

MINUTES

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

Call to Order: By Chairman Thayer, on January 18, 1989 at
10:00 a.m.

ROLL CALL

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

Members Excused: None

Members Absent: None

Staff Present: Mary McCue - Legislative Council

Announcements/Discussion: Chairman Thayer reminded everyone
present to sign in and please fill out a testimony
sheet if they planned on testifying. He further
requested, written testimony be handed to the
secretary.

HEARING ON SENATE BILL 115

Presentation and Opening Statement by Sponsor: Senator J.

D. Lynch, Senate District 36, presented SB 115 as
another means in which, we can help, our senior
citizens enjoy more flexibility in their retiring
years. In essence, what the bill would do is allow
elderly people, on a fixed income, to maintain and
retain ownership of their home. It would allow the
elderly to borrow on their home and the State would
insure the equities in those homes.

Senator Lynch cited necessity, and need, as a
criteria for the basis for entering into use of
this proposed legislation. We did not intend to
encourage everyone, who owns their home, to begin
borrowing. He said, part of the bill makes sure
there is counseling, so people understand they are
actually borrowing on their home. He said he
thought it was one more means of trying to allow
people to remain living in their homes with
dignity.

List of Testifying Proponents and What Group They Represent:

LeDean Lewis - American Association of Retired
Persons
Hank Hudson - Seniors Office/ Department of Family
Services
Douglas B. Olson - Self/ Attorney
Wayne Phillips - Governor's Office

List of Testifying Opponents and What Group They Represent:

None

Testimony:

LeDean Lewis said, she was testifying for SB 115, and would read the testimony committee members had before them. Briefly, "The proposed legislation should:

1. Set up an agency to develop and regulate a system of equity conversion;
2. Provide counseling to the homeowners to ensure they understand the advantages of the equity conversion; and
3. Insure that eligibility for Medicaid and other means-tested programs is not affected by the home equity conversion."

She further stated, "The Montana State Legislative Committee of AARP propose the following amendments:

1. At Page 2 following Section 3 (3) (c), add subsection (d):

who has completed an approved reverse annuity mortgage counseling program.

2. At Page 3 Section 5 (3) on Line 23:
in compliance with the Medicaid regulations regarding an individuals intent to return home.

3. At Page 2 Section 2 (4) after Line 1:
administer a reverse annuity program which will not jeopardize the participant eligibility for Medicaid and other means-tested programs." (See Exhibit #1)

Hank Hudson stated, he was testifying in favor of SB 115, the Reverse Annuity Mortgage Program (RAM).
"The program as envisioned in SB 115 is well designed

for Montana. It targets those elderly most in danger of losing their independence due to an inadequate cash income. It ensures the right to occupancy for as long as the homeowner wishes, and is able."

"All applicants should be carefully counseled to ensure they understand exactly what they are getting, what they are paying in interest, and what they are giving up. Applicants must understand what affect this program will have on other public benefits for which they might be eligible. They must also understand the rights and responsibilities which come with a RAM."

"A RAM is not for everyone, but for a certain group of elderly it could make an immense difference in the quality of their lives." (See Exhibit #2)

Senator Lynch testified, " Mr. Chairman, for the record, I requested Mr. Hudson's presence. I think that it is necessary on some of these, to make sure the employees be requested to testify."

Chairman Thayer: "So Noted."

Douglas Olson said, "I am an attorney residing in Helena and"....."Senate Bill 115 should be supported by all Montanans, for we all may someday benefit from a similar program. Two issues surrounding this bill should be clarified if not in the bill, then at least noted in the committee record.

First, senior citizens should be thoroughly counseled on what the implications of their participation in the program are. Section 2 of the bill, in paragraph #3, makes reference to counseling as a pre-requisite. Many national groups believe that counseling should be mandatory because of the implications of a lump-sum payback at the end of the 10-year term.

The second area that needs clarification concerns Section 5, paragraph (3), (c), vacation of the premises by the mortgagor. Is a temporary vacation to a hospital or nursing home for treatment or convalescence going to result in the loan becoming 'due and payable' even if the senior citizen has good prospects of returning to live in their home? I would hope that the committee would discuss these issues and give some direction to the Board of Housing's rulemaking authority to resolve them." (See Exhibit #3)

Wayne Phillips stated, he was party to reviewing this bill in conjunction with the Governor. "We would like this

committee to be aware of the Governor's policy, generally entering the session, and specifically in application to this bill. The Governor is going to oppose any bill that basically increases costs, or increases FTE's in state government, or if it expands authority of various departments, at this time. As you know, from this bill, it does expand some authority of the Board of Housing. However, we are not going to oppose the bill, by any stretch of the imagination. We believe that Senator Lynch, Representative Driscoll, and Representative Daily have presented a very good bill that can help some people, in certain economic situations. We would ask this committee to look at it thoroughly, to make sure that there is no fiscal impact. Particularly now, with the amendments looking for counseling, and at the bill, as it exists, before that amendment. As the bill goes through the process and you exercise your will; and determine it has no fiscal impact, and it turns out to be a positive bill, we will come in and support it enthusiastically. If however, it does end up with a fiscal impact later on in the process, or turns out for some reason to be a negative bill, then we would come in and oppose it. At this time we will not do that, but we want you to know the Governor's policy in general relationship to this bill."

Questions From Committee Members: Mr. Kain, a representative of the Board of Housing and the Department of Commerce, replied to Senator Boylan's question as to SB 115's fiscal impact. As the Department envisioned the program, it had no fiscal impact. However, the Department requested approximately \$24,000 per year to administer the program.

Senator Thayer's question concerning mandatory counseling, prompted Mr. Kain's agreement of its' necessity. He said, the drafting committee proposed the measure, and work had already begun in designing the concept for a program to make counseling available for applicants. The idea was to have trained volunteers as counselors.

In response to Senator McLane, Mr. Kain explained, a reverse annuity mortgage applicant must have equity in their property. The property would be appraised, with the loan based on eighty percent of the appraised value. The funds allocated would then be set up in monthly payments over a ten year period. Interest on this loan would be kept low, in the seven percent range. At the end of the ten year period, cash flow

would stop, but the homeowner would continue to live in their home, as long as physically able. Kain emphasized, the Board of Housing would not throw anyone out of their home. He cited the program as giving the property owners an additional, tax free, income.

Kain reassured Senator Boylan there were no strings attached to expenditure of the funds. Borrowers were free to use the funds for maintenance, or in any other manner they saw fit. The Board felt it was inappropriate to control how the borrowers utilized their funds.

Our intent is to offer this program only, to those in need of additional cash to meet monthly obligations. Therefore, Senator Weeding, if applicants had resources and were attempting to utilize the program for interest savings, the application would be denied.

Senator Meyer inquired who the mortgage holder was, and the advantages of the RAM program versus a bank loan. In reply, Mr. Kain said, the Montana Board of Housing would hold the mortgage, because banks typically would not deal in lower than market interest rates.

Senator Meyer asked whether elderly people could assign their property to the county and pay no taxes, while they maintained occupancy until they no longer needed the property? Mr. Hudson stated he was not aware of that particular program. However, there are low income property tax referral programs for seniors who retain ownership of their homes. In programs such as these, the tax debt accumulates on an annual basis until the county eventually acquires the property, and offers it for sale.

Senator Meyer questioned what happened to the property after the ten year period, when the owners were placed under medical care. Mr. Kain said the Board of Housing would then take possession of the property, and offer it for sale. The Board did not anticipate possession of very many homes. He said he thought the borrowers, or their representatives would pay the loan and retain ownership.

A concern expressed, by Senator Meyer, was that the RAM program would end up with all the assets, leaving the participants broke and without any equity at a time when they could no longer care for themselves.

Mr. Kain told Senator Williams, assuming the board loans \$40,000 at seven percent, a monthly payment of \$230 would be advanced. Payments for a ten year period would total approximately \$28,000. The difference, \$12,000, represents the interest that has been building.

Chairman Thayer questioned what would happen if a majority of the borrowers lived ten years beyond the ten year duration of the program? How would the Board of Housing fund the program? Mr. Kain said the Board's intent was to use taxable bonds.

Mr. Kain assured Senator Lynch the paperwork, of the loan application, stipulated the borrower be required to provide insurance and keep taxes current.

Senator Meyer said, line 14 of the definition section states, "Who is the owner and occupant of a single family dwelling that is unencumbered by any prior mortgage lien, or pledge". Would you explain your earlier statement that you were anticipating loaning money to pay off existing liens against the property? Mr. Kain stated, the Board anticipated offering funds simultaneously with the RAM Loan, in order to pay any existing liens. He explained, the Board had to obtain a first mortgage on the property.

Senator Williams questioned Mr. Olson in regard to the language concerning vacation on page 3, section 5, subsection 3, C. Does a short convalescence render the loan due and payable? Senator Williams said he felt the language should specifically define temporary vacation as well as vacation. No direct reply was actually given to his suggestion.

Closing by Sponsor: Senator Lynch said he felt SB 115 had some real merit. He termed the bill as one more means of economic flexibility for people in need. He stated the program was not for everyone, but was an opportunity for our state to help some.

DISPOSITION OF SENATE BILL 115

Discussion: Executive Action will take place at a later date.

HEARING ON HOUSE BILL 16

Presentation and Opening Statement by Sponsor:

Representative Driscoll, House District 92, stated House Bill 16 dealt with legalizing benefits and discounts for senior citizens or any other group. The bill was drafted to deal with laws concerning public accomodations.

List of Testifying Proponents and What Group They Represent:

Ann MacIntyre - Human Rights Commission

List of Testifying Opponents and What Group They Represent:

None

Testimony: Ann MacIntyre said the bill was recommended by the Human Rights Commission. She cited the bill as addressing the situation of offering discounts or benefits to senior citizens. She pointed out hospitals and transportation as two entities already ofering discounts or benefits to senior citizens. MacIntyre felt the discounts or benefits may be in violation of the existing law. She urged passage of House Bill 16, as it would legalize such practices.

Questions From Committee Members: None

Closing by Sponsor: Representative Driscoll requested the committee's passage, and asked Senator Lynch to carry the bill through the Senate.

DISPOSITION OF HOUSE BILL 16

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch moved House Bill 16 Be Concurred In. Senator McLane seconded. The vote was unanimous.

DISPOSITION OF SENATE BILL 87

Discussion: Mary McCue explained, she had a set of proposed amendments and a copy of Mr. Goe's suggestions for amending the bill. She pointed out the statement of intent referred to a family member living in the home, while the statute did not make that same

distinction. The proposed amendments did not make that stipulation. She said, the amendment state "family member", and she thought the committee should remove the language "Living in the home" from the statement of intent. (See Exhibit #4)

Amendments and Votes: Senator Meyer made a motion to amend, by excluding the suggested language from the statement of intent. Senator Weeding Seconded. Motion Carried.

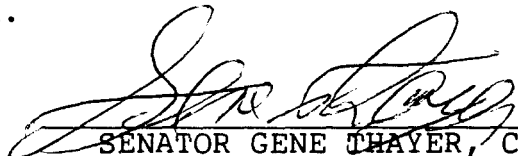
Senator Meyer moved the amendments (exhibit #4) to the bill. Senator Weeding seconded. The motion carried.

Senator Hager moved to amend the bill by inserting "The policy holder will determine if a family member should be excluded", rather than the insurance company. seconded by Senator Noble. A brief discussion revealed passage of the bill and renewal of policies would take care of that situation. The discussion prompted Senator Noble to withdraw his second, and Senator Hager to withdraw his motion to amend.

Recommendation and Vote: Senator Williams moved Senate Bill 87, including the statement of intent, Do Pass As Amended. Senator Meyer seconded. Motion carried unanimously.

ADJOURNMENT

Adjournment At: 11:38 a.m.


SENATOR GENE THAYER, Chairman

GT/ct

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1-18-89

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

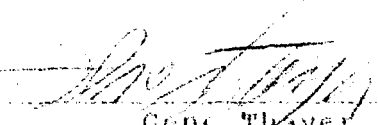
January 18, 1969

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 16 (third reading copy -- blue), respectfully report that HB 16 be concurred in.

BE CONCURRED IN

Signed: _____


Gene Thayer, Chairman

STANDING COMMITTEE REPORT

January 18, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 87 (first reading copy -- white), respectfully report that SB 87 be amended and as so amended do pass:

1. Title, line 8.

Strike: "33-23-203,"

Following: "61-6-103"

Strike: ",,"

3. Pages 1 and 2.

Strike: section 1 in its entirety

Renumber: subsequent sections

4. Page 7, lines 8 through 12.

Strike: subsection 14 in its entirety

5. Page 7, line 14.

Following: "insurance"

Insert: "-- family member exclusion"

Following: "(1)"

Insert: "(a)"

6. Page 7, line 15.


Strike: "61-6-103(14)"

Insert: "subsection (b)"

7. Page 7, following line 23.

Insert: "(b) Notwithstanding the mandatory motor vehicle liability insurance protection provided for in subsection (a), nothing in this part may be construed to prohibit the exclusion from insurance coverage of a named family member in a motor vehicle liability insurance policy."

AND AS SO AMENDED DO PASS

Signed: 

Gene Thayer, Chairman

Statement of Intent attached.

STATEMENT OF INTENT
Senate Bill No. 87

By amending section 61-6-301, MCA, it is the intent of the legislature to expressly permit named driver exclusions in mandatory motor vehicle insurance policies for family members of the policy holder. It is the finding of the legislature that the prohibition against named driver exclusions in the context of the family has the result, in effect, of denying coverage to families who have found their insurance premiums to double or triple due to the Montana supreme court's decision in Iowa Mutual Insurance Company v. Davis, 752 P.2d 166 (1988). In that case, the court held that mandatory liability coverage requirements, as a matter of public policy, prohibited exclusion of a named driver or named drivers from coverage under motor vehicle liability policies."

CLERICAL

S Bill No. 87

Date: 1/19/89

Time:

CD
(Legislative Council Staff)

Business + Industry
 S / H Standing Committee

[Signature]
(Chairman)
THAYER

S / H Committee of the Whole

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

#6 Insert: "subsection (1)(b)"

#7 Insert: "... subsection (1)(a), ..."

(This sheet to be used by those testifying on a

SENATE BILL NO. 1
bill.)
EXHIBIT NO. 1

DATE 1/18/89

DATE: NO SB 115

NAME: John Lewis

ADDRESS: Bellevue

PHONE: 458-6195

REPRESENTING WHOM? AARP

APPEARING ON WHICH PROPOSAL: SB-115

DO YOU: SUPPORT? yes AMEND? _____ OPPOSE? _____

COMMENT:
see exhibit #1

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Le Dean Lewis1988-1989
MONTANA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Mrs. Molly L. Munro
4022 6th Avenue South
Great Falls, MT 59405
(406) 727-5604

SECRETARY
Mr. John C. Bower
1405 West Story Street
Bozeman, MT 59715
(406) 587-7535

January 18, 1989

TO: Senate Business and Industry Committee

FROM: Le Dean Lewis, American Association of Retired Persons

RE: Senate Bill No. 115
Reverse Annuity Mortgage Loan Program

The American Association Retired Persons supports the reverse annuity mortgage.

Many of Montana's seniors are finding that, due to inflation, rising property taxes and increased costs of home maintenance, and the ever-increasing costs of health care, their retirement income is no longer sufficient to cover living expenses. Although the home they own may be debt free, the only way they can use that equity to supplement their income is to sell their home and move to unfamiliar surroundings.

Legislation is proposed which would enable homeowners to convert the equity in their homes to a monthly income supplement while continuing to live in their homes. The money could be used to finance home maintenance or to pay for needed health care or support services.

The proposed legislation should:

1. Set up an agency to develop and regulate a system of equity conversion;
2. Provide counseling to the homeowners to ensure they understand the advantages and disadvantages of the equity conversion; and
3. Insure that eligibility for Medicaid and other means-tested programs is not affected by the home equity conversion.

Ex. # 1

11/18/89

SB 115

Page Two

The Montana State Legislative Committee of AARP supports passage of such legislation if it provides for mandatory counseling of the homeowners. We strongly believe that correctly written legislation would be a means for senior homeowners to supplement their fixed incomes and continue to enjoy the comfort of their homes in their last years.

The Montana State Legislative Committee of AARP propose the following amendments:

1. At Page 2 following Section 3 (3) (c), add subsection (d):

who has completed an approved reverse annuity mortgage counseling program.

2. At Page 3 Section 5 (3) on Line 23:

in compliance with the Medicaid regulations regarding an individuals intent to return home.

3. At Page 2 Section 2 (4) after Line 1:

administer a reverse annuity program which will not jeopardize the participants eligibility for Medicaid and other means-tested programs.

EXHIBIT NO. 2

NAME: Hank Hudson

DATE: 1/18/89
BILL NO.: 11818 SB115

ADDRESS: Box 232 Capitol Station Helena

PHONE: 444-4204

REPRESENTING WHOM? Senior office

APPEARING ON WHICH PROPOSAL: SB115

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: see Exhibit #2

Multiple horizontal lines for additional comments or notes.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

*Hudson*SENATE BILL 115

Testimony of Hank Hudson, Legal Services Developer
Seniors Office/Department of Family Services

Mr. chairman, I would like to speak in favor of Senate Bill 115, the Reverse Annuity Mortgage Program (RAM). As an employee of the State Aging Services Programs I have been aware of growing interest among Montana's senior citizens regarding various Home Equity Conversion strategies. As many states have initiated programs word has spread through magazines and television, and Montana seniors have begun calling our offices to inquire about the availability of such programs in Montana.

The program as envisioned in SB115 is well designed for Montana. It targets those elderly most in danger of losing their independence due to an inadequate cash income. It ensures the right to occupancy for as long as the homeowner wishes, and is able. It is a straightforward design, and it is my understanding that adequate consumer safeguards will be included in the program.

From an advocates point of view the most important consumer safeguard is adequate and mandatory counseling prior to entering into a RAM. All applicants should be carefully counseled to ensure they understand exactly what they are getting, what they are paying in interest, and what they are giving up. Applicants must understand what effect this program will have on other public benefits for which they might be eligible. They must also understand the rights and responsibilities which come with a RAM.

The Board of Housing is to be commended for working closely with the Governor's Advisory Council on Aging and designing a program aimed at helping "cash poor/house rich" seniors remain in their neighborhoods, and live independent lives. A RAM is not for everyone, but for a certain group of elderly it could make an immense difference in the quality of their lives.

DOUGLAS B. OLSON
ATTORNEY AT LAW
P.O. BOX 1695
HELENA, MONTANA 59624

OLSON

January 18, 1989

Senate Business & Industry Committee
State Capitol
Helena, Montana 59620

re: Senate Bill 115

Dear Senators:

My name is Doug Olson and I am an attorney residing in Helena and I am appearing here today as a private citizen and individual urging your support of Senate Bill 115 pertaining to reverse annuity mortgages for low-income senior citizens. From 1981 to 1985, I served as the attorney-developer of legal services for Montana's senior citizens. I also have served since 1983 on the State Bar of Montana's Elderly Assistance Committee. I am appearing today in support of this bill as a private citizen and not as a representative of the State Bar of Montana.

In my service in past positions to senior citizens I have had the occasion to meet with a number of representatives of national organizations that serve senior citizens. A primary concern to these groups is to permit senior citizens to remain as independent and self-autonomous as possible. Remaining in ones own home for as long as possible is one means to facilitate this independence. Many senior citizens have their homes paid for but are short on cash to meet their routine costs of living. Creating a program that would allow them to in essence live on the equity in their homes has helped seniors in other states and could do the same here in Montana.

Senate Bill 115 should be supported by all Montanans for we all may someday benefit from a similar program. Two issues surrounding this bill should be clarified if not in the bill, then at least noted in the committee record. First, senior citizens should be thoroughly counseled on what the implications of their participation in the program are. Section 2 of the bill in paragraph #3 makes reference to counseling seniors but the bill as drafted doesn't mandate counseling as a pre-requisite. Many national groups believe that counseling should be mandatory because of the implications of a lump-sum payback at the end of the 10-year term. The second area that needs clarification concerns Section 5, paragraph (3)(c), on page 3, vacation of the premises by the mortgagor. Is a temporary vacation to a hospital or nursing home for treatment or convalescence going to result in the loan becoming "due and payable" even if the senior citizen has good prospects of returning to live in their home? I would hope that the committee would discuss these issues and give some direction to the Board of Housing's rulemaking authority to resolve them.

Thank you for listening to my views on this bill and I hope you will act favorably on the bill in your committee.

Sincerely,

Doug Olson
Douglas B. Olson

Amendments to Senate Bill No. 87
First Reading Copy

Requested by Oliver Goe
For the Committee on Business & Industry

Prepared by Mary McCue
January 17, 1989

1. Title, line 8.
Strike: "33-23-203,"
Following: "61-6-103"
Strike: ",,"

2. Page 1, following line 9.
Insert: "STATEMENT OF INTENT
By amending section 61-6-301, MCA, it is the intent of the legislature to expressly permit named driver exclusions in mandatory motor vehicle insurance policies for those family members living in the home of the policy holder. It is the finding of the legislature that the prohibition against named driver exclusions in the context of the family has the result, in effect, of denying coverage to families who have found their insurance premiums to double or triple due to the Montana supreme court's decision in Iowa Mutual Insurance Company v. Davis, 752 P.2d 166 (1988). In that case, the court held that mandatory liability coverage requirements, as a matter of public policy, prohibited exclusion of a named driver or named drivers from coverage under motor vehicle liability policies."

3. Pages 1 and 2.
Strike: section 1 in its entirety
Re-number: subsequent sections

4. Page 7, lines 8 through 12.
Strike: subsection 14 in its entirety

5. Page 7, line 14.
Following: "insurance"
Insert: "-- family member exclusion"
Following: "(1)"
Insert: "(a)"

6. Page 7, line 15.
Strike: "61-6-103(14)"
Insert: "subsection (b)"

7. Page 7, following line 23.
Insert: "(b) Notwithstanding the mandatory motor vehicle

liability insurance protection provided for in subsection (a), nothing in this part may be construed to prohibit the exclusion from insurance coverage of a named family member in a motor vehicle liability insurance policy."

EXHIBIT NO. 4DATE 1/18/89BROWNING, KALECZYC, BERRY & HOVEN, BILL NO. SB 87

ATTORNEYS AT LAW

28 NORTH LAST CHANCE GULCH

POST OFFICE BOX 1697

HELENA, MONTANA 59624

R. STEPHEN BROWNING*
 STANLEY T. KALECZYC*
 LEO BERRY
 J. DANIEL HOVEN
 OLIVER H. GOE
 KATHARINE S. DONNELLEY
 JON METROPOULOS

TELEPHONE

(406) 449-6220

TELECOPIER

(406) 443-0700

*MEMBER OF MONTANA AND THE
 DISTRICT OF COLUMBIA BARS

January 17, 1989

Ms. Mary McCue
 Senate Committee on Business
 & Industry
 Room 138, State Capitol Building
 Helena, MT 59620

Re: Amendments to Senate Bill 87

Dear Ms. McCue:

Enclosed you will find proposed amendments to Senate Bill 87. As you will recall, the various individuals who testified in favor of Senate Bill 87, allowing for named driver exclusions in the context of family vehicle liability insurance policies, expressed a uniform concern that the bill as written will not accomplish its stated purpose. Pursuant to suggestion, I present the proposed amendments for consideration by the Committee. I believe the amendments would carry out the intended purpose, allowing for the exclusion of a family member from coverage under a motor vehicle liability insurance policy and, hopefully, survive judicial scrutiny when challenged.

As you will note from my proposed amendments, I removed in total Section 1 of the bill as proposed. As § 33-23-203 is an anti-stacking provision having little to do with the contents of a motor vehicle liability policy per se, the proposed amendments allowing for family member exclusions are not properly contained therein.

Similarly, I removed in total proposed changes to Section 61-6-103, as contained within Section 2 of Senate Bill 87. Not only do I believe (14) as proposed too restrictive, in that the problem sought to be remedied here normally does not arise where a driver's license has been revoked, suspended or cancelled, as discussed more fully below, I also feel that the amendments to the current law must be contained within § 61-6-301. I would bring your attention to the fact that § 61-6-103 is a portion of what is commonly referred to as the Motor Vehicle Safety Responsibility Act. As summarized in a variety of Supreme Court cases, including Velte v. Allstate Insurance Company, 593 P.2d 454 (1979), and Boldt v. State Farm, 443 P.2d 33 (1967), requirements of this Act only come into play where a motorist has either been convicted or

Ms. McCue
Page 2
January 17, 1989

forfeited bail for one of the driving offenses referred to in the Act, has outstanding unsatisfied judgments or where his driver's license has been cancelled, suspended or revoked.

I strongly believe that the amendments to the current law must be contained within Section 61-6-301, MCA. I would refer you to Iowa Mutual Insurance Company v. Davis, 752 P.2d 166 (1988) and Horace Mann Insurance v. Hampton, No. 88-212 (decided January 11, 1989). In both of these decisions, the Montana Supreme Court clearly held that the public policy of Montana, as evidenced by Section 61-6-301, is that every owner of a motor vehicle operated in Montana must procure a policy of insurance which continuously provides coverage up to the limits set forth in Section 61-6-103, no matter who the driver. Accordingly, in Iowa Mutual and as reaffirmed in Horace Mann, the Supreme Court held that family exclusions, such as that at issue here, are against public policy and thereby unenforceable.

The proposed amendments to Section 61-6-301 would hopefully incorporate into such "public policy" the concept that the owners of a family vehicle can exclude from coverage named family members. Such exclusions would undoubtedly occur most frequently in those situations where you have a multiple vehicle family, with minor or young drivers. It is State Farm's experience that families in such a situation will exclude these higher risk drivers from those policies covering vehicles which the high risk driver does not drive, insuring them on the vehicle they do drive. I also include an amendment to Section 61-6-303, identifying as an exempt vehicle, a vehicle driven by an excluded family member. (I would like to discuss the amendment to Section 61-6-303 with you further. I believe an amendment to this section may be appropriate, however, have had some difficulty in finding the correct language.)

I feel that when the amendments to Section 61-6-301 are passed, simultaneously therewith, a statement of intent should be included. Suggested language might be, "By amending Section 61-6-301, it is the intent of this legislature to expressly permit named driver exclusions in mandatory automobile insurance policies for those family members living in the home. It is the finding of this legislature that the prohibition against such named driver exclusions in the context of the family has, in effect, the result of denying coverage to families who have found their insurance premiums to double and triple due to the Court's decision in Iowa Mutual Insurance Company v. Davis, 752 P.2d 166 (1988), wherein it was held that mandatory liability coverage requirements as a matter of public policy, prohibited exclusion of named driver or drivers from coverage under motor vehicle liability policies." If later challenged in the courts, such a statement of intent would certainly be beneficial in presenting any arguments that

Ex. # 4

1/18/89

SB 87

Ms. McCue
Page 3
January 17, 1989

named driver exclusions within the family are not only provided for by statute, but consistent with the public policy of the State of Montana as set forth by the legislature.

You will note that in my proposed amendments, I incorporate the \$10,000 property damage provision contained within the original bill. In my discussions with State Farm, it is my understanding that almost every carrier in the State of Montana writes policies with this minimum \$10,000 limit. I have not incorporated the various grammatical changes to such section. Though I have not explored them in depth, I question their necessity.

Thank you for your assistance and cooperation. Should you have any questions, please feel free to call.

Sincerely,

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By 

Oliver H. Goe

/arh/srg
Enclosure

