Information Act. We would be under the same requirements as any other criminal justice agency."

Chairman Thayer asked Tanya, "In your estimation, to accomplish what you are trying to do, would it be necessary that intelligence type information also, be included in the bill?" Tanya said, "Yes, definitely, because the lack of that type of information is now preventing us from accomplishing our investigative goals."

Closing by Sponsor: Senator Hofman closed by stating he felt all expressed concerns had probably been alleviated. He said, the security question wasn't a major concern, as the agency would only receive information enabling them to better administrate regulation of insurance agencies and companies. They

won't receive the kind of information peace officers would be worried about.

Senator Hofman said he had a copy of the same letter, as attached to Tanya Ask's testimony, plus letters of support from various county attorneys. All of them urged passage of this bill.

DISPOSITION ON SENATE BILL 36

Discussion: Senator Meyer suggested the committee defer executive action on SB 36 until Monday's hearing, and have Mary investigate the existence and concerns of the possible second bill.

Hearing on SB 36 was closed. Executive action will be taken at a later date

HEARING ON SENATE BILL 27

Presentation and Opening Statement by Sponsor: Senator Darryl Meyer, District 17, stated SB 27 was simply a cleanup bill for minor errors and irregularities in the Securities Act of Montana. Changes within the bill were basically intended to modernize the Securities Act and put us in line with surrounding states.

List of Testifying Proponents and What Group They Represent:

Kathy Irigoien - Deputy Security Commissioner, State Auditors Office.

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Kathy Irigoien stated, the bill's purpose was to clean up minor errors and irregularities in the Securities Act of Montana.

"Section I inserts "registered" on line 5, page 6. If the word registered were not added, a person acting as a broker-dealer, without being registered as a broker-dealer, could also act as an investment advisor without becoming registered as a investment advisor."

"Section II deletes "the" on line 4, page 15. If the word "the" is not deleted, it appears that commercial

paper, that otherwise fits the other requirements in the subsection, is not essential legislation as a security unless it is sold to a certain bank or a certain insurance company. When in fact, the bank or insurance company to which the commercial paper is sold is totally irrelevant to the propose of determining whether the commercial paper is exempt from registration."

"Section III clarifies (at lines 8 through 14, page 16), that broker-dealers, or securities salesmen are exempt from registration when engaging in transactions that are exempt from registration under another statute, 30-10-105, MCA, only if that statute expressly exempts them."

"Section III (at line 23, page 18 through line 6, page 19), clarifies that registration of a broker-dealer, salesman, investment advisor, or investment advisor representative, cannot be terminated unless the commissioner approves the termination in writing. On lines 11 through 12, page 24, the order of key terms has been rearranged to conform with the order commonly used throughout the Securities Act of Montana."

"Section IV makes investment advisors responsible for paying examination costs. Already, broker-dealers and issuers are responsible for such costs. Investment advisors were inadvertently omitted from the examination cost payment requirement."

"Section V clarifies that the commissioners may not maintain an administrative or civil action for a violation of the laws requiring a broker-dealer, salesman, investment advisor, or investment advisor representative to register, unless the action is brought within two years after the failure to register occurs."

"Section V, also clarifies that the statute of limitations for an administrative or civil action for a violation, other than failure to register, is two years after the commissioners discovers the violation."

OPPONENTS: None

Questions From Committee Members: Senator Thayer inquired about the insertion of quite a little language dealing with investment advisor. Was that something inadvertently left out originally, or is this kind of a new field, that people have entered into recently to

circumvent the law?

Kathy Irigoien said "Yes, investment advisors weren't originally included in the Securities Act. The Securities Act was passed in 1956 or 59. They have been around for about eight years. When they were inserted into the code, inserting them into that particular subsection, and requiring them to take examination costs, was overlooked." (SEE EXHIBIT 2).

Closing by Sponsor: Senator Darryl Meyer stated, "I close."

DISPOSITION OF SENATE BILL 27

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Meyer moved SB 27 DO PASS. Senator Williams seconded the motion. The vote was unanimous.

DISPOSITION OF SENATE BILL 43

Discussion: Chairman Thayer asked staff member Mary McCue for the amendment necessary for SB 43, carried over from yesterday.

Mary stated she had prepared two sets of amendments as requested by the sponsor. First is the language that he suggested we insert concerning the exemption from the bond requirement. I first, took the amendment the Department of Agriculture brought yesterday and put it in our form. Number one just changes the title. The front side of Exhibit 3 states the above amendment.

Amendments and Votes:

Senator Meyer made a motion to amend SB 43. Senator McLane seconded the motion. The motion carried unanimously.

Mary McCue further explained the backside of Exhibit 3 as to the intent of SB 43. After we met yesterday, I talked to Senator Rapp-Svrcek, to the attorney of the Department of Agriculture, Tim Malloy, and to Roy Bjornson who was here yesterday. I think I confused the issue by bringing up the discussion of someone who may be selling, but not hauling. The reason I got off track, was because the person on our staff who drafted

this bill thought we were trying to address those people. However, as Senator Rapp-Svrcek testified, the woman was required to pay a license. We're assuming she's hauling and selling. We are not going to have amendments to try and insert those people in here.

Section III, page 3, of the bill subsection 2: states, "A separate application and license are required for each temporary location and for each motor vehicle to be operated." "It occurred to me, and I discussed it with these gentlemen; what if a person is driving his own truck and selling from a stand right next to the parked, empty truck?"

"It would seem to me, under a real literal reading of this, you could require two licenses. They agree with me, it is a technical problem and not what is intended."

"In the description of what a temporary location is, I suggest we insert language to include a motor vehicle."

"In the section on who we are going to license, we'll just say you have to have a separate license for a temporary location. If you are selling from the vehicle, and a stand, it is intended that you buy two licenses, based on the gross receipts."

"We talked about the person who brought in one large truck and then sent the product out on four or five little trucks. The intent is, you have to get a license for each of the trucks, being sold from."

"Licensing fees are going to be 10% of your gross receipts from all of those vehicles you send out, but not more than \$200.00. The reason they want to do this is in regard to other statutes in the same part. The person who drives the truck has to produce the license. They want to make sure a license number is assigned to each vehicle, but they'll have a single applicant to deal with." (SEE EXHIBIT 3).

Amendments and Votes: Senator Meyer moved the amendment to SB 43, Senator McLane seconded the motion. The amendment carried unanimously.

Recommendation and Vote: Senator McLane moved for a DO PASS as amended for SB 43. Senator Weeding seconded the motion. Motion carried unanimously.

ADJOURNMENT

Adjournment At: 11:48 a.m.



SENATOR GENE THAYER, Chairman

GT/ct

senmin6.sr

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/6/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DARRYL MEYER	✓		
SENATOR PAUL BOYLAN			✓
SENATOR JERRY NOBLE	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM HAGER	✓		
SENATOR HARRY MC LANE	✓		
SENATOR CECIL WEEDING	✓		
SENATOR JOHN "J.D." LYNCH	✓		
SENATOR GENE THAYER	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 6, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 27 (first reading copy -- white), respectfully report that SB 27 do pass.

DO PASS

Signed: _____

Gene Thayer
Gene Thayer, Chairman

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3-3-6
1

STANDING COMMITTEE REPORT

January 6, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 43 (first reading copy -- white), respectfully report that SB 43 do pass and be amended as follows:

1. Title, line 5.

Following: "FEE;"

Insert: "DEFINING TEMPORARY LOCATION; PROVIDING AN EXEMPTION FROM THE BOND REQUIREMENT; REQUIRING THE LICENSEE TO DISPLAY THE LICENSE;"

2. Title, line 6.

Following: "20-3-704"

Strike: ", AND"

Insert: "THROUGH"

3. Page 3, line 8.

Following: "means any"

Insert: "motor vehicle,"

4. Page 3, line 18.

Following: "temporary location"

Strike: "and for each motor vehicle to be operated"

continued

5. Page 4.

Following: line 4.

Insert: Section 3. Section 80-3-705, NCA, is amended to read:

"80-3-705. Surety bond. A (1) Except as provided in subsection (2), a license may not be issued until the applicant has filed a surety bond or its equivalent, as established by the department by rule, issued by a company authorized to do business in the state. The bond or its equivalent must first be approved by the department and ~~shall~~ may not be for ~~not~~ less than \$1,000. The bond or its equivalent ~~shall~~ must be in a form prescribed by the department and ~~shall~~ must be conditioned upon the delivery of honest weights, measures, or grades; accurate representation as to quality or class of produce; the actual payment of checks, drafts, or other obligations delivered by the itinerant merchant in exchange for the purchase of produce; and the payment of all other obligations incurred by him.

(2) An itinerant merchant who has sold less than \$2,000 of produce in the year immediately preceding his application or whose total inventory or projected cumulative inventory for the license year is less than \$2,000 is exempt from the bond requirement."

Renumber: subsequent sections

DO PASS

Signed: 

Gene Thayer, Chairman

eg
1-6-89
3:30

(This sheet to be used by those testifying on a bill.)

EXHIBIT NO. 1
DATE 1/6/89
BILL NO. SB36 79

NAME: Tanya Ask DATE: 1/6/89

ADDRESS: P.O. Box 4009 Helena

PHONE: 444-2040

REPRESENTING WHOM? Montana Ins Dept

APPEARING ON WHICH PROPOSAL: Senate Bill 36

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: Attached

Multiple horizontal lines for additional comments or notes.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

TESTIMONY

Pg 2

Senate Bill 36

Tanya M. Ask

Montana Insurance Department

January 6, 1989

I am here representing the Montana Insurance Department in support of Senate Bill 36, a bill which would designate the Insurance Department a criminal justice agency, and would provide immunity for persons conducting an official investigation of alleged insurance or reinsurance fraud.

Section 1 of the bill designates the department a criminal justice agency. We have heard there is misunderstanding and opposition on the part of a group, that does not appear to understand how this designation would apply to the insurance department. This section of the bill impacts us in two ways which we feel are very important in carrying out our duties: we would be eligible to receive confidential criminal justice information; and we would be required to keep secure confidential criminal justice information.

A criminal justice agency is one which performs any activities defined as the "administration of criminal justice". There are a number of activities listed as "administration of criminal justice", but the only activities that apply to the insurance department are: detection, collection, storage and dissemination of criminal justice information. This authority must be given somewhere else within an agency's powers and duties. Our authority to investigate falls from 33-1-311(3), MCA, with 33-1-401 and 402, MCA as examples. Section 401 requires the department to examine insurers and 402 agents, managers and such.

The Criminal Justice Information Act does NOT confer any authority on an agency designated a criminal justice agency; it merely makes the agency eligible to receive confidential criminal justice

information. Designating us as a criminal justice agency would allow us to receive confidential criminal justice information from other agencies such as sheriffs' departments, the FBI, the U.S. Postal Service, and even the Montana Securities Department, which is in the same office with us. Presently we can share information with any of these entities, but they cannot share confidential information with us. It takes us much longer to put information together and results in a great deal of duplicate effort.

By receiving this type of information from other agencies, we can also help other agencies with their cases, such as sheriffs' departments and county attorneys' offices. This cooperative effort results in a cost savings for local governments, who already face their own set of financial problems. We have already assisted several local governments with cases in Billings, Bozeman, Great Falls, Hamilton, Missoula and Glendive. We have also received the support of a number of county attorneys, and I have a letter today from CA Harold Hanser of Yellowstone County, which I would like to include with my testimony.

Receiving this information is one part of the designation affecting our office. The second is equally important, imposing restrictions on how that information can be used. Confidential criminal justice information MUST be kept secure, and can ONLY be released to other criminal justice agencies. This is desirable because:

- a) witnesses are frequently reluctant to talk unless they know their statements will be kept confidential until a case is actually brought;
- b) if an investigation becomes known prior to any allegations being proven, evidence and witnesses may disappear; and
- c) investigations of alleged insurance code violations are not always substantiated--there may be no grounds for the allegation. An innocent individual could be seriously harmed if the fact an investigation is being conducted becomes public knowledge.

The second part of the bill provides a person with immunity from prosecution for furnishing us with information about known or

suspected fraudulent insurance or reinsurance transactions. It also provides the department with immunity from prosecution for the lawful discharge of our duties in connection with investigations of allegedly fraudulent insurance or reinsurance transactions.

This section is important because it provides protection for citizens who come forward in good faith with information about alleged fraudulent activities. It also provides a greater ability for us to share information with other state insurance departments about activities that cross state borders, and there are a lot of those.

INS 507 (5-7)

SB 36

Pg. 5 of 5

1/6/89

Ex. # 1

County of Yellowstone

BILLINGS, MONTANA 59101

COUNTY ATTORNEY'S OFFICE, YELLOWSTONE COUNTY COURTHOUSE, ROOM 508
(406) 256-2870



- Criminal Division
- Civil Division
- Deferred Prosecution

- Victim/Witness Assistance
- Child Support Enforcement

January 4, 1988

Honorable Gene Thayel
Chairman, Business & Industry Committee
State Senate
Helena, MT 59620

Re: Senate Bill 36

Dear Senator:

This office supports S.B. 36 which would make the insurance department of the state auditor's office a criminal justice agency. This designation will expedite sharing information with them for purposes of investigation and prosecution. Unfortunately, we are seeing more criminal conduct in this area.

Sincerely,

Harold F. Hanser
Harold F. Hanser,
County Attorney

HFH/cr

cc: Senator Tom Hager
Andrea Bennett, State Auditor ✓

RECEIVED
STATE AUDITOR'S OFFICE
JAN 5 8 08 AM '88
HELENA, MONT.

(This sheet to be used by those testifying on a bill.)

EXHIBIT NO. 2

DATE 1/6/89

BILL NO. SB 27

NAME: Kathy M. Irzoin DATE: 1/6/89

ADDRESS: P.O. Box 409 Helena 59604

PHONE: 444-2040

REPRESENTING WHOM? State Auditor's office

APPEARING ON WHICH PROPOSAL SB 27, SB 36

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: exhibit #2

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WRITTEN TESTIMONY OF THE STATE AUDITOR
SENATE BILL 27
Senate Business and Industry
January 6, 1989

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 1/6/89

BILL NO. SB 27

Rodney Simpson

I. Purpose

The purpose of Senate Bill 27 is to clean up minor errors and irregularities in the Securities Act of Montana. Senate Bill 27 is the Montana Securities Department's housekeeping bill.

II. Section by Section Explanation

Section 1 inserts "registered" on line 5, page 6. If the word "registered" is not added as proposed, a person acting as a broker-dealer, even though not registered as a broker-dealer, could also act as an investment without registering.

Section 2 deletes "the" on line 4, page 15. The sentence makes more sense if the word "the" is deleted. If the word "the" is not deleted, it appears that commercial paper that otherwise fits the subsection is not exempt from registration as a security unless it is sold to certain banks or insurance companies. In fact, the bank or insurance company to which the commercial is sold is irrelevant for purposes of determine whether it is exempt from registration as a security.

Section 3 clarifies (at lines 8 through 14, page 16) that a broker-dealer or securities salesman is exempt from registration when engaging in a transaction exempt from registration under 30-10-105, MCA, only if 30-10-105, MCA, expressly exempts them. For example, a broker-dealer or securities salesman must be registered when engaging in: (1) certain nonissuer distributions of outstanding securities (30-10-105(2), MCA); and (2) transactions exempt under rules like the Montana Uniform Limited Offering Exemption (ARM 6.10.120) and the Montana Investment Venture Capital Exemption (ARM 6.10.124) adopted by the commissioner (30-10-105(15), MCA).

Section 3 (at line 23, page 18, through line 6, page 19) clarifies that registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may not be terminated without the express written consent of the commissioner. On lines 11 through 12, page 24, the order of key terms is rearranged to conform with the order commonly used throughout the Securities Act of Montana.

Section 4 makes investment advisers responsible for paying examination costs. Already, broker-dealers and issuers are responsible for such costs. Investment advisers were inadvertently omitted from the examination cost payment requirement.

Ex. #2
1/6/89
SB27

Section 5 clarifies that the commissioner may not maintain an administrative or civil action for a violation of the laws requiring a broker-dealer, salesman, investment adviser, or investment adviser representative to register unless it is brought within two years after the failure to register occurs. Section 5 clarifies that the statute of limitations for an administrative or civil action for a violation other than failure to register is two years after the commissioner discovers the violation.

STANDING COMMITTEE REPORT

January 6, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 43 (first reading copy -- white), respectfully report that SB 43 do pass and be amended as follows:

1. Title, line 5.

Following: "FEE;"

Insert: "DEFINING TEMPORARY LOCATION; PROVIDING AN EXEMPTION FROM THE ROAD REQUIREMENT; REQUIRING THE LICENSEE TO DISPLAY THE LICENSE;"

2. Title, line 6.

Following: "20-3-704"

Strike: ", AND"

Insert: "THROUGH"

3. Page 3, line 3.

Following: "means any"Insert: "motor vehicle,"

4. Page 3, line 18.

Following: "temporary location"Strike: "and for each motor vehicle to be operated"

continued

EXHIBIT NO. 3DATE 1/6/89BILL NO. SB 43

5. Page 4.

Following: line 4.

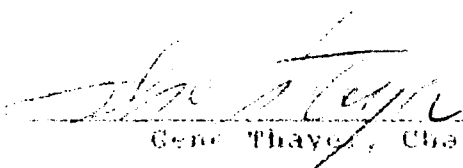
Insert: Section 3. Section 80-3-705, HCA, is amended to read:

"80-3-705. Surety bond. A (1) Except as provided in subsection (2), a license may not be issued until the applicant has filed a surety bond or its equivalent, as established by the department by rule, issued by a company authorized to do business in the state. The bond or its equivalent must first be approved by the department and shall may not be for not less than \$1,000. The bond or its equivalent shall must be in a form prescribed by the department and shall must be conditioned upon the delivery of honest weights, measures, or grades; accurate representation as to quality or class of produce; the actual payment of checks, drafts, or other obligations delivered by the itinerant merchant in exchange for the purchase of produce; and the payment of all other obligations incurred by him.

(2) An itinerant merchant who has sold less than \$2,000 of produce in the year immediately preceding his application or whose total inventory or projected cumulative inventory for the license year is less than \$2,000 is exempt from the bond requirement."

Renumber: subsequent sections

DO PASS

Signed: 

Gene Thayer, Chairman

