

MINUTES

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

Call to Order: By Chairman Thayer, on February 28, 1989, at
10:00 a.m., Room 410

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: None

HEARING ON HOUSE BILL 262

Presentation and Opening Statement by Sponsor:

Representative Hoffman, House District 74, said HB 262 dealt with updating the laws regulating the credit life and disability insurers of Montana, and was requested by the State Auditor. He said the bill was an effort to promote uniformity of insurance laws among states, and was patterned after a model bill drafted by the National Association of Insurance Commissioners. He said he would have a representative from the Auditor's Office explain the bill.

List of Testifying Proponents and What Group They Represent:

Jim Borchardt - State Auditor's Office
Bob Pyfer - Vice President, Montana Credit Unions
League
Larry Akey - Montana Association of Underwriters

List of Testifying Opponents and What Group They Represent:

None

Testimony: Jim Borchardt said he would like to briefly present a section by section explanation of the bill. He followed written Exhibit #3 in his delivery.

He said he was presenting an amendment to clarify an industry concern, as to the possible misinterpretation of the bill. (See Exhibit #2) He said the amendment was to page 10, line 13, and helped define the actual amount of unpaid indebtedness on the date of death. He concluded by stating that HB 262 updated Montana's credit life and credit disability insurance laws, and made them more like the laws in surrounding states. He said the State Auditor's Office urged passage of the bill.

Bob Pyfer said he had sent a copy of HB 262 to their legal department, because it involved credit life and disability. He said their legal department had expressed a couple of concerns, but those had been taken care of in the House. He said they had worked with the commissioner's office, and with Representative Hoffman, to amend the bill. He stated the notable amendment was to make sure the existing law provisions, that allowed credit union's to continue their loan protection program, were not affected. He said their loan protection program provided free, non-commission credit life insurance to members. He stated they had merely wanted to make sure no licensing would be required by the current law. He said they wholeheartedly supported HB 262, as amended.

Larry Akey said they supported HB 262 as it was amended in the House. He asked the committee to give the bill passage.

Questions From Committee Members: None

Closing by Sponsor: Representative Hoffman said HB 262 was nothing but a housekeeping bill, and of a very technical substance. He stated the bill had the support of the outside interests, who were affected.

DISPOSITION OF HOUSE BILL 262

Discussion: None

Amendments and Votes: Senator Lynch moved the amendment in exhibit #2. Senator Noble seconded the motion. The motion Carried Unanimously.

Recommendation and Vote: Senator Lynch moved HB 262 BE CONCURRED IN AS AMENDED. Senator Noble seconded the motion. The motion Carried Unanimously. Senator Boylan carried HB 262 on the Senate floor.

HEARING ON HOUSE BILL 247

Presentation and Opening Statement by Sponsor:

Representative Whalen termed HB 247 as the regional rate making bill. He said it essentially allowed the insurance commissioner to collect insurance industry information from states with similar demographic characteristics to Montana, concerning noncompetitive or volatile insurance matters. He said noncompetitive was described as only a small number of insurers who were willing to transact a particular line of insurance in Montana, and volatile referred to a low volume of claims, with regard to a particular line of insurance. He said the statement of intent indicated that the bill came about because of the obstetrics crisis in Montana.

He said that when there was a low volume of business on a particular line of insurance, premiums were inclined to sky rocket, and with a small volume of business and claims there wasn't the actuarial data necessary for an adequate projection for setting a premium rate. He said that when the insurance industry was confronted with that situation, they set rates on a national basis, and that would require Montanans to pay rates based on obstetrics malpractice data that was not comparable with the conditions of Montana. He stated that in order for the insurance commissioner to evaluate rates, and base them on similar situations, the bill would allow collection of data from states which had conditions more like those in Montana.

List of Testifying Proponents and What Group They Represent:

Jim Borchardt - State Auditor's Office

List of Testifying Opponents and What Group They Represent:

Bonnie Tippy - Alliance of Montana Insurers
Jacqueline Terrell - American Insurance Association
Steve Browning - State Farm Mutual Insurance Company
Gene Phillips - National Association of Insurers

Testimony: Jim Borchardt said HB 247 was to insure that selective insurance premium rates in Montana were not excessive, and those rates were based on Montana's experience and the experience of states with similar

claim experience. He reviewed the sections of the bill, and the circumstances surrounding surplus lines insurance. His testimony directly followed Exhibit #4.

Bonnie Tippy said they opposed HB 247, because they thought it could have the opposite affect as the bill's stated intent. She said the bill had been drafted with definitions which were too vague. She presented a written copy of her exact testimony. (See Exhibit #5)

Jacqueline Terrell said they opposed the bill because it seemed to have a conflict in its purpose, it enormously expanded the commissioner's power, had significant drafting problems, and they believed its' ultimate affect would be to eliminate competition among private insurers in Montana. She said the statement of intent was misleading, because it directed attention to the current perceived malpractice crisis in Montana, and stated that insurance was not the primary problem in obstetrical malpractice. She said the bill seemed to be looking in two directions at once, as it proposed to use other similar states' experience for rate basing, because Montana didn't have sufficient information. She said that if we looked to other like states, they wouldn't have sufficient information either. She stated that various insurance companies had their own specific method of rating malpractice premiums, and didn't base their rates on a high risk state's experience where they did not sell malpractice insurance.

She urged the committee to examine the powers HB 247 would give the commissioner, and to compare them with chapter sixteen of the insurance codes. She said that was the chapter which set forth curbs on the power to call in data, evaluate it, and report responce that was approved on various insurance. She said the bill contained a number of provisions which were characteristic to section sixteen, and others greatly expanded that authority.

Ms. Terrell reiterated concern for the imprecise definition of noncompetitive and volatile. She said the definitions were too vague, and provided no basis for making a comparative evaluation.

She said the commissioner presently had the power to review the rates and compare them with other states filed in Montana. She stated that Montana wasn't necessarily similar to the surrounding states, and didn't feel a regional rate making effort was going to be a benefit. She expressed concern that a

concentrated regional effort could lead to a loss of power for regulating within our own state, and lead to a regional rate making commission. She said she didn't feel that was the intent of the legislation, but did feel the legislation would reduce the insured's ability to shop for an appropriate product.

Steve Brown said they opposed HB 247 for the same reasons the previous speakers had noted. He said he was proposing some amendments, in case the bill was passed. (See Exhibit #6) He said his amendment contained language from the Wyoming Statutes, which would further define what 'competitive' insurance was. He said he was at a loss for a definition of volatile, and was asking them to delete it from the bill. He said his understanding was that an insurance rate was volatile on a competitive market, so the bill was proposing to deal with those policies where there was no competition. He said the amendments outlined what a noncompetitive market was.

Gene Phillips said they opposed HB 247 for the reasons already stated. He emphasized that the bill gave power for the commissioner to make the determination of what was noncompetitive, what was volatile, and their affect. He said it put the commissioner in the role of an insurance company actuary, by imposing certain rating standards on the insurable. He said they did not think that was appropriate, because the standards set by the commissioner might result in flexibility of rating procedures, and the bill was not drafted to encourage independent rate making methods. He said they felt each company should choose methods of rate making, which best fit their own experience in the state, rather than have them imposed by the commissioner.

Questions From Committee Members: Representative Whalen told Senator Lynch the bill had been opposed in the House by basically the same people.

Senator Weeding asked if their was a specific region in mind, or a multi-state compact being considered? He said he was having trouble in determining how the Montana Insurance Commissioner was going to devise the concept. Jim Borchardt said there was no plan to include specific states. He said it would first have to be determined which states should appropriately be included. He said it would depend on each individual line of insurance, and that insurer's experience in Montana, and other states which might be similar. He said that combined data could be looked at, and

presented to an actuary. Mr. Borchardt said the term regional didn't necessarily mean a geographic region.

Senator Williams asked if the amendments from State Farm had been proposed in the House? Representative Whalen said they had not, and he had just now seen them for the first time. He said he would oppose the amendments, and the statement that the definitions, as currently written, were vague, and a probable constitutional problem. He said he felt the insurance commissioner's definition was a reasonable one, and gave her the flexibility to evaluate each specific situation.

Senator Meyer asked how much this requirement would cost the insurer? Representative Whalen said it wouldn't cost the insurer a thing if insurance companies submitted reasonable rates in Montana.

Senator Meyer asked if it was correct that each insurer could possibly have to pay for a consultant to check those particular rates? Representative Whalen said he thought the bill gave the insurance commissioner the authority to request actuarial data from each insurer proposing to charge a particular fee in Montana. He said the commissioner could then compile an actuarially determination of what she thought was a fair rate, and utilize the hearing process for challenging the insurer to charge accordingly.

Chairman Thayer asked how OB malpractice rates, charged in Montana, compared to high rate areas such as California? Bonnie Tippy said she didn't have figures for malpractice, but Montana ranked thirty-eighth (with number one being the highest) in auto insurance. She said she would be happy to get the figures for them.

Closing by Sponsor: Representative Whalen said the bill would only apply to insurance situations where there was no competition now. He said it was not going to reduce competition, it would only give the insurance commissioner the ability to challenge a noncompetitive line. He said the definitions of noncompetitive and volatile did not have a problem with vagueness. He said he understood the bill was patterned after an existing Iowa bill, and they were not having a constitutional problem. He said that if the industry wanted to further define the definition, they could submit it to the insurance commissioner, once she had some rules to work with. He said HB 247 was requested by the insurance commissioner, because she was charged with regulating the insurance industry, and he thought she knew what was needed to protect the citizens of

Montana.

He said that in the past ten years there had been fifty-seven million dollars worth of medical malpractice insurance written in Montana, and twenty-one million dollars worth of claims paid out. He asked if it was malpractice which was driving rates up, or if it was possibly something else?

He said the bill was very simple, and was not going to require a regional commissioner, because the bill was not asking for a specific demographic region. He urged the committee to give the insurance commissioner the statutory authority she felt necessary, to properly regulate the insurance industry with particular regard to the noncompetitive lines.

DISPOSITION OF HOUSE BILL 247

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 381

Presentation and Opening Statement by Sponsor:

Representative Menahan, House District 67, opened by requesting the proponents be allowed to testify first, and he would close. He said he had an information sheet he was passing out for committee members. (See Exhibit #7)

List of Testifying Proponents and What Group They Represent:

Dr. Sidney Pratt - Montana Department of Health and Environmental Sciences
Nichole Poole - Self, Missoula, Montana
Dean Heydon - Self, Joplin, Montana
Gene Huntington - Montana Dietetic Association
Chris Volinkaty - Developmental Disabilities for Montana
Sharon Dieziger - Montana Nurses Association

List of Testifying Opponents and What Group They Represent:

Tom Hopgood - Health Insurance Association of America

Testimony: Dr. Sidney Pratt said that as director of the Department of Health he had perpetual responsibility for the in-born area of phenylalanine growth rate. He said he would limit his presentation to phenylketonuria, or more commonly referred to as PKU. He said PKU was a serious metabolic condition in which the new-born did not have the ability to convert the amino acid phenylalanine into thyroxine. He said that if the phenylalanine level is not corrected by diet, it will lie in the body and cause a severe mental deficiency. Once that deficiency is developed, it is irreversible and permanent. He said the disease was not curable, but mental retardation could be prevented.

Dr. Pratt said the administrative rule of Montana mandated a screening blood test for PKU, before a new-born was released from the hospital. He said this immediate diagnosis allowed the baby to be placed on a special diet within a few days, and mental retardation could be prevented in one hundred percent of the cases. He said the diet consisted of a low protein diet, with mild products and related foods substituted for dietary substances. He said the cost of these substitutes averaged \$200 per month, and the treatment had to be purchased for years. He stated that many families could not afford the treatment products over the long period of time they were needed.

He said the instance of PKU averaged one in fifteen thousand births, and Montana could anticipate one new case of PKU per year. He said his active PKU files for 1989 currently consisted of twelve active cases in Montana. He said his principal contributions and deliberations had been a brief summary of PKU, and its irreversible effects, and he wished to go on record in support of HB 381.

Nichole Poole said she and her husband had two children with PKU. She said they had moved to Montana four years prior, and had been denied coverage for the treatment by three different insurance companies. She said they had finally been able to obtain coverage when her husband's employer negotiated coverage as a condition of employment. She said the lengthy procedure for acquiring coverage would have caused damage to their children if they had not had the ability to afford the treatments. She said they supported the bill, and urged the committee's passage.

Dean Heydon said they had a daughter born with PKU, and she needed the special formula to survive. He said he had been trying for eight years, since her birth, to get

his insurance company to pay for the products she needed for treatment. He said their daughter was healthy, thanks to the special formula. He asked for the committee's support of HB 381. (See Exhibit # 8)

Gene Huntington said this wasn't the original legislation the dieticians had requested. He said that when they became aware of HB 381, they became involved and interested in supporting the bill. He said the bill was no benefit to nutritionists, and was not an attempt to extend coverage to cover other kinds of dietary supplements. He said they helped with the drafting process when the bill was in the House Subcommittee, and he thought everyone had a chance to get involved with the bill. He said he thought the bill was vastly improved in the subcommittee.

He said the bill addressed a fairly unique problem, in that the treatment for PKU was dietary. He said insurance companies generally excluded dietary. He said in this particular instance, it was the medical treatment. He said he thought the low incidence of PKU, the unfamiliarity to insurance companies, and the element of surprise in the disease's occurrence created a unique situation. He said he thought it was a step forward to have mandatory testing, in order to prevent retardation from occurring, and HB 381 followed through by assuring that PKU patients received treatment.

Chris Volindaty said it was her with that all mentally retarded children could be treated as easily as those with PKU. She said HB 381 was a very good bill, because children who did not receive the treatment early in life developed severe mental retardation. She said she currently treated two severely retarded adults with PKU, who had not received treatment, and the cost to the state ran between twenty and sixty thousand dollars a year. She said HB 381 was a good insurance policy for all residents in Montana, and they urged adoption of the bill.

Sharon Dieziger said the Montana Nurses Association wanted to go on record as supporting HB 381.

Tom Hoppgood said he did not like speaking against a children's bill, but this was another case of mandatory insurance coverage, and they had continually opposed mandatory coverage. He said it was undeniable that when you mandated insurance coverage, you drove the cost of insurance up. He said the original draft of the bill had not required mandatory coverage. He said page 2, lines 5 and 6 provided for mandatory coverage.

He said he would not be opposing the bill if it were only a mandatory offering. He said that if the bill required a mandatory offering of the coverage, in order to transact insurance business in Montana, it would solve the problems testified to. He said the number of PKU patients was relatively small, and the bill would allow the treatment costs to be spread across the entire gamut of insurance consumers, and the cost increase wasn't going to be very great. He said he was speaking against the principal of adding mandatory coverage because he did not feel it was a policy legislature wanted to pursue, and it left the consuming public no choice but to not have insurance. He stated the increased health insurance costs weren't always the fault of the insurance companies, especially when legislature mandated coverage.

Questions From Committee Members: Tom Hopgood said he could not tell Senator Lynch exactly what cost increases passage of this bill would create.

Doctor Pratt told Senator Williams he currently had twelve active cases of PKU patients who were under treatment. He said they did not know exactly how many undiagnosed cases existed in Montana.

Doctor Pratt told Senator Lynch that it had been fairly well determined that treatment should never stopped, at any age. He said it was know that the IQ of the patient stayed perfectly normal until treatment was stopped, then discontinued treatment showed regression in the IQ. He said they knew every female PKU patient should continue indefinitely, until she went beyond the child bearing age.

Chairman Thayer asked if Mr. Heydon how many insurance companies he had applied to in the eight years he was trying to acquire coverage? Mr. Heydon said he had only worked with Blue Shield, and had the feeling that maybe one of their applications may render coverage.

Chairman Thayer asked, if insurance companies didn't want mandated insurance, then why wasn't there insurance available to cover these people? Chuck Butler said, as you heard Mrs. Poole testify, they have coverage within a group policy. He said Blue Cross-Blue Shield had taken that account over, and the coverage of the children with PKU had been a negotiated factor for that particular group. He said it was a large group, and the bank knew the cost would be absorbed into the cost of the policy, and had agreed to pay that difference. He said PKU treatment was not a prescription item, and

did not fall under the prescription area of coverage.

He said Blue Cross-Blue Shield had already concluded that PKU should be included in their benefit contracts, even if HB 381 did not become a law.

Tom Hopgood told Chairman Thayer he did not know of any insurance companies in Montana who covered PKU treatment at the current time.

Representative Menahan told Senator Lynch seven other states had enacted this type of legislation.

Representative Menahan told Senator Williams the March of Dimes was not funded to help in areas other than birth defects.

Closing by Sponsor: Representative Menahan said the bill only affected a small group of people, and he would appreciate their support.

DISPOSITION OF HOUSE BILL 381

Discussion: Chairman Thayer said he was going to vote for the bill, because he didn't see it in the same light as the previous bill on mandated costs. He said HB 381 only affected a few people, and it wasn't currently being offered.


Chuck Butler told Chairman Thayer that if this bill passed Mr. Heydon and his family would not have coverage for the first twelve months, because it was a pre-existing condition, but after that time they would be covered.

Amendments and Votes: None

Recommendation and Vote: Senator Meyer made a motion HB 381 BE CONCURRED IN. Senator McLane seconded the motion. The motion Carried Unanimously. Senator Lynch carried HB 381 on the Senate floor.

ADJOURNMENT

Adjournment At: 11:34 a.m.


SENATOR GENE THAYER, Chairman

GT/ct

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 3/28

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.

SENATE STANDING COMMITTEE REPORT

February 28, 1989

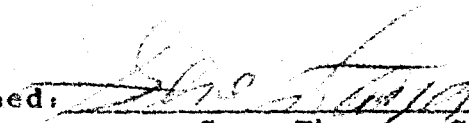
MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 262 (third reading copy -- blue), respectfully report that HB 262 be amended and as so amended be concurred in:

Sponsor: Hoffman, R. (Boylan)

1. Page 10, line 13.
Strike: "less"
Insert: "excluding"

AND AS AMENDED BE CONCURRED IN

Signed: 

Gene Thayer, Chairman

Y.C.
2/28/89
1:43
P.M.

SENATE STANDING COMMITTEE REPORT

February 28, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 381 (third reading copy -- blue), respectfully report that HB 381 be concurred in.

Sponsor: Menahan (Lynch)

BE CONCURRED IN

Signed: 
Gene Thayer, Chairman

2/28/89
1:43
P.M.

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 2/28/89

BILL NO. HB 381

381

COGSWELL BUILDING



STAN STEPHENS, GOVERNOR

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

Mr. Chairman and members of the Senate Committee on Business and Industry.

I am Dr. Sidney Pratt, Chief of the Family and Maternal and Child Health Bureau of the Montana Department of Health and Environmental Sciences. One of the programs I have professional responsibility for, as Medical Director, is the Inborn Errors of Metabolism program. I will limit my presentation to phenylketonuria (PKU), one of the three inborn errors of metabolism for which our state laboratory screens.

PKU is a serious metabolic condition in which the newborn does not have the ability to convert the amino acid phenylalanine into tyrosine. The phenylalanine level, if not corrected by diet, rises in the body resulting in severe mental deficiency which, once developed, is irreversible and permanent.

While PKU cannot be cured, the mental retardation can be prevented. The Administrative Rules of Montana mandate a screening blood test for PKU before the newborn leaves the hospital. This immediate diagnosis allows the baby to be placed on a special diet within a few days and prevents the mental retardation in 100% of the cases. The special diet is a low protein diet with milk products and related foods substituting for dietary substances. The cost of these substitutes averages \$200 per month. Many families cannot afford these products which must be purchased month after month, year after year.

It was determined in the mid-70's that 34 patients in the Montana Developmental Center in Boulder were there because of PKU and its associated severe mental retardation. The incidence of PKU averages one in 15,000 births, so Montana can anticipate one new case per year. My active PKU files in 1989 consist of twelve cases.

While my principal contribution to your deliberations has been a brief summary of PKU and its irreversible and deleterious effects, I would like to go on record as supporting House Bill 381.

Thank you for your attention. "AN EQUAL OPPORTUNITY EMPLOYER"

EXHIBIT NO. 2DATE 2/28/89BILL NO. HB 262

House Bill 262

Proposed Amendment
Presented by Jim Borchardt
Montana Insurance Department
444-2040
February 28, 1989

1) Page 10, line 13.
Following: "indebtedness on the date of death,"
Strike: "less"
Insert: "excluding"

INS 514-4

TESTIMONY ON HOUSE BILL 262
STATE AUDITOR'S OFFICE
February 28, 1989

I. General Introduction

The general purpose of this bill is to update the laws relating to credit life and credit disability insurers transacting insurance in Montana. In an effort to promote uniformity of insurance laws among states, the bill is patterned after a model bill drafted by the National Association of Insurance Commissioners (NAIC).

II. Section-by-section Explanation

Section 1 and section 11 prohibit an insurer from delivering or issuing for delivery a policy or certificate of credit life or credit disability insurance before it is filed with and approved by the commissioner. The scope of the credit life and credit disability insurance laws is restricted in section 2. Definitions for "credit transaction" and "open-end credit" are added in section 3.

Section 8 of the bill has two effects: (1) it eliminates the unsupported distinction between loans of \$15,000 or less and loans exceeding \$15,000*; and (2) it recognizes the controversy surrounding the amount of coverage (gross versus net), acknowledging that various techniques are available to provide a benefit that covers delinquencies and thereby precludes the development of deficiency balances when coverage is restricted to "net."

In response to recent developments in the financial services industry, which underscore the need for flexibility and innovation in credit life and credit disability insurance, section 9 of the bill provides for truncated (partial) or critical period credit life and credit disability coverages or for delinquency, extensions, or other repayment variations by clarifying that the term of insurance might not coincide with the term of the credit transaction. Subsection (4) of section 10 clarifies that an individual policy or group certificate of insurance delivered in connection with an open-end credit (defined in section 2 of the bill) agreement is considered to be delivered at the time the indebtedness is incurred if delivery occurs on or before the date the indebtedness is incurred.

Each section includes stylistic changes suggested in the Legislative Council's Bill Drafting Manual.

*(Under current law, if the amount of the indebtedness is \$15,000 or less, the amount of credit life insurance must equal

EX

#3

2/28/89

the amount of the indebtedness. If the amount of the indebtedness exceeds \$15,000, then the amount of the credit life insurance may not exceed, but may be less than, the amount of the indebtedness.)

III. Amendment

To address an industry concern over a possible misinterpretation in the bill, I have prepared an amendment which will clarify that problem. The amendment (a copy of which is provided for you) relates to page 10, line 13 and helps to define "the actual amount of unpaid indebtedness on the date of death."

IV. Conclusion

House Bill 262 updates Montana's credit life and credit disability insurance laws and makes them more like the laws in surrounding states. The State Auditor's Office urges this committee to give House Bill 262 a "do pass" recommendation.

TESTIMONY ON HOUSE BILL 247
STATE AUDITOR'S OFFICE
February 28, 1989

Bechtel

I. General Introduction

The purposes of this bill are to ensure that insurance premium rates charged in Montana for certain lines of insurance are not excessive and to ensure that the rates used here are based on Montana's experience and the experience of states with claims experience similar to Montana's, not on the experience of states with totally different claims experience.

II. Section-by-section Explanation

Surplus lines insurance is exempted from insurance rate regulation in section 1 of the bill. Section 4 specifies that this bill applies only to "noncompetitive" and "volatile" lines of insurance. "Noncompetitive" means a line which only a small number of insurers is willing to write in Montana. "Volatile" means that the line has too small a volume of claims here on which actuaries may properly base rates. Thus, common types of insurance such as auto, homeowners, health and life insurance will not fall under the provisions of this bill, because they are available from numerous insurers and the Montana claims data are credible in calculating rates.

Section 5 sets forth the commissioner's duties under the bill, namely:

- 1) promulgating rules to identify noncompetitive and volatile lines of insurance and to require from insurers certain financial data on those lines,
- 2) reviewing the experience of an insurer in other states including the combined data from selected states,
- 3) determining which data from insurers' experience in other states should be used, based on certain actuarial criteria.

Section 6 describes the financial data which insurers must report annually, so that the commissioner may monitor experience on noncompetitive and volatile lines. Note that only a small number of insurers will be required to make such reports--not all insurers. Section 7 allows the commissioner to contract with an actuary to review rate filings on noncompetitive and volatile lines. The cost of this review will be borne by the insurer seeking the rate increase.

III. Conclusion

Ex. #4

2/28/89

HB 247

In short, this accomplishes several very important things:

- 1) It enables the commissioner to require that insurers provide data from states with claims experience similar to Montana.
- 2) It allows the department to obtain actuarial services when necessary without upsetting the department's budget.
- 3) It has limited impact on the insurance marketplace, because only noncompetitive and volatile lines are involved.

Finally, it continues to permit insurers to make a profit in Montana, while it prevents our residents from subsidizing the high cost of insurance in certain other dissimilar states.

**TESTIMONY
HOUSE BILL 247**

**SUBMITTED BY: Bonnie Tippy
The Alliance of American Insurers
February 29, 1989**

The purpose for which HB247 was drafted is to increase the availability and affordability of volatile, difficult to obtain types of insurance. However, enactment of this legislation could have exactly the opposite effect from its intended purpose--that is, less competition and product in certain lines of insurance.

As drafted, the bill has extremely vague definitions, i.e., section 3. What is a "small" number of insurers, and what is a "low volume" of claims in Montana. Also, what is "volatile"? The very vagueness of delegation of power to the insurance commissioner may pose a constitutional question with this bill. In the case of Douglas vs Judge, the court threw out part of the water development grants & loans program funded from a bond on the coal tax for this very reason--extreme vagueness about who was eligible to receive funding, etc.

This bill extends the authority and discretion of the insurance commissioner a great deal. For example, under Section 5, the commissioner can require very extensive reporting of premiums, losses, adjustments, etc. This very extensive and expensive data reporting will be forced upon insurers which are already finding Montana to be a risky place to do business.

Finally, the funding mechanism in this bill is burdensome. Although the insurance industry already pays over 1.5 million dollars in licensure fees, ostensibly for the purpose of paying for their own regulation, this bill requires that they must pay whatever the "reasonable fees & expenses of an actuarial consultant employed by or contracting with the commissioner for purposes of a rate filing review are. In fact, this bill as drafted closely parallels one prepared by Tillinghast, an actuarial firm, in the state of Iowa. There it was called "The regional pricing and volatile lines act." In order to determine regional pricing, the bill authorizes the commissioner to employ or contract for rate reviews with actuarial consultants, i.e. Tillinghast who authorized the draft. This appears to be a method for them to obtain business in Montana at insurers' expense in order to develop rates that have already been developed by rate service organizations such as ISO, NAII and AAIS.

Therefore, not only would this body expand the commissioners' powers through enactment of this legislation, but the companies can pay more for the privilege of additional regulation.

The bottom line is that this bill, if enacted, will served to decrease competition and drive companies out of Montana which are carrying marginal and high risk lines of insurance.

We respectfully ask that the committee give this legislation a do not pass recommendation.

PROPOSED AMENDMENTS TO HB 247
 Proposed by R. Stephen Browning
 State Farm Mutual Insurance
 February 28, 1989

Page 2, line 1 Delete:

" a line of insurance is considered 'noncompetitive' if only a small number of insurers are willing to transact the line in Montana and is considered 'volatile if the line has a low volume of claims in Montana."

Page 2, line 1 Add:

"(a) insurance market means the statewide interaction between buyers and sellers in the procurement of a line of insurance coverage pursuant to this section.

(b) noncompetitive insurance market means any market in which:

- (1) There are less than five (5) insurers actually issuing a particular line of insurance as determined by the commissioner;
- (2) Three (3) insurers transact more than ninety percent (90%) of the business;
- (3) Two (2) insurers transact more than eighty percent (80%) of the business;
- (4) There is reasonable evidence, as determined by the commissioner, of collusion among insurers in setting prices."

Page 1, line 24 Add:

" A competitive insurance market is presumed to exist except as otherwise provided in this act"

Delete:	Page 1, line 6	"OR VOLATILE"
	Page 1, line 6,7	"VOLATILE AND"
	Page 2, line 6	"or volatile"
	Page 2, line 10	"or volatile"
	Page 2, line 13	"or volatile"
	Page 2, line 16	"or volatile"
	Page 3, line 17	"or volatile"
	Page 4, line 6	"or volatile"

Genetic Series

PKU

PKU (phenylketonuria) is an inherited disease that, if untreated, causes mental retardation. About one baby in 8,000 is born with PKU in the United States each year. Most are of North European descent, but the condition is found in all ethnic groups. It is uncommon among Jewish, Asian, or Black families.

Although the disease is rare, its costs are great—not only in terms of money (several million dollars spent in state hospitals alone each year), but in family sorrow as well.

WHAT IS PKU?

PKU is a disease that affects the way the body is able to process the food it takes in. The process is called metabolism. Children born with PKU can't metabolize a part of protein called phenylalanine, which then collects in the blood stream. This abnormal build-up of phenylalanine can prevent the brain from developing as it should.

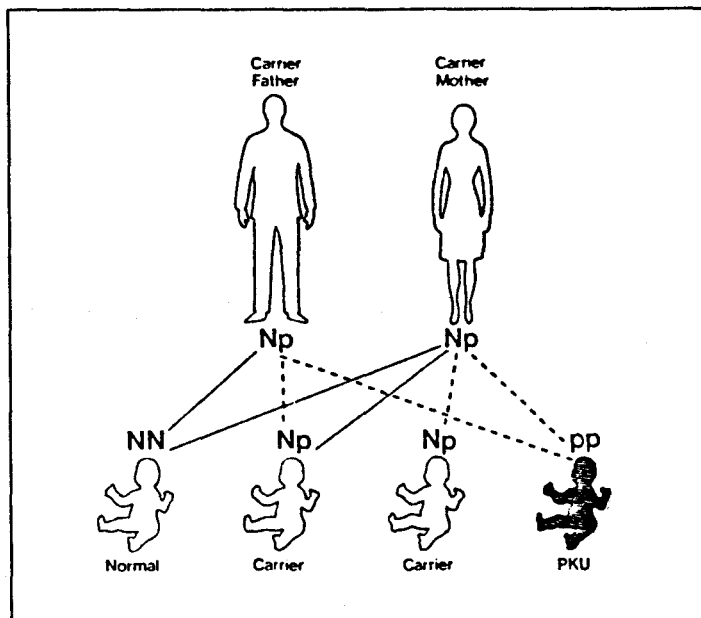
HOW DOES IT AFFECT A CHILD?

Children born with PKU appear normal for the first few months. Untreated, at three to five months they begin to lose interest in their surroundings, and by the time they are a year old they are mentally retarded. PKU children often are irritable, restless, and destructive. They may have a musty odor about them, and often have dry skin or rashes. Some have convulsions. Usually, they become physically well-developed children, and have blonder hair than their relatives.

HOW IS THE DISEASE PASSED ON?

PKU is inherited when both parents have the PKU gene and pass it on to their baby. (Genes are the particles of heredity in cells of the body. They pass on such traits as eye color and facial features, and sometimes diseases.) A parent who has the PKU gene, but not the disease, is a "carrier." A carrier has a normal gene as well as a PKU gene in each cell. A carrier's health is not affected in any known way.

When both parents are "carriers," there is a one-in-four chance that each will pass the defective gene on to a child, causing it to be born with the disease (see diagram). There also is a one-in-four chance that they will each pass on a normal gene, and the child will be free of the disease. There is a two-in-four chance that a baby will inherit the



PKU gene from one parent and the normal gene from the other, making it a carrier like its parents.

The chances are the same in each pregnancy that PKU genes will or will not be passed on. All the children in one family may be free of the disease, even though their parents are carriers. All or some may have PKU or may be carriers.

IS THERE A TEST FOR PKU?

Yes. Babies can be tested for PKU when only two days old and still in the hospital. The baby's heel is pricked and a few drops of blood are taken. The blood is sent to a special medical laboratory to find out if it has more than a normal amount of phenylalanine. If so, more tests are done to learn whether the baby has PKU or some other cause of high phenylalanine.

There also is a urine test, but the blood test is more reliable.

Most states in this country now have laws saying that babies must be tested at birth for PKU.

CAN PKU BE TREATED?

Yes. The baby is put on a low phenylalanine diet. That means no cow's milk, regular formula, or meat, because these protein foods have too much phenylalanine in them.

Ex. # 8

2/29/89

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 8

DATE 2/29/89

BILL NO. HB 381

My name is Dean Heydon
from Joplin, Mo. I have a daughter born
with PKU and she needs this special
formula to survive. I have been trying
for 8 years to get the insurance company
to pay for this product. Thanks to this
special formula my daughter is very
healthy. I am asking you Senators
for your support on House Bill 381.

DATE 2/28/89

COMMITTEE ON Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
CRIS VOLINKITY	DD (Developmental Disabilities)	381	✓	
Tom Hopgood	Health Ins Assoc. America	381		✓
Karen Handley MD	Self	381	✓	
James T. Grenthoff	M.A.A.	13	✓	
James W. Borchardt		247	✓	
James W. Borchardt		262	✓	
Gene Huntington	Mt. Dietetic Assoc	381	✓	
Bob Ryser	Mt. Credit Unions League	HB 262	✓	
Sharon Diezigen	Mt. Nurses Assoc	381	✓	
I.C. PACT	DILES	81	✓	
NEYSHA HUMPHREYS	MT. BANKERS ASSN.	HB 262	✓	
GENE PHILLIPS	N.A.I.	HB 247		X
Bank Disher	Mt. Nurses Assoc	381	✓	
Steve Browning	State Farm Ins.	HB 247		X
LARRY AKEY	MT ASSOC OF LIFE UNDERWRITERS	HB 262	✓	
"	"	HB 247		✓
Roger McGowan	INDEPENDENT INS AGENTS ASS ^{OF MT}	HB 247		✓
Dean Heydon		HB 381	✓	
Angeline Terrell	Am. Ins. Assn.	HB 247		✓
Bonnie Dwyer	Alliance of Am Insurers	HB 247		✓

(Please leave prepared statement with Secretary)