

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Chairman Bob Bachini, on January 23, 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: CHAIRMAN BACHINI said SB 16 would be held so the sponsor could address the deleted section. HB 235, HB 248 would be heard today and executive action taken on them and on HB 53, and HB 157.

HEARING ON HOUSE BILL 235

Presentation and Opening Statement by Sponsor:

REP. BOB GILBERT, HD 22, Sidney, chief sponsor, said HB 235 would modify the all-beverages license requirement for airports. Currently the law says to qualify for an airport liquor license, 20,000 passengers must enplane or deplane, and it only applies to airlines certified as passenger airlines. There are 13 communities served by this type of service. Seven are now

eligible under the 20,000 passenger requirement and six would be eligible under this law. Only one has decent facilities to handle this. West Yellowstone would like to have the liquor license but does not meet the 20,000 passenger requirement.

Proponents' Testimony:

Mike Ferguson, Administrator, Montana Aeronautics Division, Department of Commerce, said they are most interested in the West Yellowstone airport. The state owns the airport and the Aeronautics Division is the agency charged with that operation. This could help to keep that airport financially self sustaining.

Opponents' Testimony:

Mark Staples, Montana Tavern Association, said they oppose HB 235 because it will allow the issuance of a potential eight non-quota all-beverage licenses. The communities that could qualify besides West Yellowstone are Havre, Sidney, Wolf Point, Glasgow, Glendive, Lewistown and Miles City. It does not take much to put in a small all-beverage facility, particularly when you are not paying for the license investment like others. According to the Liquor Division, there are 94 all-quota beverage licenses in these eight towns and 42 on-premise beer and wine licenses. Contrary to the high cost in these areas for license and facilities, the airport license fee would cost a one-time \$800 with no renewal fees. He asked the committee to protect the 135 small businesses in these communities from further devaluation of their investments.

Questions From Committee Members:

REP. CROMLEY asked if there is anything to prevent a privately owned bar from being in an airport now. Mr. Staples said he did not know the answer. Municipalities can open a bar in an airport now and he thought probably the municipality could lease it to an individual. Mr. Ferguson said the license would be owned and retained by the airport authority and they could then lease it.

REP. BENEDICT asked what quota area West Yellowstone was in and Diana Koon, License Bureau Chief, Dept. of Revenue, said the County is Gallatin and West Yellowstone has its own quota area.

REP. BENEDICT asked if they had met their quota. Ms. Koon answered that she did not know, but there would be no new licenses issued for West Yellowstone.

REP. CROMLEY remarked then a private person couldn't purchase a license that would allow him to open a lounge at the West Yellowstone Airport. Ms. Koon said a license that has already been issued could be transferred to that airport.

REP. CROMLEY asked, even if HB 235 were passed, someone using a license held by the airport authorities would still have to show necessity and public convenience. Ms. Koon answered yes.

REP. ELLIS asked if Mr. Staples would have any objection if this were limited so it only referred to West Yellowstone. Mr. Staples said they had a flood of calls from West Yellowstone saying they would have an objection. It would affect nine licensees in West Yellowstone who would be at a disadvantage because their licenses would be devalued.

REP. ELLIS said Mr. Ferguson had indicated people would be affected in the other airports and asked if he had any indication of how it would impact West Yellowstone. Mr. Ferguson said this past season there were air carrier operations of about 2600 during the summer season and about another 500 non-scheduled.

REP. HANSON asked what the summer months were. Mr. Ferguson said they operate the air carrier service from June 1 to October 1.

REP. HANSON asked if there are provisions that will allow a tavern to relocate its license or operate another facility and still maintain its original license. Ms. Koon said there is a provision whereby a licensee can operate at his primary location and temporarily at another location for a special event. They cannot cater their own event, so it would have to be a special event for which they were specifically hired.

REP. KNOX asked for clarification between a beer and wine application and the liquor licensing. Could someone obtain a beer and wine license under this process? Ms. Koon said they could not because they are within three miles of the quota boundaries of West Yellowstone. There is a quota in the corporate cities, but no quota in a county.

REP. STEPPLER asked if this bill goes through, and they are at quota now at West Yellowstone, Section 1, Part (4) says "the department of revenue shall issue a public airport an all-beverages license to a qualified applicant regardless of the number of all-beverages licenses already issued". He asked what that meant. Ms. Koon answered they can issue an airport license to anyone who qualifies at this point in time. There is no quota for an airport license.

REP. PAVLOVICH asked to have this explained once more. Mr. Staples said as an individual citizen he had sympathy for someone who says a bar license would increase the profitability and survivability at an airport or anywhere else. The businesses that would be affected by this have paid hundreds of thousands of dollars for the privilege that would be afforded this place for \$800. Along with this privilege of having machines, and no renewal fees, they would not be amortizing a huge debt. This is a marketplace which was started 40 or 50 years ago. Customers of the existing businesses helped pay the long term notes and any loss of business would adversely affect them.

REP. BARNETT asked if this were a question of survival of the airport at West Yellowstone. Mr. Ferguson said no, it would help the airport and the Board since they are always looking for a way

to make extra money.

REP. TUNBY asked if the established quotas were under quota. Ms. Koon said the quota was established in 1945. They are based on population in corporate areas and in the county. At the time the quotas were established there were already more licenses in some areas than the Legislature felt was necessary, but the licenses were not taken away.

REP. PAVLOVICH asked how the quota system worked. Ms. Koon said it depended on the population and different population areas had different systems. Section 16-4-201 is the all-beverages license quota that sets the figures for different populations.

REP. PAVLOVICH explained if you are under quota you can take the license from an area 125% over quota and move it to the county that is under quota. Ms. Koon answered that he was correct.

Closing by Sponsor:

REP. GILBERT closed on HB 235 saying he appreciated the Montana Tavern Association's effort to protect their "turf" but this is not a new law, it is merely changing an old law. The airport authority would determine if it were of value to the community and they would own the license. He discussed the various towns and their present facilities. There was only one community that was interested.

HEARING ON HOUSE BILL 248

Presentation and Opening Statement by Sponsor:

REP. ROYAL JOHNSON, HD 88, Billings said HB 248 would revise the laws on security regulations. The bill changed one word on page 9, and on page 16 the last paragraph is changed. He offered an amendment, EXHIBIT 1, to strike words on the last page. This bill would provide authority to the Montana Securities Department to regulate "any security issued by and representing an interest in or a debt of any security guaranteed by any insurer organized and authorized to transact business under the laws of any state".

CHAIRMAN BACHINI asked who had penciled out the remainder of lines 11 through 15 and was told by REP. JOHNSON that he had done so. CHAIRMAN BACHINI requested this not be done before the committee had a chance to look at the bill. The committee would take care of it by amendment. REP. JOHNSON said, in simple terms, this bill would allow each department to regulate what it knows best.

Proponents' Testimony:

David R. Barnhill, Deputy Insurance Commissioner, spoke in favor of House Bill 248, and explained variable annuities. EXHIBIT 2

Robyn J. Young, Deputy Commissioner, Montana Securities Department, spoke in favor of House Bill 248. EXHIBIT 3

James D. Strickland, representing himself as an Insurance Agent living in Belgrade and having an office in Bozeman, said the passage of this bill would be in the best interests of Montana. This product is primarily marketed for retirement and long-term tax deferred growth for consumers. They frequently deal with large sums of money and it is good to get it out of the control of the Insurance Department and into the hands of the Securities Department because they see frequent misrepresentation from agents dealing with sales. He worked very hard for his clients and if he were in violation of the insurance laws he could get a \$500 fine and perhaps his license taken away. If he were in violation of the securities law he could get a big fine and do jail time. It would be a deterrent against fraud and misrepresentation on the part of agents.

Opponents' Testimony:

Larry Akey, Montana Association of Life Underwriters, said they represent about 600 life and health insurance producers around the state. He was a reluctant opponent since what the sponsor and the Insurance and Securities Commissioners are trying to do with the bill is an effort they support. It would protect consumers in the marketplace. Many of the brokers or sales persons thought they were already regulated by the Securities Department. They have concerns with the language at the bottom of page 9 that this bill could be construed to cover variable life insurance as well as variable annuities. An annuity has both a death benefit and an investment component, and variable life insurance also has those two components. In addition to the amendment proposed by the sponsor, the committee should also strike the language "life insurance and" from the title so that it provides regulation of variable annuities only. He would like the record to clearly show Page 9, lines 11-15 include the words "fixed sum" in the definition of "security". It is not the intent of this committee or the Legislature that the inclusion of the word "fixed" means they are talking only about variable annuities and not life insurance.

Questions From Committee Members:

REP. PAVLOVICH asked if the Securities Department would have a problem with striking life insurance from the title. Ms. Young said there could be cases where life insurance might meet the definition of security, but her testimony today stated the current life insurance would not meet that definition.

CHAIRMAN BACHINI asked about the word "fixed". Ms. Young stated that has to be in there, it is a critical word in the bill.

CHAIRMAN BACHINI announced they would not take executive action. Perhaps Ms. Young, the sponsor and Mr. Akey could work out the

proper amendment.

REP. KNOX asked if the insurance agents who are selling annuities are registered under the Securities Department. Mr. Strickland said not all of them.

REP. CROMLEY asked if this would make a difference on the time a person purchases a variable annuity in terms of the commission in charge of it. Mr. Barnhill explained the whole thrust of this bill is to make sure the investor has all the material information needed to make a wise decision so he will not be misled or surprised down the road.

REP. CROMLEY asked if prospectuses would have to be filed with a broker dealer. Ms. Young stated prospectuses must be delivered prior to or at the time of sale.

REP. WALLIN asked if the information required is the same as that for mutual funds. Mr. Barnhill answered yes.

CHAIRMAN BACHINI asked if this bill should be effective immediately or go through the normal process. Ms. Young said effective immediately.

Closing by Sponsor:

REP. JOHNSON said there are other people besides insurance people who are selling variable annuities who have given them the same kind of regulating problems. The Series 5 or 7 licenses do not have a problem with this bill. The reason the amendment was inserted on the last page was because the bank people did not want to have to register the people that do variable annuities twice in the state--first as an insurance license and second as an investment license. We agree and have no problem with that situation.

EXECUTIVE ACTION ON HOUSE BILL 235

Motion: REP. LARSON MOVED HB 235 DO NOT PASS.

Discussion: REP. SCOTT asked REP. PAVLOVICH if he were in this business and had a clientele of about 3,000 people of which 1/3 were not able to legally purchase a product from him, would this be financially feasible no matter what price they paid for their license or their fixtures. REP. PAVLOVICH answered no, and he agreed with REP. SCOTT that it could be more of a liability than an asset to the airport. REP. PAVLOVICH explained most people who own a catering license let civic organizations use it for no fee to keep everybody happy.

REP. WALLIN said because the airport is a public facility, it seemed rather strange that neither the Gallatin County Commissioners nor anyone from the City of West Yellowstone appeared in support of the bill.

REP. HANSON explained what they had done in Billings. He was president of the Met Park and they wanted a liquor license in the Pioneer Room. They put out a request for bids to all the tavern associations with the understanding they would use their liquor license and hire a manager while the park furnished the people. That event ran for 34 days continuously. Maybe they could ask for a special event permit for the time the airport was open.

REP. STELLA JEAN HANSEN said in '83 or '85 Missoula County came in with a bill similar to this and managed to get a liquor license for a golf course. One of the committee members advised that was for a beer license.

CHAIRMAN BACHINI said he had a problem with the bill and would support the motion.

MOTION/VOTE: REP. PAVLOVICH MADE A SUBSTITUTE MOTION THAT HB 235 BE TABLED. Motion carried 14-4 with REPS. STELLA JEAN HANSEN, BARNETT, CROMLEY AND WALLIN VOTING NO.

EXECUTIVE ACTION ON HOUSE BILL 53

SUBCOMMITTEE REPORT:

REP. STEPLER, HD 21, Brockton, explained the recommendation of the subcommittee. They met with members of the service, the bill's sponsor and the Dept. of Commerce and worked out an agreement for increasing the fees by 25% in some cases and 30% in others. Commerce agreed they would come up with some type of phase-in period for some of the equipment to be purchased. In the handout, EXHIBIT 4, they requested that \$80,000 worth of equipment be purchased next year and \$20,000 the following year.

Motion: REP. PAVLOVICH MOVED HB 53 DO PASS.

MOTION: REP. PAVLOVICH MOVED HB 53 BE AMENDED. Copy of the proposed amendments are attached which were prepared by Paul Verdon, numbered HB005301.APV, dated January 21, 1991.
EXHIBIT 5

Discussion: REP. BENEDICT said discussions indicated 25% would be much more palatable.

CHAIRMAN BACHINI said he had a note handed to him from people from the Triangle area of Choteau-Dutton stating they were opposed to the bill, but would go along with absolutely no more than 25%, although they would rather have no increase in fees.

REP. KILPATRICK asked if anyone recalled when this was originally changed. It was in 1983.

REP. BACHINI asked if most of these increases are close to the

25%. REP. STEPPLER said they are.

REP. WALLIN said the savings are then much reduced but there is still an increase close to 25%. He mentioned underground tanks and suggested the possibility of passing the amendments and tabling the bill.

REP. HANSON said that the lobbyist for the service station and the dispensing group recognized this had to be raised although they bought from them often. The lobbyist representing the tanks, farms and wholesalers also supported the tank portion of this bill.

REP. KILPATRICK said the handout from Commerce indicated the equipment they wanted to purchase or re-fix was for a crane, a hoist for \$15,000, trucks, etc. The filling station people said all they use is a five gallon bucket. These fees are going into the fund for weight for the scale as well as for the pumps. Perhaps the whole thing is tied together, but it looks as though the people in the gas industry are supplementing the weight and measures.

REP. STEPPLER remembered when they talked to Mr. Kembel from Commerce he said some of the requests were for the weights and some were for the measures department, but they pretty well balance out.

REP. ELLIS said REP. KILPATRICK addressed the high burden on the measuring equipment as compared to what they need the equipment for, but in the testimony the Department said 40% of the devices licensed were weighing devices that generated 64% of the revenue while 60% of the devices licensed are measuring devices and generate only 36% of the revenue. This bill does move toward fairness of the problem.

CHAIRMAN BACHINI said there is no guarantee, with this increase of fees, they will purchase any equipment or get the equipment.

REP. WALLIN said he had talked to Mr. Kembel after the hearing and asked the reason for the drastic raises. It was hard to understand since there would be many less service stations when those raises were put into effect. Why more money for less work?

VOTE: Motion to amend HB 53 carried 17 to 1 with Chairman Bachini voting no.

MOTION: REP. WALLIN made a substitute motion that HB 53 DO NOT PASS AS AMENDED.

REP. TUNBY said he talked to the largest distributor in his county who didn't care for an increase in fees, but said they had lost about \$8,000 one year because of a defective meter. He felt it would be better to have the inspection more often.

REP. CROMLEY said the subcommittee discussed the idea of less frequent inspection but the industry felt more inspections were needed.

REP. STELLA JEAN HANSEN asked if the subcommittee had talked about getting that money back into their funds. REP. TUNBY said they would do everything in their power to see that the money was appropriated properly. REP. HANSEN was concerned with the money going into the General Fund since there was no guarantee it will ever get back for the intention stated in this bill. REP. STEPPLER said, in talking to Mr. Kembel, they felt it was fair that this go into the General Fund and that the public pay for part of the services as a consumer protection. The people that were selling also wanted it for protection.

REP. STELLA JEAN HANSEN asked if there is an appropriation in the budget now for this. REP. STEPPLER said there is a request for this appropriation in the budget.

CHAIRMAN BACHINI asked if this was in a modified or in the present budget. REP. STEPPLER said he did not know.

REP. SCOTT said he had discussed this with a bulk dealer in his area and found they would go along with something that would be progressive, based on volume of sales.

REP. LARSON felt the bill should pass as amended since it is a consumer protection bill.

VOTE: HB 53 DO NOT PASS AS AMENDED. Motion failed on a roll call vote 6-12. EXHIBIT 6

MOTION/VOTE: REP. PAVLOVICH MOVED TO REVERSE VOTE ON HB 53. HB 53 DO PASS AS AMENDED. Motion carried 12-6.

EXECUTIVE ACTION ON HOUSE BILL 157

MOTION/VOTE: REP. WALLIN MOVED HB 157 DO NOT PASS. Motion carried 16-3 with REPS. KILPATRICK, SCOTT AND MCCULLOCH VOTING NO.

EXECUTIVE ACTION ON HOUSE BILL 248

Motion: REP. PAVLOVICH MOVED HB 248 DO PASS.

MOTION/VOTE: REP PAVLOVICH MOVED TO AMEND HB 248. 1. Amend title, line 8, strike "LIFE INSURANCE AND". 2. Page 16, lines 11 through 15 following "state." on line 11 strike "This" on line 11 through "securities." on line 15.

VOTE: AMENDMENT 1. Motion carried unanimously.

VOTE: AMENDMENT 2. Motion carried unanimously.

HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

January 23, 1991

Page 10 of 10

REP. PAVLOVICH asked Mr. Verdon to make the amendment state an effective date. Mr. Verdon said in checking this, they did not want the effective date changed from October 1.

MOTION/VOTE: REP. PAVLOVICH MOVED HB 248 DO PASS AS AMENDED.
Motion carried unanimously.

CHAIRMAN BACHINI announced they would take executive action on HB 241 Monday and 169 would be heard Jan 24.

ADJOURNMENT

Adjournment: 11 a.m.



BOB BACHINI, Chairman



JO LAHTI, Secretary

BB/jl

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

DATE Jan. 23, 1991

[illegible]

HOUSE STANDING COMMITTEE REPORT

January 23, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 53 (first reading copy -- white) do pass as amended .

Signed: Bob Bachini
Bob Bachini, Chairman

And, that such amendments read:

1. Page 2, line 3.

Strike: "\$10"

Insert: "\$7"

2. Page 2, line 5.

Strike: "\$30"

Insert: "\$20"

3. Page 2, line 7.

Strike: "\$40"

Insert: "\$25"

4. Page 2, line 8.

Strike: "\$50"

Insert: "\$30"

5. Page 2, line 9.

Strike: "\$6"

Insert: "\$4"

6. Page 2, line 11.

Strike: "\$40"

Insert: "\$25"

7. Page 2, line 13.

Strike: "\$40"

Insert: "\$25"

Strike: "\$8"

Insert: "\$5"

HOUSE STANDING COMMITTEE REPORT

January 23, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 248 (first reading copy -- white) do pass as amended .

Signed: _____
Bob Bachini, Chairman

And, that such amendments read:

1. Title, line 8.

Strike: "LIFE INSURANCE AND"

2. Page 16, lines 11 through 15.

Following: "state." on line 11

Strike: "This" on line 11 through "securities." on line 15

Amendments to House Bill No. 248
First Reading Copy

EXHIBIT 1
DATE 1-23-91
HB 248

For the Committee on Business and Economic Development

Prepared by Paul Verdon
January 23, 1991

1. Title, line 8.

Strike: "LIFE INSURANCE AND"

2. Page 16, lines 11 through 15.

Following: "state." on line 11

Strike: "This" on line 11 through "securities." on line 15

Exhibit 2
1-23-91
HB 248

January 23, 1991
House Bill 248
House Business and Economic Development Committee
David R. Barnhill, Deputy Insurance Commissioner

Good morning, I am Dave Barnhill, Deputy Commissioner of Insurance. I am testifying as a proponent on behalf of Andrea "Andy" Bennett, State Auditor, Commissioner of Insurance and Commissioner of Securities.

When a person invests money into a variable annuity, the money purchases two distinct products. A small portion of the money buys a death benefit, usually an amount equal to the total invested, payable upon the death of the investor to a named beneficiary. In this respect, a variable annuity is like traditional insurance for it pays a determinable amount, what was invested, upon a determinable event, death. This meets the definition of insurance. The balance of the money invested, and by far the larger part, buys investment assets, separate from those owned by the insurer, for the purpose of earning a return on the invested money. When the investor redeems the variable annuity, the value is dependent upon the market value of those assets at the time of redemption. This is different than insurance, for the amount to be paid at redemption is unknown, that is, it is not determinable. In this respect, a variable annuity is not like insurance. It is in fact like a mutual fund. Many persons think of a variable annuity as being a mutual fund with insurance protection as an umbrella in the event the investor dies before redemption. This is as good a working definition as I know.

The hybrid nature of a variable annuity presents enforcement problems. Currently, variable annuities are regulated under the insurance code. The insurance code generally regulates products with fixed or guaranteed values. As described, you know that variable annuities do not have fixed values. Variable annuities present market risk to the

Ex. 2
1-23-91
HB 248

investor. Common sense suggests that the regulation of variable annuities ought to take into account the market risk. This bill does just that by placing the regulation of the market risk inherent in variable annuities under the securities code.

This bill, if enacted into law, would require that producers use the same degree of care in selling variable annuities that securities brokers must exercise in selling mutual funds, and subjects insurance producers to the same penalties as stock brokers when they do not use care in selling mutual funds.

This bill, if enacted into law, would not: 1) create more bureaucracy or regulatory expense; 2) impose additional licensing or other "red tape" requirements upon insurers or individuals; or 3) detract from the ability of the insurance department to regulate insurance companies that provide variable annuities.

I am available for questions. Thank you.

DB/amp(884)

TESTIMONY

Exhibit 25
1-23-91
HB 248

January 23, 1991

House Bill 248

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, Andrea "Andy" Bennett, and the Montana Securities Department in support of House Bill 248.

A variable annuity is neither solely an investment contract nor solely an insurance contract. This hybrid product is the result of the current trend towards "one-stop financial marketing" together with the increasing competition of the securities and insurance industries for the business of managing investors money.

The distinguishing feature of a variable annuity is that the investor's payments purchase "units" in a fund of securities, such as a growth stock fund or a bond fund, much as in the case of any other mutual fund. The value of the investment, which is based on the market value of the "annuity unit", fluctuates as the value of the portfolio goes up or down.

Many insurance companies choose to have their variable products marketed through registered broker-dealers. For example, New York Life, MONY Life, New England Life, and others have formed subsidiary or related corporations to act as broker-dealers that market their securities.

Traditional brokerage firms are also actively marketing variable annuities. In fact, a 1989 survey of full service broker-

Ex. 3

1-23-91

HB 248

dealers indicated that revenue from the sale of variable life and annuities represented an average of 6% of their total revenues.

Salesmen working for brokerage firms, and life insurance agents, are in direct competition when selling variable annuities. Insurance agents have to pass an exam to qualify for membership as registered representatives of the broker-dealer that markets the variable annuity. Securities salesmen have to pass insurance exams and become licensed to sell life insurance in order to sell variable annuities. Many of these dually licensed and regulated salesmen also advertise themselves as "financial planners" and therefore may also be subject to the investment adviser provisions of the Securities Act. In reality, House Bill 248 will have minimal impact on the registration requirements for the salesmen selling variable annuities.

With all of this dual registration, overlapping of financial services, and complicated "hybrid" products, just where does the consumer fit into this picture? The consumer is justifiably confused. The emphasis in the advertising and marketing of variable annuities is clearly on their use as investment vehicles for the accumulation of capital. The most common purchaser of a variable life or annuity product is an investor, between the age of 50 and 65, who is seeking a "tax deferred" long term retirement planning investment.

The Montana Securities Department frequently receives telephone calls from investors with complaints involving variable annuities. The investor calls us because they expect us to assist them with their "investment" problems. In many cases, they do not even understand that they have purchased an insurance product. The complaint may involve a salesman and a broker-dealer that are already registered with the Securities Department because they sell other types of investments. House

Bill 248 would enable the Securities Department to investigate these complaints.

Variable annuities are so similar to mutual funds that they should be subject to the same standards of investor protection. The value of a unit in a variable annuity fluctuates directly with changes in the market value of the securities contained in the fund's investment portfolio in the same way that a share of a mutual fund fluctuates in value.

Variable annuities generally involve a "package of funds" with a variety of investment objectives, which is similar to the variety of funds offered by a "family" of mutual funds. The investor has the responsibility and the flexibility to allocate his investment between the different funds. This involves a much greater level of understanding of the underlying risks involved in different types of investments than is required of an investor placing his investment in a "guaranteed" insurance product.

Variable annuities often involve sales charges that are either assessed as "front-end loads" or "surrender charges". In addition, the products involve "mortality charges", "premium taxes", "administrative charges", and a host of other costs to the investor. These are "material facts" that should be disclosed to the investor prior to the sale.

The Securities Act provides investors better protection from "fraud" or "misrepresentations." With 80 years of history behind state securities regulation, there is a substantial body of law to support the fact that securities fraud covers omissions and half-truths that are often not covered, or may be difficult to prove, under insurance laws or common law.

The purchaser of a variable annuity must have the same right to "full disclosure" and other protection that is provided to mutual fund and other investors under the Securities Act. Concepts that are understood to be basic rules of ethical practice for securities salesmen are not recognized as legal responsibilities of insurance salesmen. These obligations include the responsibility to: know your customer; make only "suitable" investment recommendations; disclose commissions, fees and other compensation; and act as a "fiduciary". House Bill 248 would allow the Securities Department to apply these rules to transactions involving the sale of variable annuities.

The enforcement remedies available to the Commissioner of Securities are more exacting than those available to use against insurance salesmen under the Insurance Code. A permanent cease and desist order, or a revocation of a salesman's registration with the Securities Department, is grounds that can be used by Montana and most other states to keep the salesman out of the business for five years. In addition, we can assess fines of \$5,000 per violation. Willful violations of the provisions of the Securities Act are felony criminal offenses allowing prison sentences of up to ten years per violation.

State Auditor Andrea "Andy" Bennett, is also the Commissioner of Insurance and Commissioner of Securities. This presents an opportunity for the Insurance Department and the Securities Department to combine our efforts to ensure that Montana citizens have the best possible system for regulating variable annuities. The Securities Department and the Insurance Department urge a "do pass" on House Bill 248. I would be happy to answer any questions you may have.

(hb248.tst)

WEIGHTS & MEASURES BUREAU
PUBLIC SAFETY DIVISION
DEPARTMENT OF COMMERCE

Exhibit 4
1-23-91
HB 53

TESTIMONY ON HOUSE BILL NO. 53

House Bill No. 53 is at the request of the Department. The proposed bill increases the license fees for the petroleum licensing program and also clarifies the status of licenses for measuring devices upon a change in ownership of such devices.

The reason for the proposed bill is to offset the cost of equipment, for the Weights & Measures Bureau, to the general fund. The decision was made during the budget process that equipment costs needed to be covered by some other means than simply putting a greater demand on the already troubled general fund monies.

The decision was made to increase the fees for petroleum devices because currently even though there are 6,939 weighing devices generating \$138,781 there are 10,343 measuring devices generating only \$76,863. In other words 40% of the devices licensed (weighing devices) are currently generating 64% of the revenue, while 60% of the devices licensed (measuring devices) are currently generating 36% of the revenue. As proposed by the bill the ratio would be (weighing devices) still equal 40% of the licensed devices would generate 48% of the revenue and (measuring devices) still equal 60% of the licensed devices would generate 52% of the revenue.

In addition the licenses for weighing and measuring devices have been handled differently when there was a change in ownership. As proposed both types of devices would be handled in the same manner. If there is a change in ownership, of the measuring devices, and the devices remain at the same location the existing license will continue to remain in force. If however ownership changes and the measuring devices change location a new license will be required. The reason for the method of operation is that as long as the measuring devices remain in the same location the Bureau does not have to do additional testing. If the equipment is moved new testing is required and thus more expenses for the Bureau need to be addressed.

The Bureau has a substantial inventory of older equipment that is constantly breaking down. The loss in productive time and finances to cover repair of equipment is negatively impacting the Bureau's ability to perform the statutory duties.

2x. 4
1-23-91
HB 53

The equipment purchases scheduled in the budget is as follows:

Item	FY92	FY93	Reason
Package Scales	7,000	0	Need 7 to do inspections
Cable Hoists	15,000	0	Need 5 replace worn out ones
25 gal LPG Pro	5,000	0	Need to do small meters
2t Trk.(M4160)	24,000	0	Current truck 150,000 mi. plus
1/2t Pu(M4434)	11,386	0	Current truck 135,000 mi. plus
1/2t Pu(M4419)	0	11,700	Current truck 111,000 mi. plus
3/4t Pu(M5841)	0	12,653	Current truck 123,000 mi. plus
Micro Balance	10,000	0	Need to keep lab. certified
100 gal. Prover	2,500	0	Need to keep lab. certified
100 gal. Prover	2,500	0	Need to replace worn out
Computer	5,000	0	To automate laboratory
TOTAL	82,386	24,353	

In the future the equipment needs of the Bureau will continue, thus requiring the need for additional funding. As an example in 1994 the Bureau will need to replace a 1/2 ton pickup and a 2&1/2 ton truck and in 1995 will need to replace a semi-truck. In addition in 1994 there is going to be a change in the weighing device testing requirements and the Bureau will need to increase the amount of weights they have available by 10,000 pounds at a cost of approximately \$1.20 to \$1.50 per pound, for a total cost of \$12,000 to \$15,000.

Amendments to House Bill No. 53
First Reading Copy

Exhibit 5
1-23-91
HB 53

Requested by Representative Steppler
For the Committee on Business and Economic Development

Prepared by Paul Verdon
January 21, 1991

1. Page 2, line 3.

Strike: "\$10"

Insert: "\$7"

2. Page 2, line 5.

Strike: "\$30"

Insert: "\$20"

3. Page 2, line 7.

Strike: "\$40"

Insert: "\$25"

4. Page 2, line 8.

Strike: "\$50"

Insert: "\$30"

5. Page 2, line 9.

Strike: "\$6"

Insert: "\$4"

6. Page 2, line 11.

Strike: "\$40"

Insert: "\$25"

7. Page 2, line 13.

Strike: "\$40"

Insert: "\$25"

Strike: "\$8"

Insert: "\$5"

Exhibit 6

1-23-91

HB 53

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL VOTE

DATE Jan. 23, 1991 BILL NO. HB 53 NUMBER 1

MOTION: Do Not Pass As Amended

NAME	AYE	NO
REP. JOE BARNETT	✓	
REP. STEVE BENEDICT		✓
REP. BRENT CROMLEY		✓
REP. TIM DOWELL		✓
REP. ALVIN ELLIS, JR.		✓
REP. STELLA JEAN HANSEN	✓	
REP. H.S. "SONNY" HANSON		✓
REP. TOM KILPATRICK	✓	
REP. DICK KNOX		✓
REP. DON LARSON		✓
REP. SCOTT MCCULLOCH		✓
REP. BOB PAVLOVICH		✓
REP. JOHN SCOTT	✓	
REP. DON STEPPLER		✓
REP. ROLPH TUNBY		✓
REP. NORM WALLIN	✓	
REP. SHEILA RICE, VICE-CHAIR		✓
REP. BOB BACHINI, CHAIRMAN	✓	
TOTAL	6	12

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Business & Econ Dev. COMMITTEE BILL NO. HB 235
 DATE Jan 23, 1991 SPONSOR(S) Rep. Gilbert

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
MIKE FERGUSON 1/2 AERONAUTICS DIV. HELENA AIRPORT	DEPT OF COMMERCE AERONAUTICS DIV.	235		X
Diana Koon - D of Revenue	Liquor Division	235	-	-
Francis Durkee	MT Tavern Assn	235	X	
MARK STAPLES	" " "	235	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

VISITOR'S REGISTER

COMMITTEE

DATE Jan 23, 1991

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

PLEASE PRINT

[illegible]