

MINUTES

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

Call to Order: By Chairman Gene Thayer, on March 7, 1989,
at 10:00 a.m.

ROLL CALL

Members Present: Chairman Thayer, Senator Boylan, Senator Williams, Senator Hager, Senator McLane, Senator Weeding, Senator Lynch

Members Excused: Senator Darryl Meyer, Senator Jerry Noble

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: Chairman Thayer said he had been asked to hold the adverse committee report, because the Auditor's Office and the industry people had agreed, they would delete all the portions of SB 453 which everyone objected to. He stated they had, in effect, offered to serve as a sub-committee. He said there were some parts of the bill which both sides felt were important. He stated the request had been made, that the committee re-consider, and give them a couple days to work it out.

Senator Lynch objected to the proposal, by saying, if we're going to have a sub-committee, it should be elected officials. He stated that some of the portions of the bill he favored, had been opposed by the industry. He thought the Auditor's Office and the industry weren't the ones to be working on legislation. He said, "We're the legislators, and if we're going to have a sub-committee, it had better be us, because the legislative prerogative sits in this House and this Senate, and not in the Auditor's Office."

Senator Williams said he felt the same way he had, the day of the hearing. If we're going to have a 77 page bill come in to be revised, we would need more time to evaluate the thing, and he opposed taking action on the bill that quickly, or to turn it over to the industry and Auditor's Office. He stated, if the contents of the bill were so important to be taken care of right now, it seemed to him, there would have been a good hearing two months ago.

Senator Weeding said there were only two or three areas, where there were a lot of opponents. We could sit in sub-committee and consider those sections, and I guess I would be willing to review SB 453.

Senator Lynch said both Senator Boylan, who was in another meeting yet, and Senator Meyer, who was excused, had voiced opposition to working on the bill. He said the request was too fast, and thought a decision wasn't right, especially when all of the Senators couldn't voice an opinion.

Senator Williams said the House would have to suspend the rules, to accept the bill regardless of what the committee did. "There is no big hurry, is there?"

Chairman Thayer said he had received the proposal, and wanted to know whether the committee wanted to hold up the adverse committee report until the other members were there, to discuss it? The committee agreed to hold the adverse committee report to discuss it. Chairman Thayer said he'd hold the adverse committee report one more day.

HEARING ON HOUSE BILL 218

Presentation and Opening Statement by Sponsor:

Representative Jan Brown, House District 46, said HB 218 was not a controversial banking bill. This was a clean-up bill requested by the Department of Commerce. Fred Flanders is her to go through the provisions of the bill with you. The House Business Committee did put one amendment in the bill, on page 4, lines 14 - 16, requesting that the reports of the examination be given no later than 120 days after completion of the examination. They felt that sometimes the reports were too slow.

List of Testifying Proponents and What Group They Represent:

Fred Flanders - Department of Commerce, Commissioner
of Financial Institutions

List of Testifying Opponents and What Group They Represent:

None

Testimony: Fred Flanders said that the changes in statutes we have requested are as follows: Section 32-1-215 allows them to recover the costs that they incur through special examinations. A special examination is one that is normally requested by directors of a bank for various reasons. The most common use of the special examination is when we have a bank request to convert from a national charter, to a state charter. We've had a number of those requests in the last couple of years. We have converted several banks from national to state charters. We merely want to recover the costs for travel and salary involved in those examinations.

The change in section 30-1-422 is a change that has been necessitated by the need for a number of the banks to get involved in investing quasi-governmental entities, such as Farmer Mac. Farmer Mac is a secondary market for long term farm mortgages. Our current law does not allow banks to invest in Farmer Mac, and that amendment will allow them to do so.

The change in section 30-2-433 is a change that is important to adequately supervise the investment activities of the state chartered banks. There have been a number of new investment vehicles, many of which are rather "flaky". In some cases, banks are buying questionable investment vehicles. The Department wants a better feel for the type of investments banks are using. By striking the words "letters of credit", in 32-1-437 the conflict will be eliminated.

Fred Flanders said the House amendment, requiring a written report within 120 days, was fine with the Department of Commerce.

Questions From Committee Members: Chairman Thayer asked Fred Flanders why the House amendment was put in the legislation? Mr. Flanders said a frequent delay, on the part of the Department, in getting the examination reports out to banks had prompted the amendment. He said delays had been caused by various problems. He stated one current problem, was they had found their switch to a computer process to be more difficult than anticipated. Mr. Flanders said completion of some cases had taken up to five months, even though their objective was 90 days. He said they could usually meet their objective, but occasionally it slipped beyond that. He believed the 120 day limit was workable.

Closing by Sponsor: Representative Jan Brown closed, and asked someone from the committee to carry the bill in the Senate.

DISPOSITION OF HOUSE BILL 218

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Williams made a motion HB 218 BE CONCURRED IN. Senator McLane seconded the motion. The motion Carried Unanimously. Senator Weeding will carry HB 218 to the Senate floor.

HEARING ON HOUSE BILL 536

Presentation and Opening Statement by Sponsor:

Representative Jan Brown, House District 46, stated HB 536 was the insurance agents pre-licensing bill. She said the bill had died in the House last session, and a study committee had worked out this compromise bill during the interim. She said the House had amended the bill, to reduce 40 hours of instruction to 20, and there would be a proponent asking that be amended back to 40 hours.

List of Testifying Proponents and What Group They Represent:

Larry Akey - Montana Association of Life Underwriters
Roger McGlenn - Executive Director of Independent Insurance Agents
Tanya Ask - NIT Insurance Department

List of Testifying Opponents and What Group They Represent:

None

Testimony: Larry Akey said his organization supported HB 536. He stated, as Representative Brown indicated, one of the principal pieces of legislation supported by the Association in 1987 had been a continuing education bill for insurance agents. He said their association believed it was important for an increasingly complex professional field to continue updated study.

He said the agents' associations was willing to look toward self-policing of the industry, and the industry felt it was very important, for the industry consumers, that they were self-policing. He stated They were willing to work toward responsible, moderate efforts, to ascertain that agents were properly trained policed.

Mr. Akey said the second point was, that this bill was a product of 18 months of work, by the three associations affected, and the commissioners office. He said they believed the original draft was a good solid bill. He stated the House had cut the required hours of pre-licensing education in half, and they were asking the committee to amend the bill back to it's original 40 hours. Mr. Akey presented the amendment they were requesting. (See Exhibit #1) He said 40 hours was not out of line, as 31 other states had licensing education requirements, and some states require 90, 121 or 240 hours of pre-licensing education. He asked the committee to please adopt the amendment and give HB 536 a do pass.

Roger McGlenn testified that the task force had been formed after the bill had died last session. He said the reason the bill failed was concern raised that the property and casualty industry's statute, combined with the bill, could be unnecessarily burdensome. He said they had surveyed the agents in Montana, and 70% of the agents responding supported pre-licensing, while 17% did not, and 9% were neutral.

He said they had determined a three step course was appropriate. 1. To clarify and amend existing Montana licensing laws which had created the problems that ultimately doomed the last bill.

2. To completely research pre-licensing in the United States, and bring forth a responsible pre-licensing bill for the 1989 session.

3. If these bills have proven successful by 1991, the task force will pursue work on continuing education requirements.

Mr. McGlenn said HB 536 was companion to HB 734. He said anyone who worked with insurance, doing anything more than be a receptionist, was presently required to be licensed, and HB 734 addressed that issue. He said he supported the amendment recommended by Mr. Akey.

Tanya Ask said her department approved, assisted, and advised on technical areas in preparing this legislation. She said the department thought this was good legislation.

Questions From Committee Members: Senator McLane asked, if we amend the 40 hours back into the bill, will the House remove them again? Larry Akey said the 40 hours was a solid recommendation, and the sponsor agreed there should be an effort to keep that requirement. He said he hoped the House could be convinced to pass it.

Closing by Sponsor: Representative Brown said the University of Montana had testified to having put together a 24 hour course, and they could present the course throughout the state. She said she felt that was the reason for the amendment, and believed the 40 hour requirement would make it through the House this time. She thought that since the task force had worked so hard to properly research the bill, it was probably where it should be, and she supported their efforts.

DISPOSITION OF HOUSE BILL 536

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 706

Presentation and Opening Statement by Sponsor:

Representative Tom Nelson, House District 95, described HB 706 as an interesting bill which dealt with surplus lines insurance. He said the legislation was proposed because surplus lines insurance companies were not licensed in the state, or approved by the state. He said licensed companies participated in the guarantee fund, while the surplus lines insurance companies did not. He stated surplus lines insurance companies were normally the markets used for unusual or high risk insurance needs. He said state law required evidence must be provided, that placement cannot be readily made through a licensed insurance company, before insurance is placed with a surplus lines company. He said some examples of surplus lines coverage, for hard to place

risks included segments of timber, mining, manufacturing and agricultural industries, and property in unprotected areas. He said the Montana Surplus Lines Agents Association was proposing the legislation in an effort to bring Montana law more closely in line with many surrounding states. He said they believed this bill would increase market availability, and competition of surplus lines of insurance, and benefit Montana consumers. He said the bill would also allow for an advisory organization, under the control of the Montana Insurance Commissioner, which would assist in reducing administrative efforts and expenses.

List of Testifying Proponents and What Group They Represent:

Helen Burke - President, Montana Surplus Lines Agents Association
Roger McGlenn - Executive Director, Independent Insurance Agents Association of Montana

List of Testifying Opponents and What Group They Represent:

None

Testimony: Helen Burke said her group had worked closely with the Insurance Commissioner, and her legal staff, in an effort to draft language for HB 706, and obtain some outside insurance which has been unavailable in the state of Montana. She stated the language clarifications would make it more understandable to the agents, the Commissioner's Office, and consumers. She said the outside markets was interested in how this legislation was accepted in the state, because if an insurer had to come to Montana to investigate a lumbering outfit, without any financial assistance in getting an inspection on the risk, they weren't interested in coming. She stated that was part of what the bill was trying to do. She recommended a do pass.

Roger McGlenn said his group stood support of HB 706, and stated the laws from Utah, Colorado, Idaho, Oregon and California had been reviewed to bring this bill before the committee. He said much of the bill utilized NAIC language, and most of it was housekeeping. He said there was an inspection fee, which would bring market availability in some of these difficult lines to Montana. He stated the stamping office should expedite the process for the Insurance Department, Montana insurance agents, and for Montana insurance consumers. He said they asked for a favorable consideration.

Questions From Committee Members: Senator Lynch said, usually the legislature sets the stamping fee, and this one would be set by rule. He asked, "Why aren't we setting that fee?"

Mr. McGlenn said other states set a percentage stamping fee. He said they felt that in Montana this stamping organization, which is named the advisory organization, existed today, but didn't have stamping authority. He said there was approximately \$9,000,000 of surplus lines written in Montana, and a 1% fee would be \$90,000. He said they felt that may be excessive to the needs for set up, and in the interest of the insurance consumer, the Insurance Department should be allowed to set that fee at what it takes to do the job.

Senator Williams asked for a definition of stamping fee. Mr. McGlenn explained, in statute, this advisory organization was required to do several things, one of which was the stamping. He said there was, indeed, a "rubber stamp" that went on these policies, then it had to be filed and kept in computer, and invoices sent to agents, and assistance in filing a report. He said it was easier to call it a stamping fee than an administrative fee, by an advisory organization. He said it was what paid for the operation of the office to operate and provide the function.

Closing by Sponsor: Representative Nelson said Hb 706 had passed the House with everyone in agreement. He said it was a good bill, and recommended a do concur. Senator Williams will carry HB 706 on the Senate floor.

DISPOSITION OF HOUSE BILL 706

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 339

Presentation and Opening Statement by Sponsor:

Representative Fred Thomas, House District 62, said HB 339 was requested by the Division of Workers' Compensation. He said it dealt with the subject of domiciliary care, at home, of an injured worker. He

SENATE COMMITTEE ON BUSINESS AND INDUSTRY

March 7, 1989

Page 9 of 13

said the bill followed a court ruling, which had set this up, and set some standards for domiciliary care. He said HB 339 set provisions, where domiciliary care would be paid for. He said the key part of the bill was section 2, page 3. He stated two points amended in the House were:

1. Page 3, line 17, they set up a little bit different mechanism, than the original bill design, where the insurer would receive a constructive notice from the claimant or his representative versus, the stricken language "a written demand". He said he preferred the term constructive notice, versus a written demand.

2. Page 4, line 9 the House took out the maximum amount available for payment, domiciliary care on a monthly basis, of \$1500. He said they had, therefore, left in the 'reasonable and necessary' language on line 8.

Representative Thomas said domiciliary care was an important part of workers' compensation, and they could save money by keeping injured people at home, instead of placing them in rest homes, if the type of injury made that a possibility.

List of Testifying Proponents and What Group They Represent:

Jim Murphy - Bureau Chief, Workers' Compensation
Division
Mike Sherwood - Legislative Council for Trial Lawyers
Association

List of Testifying Opponents and What Group They Represent:

George Wood - Executive Secretary, Montana Self
Insurers Association
Jacqueline Terrell - American Insurance Association
James Tutwiler - Montana Chamber of Commerce

Testimony: Jim Murphy said this bill was presented, determine whether legislature wished to limit the amount paid for domiciliary care. He said that in certain cases the injured worker need assistance in the home, because of the nature of the injury. He stated section 2, (1), set forth the criteria for obtaining such services, and with the House amendment, were exactly the same as the criteria used by the Supreme Court. He cited the criteria as; constructive notice, necessity of the service supported by medical evidence, under the direction of a physician, and the services

were those of a trained attendant, and a need to be able to determine the actual value. He state the \$1500 cap, in the original bill, was an attempt to determine whether there was to be a control on costs, so both the claimant and the insurer would know what the maximum and risk were. He state the \$1500 was within the amounts that the State Fund currently paid for domiciliary cases, and was in fairly good line with home health care attendant charges provided by various institutions. He said it was a little lower than you would pay at a nursing home. He said that if Legislature didn't put a cap on domiciliary care, we would recommend this bill be killed, because the information needed to administer this, is already in a Supreme Court decision.

Michael Sherwood said this was one of multiple bills that had been proposed by the Division, and most of them were negotiated, but this was not. He said he believed these awards should be done on a case by case basis. He objected to the cap because, it would be the only legislative cap, specifically in the law, with regard to medical expenses. He believed domiciliary care was cost effective for the state. He said they opposed the bill with the cap, but with the cap out, they supported it.

George Wood said they raised strong objection to this bill. He said, this bill was not seeing to a benefit, but was a reaction to a court decision and asking the legislature to write in what the court has granted in benefits. He said it was a vehicle in which the legislature could tell the courts, this benefit was not one to be contemplated by allowing under the act, and to remove it. He stated the cost would be prohibitive.

He cited page 4, lines 2 through 6 as the heart of the bill. He said Sub-paragraph (d) said the services were beyond the scope of normal household duties, and he was not sure what household duties were. Sub-paragraph (e) indicated the services were such, that the value could be determined with reasonable certainty, and he did not know how to determine the value of normal household duties, let alone those beyond what is considered normal. He said another extremely dangerous item in the bill, was the removal of fee schedules. He said that if usual and customary was extended to one segment under the medical provisions of the act, what was to prevent others asking to extend it to all medical providers. He said the bill would increase costs and litigation points. He said portion that said pay for spouses and the usual

and customary, made the bill abhorrent to his group and should be removed. He suggested a do not pass.

Jacqueline Terrell reiterated the comments made by Mr. Wood and added some specific concerns. She cited those concerns with page 3, section 2, (a) which had been amended to require that the insurer receive constructive notice from the claimant or his representative. She said that in allowing constructive notice, rather than actual notice or written demand, was going to increase litigation and place both parties in a position of greater uncertainty. She requested the committee restore that section, if they were going to pass the bill, but asked the committee do not pass the bill.

James Tutwiler said they supported the bill in the House, because they felt HB 339 provided attention to a problem which existed. He said they felt the House's removal of the limitation, had gutted the bill and would not support the bill, without some reasonable cap, or limit on the amount paid for home care. He said that as the bill stood, they opposed HB 339.

Questions From Committee Members: Senator Williams asked Mike Sherwood if the \$1500 limit would have included the medical expenses? Mike Sherwood said the medical expenses would be above that \$1500. He said the bill defined domiciliary care as ancillary medical expense, and places a limit only on the domiciliary care.

Chairman Thayer asked, why the bill was necessary if you could accomplish all of this now? Jim Murphy replied, the bill in its present form, without any kind of cap, was not necessary, and he thought they might as well not have the bill. He said the reasonable, necessary criteria was already in the law, and the criteria for domiciliary care, put out by the Supreme Court, was already in the court case. Unless the legislature wanted to put the cap to avoid the possibility of another Larson case, there wasn't much point in the bill.

Chairman Thayer asked, all insurance companies, including the State Fund, do currently have the ability to recommend and negotiate a domiciliary care settlement without a bill setting any fee, don't they? Jim Murphy replied, "That's absolutely correct."

Senator Lynch said, this bill isn't going to pass the House with the cap, and the problem is, that it isn't going

to pass the Senate without the cap. He said he thought it was going to be a status quo situation.

Chairman Thayer stated that during a recent Senate floor discussion about judges salaries, Senator Tveit had spoken of a case where a life time domiciliary care had been made, and the person made a full recovery. He asked, if you set something in the law, where does that put the court in terms of making those kinds of decisions in the future, or is there anything that can be done to prevent those kinds of decisions from being made? George Wood replied, the only opportunity this bill provided was to remove domiciliary care from the act. He said, they were better off without the cap.

Senator Lynch said, wanted to know who was better off? George Wood said he thought the injured worker was better off with some type of institutional care, because of less strain on the family, but the fact that he was getting medical care.

Senator Lynch stated that when he said, we're better off, you're not speaking for the injured worker, you're speaking for your group. George Wood replied, that he was speaking for his group.

Senator Williams asked, Representative Thomas if he was a proponent of the bill, to sponsor it? Representative Thomas said, yes.

Closing by Sponsor: Representative Thomas said the bill was brought to address the large case. He said he supposed there were a few people who thought the case, that measured what should be done with domiciliary care, was in great excess. He stated that if we needed to spend \$60,000 a year on an individual, they would have to be in very bad shape, and be in a medical care facility that was costing \$60,000, or having that kind of cost. He said that was why the bill was presented, he felt something should be done along that line. He said that if the committee did not feel that the reasonable necessary charges was tight enough language, then they should put some tighter, stricter language in, and that opportunity was there. He said he would recommend you either do that, or you can table the bill. He said the ability to tighten down following the Larson case was here.

DISPOSITION OF HOUSE BILL 339

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

Announcement: Chairman Thayer stated he had a request to hold Executive Action on the two banking bills until tomorrow, because two Senators had to be excused today. He said that request had been granted, and the banking people had ben notified.

ADJOURNMENT

Adjournment At: 11:22 a.m.



CHAIRMAN GENE THAYER, Chairman

GT/ct

SENATE STANDING COMMITTEE REPORT

March 7, 1989

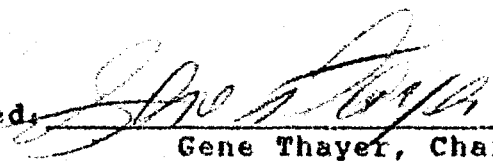
MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 218 (third reading copy -- blue), respectfully report that HB 218 be concurred in.

Sponsor: Brown, J. (Weeding)

BE CONCURRED IN

Signed,



Gene Thayer, Chairman

21.0.189
317189
1:20 p.m.

