

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By VICE CHAIR SHEILA RICE, on January 18, 1991,
at 9 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Steppler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: HB 181 and SB 5 were heard. Executive
action was taken on HB 181 and SB 5.

HEARING ON HOUSE BILL 181

Presentation and Opening Statement by Sponsor:

REP. DON LARSON, HD 65, Missoula, sponsor of HB 181 said this bill has the approval of the Montana State Council of Fire Fighters Association. It is a consumer protection bill. It has the approval and endorsement of several fire fighters organizations and several realtors. The bill requires the seller of a private residence to give written notice to the buyer as to whether there is or is not a fire or smoke detection device in the dwelling. It encourages but does not require installation of a home smoke detection device. The law requires smoke detection

devices be installed in commercial rental units and in new buildings. There is a large void in private personal residences. Every building should be equipped with a smoke detection device.

Proponents' Testimony:

Vern Erickson, Montana State Firemen's Association, said they realize this bill does not go far enough, the mere fact that it creates an awareness for these devices makes it worth while to come and testify. He encouraged support for this. Many times they get to see where these are actually life saving devices, and anything they can do to encourage the installation is well worth the effort. He encouraged support for this bill.

Tim Bergstrom, President of the Montana State Council of Professional Firefighters, said he would echo the sentiments of Mr. Erickson. All the members of his organization recognize the need and the value of these life saving early warning devices. Strongly encourage support.

James A. Lofftus, President, Montana Fire District Association, said he would repeat what was said before him, and it seemed ironic that we require a law for safe water to drink, sewage laws, etc., to protect people's lives, and a little bill that requires a smoke detector in a house when it is sold is not a law. A smoke detector costs about \$4.95, much less than for a sewer. It should make a person feel good to help save lives. This is something that Montana needs. He asked for support for HB 181.

Bruce Suenrism, Missoula Rural Fire District, said not only do these smoke detectors save lives but also in cases where they are absent we call on our firefighters to recover bodies of victims of fires that are not awakened or alerted by smoke detectors. While this bill did not go far enough, he asked support because it increases awareness of the public to the need for these devices.

Henry E. Lohr, Montana State Volunteer Firefighters Association, stated they would like to have the committee consider favorable action on HB 181.

Lyle Nagel, Montana State Fire Chiefs Association, said an advantage he could see from the bill is that if there are fire alarm systems and smoke detectors in the building the new owner would be made aware of the type of unit it is and what is required to service it, whether it is a wired in type or battery operated device. The Association asked support for this bill.

Beth Baker, Department of Justice, and the State Fire Marshal Bureau, offered a technical suggestion on the bill in Section 2 which provides codification instruction. It provides the bill is intended to be codified in Title 50, Chapter 39 and that section of that chapter of the code pertains to the requirement that the

State Fire Marshal license businesses for persons which intend to sell, service or install fire detection equipment. She was afraid if this bill gets put in that position in the code, no one would ever see it. There seemed to be no perfect place to put it, but she suggested an alternative of Title 30, Chapter 11 pertaining to sales and exchanges that are not covered by the Uniform Commercial code and includes some provisions on agreements to sell real property. Part 2 of that Chapter is entitled 'seller's responsibility' and has a number of provisions dealing with the responsibilities of the seller; she felt that would be a more appropriate place for this bill to be codified.

Opponents' Testimony: None

Questions From Committee Members:

REP. HANSON asked what constitutes a written notice in Page 1, line 24. Appraisal forms list whether there is a fire detection device in there. Evaluation forms list it, several of the forms already list whether the house has it or not. Does this section contemplate a separate piece of paper that says yes or no? Ms. Baker said she was hoping to find a provision in the code that dealt with buy and sell agreements. It seems a notice in the buy-sell agreement or other documents that go along with a sale should satisfy the provisions of the bill although it intimates a separate piece of paper be included in the documents.

REP. LARSON explained that is probably an oversight on the part of both the drafter and himself and had no problem with discussing where it should appear. If it pleases the committee and would more clearly clarify what constitutes a written notice, he has no problems with amending it to specify that this appears in the buy-sell agreement.

REP. SONNY HANSON said the answer did address the question, but the appraisal form would constitute a written notice that the fire device or smoke detector was or was not installed because people see it. REP. LARSON said not all transactions involving a buyer and seller of real estate involves an appraisal, since it is conceivable to have a cash transaction. The only universal document in those transactions would be the buy-sell agreement.

REP. STELLA JEAN HANSON said it seemed the only place it would serve any purpose at all would be in the buy-sell agreement because even if the sale bypassed a real estate agent it would have to go to a title company to transfer title. There is no responsibility in this bill on the part of the entity that makes or finalizes that sale whether it is a real estate agent or a title company, so the only way it would be known would be if that notice was part of the buy-sell agreement. If it is a separate document, it could be no one would see it.

REP. CROMLEY said as he understands this bill there is no way to enforce it. Ms. Baker answered that the bill itself does not

contain any enforcement conditions.

Closing by Sponsor:

REP. LARSON closed by re-emphasizing that this is a consumer protection bill. It is intended this bill would encourage people to become fire conscious and encourage them to put smoke detector devices in their residences. It has the support of the majority of the firefighting groups across the state and has the support of those people involved. He felt that by going through the real estate agencies homeowners would become more aware of the value of fire detection devices.

HEARING ON SENATE BILL 5

Presentation and Opening Statement by Sponsor:

SENATOR BOB BROWN, Senate District 2, chief sponsor of SB 5, said this bill was introduced at the request of the State Auditor. It is an act to generally revise the Securities Act of Montana; revising exempt transactions; clarifying physical delivery of commodities; expanding the definition of security; modifying the requirements for filing registration statements; amending several sections; and providing an immediate effective date. There are 5 or 6 general divisions to the Securities Act which is Title 30 of the state law that this bill would change. The first change occurs on Page 2 (b) where the Securities Department is given legal authority to require salesmen of securities to register. There is a vagueness in the law as to the actual requirement.

The second change occurs in Section 1 of Pages 4 and 5 and makes it clear that the current commodities investment contract that applies to commodities held as collateral be delivered to a bank rather than to the purchaser. The purpose for this is to stop fraudulent speculators. The third change occurs on Page 10 lines 4-8 changing the definition of securities which is obsolete, and inserting more popular names of securities which need to be specifically mentioned in the law. On page 22, lines 9-12 conform to the first amendment concerning the registration requirement for salesmen of securities. On page 23 this amendment would keep the Department from having to keep duplicate records of various documents when the same information is contained in other documents. On Page 25, line 25 clarifies that the Securities Department of the Auditor's office can charge for making uncertified as well as certified copies of documents. This has been a burden on their budget. He said Robyn Young would explain the changes more thoroughly.

Proponents' Testimony:

Robyn Young, Montana Securities Department, spoke in favor of Senate Bill 5. She explained the amendments to SB 5 truly are housekeeping. Her testimony is attached as EXHIBIT 1. This bill does not make any policy changes. She urged this bill be given a

Do Pass recommendation.

Opponents: None

Questions From Committee Members:

REP. WALLIN asked about the storage space for these commodities and if they needed a warehouse for them, even if it was out of state. She said the amendment in this bill relates to commodity investment contracts, not to commodities referred to in a previous bill which was a policy bill where this bill is a cleanup bill. Basically, most people would assume that this is included because the current definition says it must be physically delivered to the purchaser and some of these promoters try to claim that delivery to the bank is not the same as delivery to the purchaser, and do not consider delivery to the bank equivalent to delivery to the purchaser.

Closing by Sponsor: SEN. BOB BROWN closed.

EXECUTIVE ACTION ON SENATE BILL 5

Motion: REP. WALLIN MOVED SB 5 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 181

Motion: REP. BACHINI MOVED HB 181 DO PASS.

Motion: REP. LARSON moved to amend HB 181 in Section 2, Page 2, Title 50, Chapter 39 the provisions of which apply to section 1, be stricken and insert Title 30, Chapter 2, part 2. That properly codifies the bill.

Motion: REP. LARSON moved to amend HB 181 Page 1, line 24 following "buyer" insert "in the buy-sell agreement". This would specify a written notice should appear in the buy-sell agreement.

REP. CROMLEY said he would concur in the first amendment but not in the second. He felt written notices should be sent later.

REP. HANSON asked if an appraisal that specifically states there is a fire warning device in the house constitutes a written notice? He said his definition of written notice is that an appraisal or some other form would constitute written notice as long as the buyer received a copy of it and it is mentioned in that unit.

CHAIR RICE said they would split the amendments and limit the discussion to the codification.

VOTE: Amendment 1, on codification passed unanimously.

CHAIR RICE asked for discussion on the second amendment on the

buy-sell agreement.

REP. TUNBY said the intent of this bill is for something separate and distinct from anything else so that people take notice of it.

REP. STELLA JEAN HANSEN said she saw nothing in the bill that requests distribution, it will be on the books and no one will see it unless the person selling the house is aware of it. There is no enforcement for this bill.

REP. KILPATRICK asked if this would constitute a complete change in the buy-sell agreements? Are they printed out and you just put in the material? Where do you get the buy-sell agreements? REP. STELLA JEAN HANSEN said the Board of Realty Regulation is where they get theirs. They have printed buy-sell agreements and we pick them up when we run out. They would have to add the notification to the buy-sell agreement.

REP. SCOTT said he felt the bill had good intentions but felt without any teeth it just won't be done.

REP. LARSON spoke in favor of the buy-sell agreement requirement because that would probably cover 99.9% of all real estate transactions. If we require the Board of Realty to include this notification in the buy-sell agreement we have effectively notified nearly every buyer and seller there should be a fire detection device in every house.

REP. ELLIS said he would support placing the notification in the buy-sell agreement.

REP. DOWELL asked if they adopt an amendment to put the notification in the buy-sell agreement, would we then have to change the title where it says written notification to give the buyer information in the buy-sell?

Mr. Verdon, staff researcher, said he did not think it was necessary to change the title, it is still good notification but does not affect the title.

REP. KNOX asked if this bill is passed and it is amended that it be in the buy-sell agreement, would all buy-sell agreement forms be obsolete and a new form have to be printed? Mr. Verdon said he did not know that anybody is obligated to provide buy-sell agreements for anyone else. Unless the Board of Realty Regulation has a rule requiring sales be completed on forms the Board provides, he did not know if there was a requirement that any particular form be used.

REP. BENEDICT said on every buy-sell agreement he had ever seen there are some generic spaces where you can add whatever language you might need. He didn't think the industry would have to print any new forms just for that language.

REP. HANSON raised the issue that this bill is optional and a written notice was questionable in its presentation, and if you didn't do it nothing happened anyway. Most of those testifying were from fire organizations. If we go ahead and change it into a mandatory condition there might have been more that would have been opposed to the bill. He felt when changing this to a mandatory situation it was changing the intent of the bill.

REP. BACHINI said he would disagree because the Department has jurisdiction over this. They would have looked the issue over and, knowing the bill could change considerably, they would have been here and testified. They watch these fairly closely.

REP. DOWELL said as to the mandatory nature, you are basically saying whether or not you have a smoke detector, it is not saying you have to have one.

REP. LARSON said he did not want to get too far afield from the intent of the bill. REP. McCULLOCH suggested the addition of the single word "or". He read the proposed new language which requires the addition of the word "or"; it would read on line 24 "the seller shall provide a written notice to the buyer in a buy-sell agreement or at the time of the sale".

Motion\Vote: REP. LARSON withdrew his former amendment and moved a substitute motion to amend HB 181 line 24 following "buyer" to insert "in a buy-sell agreement or". Motion carried unanimously.

Substitute Motion: REP. LARSON MOVED HB 181 DO PASS AS AMENDED.

REP. STEPPLER asked if we could legally decide if this could be a liability bill. Mr. Verdon answered that he did not think this imposes anything on the seller for anything except to give notice whether there is a smoke detector in the house.

REP. CROMLEY said if I sell a house to someone and give the impression that every room has a smoke detector, and the buyer goes to sleep that night and the house burns down, he has no remedy in court even though it is implied there is a fire detection device in the house.

REP. LARSON said he had the same thought and perhaps the insertion of the word "working" smoke detection device might work.

REP. STELLA JEAN HANSEN said the law already says rental units must have them. She said she could never remember any action taken against the landlord if the place burned.

REP. BACHINI said he presented an amendment by the Landlord's Association to their legal people and there is a section in the law not making you liable for the maintenance of the device.

REP. SCOTT asked what the enforcement was on the rental law in

regard to installation of the smoke detector. REP. BACHINI answered that he did not remember the enforcement. He recalled the bill that required all landlords to install a smoke detector which also required the landlord to maintain those detectors and that was a big problem. He submitted an amendment from the Landlords Association stating the landlords would not be liable; that the unit was put in and inspected and no further maintenance was required by the landlord. That is now in the law.

REP. ELLIS said the only protection this legislation provides is through awareness. That is the intent of the measure, we have done that, and it should be the responsibility of the buyer to see that it works.

REP. SCOTT said the bill is for notification about a smoke detector, it is not an issue as to whether it is there or not, it does not direct the smoke detector has to be installed; it is the notification we are addressing. He would like to see an enforcement added to this bill. Without that the effect could be dormant.

REP. HANSON said in regard to smoke detectors, they are required on all new houses so this notification will basically benefit existing houses. The type of smoke detectors that are available are direct wire or battery operated and the problem you have in trying to enforce the installation of battery type smoke detectors is that it becomes a real liability problem for the one responsible. The battery types are cheap, reasonable and work for about 6 months then go out. Everyone should use the direct wire type.

REP. KILPATRICK said it was obvious with all the fire fighters that they all wanted a better bill, but felt this was an awareness bill. By putting notification in the buy-sell agreement we have done exactly what they want and if we go in and put in enforcements, etc., we are missing the intent of the bill.

VOTE: The motion HB 181 DO PASS AS AMENDED passed unanimously.

ADJOURNMENT

Adjournment: 9:25 a.m.



REP. SHEILA RICE, Vice Chair



JO LAHTI, Secretary

BB/jl

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

DATE *Jan. 18, 1991*

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1-18-91
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HOUSE STANDING COMMITTEE REPORT

January 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 5 (third reading copy -- blue) be concurred in .

Signed: 
Bob Bachini, Chairman

Carried by: Rep. Bachini

HOUSE STANDING COMMITTEE REPORT

January 18, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 181 (first reading copy -- white) do pass as amended .

Signed: _____
Bob Bachini, Chairman

And, that such amendments read:

1. Page 1, line 24.
Following: "buyer"
Strike: ", "
Insert: "in a buy-sell agreement or"
2. Page 1, line 25.
Following: "buyer"
Strike: ", "
3. Page 2, line 10.
Following: "Title"
Strike: "50"
Insert: "30"
Following: "chapter"
Strike: "39"
Insert: "11, part 2"
Following: "Title".
Strike: "50"
Insert: "30"
4. Page 2, line 11.
Following: "chapter"
Strike: "39"
Insert: "11, part 2"

TESTIMONY

EXHIBIT E-4h 1
SB 5 1/18/91

January 18, 1991

Senate Bill 5

Robyn J. Young

Montana Securities Department

For the record, my name is Robyn Young. I am the Deputy Commissioner of Securities. I am here representing the State Auditor and Montana Securities Department in support of Senate Bill 5. This bill represents the Department's housekeeping bill. The amendments to the Securities Act contained in this bill are designed primarily to clarify or correct the language contained in the Act.

Section 1 of the bill amends the definitions used in parts 1 through 3 of the Act.

The current definition of a salesman provides a blanket exclusion for a person who represents an issuer in transactions exempt under 30-10-105, MCA. However, we have adopted rules, pursuant to 30-10-105, MCA, which require a salesman to register. Therefore, the proposed amendment is necessary to correct a conflict in our statutes.

Our current statutes exclude from the definition of "commodity investment contract" those agreements through which the purchaser actually receives the commodity within 28 days of payments. We have had some enforcement problems with out of state boiler-room operators which have been selling bank financed, precious metals contracts where the metals are delivered to a bank. These fraudulent promoters have tried to claim that delivery to a bank is synonymous with delivery to the purchaser. This was clearly not the intent of the statute, since we have already provided an exemption from registration for commodities delivered to a bank within seven days. The critical issue is, if the programs are not securities then they are not covered by the antifraud sections of the Act and cannot be regulated at all by the Securities Department. If the language is added, then we can clearly apply the antifraud sections of the act to these promotions.

The current definition of a security does not clearly state that certain options are included. Certain recently adopted and popular hybrid securities, such as index options, puts, calls, straddles, etc. are commonly understood to be securities. However, specifically naming them in the definition eliminates unnecessary arguments. Federally, these securities have been expressly included in the definition of a security for some time.

Ex 1

1-18-91

SB 5

Section 2 of the bill amends provisions of the Act relating to the registration of broker-dealers, salesmen, investment advisers, and investment adviser representatives.

Presently, as our current statute 30-10-201(12)(k), MCA, reads, only broker-dealers and investment advisers have a responsibility to supervise employees. Officers, directors, branch office managers, and other control persons should also be responsible for such supervision. In Montana, we find that many salesmen are supervised by other salesmen who have the title of branch office manager. By deleting the reference to broker-dealer and investment adviser, it permits the securities department to initiate action against any individual who clearly has the responsibility for supervising an employee.

Section 3 of the bill amends provisions of the Act relating to the information that the department keeps on file concerning registrants.

We want to eliminate the ability of registration applicants to include previously filed documents by reference for the purposes of current registration applications. The right provided by 30-10-206(1), MCA, is not currently used by any issuers. If it was used, it could present problems and delays in processing the application because we would have to locate this old information, some of which is not stored within our office. It is preferable to have all of the necessary information and documents current and easily accessible.

The current statute, 30-10-206(3), MCA, provides that when securities are registered, they may be sold by the issuer, any person on whose behalf the securities are registered, or by a registered broker-dealer. This language appears to require that only broker-dealers need to be registered. Confusion will be avoided by clearly stating that salesmen must also be registered, as currently required under other sections of the Securities Act.

Section 4 of the bill amends provisions of the Securities Act relating to the requirements of filing of a consent to service of process with the Commissioner.

When the investment adviser representative sections were added to the Securities Act, the requirement to file a consent to service of process was inadvertently omitted. We have simply added the term "investment adviser representative" to the other specified applicants who must file a consent as required by 30-10-208(1), MCA.

Presently, under section 30-10-208(1), MCA, any person who has filed a consent to service of process in connection with a previous registration need not file another with a new application. This means the Securities Department must keep these documents indefinitely. In reality, this hasn't been used because the consent is built into the uniform securities application forms that must be used each time the applicant

files. Eliminating this section would allow the Department to ease its storage requirements.

Section 5 of the bill amends provisions relating to the fees which the Securities Department may charge.

The Securities Department currently charges 50 cents per page for copies of documents which we provide to the public at their request. The current statute only refers to charging for certified copies. At times we have requests for large volumes of information that does not have to be certified. We need to have the charge clearly stated in the statute.

The State Auditor and the Montana Security Department urge a "do pass" on Senate Bill 5. I would be happy to answer any questions you may have.

RY/me(SB5.tst)

VISITORS' REGISTER

Business & Econ Development COMMITTEE

BILL NO. AB 181

DATE Jan. 18, 1991

SPONSOR Rep. Larson

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

COMMITTEE

DATE Jan. 18, 1991

WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU WANT TO SUBMIT WRITTEN TESTIMONY.

PLEASE PRINT

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