MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on March 13, 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 Lynch

Members Excused: None

Members Absent: Senator Weeding

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 669

Presentation and Opening Statement by Sponsor:

Representative Marian Hanson, House District 100, said HB 669 was the result of a federal law, and allowed for the creation of certain multiple employer health plans and their state regulation. She said the bill would help keep the cost of health insurance down, and would assist hospitals and other providers in rural areas. She presented an amendment for the bill. (See Exhibit #1) She also passed out a summary of HB 669. (See Exhibit #2)

List of Testifying Proponents and What Group They Represent:

Mike Young - CCA, Billings and Missoula, Montana
Senator Dorothy Eck - Senate District 40
Lloyd Lockrem, Jr. - Montana Contractors Association
Roger Tippy - Montana Dental Association
Don Ingels - Montana Chamber of Commerce
Gene Fenderson - Montana State Building Construction Trades Council
Steve Brown - Blue Cross/Blue Shield
Carla Gray - Montana Car Company
Rob Morawic - Missoula Chamber of Commerce

List of Testifying Opponents and What Group They Represent:

Chip Erdman - Montana Unified School Trust
Montana School Board Association
Gordon Morris - Association of Counties
Alec Hansen - Montana League of Cities and Towns
Dirk Visser - President, Intermountain Administrators

Testimony: Mike Young said HB 669 concerned MEWA's, and that was a federal acronym for Multi Employer Welfare Arrangements. He said this concept of a MEWA was being touted by many nationally, as the answer to lower cost health insurance and accessibility. He said the MEWA concept was a group o unrelated employers or workers, joining together for a larger pool of employees with which to buy insurance. He said the basic concept was volume discounting, and they generally could be self-insured plans. He said a government group, hospital, or others could put together a plan whereby they could sponsor a plan for businesses in an area. He said the other benefit to that, was the plan could include an arrangement whereby those buying services, could buy at reduced rates. He said the employer could get better health coverage at cheaper rates, and the local providers were able to retain business that sometimes leaves the area.

He said the Department of Labor, under ERISA, regulated most self-insured plans, but the federal government has stated they want MEWAs to be regulated by the states. He said Montana needed a mechanism for state involvement with MEWAs. He said the bill did not cover every self-insured plan, it didn't cover every plan that included multiple employers, but just the ones who fit these unique circumstances. He said the original draft of the bill had some problems, mainly technical, and they worked with several groups and the problems were taken care of in the House. He said a couple of problems which still existed, and most of the opposition would be speaking to those errors in the bill. He said the bill needed to clearly state that ERISA programs were exempt, and they needed to make sure the state did not reverse its previous position to not regulate local government and school plans. He reiterated the intent of the bill was to allow groups of unrelated employers and employees to get together to provide better, lower cost health insurance. He said the bill would allow for the state to provide certain standards, to approve certain trust arrangements, to access fees against the trusts to pay for the cost of regulating, and provide general state oversight.

Senator Eck said she was interested in the concept, because she thought it was a way of helping small hospitals with the problems they were having in surviving. She said she thought this provided the opportunity for group plans to be put together, probably though small hospitals, and allow survival for the small communities and hospitals. She said that if local business people saw this as a method of supporting their local hospital, more of them may be able and inclined to offer health insurance for their employees. She said she thought this was one of the long range things we needed, to get Montana out of the position of being the insurer of last resort. She said she thought the bill had the potential of providing affordable health insurance to small communities and businesses.

Lloyd Lockrem said they were supporting HB 669, because their present health care plan was an ERISA plan, and they were advocating that the exemption language for ERISAs be added to the bill. He presented his sheet of proposed amendments and stated that addition would be amendment #1. (See Exhibit #3) He said amendment #2 went to the two grandfathers on page 5 of the bill. He stated amendment #3 and #6 referred to the revenue contained in the bill on page 16. He cited amendment #4 as addressing the bill's allowing the trust to make collateral loans, and purchasing corporate bonds. He said amendment #5 dealt with the fact that the bill stated no employer could be a trustee.

Mr. Lockrem said they thought HB 669 had the potential of being a significant bill for Montana, and for the committee to consider. He said that in lieu of the number of amendments proposed, he would like to suggest the bill be referred to a subcommittee for concerted effort to coordinate the amendments.

Roger Tippy said they were supporting the bill, and their concerns on section 25 had been addressed in the House. He presented Exhibit #4 to explain their support, and stated that as long as section 25 didn't change, they supported HB 669.

Gene Fenderson said they supported the bill, but had some observations they would like to express. He said they could find no mechanism for collections, by the trusts being set up, to collect what was owed. He said they would like to see a specific statement for that provision. He said they supported the concept and the whole idea.

Don Ingels said they also supported the concepts of the bill.

Steve Brown said they were a proponent, but also had a series of four or five amendments they wished to draft and submit. He said there should be an amendment for the definition of person on page 3, line 4. He said they also requested an amendment on page 5, line 21, that the bill would allow agents of health service corporations or a health service corporation to serve as an administrator of a plan. He said they would like an amendment considered as to whether the law should require a minimum of 500 people covered by a self-funded association. He said that was a portion of the Idaho law, which this bill was patterned after, and was not included in HB 669. He said page 1 of the bill indicated the prime reason for this legislation was the protection of Montana insurance consumers, and to principally protect consumers, you had to make sure there was an adequate number of people or that the plan was properly funded. He said he thought you needed to make clear, in section 11, whether the insurance commissioner was going to have the ultimate authority to decide when a plan was actuarially sound. He said page 8, line 14 had a requirement for a written statement of reasonably projected income and disbursements submitted within forty-five days of application. He said they would like to strike `within forth-five days of", and insert the word `with'. He said that by making the information available at the time of application, the commissioner could make some judgment about the soundness of that plan. He said section 25, pages 25 and 26, did not embody the HB 225 that was passed by legislature, because the wording was different than HB 669. He said the language in HB 669 was the same as the language in the introduced version of HB 225, but that was not the form that passed. He said they would work with a subcommittee on the amendments.

Carla Gray said they already had an ERISA plan, and it was critical to make sure the ERISA exemption was included. She said it was also critical that the ERISA exclusionary language was appropriate and appropriately placed within the definition of a self-funded plan.

Rob Morawic said they supported the bill, with the amendments offered by Mr. Young.

Chip Erdman rose in opposition to the bill and said they supported the amendment to remove governmental entities from the coverage. He their trust was formed as an

alternative to the employees health insurance coverages that were available. He said some of their districts were unable to find insurance, so they had banded together, and pooled in order to get coverage at the lowest possible cost. He said they thought regulation in this area was fine, but that it should be consistent. He stated the state plan for Montana, and the university system was excluded in the House, and they had been told local government would be excluded also. He said that exclusion for local government had not been made in the House, and they were requesting that exclusion be amended in. (See Exhibit #5) He said page 3, spoke of who was covered by HB 669, and their group wasn't even addressed.

Gordon Morris said they too were assured that governmental entities were not intended to be included in the bill, and they encouraged that goal. He suggested the sponsor's amendment dealing with section 4, page 5 didn't necessarily achieve removing public entities from HB 669. He said the language in the new subsection 1, beginning on line 9, was some what repugnant because it disallowed them from exacting any fees for self administered trusts. He said that if they could be assured that counties were clearly out the bill, they would probably withdraw their opposition.

Alec Hansen said their interest was very narrow, and specifically was the application as proposed to the cities and towns. He said that if there was an amendment which exempted cities and towns, from regulation required in HB 669, they would have no problem with the bill. He said they did not need to support the bill, but if they were exempt, they would not oppose the bill either. He said there was good reason to exempt cities and towns, and that was the state, board of regents, and others were all exempt already. He said cities and towns had operated these programs for many years, were all solvent, and he thought they had some assurances that cities were going to be there to honor their debts. He said they supported the sponsor's amendment, and would withdraw their opposition if guaranteed that cities and towns were excluded.

Dirk Visser said they were a third party administrator contracted by several self-insured employers in the state, to administer their self-funded plans. He said they would wholeheartedly support the stated intent of HB 669, but he said they failed to see where the bill accomplished that. He said there had already been

testimony that ERISA plans were specifically excluded by federal law, and now we were excluding the state employee fund, the university fund, and there were amendments to exclude the cities and counties (which they supported), and he asked who they were going to regulate? He asked, if we supplied the needed regulation for multiple employer welfare associations, how did HB 669 protect the consumers? He said there was no stipulation in the bill for handling the problem which would occur with a multiple employer welfare association when the plan was insolvent. He said there was no guarantee fund, and no provision for holding trust sponsoring employers liable for claims drawn. He said he thought the intent was great and applaudable, but the bill simply did not accomplish the intent, so they opposed HB 669. (See Exhibit #6)

Questions From Committee Members: Mr. Lockrem told Senator Lynch he had drafted the amendments in exhibit #3 from the second reading copy of the bill, and the language fit that copy.

Mr. Lockrem told Senator Hager their group had been started with 100 people. He said the group of 500 Mr. Brown had suggested, could be actuarially sound, but again it was actuarially sound as to what level of reinsurance they bought on the specific and aggregate level, and what premiums they were going to pay. He said he didn't see anything magic in starting a group of 500, because their present group of 422 wouldn't have been able to start, and they wouldn't be in existence today.

Senator Noble asked for a simple explanation of the difference of an ERISA and a MEWA? Dirk Visser said ERISA referred to the Employee Retirement Income Security Act of 1974, which was passed by Congress. He said the applicable provision here, was 514 B of ERISA, which specifically advented a state regulating a self-funded plan. He said a MEWA was a Multiple Employer Welfare Association, and there was an amendment made to ERISA to specifically include MEWA's in state regulation.

Senator Noble asked how ERISA treated the employees? Mr. Visser said ERISA set up protection for the employees, in that employers had to offer a plan in writing, it had to be legally enforceable, there had to be a named fiduciary responsible for the disbursements and answerable to paperwork, and reports had to be filed. He said that from a practical standpoint, if an ERISA plan wasn't solvent, there really wasn't any protection other than the Department of Labor and the employees

could file suit against the plan fiduciary or sponsor in case of improprieties. He said all private employers, such as corporations, were already exempt under ERISA. The MEWA issue was one that would exempt everyone else in the state, and just deal with MEWAs, and HB 669 was inadequate to regulate a MEWA.

Chairman Thayer said that earlier testimony had stated HB 669 did not have a provision for setting up a guarantee fund. He asked Mr. Lockrem, if there was a multi-employer association set up, and one of those companies went out of business, would HB 669 address the situation? Mr. Lockrem said no, it would not, and that was one of his concerns. He said the regulation of MEWAs had been delegated to the state, and his understanding of Montana insurance law, told him there would have to be at least $600,000 in reserves to start a MEWA in Montana, in the absence of HB 669 or some other type of regulation. He said the state had the responsibility, and the reason they thought there was a need for regulation, was that in the absence of any regulation the commissioner could say the groups were an insurance company, and require that size of reserve. He told Chairman Thayer, yes they would also be required to pay the two point seven five premium tax as well.

Senator Noble asked if MEWAs and ERISAs used reinsurers? Mr. Lockrem said he thought almost everybody used some type of reinsurance. He said he had been trying to make the point that reinsurance carriers were regulated and were paying the premium tax.

Chairman Thayer asked why the House terminated this plan in two years, if there was need for the regulation? Representative Hanson said Representative Simon had offered the amendment on the floor, and she hadn't opposed it, even though she did not support it. She said he had expressed that they should take a look at the plan, and terminate it. She said she did not believe that was logical.

Chairman Thayer asked if anyone would go to the expense of setting up one of these plans if it was going to terminate June 30, 1991. Mike Young said he agreed that it was a bad amendment, and there wouldn't be much point in beginning a plan with such short duration.

Closing by Sponsor: Representative Hanson said she had presented the amendment which would provide for governmental entities, and would support some of the amendments on the ERISA, but she would oppose the rest

of the amendments. She said she would appreciate it if the legislation could be cleaned up, as it had been caught in the transmittal crunch and they had not been able to give it thorough work in the House. She said she had told the House she would try to get the bill fixed up in the Senate, or we would kill it.

DISPOSITION OF HOUSE BILL 669

Discussion: Chairman Thayer said he had only spoken to the sponsor briefly before the hearing, and he felt everyone but the one gentleman has expressed a need for a subcommittee. He said the bill would certainly have to go to a subcommittee before the committee could take any action. He asked if anyone would be willing to serve on the subcommittee?

Senator Hager, Senator Noble, and Senator Noble volunteered to act on the subcommittee, and Chairman Thayer asked Senator Hager to chair the subcommittee.

Chairman Thayer reminded them there was coordination language needed between HB 225 and HB 669.

Senator Hager told Chairman Thayer he would ask President Galt if they could get a time extension, to allow the needed work on HB 669.

Amendments and Votes: None

Recommendation and Vote: Senator Weeding said he would suggest a subcommittee be appointed to work on HB 669.

HEARING ON HOUSE BILL 251

Presentation and Opening Statement by Sponsor: Representative Swysgood, House District 73, said HB 251 was an act to clarify the real estate description requisite of a uniform commercial code financing statement covering farm products; and amended certain sections. He stated HB 251 was simply a clarification, and Exhibit #7 referred to page 4, lines 20 through 25 of the second reading copy of the bill, and would not refer to page 2, lines 22 through 25. He said the purpose of the bill was to clarify that a financing statement covering farm products did not have to contain a legal description of the land upon which the products were grown. He said the bill provided for a "reasonable description", such as a statement naming

the county or counties where the products were growing or were to be grown. He said the bill would make it easier for ag lenders, suppliers, farmers, ranchers, and the Secretary of State to file liens, by eliminating the lengthy descriptions previously required. He said it met the needs of the Federal Food Security Act's central ag lien filing system.

List of Testifying Proponents and What Group They Represent:

Bill Leary - Montana Bankers Association

List of Testifying Opponents and What Group They Represent:

None

Testimony: Bill Leary said they were appearing in support of HB 251. He said there was little he could add, but they would be available to answer any questions.

Questions From Committee Members: Chairman Thayer asked what had brought the bill about? Representative Swysgood said everything was currently filed on computers, and it took a lot of paper to enter the entire description of land, and this bill didn't mandate, but allowed an option for an easier more convenient form of filing. He said that with the advent of so many people leasing ground, it was felt it may be difficult to obtain the correct legal description of the land, which wasn't really necessary.

Representative Swysgood told Senator Weeding the bill only pertained to crops growing or grown. He said no real estate was intended.

Chairman Thayer asked why the language to be grown was included, and why they weren't just dealing with one crop at a time? He asked what limitations there were for the amount of time this projected into the future? Mr. Leary said that crop liens were taken out on winter wheat which had already been planted, or a lien could be taken on a crop that was to be planted in the spring. He said it was just a matter of clarifying crop type. He said he did not have an answer as to how far in the future, but it seemed to be the common language which had been utilized in liens.

Closing by Sponsor: Representative Swysgood said the bill was basically rather simple, and just precluded the necessity of having the lengthy description to take a lien on land. He said he felt it would be less

expensive and more convenient for all parties concerned.

DISPOSITION OF HOUSE BILL 251

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch made a motion HB 251 BE CONCURRED IN. Senator Meyer seconded the motion. The motion Carried Unanimously. Senator Weeding carried the bill on the Senate floor.

HEARING ON HOUSE BILL 434

Presentation and Opening Statement by Sponsor:

Representative Rice, House District 43, said HB 434 addressed a problem which resulted from the recent changes in the telephone industry. He said the bill simply established that service agreements to provide maintenance for inside telephone wire, and was not insurance. He stated that if company A installed the telephone wire in your house and they also agreed to maintain the wiring, that was a simple service agreement which did not create a problem. However, if company A installed the wiring and you agreed with company B to maintain that wiring, according to a recent ruling from the insurance commissioner, that was insurance. He said there was a resulting regulation and a cost in complying with the insurance laws which company B must then go through. He said the result had been that companies in the company B position were refusing to undertake the cost of the paperwork to comply with the insurance laws of Montana.

He said consumer confusion had arisen as to why one company would do the maintenance, and another would not. He said consumers didn't really know who had installed the telephone wiring in their house. He said the bill would eliminate that confusion, and make the inside wiring maintenance more widely available.

List of Testifying Proponents and What Group They Represent:

Barry Hjort - U.S. West Direct Communications

List of Testifying Opponents and What Group They Represent:

None

Testimony: Barry Hjort said the bill was brought before them, because in 1982 the Federal Communications Commission deregulated inside wiring, and in 1987 the Montana Public Service Commission also deregulated inside wiring service. He said that after the FCC deregulation virtually any contractor could do inside wiring, and the difficulty that arose was as Representative Rice had described. He said the insurance commissioner's office had advised them that the current state of the insurance laws would subject them to insurance regulation. He said they had been advised by the commissioner's office that they were neutral on the bill.

Questions From Committee Members: Jim Borchardt, of the insurance commissioner's office, told Chairman Thayer they didn't have any problem with the bill and they were remaining neutral.

Closing by Sponsor: Representative Rice simply closed.

DISPOSITION OF HOUSE BILL 434

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch made a motion HB 434 BE CONCURRED IN. Senator Meyer seconded the motion. The motion Carried Unanimously. Senator Williams carried the bill on the Senate floor.

HEARING ON HOUSE JOINT RESOLUTION 5

Presentation and Opening Statement by Sponsor: Representative Bardanouve, House District 16, said HJR 5 was a very important resolution, and other legislators across the nation were looking at a way to better control insurance companies of America. He said the insurance companies of America were in a very unique situation, in that they lobbied the McCarran-Ferguson Law through Congress. He said they had convinced Congress to remove the insurance industry from federal control, and it was the only business in America which was exempt from the anti-trust laws, the

federal trade commission, and other types of regulation. He said they had convinced Congress local control was best, and the result was that Montana and other states like ours simply would never have the resources or capabilities of being able to truly regulate the insurance industry.

He said insurance companies were not evil, but like others they looked to the bottom line for profit. He stated the bottom line was going to get bigger and bigger, because there was no way to control them. He requested that the committee support HJR 5 even if it was only a message to Congress, rather than a law. He said the request was for support of the repeal of the McCarran-Ferguson Act.

He asked why the richest single industry in America should be exempt from federal regulation? He said that if they voted against HJR 5, he wanted them to ask themselves why this industry should be unique. He said he was not critical of any insurance company in Montana, because they were completely at the mercy of their giant parent companies. He said they had to do and charge what the companies stated. He said there were areas of competition at local levels, but the basic policy was made beyond Montana borders.

List of Testifying Proponents and What Group They Represent:

Mike Sherwood - Legislative Counsel, Montana Trial Lawyers Association
James Murry - Executive Secretary, Montana state AFL-CIO
Gene Fenderson - Montana Trade Builders Construction Council

List of Testifying Opponents and What Group They Represent:

Mark Webb - Regional Council, American Insurance Association
Lorna Frank - Montana Farm Bureau Federation
Bonnie Tippy - Alliance of American Insurers
Tom Grau - Century Insurance Agency, Great Falls, Montana
Tom Hopgood - Health Insurance Association of America
James Tutwiler - Montana Chamber of Commerce
Larry Akey - Montana Association of Life Underwriters
Roger McGlenn - Executive Director, Independent Insurance Agents Association of Montana
Donald Murray - National Association of Independent Insurers

Testimony: Mike Sherwood said they had not had a part in drafting HJR 5 or its submission, but the were very much in support. He said they supported it because for the past seventeen years, since the enactment of the present constitution, trial lawyers had to wage a war against insurance companies, and others who thought that liability limitations would reduce their insurance rates. He said he thought they should understand that while Montana's insurance expenditures seemed high, it only represented about three tenths of one percent of the market in the United States. He said the idea of Montana controlling the insurance industry just wasn't going to happen. He said he thought there were two options; either get the federal government to repeal the McCarran-Ferguson Act, or establish our own domestic insurance industry. He said that even though they supported HJR 5, they didn't have much faith that Congress would indeed repeal the Act. He said he wanted to point out the need for something to be done.

Jim Murry read his testimony from Exhibit #8, and stated their support of HJR 5.

Gene Fenderson said they were in support of HJR 5, for the reasons previously testified.

Mark Webb said the McCarren Ferguson Act did not create the broad anti-trust exemption for the insurance industry, that had been testified to. He said that was not the case because the Act first existed only if there was not strong state regulation in the transaction of insurance. He said the Act specifically stated that if strong state regulation was missing, the federal anti-trust laws,in their entirety, applied to insurance transactions. He said the Act contained certain exemptions to the exemptions, and those applied to situations where the insurance industry did certain cohorsive or intimidating acts. He said the other important component was that while there was a federal anti-trust exemption, the was not a state anti-trust exemption. He said that was something which was available to regulators of insurance in the various states. He said the regulatory framework was available in Montana, and the statutes provided the ability to review insurance transactions. He said to give that authority up, to the federal government, without any clearly definable qualifiable benefit to the policyholders was not something which should be contemplated by legislature.

Lorna Frank said they opposed HJR 5 because they believed each state retain regulation of insurance, and not

delegate regulation to the federal government. (See Exhibit #11)

Bonnie Tippy said they opposed the bill, and they wanted it kept in mind that if the McCarran-Ferguson Act was repealed, approximately seventeen federal agencies would have jurisdiction over the insurance industry. She said she thought we knew that allowing so much bureaucracy and paperwork was not going to help the problem, but was going to make it worse. She said they felt insurance should be regulated at the state level, and if it was felt more regulation was needed, then perhaps the insurance commissioner's office should be funded to try improving the regulation.

Tom Grau said he wished to speak in opposition to HJR 5 because he felt the regulation of insurance was basically one which should be best addressed by the people who were using the system. He said no one knew what the ramifications of the repeal of the McCarran-Ferguson Act would be, but they believed the industry would loose the ability to pool its loss data. He said that loss could be serious to Montana, because the state was served mainly by small regional insurance companies. He said those companies did not have the ability to gather the necessary material and loss data to provide sound rates. He said they felt that absence would result in a reduction to the number of regional companies serving Montana. He said they also felt the repeal of the Act would produce an inability of the companies to agree on standard forms. He said the standardization of forms was important in evaluating the coverage companies were offering. He presented written testimony to the committee. (See Exhibit #9)

Tom Hopgood said they took exception to the strident tone of HJR 5. He said they did not think the insurance industry was running a-muck and reaping excessive profits. He said they did not believe they were exempt from regulation, and to the contrary, Montana probably made them the most regulated industry around, with the exception of the public utilities. He said that between the revenue title and the insurance title, there were more laws regulating insurance in Montana than laws dealing with revenue.

He quoted a portion of the Act, which stated "The business of insurance shall be subject to the laws of the several states which regulate to the regulation or taxation of this business, provided the Sherman Act, the Clayton Act, the Federal Trade Commission Act shall be applicable to the business of insurance to the

extent that such business is not regulated by state law". He said these Acts were applicable unless there was sufficient regulation by state law. He said he would submit to the committee that there was regulation for the insurance business.

James Tutwiler said the Montana Chamber of Commerce had been an active proponent of businesses in Montana, and this advocacy extended to and included the availability and affordability of insurance needed by all businesses to protect their interests and provide a product or services to the communities in Montana. He said that in their efforts to improve the business climate in the state, they had focused on three areas which he felt were relevant to HJR 5. He said they had sought to ease regulations which were not necessarily important to business, they had helped lead the effort to reform and modernize our liability climate, and they had consistently looked for opportunities to communicate the message that Montana was indeed a good place to do business. He said that in their best judgment, HJR 5 would not serve any of the criteria outlined. He said repeal of the Act in question would certainly lead to more, not less, regulation, and our liability climate would certainly not be improved. He said they felt the resolution, strident as it was in tone, sent a clear and strong message that Montana was a hostile place to do business. He said they recommended the committee not favorably consider HJR 5 for those reasons.

Larry Akey said they had heard the proponents of HJR 5 say that repeal of the McCarran-Ferguson Act was necessary to deal with the liability crisis, he said that insurance crisis they were pointing to was primarily in the area of commercial liability. He said he thought they needed to remember that commercial liability was only between two and three percent of the insurance written in this country. He said he the McCarren-Ferguson Act worked well in auto insurance, life insurance, health insurance, rental insurance, homeowners insurance, and others, because there was not a liability crisis in those areas. He said to repeal the Act would bring in federal regulation to deal with that narrow segment of the market, and he thought it was an over reaction.

He said restricting or repealing the McCarren-Ferguson Act may do exactly the opposite of what the proponents of HJR 5 would suggest. He said he believed the repeal would reduce the availability of coverage for high end difficult risks. He said the insurance industry dealt with those risks through joint

underwriting arrangements and other means, and if the Act was repealed, those types of arrangements would be subjected to the Sherman Anti-trust Act. He said that would certainly generate years of litigation to question the anti-trust status of those arrangements, and could end up with the reduction of availability for difficult risks.

He said repealing McCarren-Ferguson really didn't do anything to enhance competition in the insurance industry. He stated that under the current program of state regulation, the insurance industry met almost all of the standard tests economists used for determining the competitiveness of an industry. He said there were over six thousand insurance companies in the insurance business in America, and no single company held more than ten percent of the total insurance market. He cited price diversity, product innovation, availability of price information, comparative buyer information as all being available with the current program. He said repealing McCarren-Ferguson precluded a lot of the flexibility needed in the industry, for innovative ways to contain costs. He said that repealing the Act could subject any actions to limit health care costs suspect, and may become subject to Sherman Antitrust regulations. He said, for those reasons, they urged a recommendation that HJR 5 be not concurred in.

Roger McGlenn he said he would not repeat the testimony of Mr. Grau, their association President, or their association's written testimony, but he wanted their association to go on record as in opposition to HJR 5. His reference was to exhibit #9)

Donald Murray said the proponents of HJR 5 had asked the committee to advocate their legislative power to the Congress of the United States, to handle a matter that the state of Montana and its legislature was competent of handling for itself. He stated, as a citizen of Montana, he would ask them that prior to advocating their regulatory function as a state legislature, he would want to know precisely what the problems were and what the solutions were. He said that before he advocated state legislative power to the United States, he would insist that those who requested the change would answer those questions. He said he didn't think the questions had been answered, nor had it been made clear exactly what type of regulation they proposed as a solution and replacement, once the Act was repealed. He said that with HJR 5, rather than simply sending a message to Congress, legislature would be advocating a power that rightfully belonged to the state, as the

McCarren-Ferguson Act itself underscored. He stated that for those reasons he would ask the committee not to send this message to Congress.

Questions From Committee Members: Senator Lynch asked why the insurance industry was the only business that did not have regulations like other businesses. Mark Webb said he thought the question assumed an exemption carved into the law, and it was not as large as suggested. He said the law stated that if there was not aggressive, bonafide state regulation, then the insurance was the same as everyone else. He said secondly, there were so many variations from state to state that there was a need to deal with each state's uniqueness and experience. He said the transaction of insurance was not necessarily amiable to a broader federal regulatory scheme.

He stated that in regard to the liability crisis mentioned, the federal government had taken additional steps. He said the Federal Risk Retention Act allowed a property and casualty insurance company to be domiciled in one state, subject to the laws of one state, but it could be able to offer insurance throughout the United States without having to meet the requirements of fifty different regulatory schemes. He said there were was the federal government had responded to the question of affordability and availability of insurance, without having to disrupt the overall state regulatory mechanism.

Senator Williams asked for the State Auditor's stance on HJR 5? Jim Borchardt said that officially their office was neutral on the issue. He said to suggest doing away with the insurance might seem a little self-serving. He said he had seen both sides of the issue, as he had worked for another insurance department where funding levels were higher, and had dealt with the same quality level of regulation which could be achieved in Montana, but there had been a large insolvency in that department. He said he had mixed personal feelings, because he saw what the federal has done in regulating the FSLIC and on the other hand, if there wasn't money to give the department assistance, maybe legislature would decide federal regulation was best. He said he would prefer to remain neutral.

Senator Williams asked if other states were submitting a similar resolution this year? Representative Bardanouve said he couldn't say exactly what they were doing. He said he had lost the large article from the Great Falls Tribune, which told about the insurance and

McCarren-Ferguson and the attempt to repeal the Act. He said the article had shown that nationwide, people who were concerned about high insurance rates were looking at McCarren-Ferguson and to possibly repealing it. He said he could not tell them how others were approaching the subjects, but he said he was sure there were other resolutions.

Senator Weeding asked, if HJR was favorable acted on by Congress, did Representative Bardanouve see elimination of regulation in Montana, or would he rather see a broad overall federal regulation. Representative Bardanouve said that if we had the resources for the power to regulate, it would probably be OK to regulate within Montana, but they knew Montana did not have the resources, power, or ability. He said that last session legislature had given the insurance commissioner the authority to hire an actuary, and this session she had returned to report that an actuary could not be hired with the money available. He said we had the power to regulate, but we did not have the power to enforce the power of regulation.

Senator Hager stated that Iowa, through their insurance department, had used the McCarren-Ferguson Act to challenge a forty-seven percent rate raise in malpractice insurance. He said the challenge had facilitated holding the raise in rates to fifteen percent. He asked, if the contents of HJR 5 became law, would the individual states lose the right to challenge? Representative Bardanouve said the states would probably have some rights, and it would not be necessary to challenge if there was federal regulation.

Closing by Sponsor: Representative Bardanouve said there had been the usual conflicting testimony involved. He said there had been testimony that McCarren-Ferguson really didn't do much, and testimony that McCarren-Ferguson was very powerful. He stated he did not know why the industry was so happy with it, if it didn't do that much. He said there was a bill in the House which would require data be supplied to the commissioner of insurance, and the insurance industry had opposed that bill. He said yet, there had been testimony which stated that repeal of the McCarren-Ferguson Act would leave the industry without the data the industry felt necessary.

He said testimony had indicated HJR 5 had a bad tone, he said he thought maybe it was time to raise our voice in protest. He said he had been in legislature at the time the Montana Insurance Title was passed. He

said he agreed it was large, and they had been instructed to adopt the legislation as introduced, without any amendments. He said all attempts to amend the insurance title had been futile. He said he felt that if anyone was concerned about getting insurance rates down in Montana, this would be foremost in their efforts. He said he felt they would not have to fight coalitions for rate reduction if there was proper regulation. He said he hoped they would give HJR 5 serious consideration, and he thought it would actually help business in Montana.

DISPOSITION OF HOUSE JOINT RESOLUTION 5

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

DISPOSITION OF HOUSE BILL 734

Discussion: Chairman Thayer stated that Representative Thomas wished to present the amendment he was going to offer on HB 734, which they had heard previously.

Representative Thomas presented copies of Exhibit #10 for everyone to follow. He stated that the amendments he had offered during the hearing were for the purpose of stripping the House floor amendments, and he would want the committee to do that, no matter what they did with the bill. He stated the floor amendments attempted to place appointments back into the bill, but they weren't done in correct form. He said he wanted to take them all out and start over on that issue.

He said the second set of amendments (exhibit #10) was done by Mary McCue and Eddye McClure, at his request. He stated that these amendments put appointments back in the bill, in what they thought was correct form. He said the current appointment process was an ongoing one, with annual appointment to every agent in the state. He said that for every company that was under the umbrella of a certain company there was a separate appointment for that company, through that agent or agency and there was a $10 fee charged. He said the amendments followed the same model language contained HB 734, and they would eliminate a bulk of the paperwork that was ongoing because these would make

the appointment perpetual.

He said one of the major carriers today had told him the appointment process was a prime part of why they were a major carrier. He said the appointment process provided consumer protection, and may even help the agent in some cases. He said he would like to see them strip the old amendments and put both sets of these amendments into HB 734.

Chairman Thayer stated that hearing testimony had indicated a concern about the language on page 83 of HB 734, regarding the change from a misdemeanor to a felony. He asked why the amendments didn't address that issue? Representative Thomas said he thought it would probably be fairest to strike the amendments, and keep the current law.

Chairman Thayer asked if the amendments had been concurred in? Representative Thomas said the agents and their associations were in favor of the amendments.

Jim Borchardt said that as far as he knew, the commissioner would object. He said she was still strongly of the opinion that the appointments should not be in.

Chairman Thayer asked how many FTEs would be eliminated if the appointment process was removed? Mr. Borchardt said he was not able to address the question.

Larry Akey said it was his understanding that the Auditor's Office currently had two full time equivalents allocated specifically for the purpose of handling the annual appointment process. He said the shift to perpetual appointments would clearly reduce their work load, but he could not speak for the office, as to the actual amount.

Representative Thomas said he would think that if the FTEs were freed up, he would certainly hope they would put to other functions within the office. He said other areas of the office, like the investigation area, were lacking in help.

Chairman Thayer asked if the committee agreed with the section dealing with the felony? He said they had opposed a like section in another piece of legislation, and he wanted to know how they felt.

Senator Lynch said he still felt the same way, and agreed that he would like it addressed in the amendments being prepared.

Senator Meyer voiced agreement, as did Senator Noble.

Mary McCue said the bill needed three or four very minor clerical corrections throughout, and she said she had been instructed to ask the committee to include those amendments.

Chairman Thayer said the committee had held HB 536, pending the outcome of HB 734. He asked for a rebriefing as to how the two bills coordinated? Representative Thomas said HB 734 defined what a customer service representative was, and HB 536 would not require licensing of a customer service representative in the future, as was required presently. He said that by making the change in HB 734 to state that a customer service representative would not have to be licensed, then HB 536 could deal with the pre-education which must be completed before someone took the test.

Chairman Thayer said Mary McCue would draft the amendments and the committee would take executive action on the bills as soon as time an preparations allowed.

Amendments and Votes: None

Recommendation and Vote: None

ADJOURNMENT

Adjournment At: 12:13 p.m.

SENATOR GENE THAYER, Chairman

GT/ct

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE DATE 3/13

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

March 13, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 251 (third reading copy -- blue), respectfully report that HB 251 be concurred in.

Sponsor: Swysgood (Weeding)

BE CONCURRED IN

Signed: Gene Thayer

Gene Thayer, Chairman

3/13/89
1:30 p.m.

scrhb251.313

SENATE STANDING COMMITTEE REPORT

March 13, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 434 (third reading copy -- blue), respectfully report that HB 434 be concurred in.

Sponsor: Rice (Williams)

BE CONCURRED IN

Signed: Gene Thayer, Chairman

3/13/89
3:30
p.m.

scrhb434.313

Sponsor Rep. ...

...NATE ... & INDUSTRY
HIBIT NO. 1
DATE 3/13/89
BILL NO. HB669

House Bill 669
Self-Funded Health Care Plans
Amendments

These amendments remove political subdivision self-insured health plans from the requirements of House Bill 669 and remove the termination date of the act.

1) Page 1, line 5.
Following: AMENDING
Delete: SECTIONS
Insert: SECTION

2) Page 1, line 6.
Following: 33-1-102
Delete: AND 33-2-708,

3) Page 1, line 7.

Following: EFFECTIVE DATE AND
Insert: AND
Following: APPLICABILITY DATE
Delete: ; AND PROVIDING A TERMINATION DATE

4) Page 26, line 13.
Strike: Section 27 in its entirety.
Renumber: Subsequent sections.

5) Page 33, line 15.
Strike: Section 33 in its entirety.

Attached, you will find a summary of the significant provisions of HB 669. We have provided this summary so that you will be able to understand after only few minutes of reading, what HB 669 is intended to do.

Our position is that with a few modifications, HB 669 will have a positive impact upon employees and employers throughout Montana, but if passed in its present state, will hinder the provision of adequate insurance to workers.

There are three main areas of concern:

1. Many federal and state laws requiring registration of self-funded plans allow a plan to begin operation after having met the qualifications for registration and made application for registration. This enables the plan to begin to collect funds, bring employers together and obtain commitments from insurers. As HB 669 now stands, a self-funded plan may not operate until registration has been granted by the commissioner, which grant may take up to 90 days from the date of application.

   We propose the following change:

   Section 4., Page 4, line 5

   After ". . . commissioner under [sections 1 through 26]." Add: "or having met the qualifications for registration under Section 5 and made application for registration under Section 6, and awaiting a grant of registration by the commissioner."

2. Federal law (ERISA) governs most self-funded benefit plans and overrides state laws (Section 514 (b) of ERISA). Many groups have construed this bill as regulating their plans--thus being in conflict with federal law. Currently, state law excludes political subdivisions from State Insurance Department regulations (MCA 33-20-??) 1987 legislature. Both these exclusions should be stated to clarify the regulation.

   We propose the following change:

   Section 4., Page 5, line 14

   Add: "(h) a plan that is governed by the Employee Retirement Income Security Act (ERISA) of 1974 and as amended thereunder.

   (i) a self-funded plan administered by or for a state political subdivision or pool of subdivisions so long

Ex. #2
3/13/89

as trust funds are used exclusively for the benefit of trust beneficiaries."

3. This section deletion again is in keeping with the 1987 legislative adoption of Section 33-20-??.

We propose the following change:

Section 27., Page 26, line 12

Delete entire section.

Ex. #2
3/13/87

HB 669 SUMMARY

Section 2. PURPOSE Provide state supervision of self-funded plans.

Section 4. REGISTRATION A self-funded plan is not considered to be engaged in the business of insurance and is not subject to the Montana Insurance Code except as expressly provided, however, all self-funded plans must register *or having met the qualifications for registration, have made application for registration and is awaiting grant of registration by the commissioner* ~~with the insurance commissioner~~ except those:

1. established solely to fund a deductible,
2. established under Title 39, Chapter 71,
3. administered by the federal government,
4. providing on location care to employees,
5. ~~in existence for the immediately preceding 15 years,~~
6. established by the Board of Regents,
7. *Erisa plans,*
8. *government subdivision plans,*

Section 5. QUALIFICATIONS FOR REGISTRATION. In order to be registered, a self-funded plan must require contributions from the employer and employee to be paid in advance into an actuarially sound, irrevocable trust administered by a trustworthy trustee, and provide notification to beneficiaries of benefits, restrictions and procedures for filing claims.

Ex. #2
3/13/89

Section 6. APPLICATION FOR REGISTRATION. Each self-funded plan must submit to the commissioner, an application along with:

1. a copy of the trust agreement,
2. a copy of the benefits,
3. a financial statement certified by an accountant,
4. projected income and disbursements for 12 months,

Section 7. GRANT OR DENIAL OF REGISTRATION. The commissioner must decide within 60 days whether an application meets the qualifications.

Section 8. TRUST FUND POWERS. The trust fund may sue and be sued, contract, borrow money and give security for loans.

Section 9. TRUST FUND LIABILITY. A trust fund is liable for benefits specified, but may not be garnished or levied upon for obligations of beneficiaries or be required to pay obligations of the employer.

Section 11. RESERVES. A self-funded plan must maintain reserves sufficient to pay claims. ~~;-which-reserves-shall-be certified-by-a-member-of-the-American-Academy-of-Actuaries-as being-sufficient.~~

Ex #2
3/13/85

Section 12. RECORDS AND ACCOUNTS. Each year, the trustee will submit a report to the commissioner summarizing financial transactions of the previous year.

Section 13. FEES. Each self-funded plan will pay fees to the commissioner which fees will be used to offset expenses incurred in the regulation of self-funded plans.

Section 14. EXAMINATION OF RECORDS AND ACCOUNTS. The commissioner may examine the records of the self-funded plan whenever he considers it advisable. The fund shall bear the costs of the examination.

Section 15. BONDING. All who handle funds shall be bonded in an amount not less than $25,000.

Section 18. RECOVERY OF DEPLETED FUNDS. If the funds have been wrongfully depleted, the attorney general may bring action.

Section 19. TERMINATION OF REGISTRATION. The commissioner may terminate the registration if he finds that the fund no longer meets the requirements of registration, or the benefits promised are not being fairly paid.

Section 20. LIQUIDATION OF TRUST FUND. Upon termination of the fund, the trustee shall liquidate the plan under a fair plan of liquidation filed with the commissioner.

Ex. #2
3/13/89

Section 22. PENALTIES. Anyone who violates these sections shall be fined not more than $1,000 or be imprisoned for 1 year or both.

Section 24. COVERAGE FROM MOMENT OF BIRTH. Each self-funded plan must ~~provide accident and sickness coverage from birth to each newborn infant of an insured.~~ *comply with all state mandated benefit laws.*

Section 25. CHOICE OF DENTAL PLAN PROVIDERS. A self-funded plan that covers a dental care assistance plan must permit the covered persons to obtain services from any license dental care provider of their choice.

~~Section 27. EXCEPTIONS. These provisions do not apply to:~~

~~1. domestic farm mutual insurers;~~

~~2. domestic benevolent associations;~~

~~3. fraternal benefit societies;~~

~~4. health maintenance organizations;~~

~~5. workers' compensation insurance programs;~~

~~6. state employee group insurance programs;~~

~~7. state self insurance reserve fund;~~

~~8. arrangements between political subdivisions undertaken to indemnify one another by way of pooling;~~

Ex. #2
3/13/89

~~9.---plan-of-a-single-political-subdivision-to-provide-its officers-or-employees-disability-or-life-insurance;~~

~~10.--Board-of-Regents'-Group-Insurance-Program.~~

Section 28. FEES AND LICENSES. The commissioner shall collect various registration fees in addition to a fee of 14 cents a month per employee covered by the self-funded plan during each year.

~~Section-33.----TERMINATION-DATE.---This-act-terminates-on-June 30,-1991.~~

SENATE BUSINESS & INDUSTRY
EXHIBIT NO 3
DATE 3/13/89
BILL NO. HB 669

PROPOSED AMENDMENTS TO H. B. 669

MONTANA CONTRACTOR'S ASSOCIATION

Amendment No. 1

Amend page 3, line 19, INSERT

(c) Neither an employee benefit plan nor any trust established under such plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company, or to be engaged in the business of insurance or banking for purposes of any law of this state purporting to regulate insurance companies, insurance contracts, banks, trust companies or investment companies.

Amendment No. 2

Amend page 5, lines 3 through 11

STRIKE LINES 3 through 11 and renumber subsequent sections.

Amendment No. 3

Amend page 16, lines 3 through 25

STRIKE LINES 3 through 25

Amendment No. 4

Amend page 11

STRIKE LINES 1 through 4
and

Lines 19 through 20

STRIKE ", other than a collateral loan reffered to in subsection (1) (d) but subject to subsections (2)(a) and (2)(b)"

Amendment No. 5

Amend page 17, line 6

Following the word may strike the word "not"

Amendment No. 6

Amend page 32, lines 1 through 6

STRIKE LINES 1 through 6

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 3/13/89
BILL NO. HB 669

To be filled out by a person testifying or a person ~~who would not~~ like to stand up and speak but wants their testimony ~~entered~~ into the record.

WITNESS STATEMENT

NAME Roger Tippy BILL NO. HB 669

ADDRESS P O Box 543 Helena 59624

WHOM DO YOU REPRESENT? Montana Dental Association

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS: The dentists asked for the amendment which is section 25 of this bill, and with that amendment support this bill.

Sec. 25 extends the policy of freedom of choice of dentists recently recognized in another bill (HB225) in what would be a new set of regulations in the Insurance Code. The other bill put this policy in the PPO and HMO laws and section 25 would put the policy in the anti-health trusts law.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form
Rev. 1985

Chip Erdmann

PROPOSED AMENDMENT TO HB 669

Third Reading Copy

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 3/13/89
BILL NO. HB669

Page 5, line 12, following act]
STRIKE ; or
INSERT ;

Page 5, following, line 14
ADD

(H) ANY ARRANGEMENT, PLAN, OR INTERLOCAL AGREEMENT BETWEEN POLITICAL SUBDIVISIONS OF THIS STATE WHEREBY THE POLITICAL SUBDIVISIONS UNDERTAKE TO SEPARATELY OR JOINTLY INDEMNIFY ONE ANOTHER BY WAY OF A POOLING, JOINT RETENTION, DEDUCTIBLE, OR SELF-INSURANCE PLAN.

Montana School Board Assoc.

Montana United School Trust

Chip Erdmann

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 3/13/89
BILL NO. HB669

TESTIMONY ON PROPOSED HB669
Submitted by
DIRK C. VISSER, RHU
President, Intermountain Administrators, Inc.

For the record, Intermountain Administrators, Inc. is a licensed Third Party Administrator operating in Montana. Our firm is retained as a Third Party Administrator by several employers who have sponsored self-funded health benefits plans which collectively cover over 20,000 residents of Montana. These employers include several Montana Counties, Cities and School Districts as well as two association plans and numerous corporate employers.

The "Statement of Intent" of HB669 indicates that the bill is "principally to protect Montana Insurance Consumers, while making insurance more available in this State".

While this intent is certainly good, HB669 as it is presently written, would not accomplish that objective for the following reasons:

1) Most private employers and state associations are exempt from State Regulation under Section 514 (b) of the Employee Retirement Income Security Act of 1974 (ERISA).

2) HB669 would not make health insurance more available in this State, as it would add additional layers of administrative and regulatory expense to the cost of establishing and maintaining a self-funded plan. This would discourage many employers such as Cities, Counties, School Districts and Religious Organizations from establishing a self-funded plan as an alternative to skyrocketing health insurance rates.

   There are currently several municipalities, school districts, church groups and associations operating self-funded plans in Montana at an affordable cost to their employees. In most instances the self-funded plans net costs are several thousand dollars less than comparible plans offered by insurance companies.

   The collective savings that Montana employers have realized because of these existing self-funded plans amounts to millions of dollars. This is money that has been and will be retained by local municipalities, school districts, church groups and employer associations for the benefit of their employees, instead of contributing to the profits of insurance companies.

3) HB669 does not provide any protection for Montana Consumers in the event that a self-funded plan that it proposes to regulate is declared insolvent by the Insurance Department of Montana.

   There is no provision to include those self-funded groups in any guarantee fund, such as that maintained in Montana to protect consumers in the event that an insurance company is declared insolvent, nor is there any provision to hold the employers who are participating in a Multiple Employer Welfare Association (MEWA) liable for unfunded claims of their employees should the Trust become insolvent.

We are opposed to HB669 as it was originally drafted and subsequently amended because it does not accomplish its "Statement of Intent".

We would welcome and support any reasonable regulations to protect Montana Consumers. HB669 must either be amended to accomplish its stated objective or new proposed regulations should be drafted that would accomplish the intent of HB669.

Thank you for your consideration of these items of concern.

TESTIMONY FOR HB 251

Senate Business & Industry Committee

10:00 a.m., Monday
March 13, 1989

Mr. Chairman & Members of the Committee:

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

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

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

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

Thank you.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 8
DATE 3/13/89
BILL NO. HJR 5

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

Testimony of Jim Murry before the Senate Business and Industry Committee on House Joint Resolution 5, March 13, 1988

Mr. Chairman and members of the Committee, for the record, I am Jim Murry, Executive Secretary of the Montana State AFL-CIO, and am here today in support of House Joint Resolution 5 urging Congress to repeal the McCarran-Ferguson Act.

When McCarran-Ferguson was first enacted in 1945, it was widely believed that state regulation of the insurance industry would be enough to protect the consuming public from anti-competitive practices. Congress granted the insurance industry a broad exemption from anti-trust regulation, an exemption that has been withheld from other industries. Now, some 44 years later, it is clear that the federal anti-trust laws could be put to good use in the insurance industry.

Critics of the insurance industry point out that the states have not regulated the industry tightly enough to prevent anti-competitive practices. As evidence, they cite the difficulty of obtaining liability insurance for local governments, day-care providers, obstetricians, nurse mid-wives and many others. Anti-trust regulation would jeopardize certain insurance industry practices such as price fixing, regional monopolies and so-called "tie-in" policies that require consumers to buy one type of insurance in order to get another. As further evidence of the need for federal regulation, critics cite a recent lawsuit by 19 state attorneys general alleging that certain insurance companies conspired to withhold coverage from certain classes of potential customers.

The insurance industry appears to want the best of both worlds when it comes to regulation. They have mounted an extensive and costly lobbying campaign to keep Congress from altering or repealing the McCarran-Ferguson Act, thus keeping insurance free from federal regulation. At the same time, the insurance industry is lobbying for regulations that would keep bankers out of the insurance business.

We believe that the time has come for the federal anti-trust laws to be applied to the insurance industry just as they are applied to other industries. We believe that it is time for the insurance industry to be held accountable for some of their questionable practices, and we strongly support this resolution.

Thank you.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 9
DATE 3/13/89
BILL NO. HJR 5

REGARDING HOUSE JOINT RESOLUTION #5

To: Montana Senate Business & Industry Committee

From: Roger McGlenn, Representing the Independent Insurance Agents' Association of Montana, 442-9555

The McCarran-Ferguson Act

The Independent Insurance Agents Association of America, our national association, has carefully reviewed whether the McCarran-Ferguson Act continues to serve an important public purpose. Those proposing to amend or repeal it argue that the industry currently sets its prices in unison and that amendment or repeal would increase competition and lessen affordability and availability problems.

The conclusions of our study are:

(1) While rating organizations do publish advisory rates for typical risks in given classes, these are only a starting point for individual companies, which set their own final price to the consumer. In the real market, the actual price charges by individual companies for any given risk vary tremendously. We invite consumers to ask any independent agent for a

Ex. #9
3/13/89

demonstration of the variation in prices for any given risk. The degree of competition is reflected by the fact that in a field which is served by about 3,800 companies, no single company or group has more than 10 percent of the property/casualty insurance market. In addition, the presence of a large force of independent agents facilitates a competitive insurance system.

(2) There is a substantial risk that repeal or amendment of the McCarran-Ferguson Act will lessen competition, not increase it, by squeezing smaller, regional carriers out of the market. These carriers have become an increasingly important source of insurance to independent agents and their insureds, particularly in small towns and rural areas. Repeal or amendment also could jeopardize the continued availability of common coverage forms that facilitate the ability of independent agents and the public to shop easily between companies.

(3) Repeal or Amendment of the Act would lead to increasing federal regulation of the insurance business and a reduced role for state regulation. We believe this would be a disservice to the public because the state regulators are closer to local problems and are in a position to be more responsive

Ex. #9
3/13/89

to individual consumers than a federal regulator would be.

For all of these reasons, we believe the McCarran-Ferguson Act continues to serve an important public objective. We are deeply troubled that repealing or amending this federal law would have a severely disruptive effect on insurance markets and exacerbate affordability and availability problems for the public especially in rural areas like Montana.

We urge the Senate Business and Industry Committee to vote no on House Joint Resolution Five.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 10
DATE 3/13/89
BILL NO. HB 734

Amendments to House Bill No. 734
Third Reading Copy

For the Senate Committee on Business and Industry

Prepared by Eddye McClure
March 9, 1989

1. Title, line 20.
Following: "RESIDENCE;"
Insert: "PROVIDING FOR APPOINTMENT OF INSURANCE PRODUCERS; PROVIDING FOR NOTIFICATION UPON TERMINATION OF AN APPOINTED INSURANCE PRODUCER;"

2. Title, Page 2, lines 7 and 8.
Following: "33-17-403,"
Strike: "AND"
Following: "~~33-17-1104,~~"
Insert: "AND 33-17-1104,"

3. Page 5, line 5.
Following: line 4
Insert: "NEW SECTION. **Section 5. Appointments of insurance producers by insurers.** (1) An insurance producer may not claim to be a representative of or an authorized or appointed insurance producer of or use another term implying a contractual relationship with a particular insurer and may not accept applications for the insurer unless the insurance producer becomes an appointed insurance producer of that insurer pursuant to this section. The following are the appointing insurer's requirements for making appointment of a licensed insurance producer:

(a) The insurer shall, no later than 15 days from the date the agency contract is executed or the first insurance application is submitted by a licensed insurance producer, whichever is earlier, file with the insurance department a written notice of appointment on a form prescribed by the insurance department.

(b) If there is no executed agency contract, the insurer shall mail to the licensed insurance producer, no later than 15 days from the date the first insurance application is submitted by him, a copy of the notice of appointment form filed with the insurance department. If the licensed insurance producer does not receive the acknowledgement of appointment from the insurer within 30 days from the date the first insurance application is submitted to the insurer, the insurance producer shall immediately discontinue acting as an insurance producer on behalf of that insurer until the acknowledgement is received or the agency contract is executed.

(2) Upon receipt of the notice of appointment, the

insurance department shall verify within 5 working days that the licensed insurance producer is eligible for appointment. If the licensed insurance producer is determined to be ineligible for appointment, the insurance department shall notify the insurer within 5 days of the determination.

(3) An appointment is effective on the date of the executed contract and is perpetual until canceled by the insurer.

NEW SECTION. **Section 6. Notification of appointment termination.** (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department. If the reason of the termination is for any of the causes listed in [section 49 or 63], the insurer shall notify the insurance department of the reason and the insurer shall, upon request of the insurance department, provide information, documents, records, or other data pertaining to the termination that may be used by the insurance department in any action taken pursuant to [section 60].

(2) Any information, documents, records, or other data provided pursuant to this section is privileged and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith."

Renumber: subsequent sections

4. Page 14, lines 13 through 15.
Following: "~~$ 300.00~~"
Strike: "$ 500.00"
Insert: "$ 600.00"

5. Page 15, lines 8 through 21.
Strike: subsection (e) in its entirety
Renumber: subsequent subsections

6. Page 16, line 6.
Following: "~~100.00~~"
Strike: "50.00"
Insert: "40.00"

7. Page 19, lines 18 through 23.
Strike: subsection (2) in its entirety
Renumber: subsequent subsection

8. Page 29, lines 8 through 13.
Strike: subsection (2) in its entirety

Ex. #10
3/13/89
HB 734

Renumber: subsequent subsections

9. Page 32, lines 10 through 15.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

10. Page 77, lines 4 through 6.
Following: "~~33-17-1104~~"
Strike: remainder of line 4 through "33-17-1104" on line 6

11. Page 92, line 2.
Following: "33-17-403,"
Strike: "AND
Following: "~~33-17-1104,~~"
Insert: "and 33-17-1104,"

12. Page 92, line 9.
Following: "4"
Insert: "through 6"
Following: "4]"
Strike: "is"
Insert: "are"

13. Page 92, line 11.
Following: "4"
Insert: "through 6"

SENATE BUSINESS & INDUSTR
EXHIBIT NO. 10
DATE 3/13
BILL NO. HJR 5

MONTANA FARM BUREAU FEDERATION
502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

BILL # HJR 5 ; TESTIMONY BY: Lorna Frank

DATE March 13, 1989 ; SUPPORT _____ ; OPPOSE Yes

Mr. Chairman, members of the committee for the record my name is Lorna Frank, representing 3600 Farm Bureau members throughout the state.

Farm Bureau opposes HJR 5, we believe each state should regulate the insurance companies within the state, not the federal government.

This could take away another of the states rights and turn it over to the federal government. Montana does a far better job of regulating business within the state, than does the federal government.

Washington, D.C. is too far away to know what is best for Montana. We urge this committee to "do not concur" on HJR 5.

SIGNED: Lorna Frank

DATE 3/13/89

COMMITTEE ON Business & Industry 1 of 2

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
E. H. Garrison	MCA. Bldrs MT	669	X	
Ay Wolcott, JR	Wolcott & Associates, Inc	669		X
George Estel	Employee Benefit Plans	669	X	
Mike Young	CCA Billings & Missoula	HB669	✓	
Rob Moravec	Msla Chamber	HB669	✓	
Roger McGlenn	IIAM	HJR-5		X
Thomas A. Graul	Century Insurance Agency	HJR5		X
Jim Tletwiler	MT. Chamber Com	HJR5		X
John Cadby	MT Bankers	HB251	X	
Dirk Visser	Intermountain Forum, Inc	HB669		X
Roger Tippy	Mont Dental Assn	HB669	X	
Chip Erdmann	MT United School Trust	HB669		X
Leonard Bailey	MT Hospital Assn	HB669		X
Barry L. Hjort	US West Comm.	HB434	X	
Bill Leary	MT. Bankers Assn	HB251	X	
Jacqueline Terrell	Amer Ins Assoc	HJR5		X
"	"	HB434	X	
Bonnie Tippy	Alliance of Am Insurers	HJR5		X
Floyd Lockram, Jr.	MT. Contractors Health Care	669	X	
Dan Bruneau	Washington Corporations	669	X	
Michael S. Sherwood	MTLA	HJR5	X	
John Morris	MACO	669		X
Jim Angela	MT Chamber of Commerce	669	X	
LARRY AKEY	MT ASSOC OF LIFE UNDERWRITERS	HJR5		X
DONALD MURRAY (for Gene Phillips)	Northwestern Telephone Systems National Ass'n Independ. Insurers	HB434	X	
DONALD MURRAY (for Gene Phillips)	Natl. Ass'n. Independ. Insurers	HJR5		X

(Please leave prepared statement with Secretary.)

COMMITTEE ON B & I

DATE 3/13

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VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Lorna Frank	Farm Bureau	HJR 6		X
Mike Sherwood	MTLA	HJR 5	X	
Mark Webb	American Ins. Assn	HJR 5		X

(Please leave prepared statement with Secretary)