MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By **VICE CHAIRMAN SHEILA RICE**, on January 30, 1991, at 8:00 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 297 and SB 48 were to be heard. Executive Action taken on SB 48, HB 297, HB 203.

Don Judge, AFL-CIO, Helena, talked about economic development in Montana. Bob Friedman has been working for over 12 years trying to help communities get a handle on and control of their economic future. He explained the problems he sees Montana as having in trying to develop a future economic development program. Development really begins from the bottom up. States can stimulate that kind of activity. He answered questions from the Committee.

HEARING ON SENATE BILL 48

SEN. DENNIS NATHE, SD 10, Redstone, explained SB 48 is an Act

redefining commodity dealer by deleting the exemption of a person purchasing agricultural commodities from a licensed commodity dealer; revising bonding requirements; and amending Sections 80-4-402 and 80-4-604, MCA. This bill has to do with the bonding requirements of commodity dealers. When one elevator sells to another elevator no bond is required now, but when a commodity dealer buys from a producer bonding is required. They had to be bonded under the bankruptcy laws. Changes have been made in the licensing of commodity dealers.

In the 1985 session the federal loan operators didn't want to require a bond from people who were buying large quantities of grain so bonding on transactions between elevator to elevator was wiped out. Why is he introducing this bill when operations have been functioning without that bond? In North Central Montana they have had one of the licensed commodity dealers go bankrupt and the smaller elevators that sold to them had no bond to cover losses. Also they have had a farm that bought an elevator and those people had no coverage on the grain shipped out of the State. Any transaction between one elevator and another should require bonding. Redstone small farmers owned the elevator. A fifty-two car train load was shipped out. It has involved a specialty niche in the market producing 2,000-3,000 bushels of hard red winter wheat. It usually goes by truck to some place in the state, or it is sold to the 52-car train, but in all that time there has been no bonding since 1985. This bill reinstates that.

Proponents' Testimony: None

Opponents' Testimony: None

Melford C. Schulz, employed by Stegner Grain and Seed Company, and Vice President of the Montana Grain Elevator Association, Great Falls, opposes SB 48, and presented written testimony. The cost of bonding large volumes of dollar business is expensive. Dealer to dealer grain transactions are private contractual arrangements. **EXHIBIT 1.**

Pam Langley, Lobbyist for Montana Grain Elevator Association (MGEA), speaks on behalf of **Dan Place,** the Legislative Chairman for the Association, in opposition to SB 48. **EXHIBIT 2**

Questions From Committee Members:

REP. RICE asked the reason this bill is necessary, and is there an approximate cost? **SEN. NATHE** said the maximum that could be levied would be $1 million in statute 80-4-504, 80-4-505, 80-4-604. Great Falls had one licensed commodity dealer, and there were seven or eight in north central Montana. An out-of-state firm went broke. His little elevator does a lot of specialty marketing because that is the only way a small elevator can survive. They do not have the facilities or investments to get the freight rates on shipping wheat that 52-car single origin

unit trains get, so they go to specialty market areas. The margin of profit for a little elevator is $10,000, $15,000, $20,000 a year, and it only takes one thing to wipe out profits for a year. Requiring bonding or a letter of credit gives some assurance that the company they are dealing with is financially sound.

REP. LARSON asked about costs imposed by the bill. **SEN. NATHE** said there would be added cost. Idaho requires a maximum of $450,000, and there is another fraction of a cent subtracted from every producer's bushel sold that goes into an indemnity fund to cover the grain elevator and producer.

Mel Schulz said the states of Idaho, Washington and Oregon do not require bonding for dealer to dealer business. He believes the states of North and South Dakota and Wyoming do not require bonding.

REP. KNOX said bonding is an expensive endeavor and the bonding requirement might render Montana noncompetitive. What would be the dollar amounts? **Mel Schulz** could only give an approximation. A company he manages in Montana does about $13 million in business, a bond to cover that dollar amount would run from $5,000 to $10,000 per year. Take that number and multiply it by 53 companies in Montana to get a conservative number. Most of the grain companies in Montana do more business than that.

REP. ELLIS asked if it was his feeling that this bill will prevent coast trading? Are transactions where local dealers ship to the coast considered done there or here? **SEN. NATHE** replied in coast trading it is 10 cents on the dollar. The maximum bond will not prevent coast trading. If grain is sold out of state, money is paid in advance.

Mel Schulz said in Montana there are two modes of transporting grain to interstate commerce, by rail and by semitruck. For transactions shipped by rail, it is the custom in the industry for the buyer to advance to the seller 90% of the value of the product. Using semitrucks, it is the custom in the industry payment will be made within 30 days after the truck leaves the grain elevator and arrives at its destination.

REP. DOWELL asked if someone were a small elevator operator in Montana, and this bill did not become law, what kinds of protection would there be to keep him from potentially selling grain to a business that could fold. **Mel Schulz** said there are management practices that should be put in place at every locally managed elevator and dealership in Montana. Those practices involve a formal credit policy allocating a certain amount of credit to each sales customer. The credit outstanding is monitored on an ongoing basis, like every 30 days, and money due more than 30 days requires working with the buyers. Problems are normally spotted and corrected before it costs large amounts of money. **REP. DOWELL** said basically it is running a credit check.

REP. BARNETT asked if prior to 1985 bonding was required of the elevators? **SEN. NATHE** said yes, prior to 1983 and up to 1985. The problem was that in response to coast trading, feed lot operators buying more than $10,000 grain per year had to post a bond. In 1985, they were exempt from that. On Page 2, line 10 that exemption was put in and knocked out the bonding requirement for elevators. Simultaneously, in 1985, the $10,000 figure was changed to $30,000.

Mel Schulz said he was surprised to learn this morning there was a bond prior to 1983 for dealer to dealer trading transfers. That bond was in conjunction with a buyer's license and was for a maximum of $20,000. A $20,000 bond is quite insignificant compared to the bond being discussed of up to a million dollars. The cost of that bond in 1983 was considerably less than the bond proposed. Grain transactions from grower to dealer are viewed differently than grain transactions from dealer to dealer. The Uniform Commercial Code differentiates between those types of transactions. In a grower to dealer transaction, the elevator is liable for any secured interest in that grain. In dealer to dealer transactions, the Uniform Commercial Code states that secured interest does not follow the grain from dealer to dealer. There is a definite difference in those two types of transactions. In practice, dealer to dealer payments are made differently for the grain, the rules and regulations and terms of the transaction are different. Dealer to dealer grain transactions are made under rules and regulations of a commodity exchange and/or a national association. Grower producer transactions terms are usually made with local arrangements.

REP. BARNETT asked if he saw any great difference with the bonding change in his ability to do business? **Mel Schulz** said there was a change, but it was insignificant.

REP. STEPPLER said there are two marketing tools used, one deferred payment on contracts, the other MPE contracts with the price established. When wheat is delivered by the producer to the dealer, the producer does not get payment at that time but at a later date. The wheat is usually delivered by that dealer to another dealer. Would this be more protection for that contract?

SEN. NATHE replied the producer is covered from the producer to the elevator. This would not necessarily increase protection for the producer. A small elevator might not go broke and be sold. Deferred contracts in a bankruptcy would be the last thing to be paid out. When grain is turned over to an elevator, title to that grain goes to the elevator, and you do not get that grain back in any bankruptcy. It is not like storage. Grain is usually put in a pipeline dealing with major companies like Cargill, etc. They are very sound outfits. Price later contracts involve a signed agreement that you can no longer demand that grain back.

REP. PAVLOVICH asked what effect this would have on grain elevators in operation now? **SEN. NATHE** assumes Butte/Silver Bow

is a terminal that buys from producers and other grain elevators that ship barley to them. A bond would be required in order to buy from elevators. The bond is based on two percent of the commodities purchased. The level of bonding would be up to the maximum.

REP. TUNBY referred to the last page of the letter **Pam Langley** read, stating, "We support the same bond with an increase to cover all transactions----" **Pam Langley** said according to the testimony this morning, the million dollar maximum is already there.

Roy Bjornson said present law bases the bond level for commodity dealers on two percent of the dollar value purchased from producers. The minimum amount of bond is $20,000 and the maximum is $1 million. SB 48 provides that a commodity dealer that increases his volume would be assessed a bond amount based on that level. The two percent figure would still be used. This could decrease the level of coverage to the producer because of increased volume of grain in the pipeline covered by the bond.

REP. TUNBY does not understand why when the bond is increased the producer coverage would decrease. **Roy Bjornson** replied the current level of bonding goes directly back to the producer who has a claim. The bonding level will never increase proportionately fast enough to cover all the claims that are presented if there should be a bankruptcy. The law passed in 1983 gives the Department more authority to move faster to limit the amount of debt. When dealing in larger volumes of grain the risk is greater because it still is only two percent of the volume.

REP. ELLIS asked what does a bond cost? **Roy Bjornson** said cost is set by the bonding association, and he does not know the exact amount of the bond. The rate is higher for commodity dealers than for warehousemen. Other equivalents such as certificates of deposit or letters of credit can be used.

REP. ELLIS asked are we better prepared now than pre-1985 and the Coast Trading deal? How will this new law affect that kind of an occurrence? **Ray Bjornson** said we are better prepared now after passage of the new bill in 1983. In 1983 experience was gained a lot from the feedlot operation. A huge case was just resolved in Carbon County and did pay 95.95% back to the producers.

REP. BACHINI said if heard correctly, there is a larger risk within the bigger companies. Is that correct? **Ray Bjornson** said they are dealing in larger volumes of grain and there is a bigger risk.

REP. BACHINI asked if DOA would be in better shape to address the problem with SB 48 than without it? **Ray Bjornson** replied there are mixed emotions on that. DOA deals with both large companies and small companies. This last year small companies have been damaged because of no dealer to dealer coverage. After 1985 there

was a better chance of administering the commodity dealer because DOA deals only with dealer losses either with large or small companies. Dealer to dealer transactions involve problems with how title passes, where it passes and which state it passes in. It involves more investigative work to resolve that type of problems.

REP. WALLIN said west coast traders have an advantage because they don't have the cost of bonds. They also have an advantage on freight rates. What are we talking about? **SEN. NATHE** said the problem is right now smaller elevators are trying to survive. The single origin 52-car unit train has had a dramatic impact on small grain elevators. Those that have tried to survive had to go into a specialty niche. The wheat from north eastern and north central Montana is hard red winter wheat, durham wheat and hard red spring wheat. There are specialty markets the little houses try to fill. There would be an increased cost to maintain an increased bond, but what that translates to in cents per bushel, he does not know.

REP. WALLIN said in eastern Montana, grain goes to Duluth. **SEN. NATHE** said it goes both ways. Right now, primarily it goes into the Los Angeles market because of dealing with durham wheat.

REP. WALLIN asked how will the small elevator survive when the railroad pulls out? **SEN. NATHE** said his location is downstream from where the rails are being abandoned, so there are still railroads.

REP. WALLIN asked if bonding requires a brokerage firm? **SEN. NATHE** said a commission house can provide a line of credit or source of money and a line of credit can be obtained at a local bank. The commission houses are a source of money and provide an auditing service. There will always be little elevators. On the Bainville-Opheim Branch, which ships a lot of grain out of north eastern Montana, there are two elevators which have consistently turned a profit of $25,000 to $30,000 each year. Dealing with large volumes of grain, where fifty-two 3,300 bushel hopper bottom cars are filled, takes a lot of watching.

REP. BACHINI said **SEN. NATHE** is trying to address the small operator. Is it possible to amend the bill to address the small operator by the amount of the sale, and maybe exempt the larger unit? **SEN. NATHE** doesn't believe that can be done because the smaller elevator sells to a middle sized or large outfit.

Closing by Sponsor:

SEN. NATHE said Scobey in its heyday was the largest inland shipping point of wheat in the world. Much wheat came out of Canada. Scobey merchants in 1922-23 hired three men from the old Chicago Blacksocks who were blackballed for fixing the 1919 world series to play ball for Scobey.

HEARING ON HB 297

Presentation and Opening Statement by Sponsor:

REP. WILBUR SPRING, HD 77, Belgrade, is the sponsor of HB 297, requested by the Commissioner of Insurance. It is an Act to generally revise the laws relating to surplus lines insurance; eliminating the placement fee; allowing nonresident insurance producers to become surplus lines producers; requiring purchasing groups to identify a licensed insurance producer when registering with the Department of Insurance; subjecting surplus lines producers to provisions of the Montana Insurance Code concerning premium changes and cancellation; and amending several sections of Title 33, MCA.

This bill is designed to promote the interests of Montana consumers by prohibiting midterm premium increase cancellation of surplus line insurance. This bill would make Montana law consistent with federal law regarding purchasing groups. Currently the inconsistency between state law and federal law presents enforcement problems to the Montana insurance department. This opens the door for the unscrupulous to defraud Montana consumers. This bill if enacted would greatly reduce the chances of abuse. There is an error in the title of the act which should be amended.

Proponents' Testimony:

Dave Barnhill, Deputy Insurance Commissioner, testified as a proponent for HB 297 and presented very explanatory written testimony. **EXHIBIT 3.**

Roger McGlenn, Executive Director, Independent Insurance Agents Association of Montana, and Executive Director, Montana Surplus Lines Agents Association, said both organizations favor the major portions of HB 297. These portions are: requiring purchasing groups to identify a licensed surplus lines producer, and subjecting surplus lines insurers to the Montana Insurance Code concerning premium changes and cancellations. **Mr. McGlenn** presented written testimony. **EXHIBIT 4.**

Opponents' Testimony: None

Questions From Committee Members:

REP. CROMLEY asked what the status of Montana agents will be under the new law. **Mr. McGlenn** said he believed it was a matter of potential. The proposal deals with federal law establishing purchasing groups. Current language says agents must identify the insurance producer through which the purchasing group intends to place business. An agent could say it simply says the insurance producer must be identified, it doesn't say anything about needing a Montana insurance license. This is in the best interest of the consumer because it allows a stronger regulatory trail for

the insurance department. If a person is licensed in Pennsylvania or New York and isn't required to have a Montana license, what authority does the insurance department have over that person? How can that person's right to do business in the state be terminated? The proposed language clarifies that and eliminates any questions or arguments down the road.

REP. CROMLEY said the language proposed by **Mr. McGlenn** is to identify Montana producers. Just because a person is identified as the producer does not mean that person will be used. **Mr. McGlenn** said the same would hold true for a nonresident who doesn't hold a license. At least the insurance department can call up and see if arrangements have been made for all the statutorial requirements for this purchasing group, and the licensed agent could say no he had never heard of them or yes arrangements had been made.

Mr. McGlenn said for a purchasing group to offer products in Montana, they first must be qualified and approved by the insurance department. If the department was not comfortable with the case, the group would not be qualified to operate in the state. The protection is in another section of the code.

Dave Barnhill said it is true that a purchasing group before it can conduct business in Montana must state their designated surplus lines producer.

REP. CROMLEY asked if the surplus lines producer has to be in Montana? **Mr. Barnhill** said under current Montana law, purchasing groups can acquire admitted carriers through retention groups and purchasing groups. They are required to designate the producer they use. The problem with enforcement of the purchasing group law relates to instances where a purchasing group is going to use surplus lines insurance. We require them to tell us who their surplus lines producer will be.

REP. BACHINI asked if he concurred with the amendment. **Mr. Barnhill** replied yes.

REP. WALLIN asked how would Montana keep track of Canadian companies? **Dave Barnhill** said companies that are located in other countries are called alien companies and must register with the insurance department and meet capitalization requirements just as American companies do. Foreign companies are authorized to do business in this state just as a New Jersey or Montana company is. The same information is held with respect to them as an American based company.

REP. WALLIN how available in Montana is surplus lines insurance? Does this make it more difficult for a person needing this coverage? **Dave Barnhill** could not answer the question directly. The question of availability depends upon the particular line of insurance involved. There is nothing in this bill that would make it more difficult to acquire surplus lines insurance. Surplus

lines insurance is relatively easy to acquire in a soft market. It becomes harder to acquire in a hard market.

Closing by Sponsor:

REP. SPRING recommends do pass as amended.

EXECUTIVE ACTION ON HB 297

Motion: **REP. HANSEN MOVED HB 297 DO PASS.**
REP. ELLIS moved HB 297 be amended.

Discussion:

REP. ELLIS discussed the amendments. In the Title on Page 1, line 9, following "A", insert "Montana", and on line 11, strike "producers" and insert "insurers". On Page 4, line 22, following "identifies the" insert "Montana-licensed" and following "producer" insert "or Montana-licensed surplus insurance lines producer". **EXHIBIT 5.**

Vote: **Motion to amend HB 297 carried unanimously.**

Motion/Vote: **REP. HANSEN MOVED HB 297 AS AMENDED DO PASS. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 48

Motion: **REP. DOWELL MOVED SB 48 DO PASS.**

Discussion:

REP. KNOX spoke in opposition to the bill. It is clear that this is going to reduce competition for grain produced in Montana. It is a sick business now, and we definitely do not want to reduce competition for the product. The rationale is that dealers from other states will obviously buy from neighboring states if they have the opportunity, rather than purchase a bond to buy grain in Montana.

REP. LARSON will vote in opposition to the bill.

REP. DOWELL agrees with what he has heard from **REP. KNOX and REP. LARSON.** The producers were opposed in most cases.

Motion/Vote: **REP. DOWELL MADE A SUBSTITUTE MOTION TO TABLE SB 48. Motion carried 10 to 8 by roll call vote. EXHIBIT 6.**

EXECUTIVE ACTION ON HB 203

Motion: **REP. SHEILA RICE MOVED HB 203 DO PASS.**
REP. SHEILA RICE moved HB 203 be amended.

Discussion:

REP. RICE discussed the amendments. On Page 2, lines 12 and 23, strike the words "financial institution" and insert "lender".

REP. SONNY HANSON asked just what it does. His understanding of that section is it basically talks about usury laws and we're pulling this out from underneath. By changing financial institution, we're expanding to all institutions.

REP. RICE said this section is just on the Homestead Act. It is a drafter's change to make the law conform between the two sections. The usury laws are dealt with in section 1.

REP. CROMLEY said the bill now talks about insurance companies and banks, rather than financial institutions.

REP. HANSON asked if this modification is predicated on adoption of the bill by putting insurance companies in. If insurance companies had not been added, it would remain financial institutions.

REP. CROMLEY said Section 2 talks about a series of companies, banks, credit unions, and collects them all and calls them financial institutions. Now instead of calling them financial institutions, they are called lenders. It is just different wording.

Vote: **Motion to amend HB 203 passed unanimously.**

Motion: **REP. SHEILA RICE MADE A SUBSTITUTE MOTION HB 203 AS AMENDED DO PASS.**

Discussion:

REP. SONNY HANSON spoke against the bill. He did checking on the bill to find out why it appeared. The only reason seems to be an insurance company has rewritten an existing loan and is now charging a greater percent interest in violation of the usury law. They wish to foreclose on the property, and would consequently be in violation of usury laws during a foreclosure. Insurance companies are not regulated lenders in the sense that banks and corporations are. Nobody really pushes and supports this bill other than an attorney who testified on the bill. This is a single issue.

REP. BACHINI said so often there is legislation before committees that is a single issue situation.

REP. CROMLEY supports the bill. He does not feel it is a single situation, but a series of situations where insurance companies have loaned money. If a bank is also involved, the insurance companies are in a different position than the bank lenders.

REP. KILPATRICK asked if the representative of the Auditor's Office said there is no control as it stands now, but if

insurance companies are put in as a lender with banking there is some control.

REP. TUNBY said in his notes, the Auditor's office took no position. They made statements, but not pro or con.

REP. LARSON would like to have the sponsor respond to **REP. HANSON's** views. **REP. RICE** thought **REP. HANSON** was describing a hypothetical situation that could occur. Her understanding from the constituent who asked her to sponsor the legislation, is the idea of the bill would be to put insurance companies on the same footing as banking institutions relative to agricultural loans.

REP. ELLIS asked the sponsor if the insurance companies have to jump through the same hoops as regulated lenders? Do they qualify in other circumstances as regulated lenders? **REP. RICE** said if insurance companies are put under this regulated lender category, then they have all the regulations of a regulated lender. Whether or not they are exactly synonymous with banking regulations, she cannot say.

REP. ELLIS asked if this would create a fiscal impact. **REP. RICE** said none was ever talked about with the state agencies.

REP. HANSON said insurance companies are not a regulated lender. They fall in the regulated lender status for state operation. Insurance companies are taken from the usury portion of the law to give them some of the benefits of a banking institution but federal regulations are not imposed.

Paul Verdon said the definition in Section 31-1-111 applies only as it affects 31-1-112, the interest rate limitation exemption. This does not put the insurance company under any regulation except the limitation of the usury law.

REP. McCULLOCH spoke in favor of the motion.

Vote: Motion that HB 203 as amended do pass carried 11 to 7 by roll call vote. EXHIBIT 7.

ADJOURNMENT

Adjournment: 11:00 A.M.

Lg Bob Bachini
REP. BOB BACHINI, CHAIRMAN

Jo Lahti
JO LAHTI, SECRETARY

BB/jl

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL DATE Jan 30, 1991

NAME	PRESENT	ABSENT	EXCUSED
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	✓		

HOUSE STANDING COMMITTEE REPORT

January 30, 1991

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 297 (first reading copy -- white) do pass as amended .

Signed: _____
Bob Bachini, Chairman

And, that such amendments read:

1. Title, line 9.
Following: "A"
Insert: "MONTANA-"

2. Title, line 11.
Strike: "PRODUCERS"
Insert: "INSURERS"

3. Page 4, line 22.
Following: "identifies the"
Insert: "Montana-licensed"
Following: "producer"
Insert: "or Montana-licensed surplus insurance lines producer"

CLERICAL

Bill No. _____

Date: _____

Time: _____

(Legislative Council Staff)

☐ _____
S / H Standing Committee

(Chairman)

☐ S / H Committee of the Whole

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

HOUSE STANDING COMMITTEE REPORT

January 30, 1991

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 203 (first reading copy -- white) do pass as amended .

Signed: _____
Bob Bachini, Chairman

And, that such amendments read:

1. Page 2, line 12.
Strike: "financial institution"
Insert: "lender"

2. Page 2, line 23.
Strike: "financial institution"
Insert: "lender"

DATE Jan. 30, 1991
~~HB~~ SB 48

1/30/91

My name is Melford C. Schulz. I reside at 3435 6th Ave So. Great Falls, MT. I am employed by Stegner Grain & Seed Company. I also am the Vice-President of the Montana Grain Elevator Assn. The M.G.E.A. has a membership which represents one hundred and fifty grain elevators and forty nine grain companies doing business in the State of Montana. It is our position that we are opposed to Senate Bill No. 48 for the following reasons:

1. The cost of bonding large volume dollar business is an expensive endeavor and could cause Montana grain to be non-competitive in the market place particularly when neighboring grain producing states do not require dealer to dealer bonding.

2. Dealer to dealer grain transactions are private contractual arrangements made between various grain companies who have the right and responsibility to establish their own credit risk policies.

In closing, we respectfully submit, that dealer to dealer grain transactions are entirely different then dealer to grower transactions and should be viewed accordingly and that the bonding of such business will be a burden and unnecessary expense to the private sector of the Montana grain industry.

SENATE BILL # 48

EX. 2
1/30/91
SB 48

Mr. Chairman, Members of the Committee:

My name is Dan Place, I am representing the Montana Grain Elevator Assn and also my own business--Broadwater Grain and Supply, a locally owned,independent grain elevator and feed store in Townsend. Montana Grain Elevator Assn. and Broadwater Grain are opponants of Senate Bill # 48.

The MGEA is opposing for the following reasons:

At this time we do not know what our additional bonding costs would be. Presently we are bonded to the Montana producer only.

At this time it is not clear as to where out of state purchasers, whether they be major grain exporters, major flour mills or major domestic users of feed grains, would have to be bonded to buy grain- dealer to dealer out of the state of Montana. If other states did not have dealer to dealer bonding, would we lose part of our share of the market out of the state of Montana?

Would Senate Bill # 48 promote the use of some bad business practices? Would a dealer sell to someone that is not financially sound if they knew that this person had a dealer to dealer bond?

Montana Grain Elevator Assn. feels that Senate Bill # 48 may adversly affect the grain merchandising in the State of Montana.

Broadwater Grain opposes Senate Bill # 48 for the following reasons:

Broadwater Grain does not buy grain from other dealers--we buy only from Montana producers. By current state law we are bonded to these producers. If Senate Bill 48 were to pass and dealer to dealer bonding would become mandatory-it would require larger bonds, giving bonding companies more exposure. More exposure would make my bond to the Montana producer more expensive--thus increasing my cost of doing business.

Broadwater Grain shares the views of the MGEA on losing our market share for the state of Montana. If surrounding states do not have dealer to dealer bonding requirements, I am sure dealers purchasing grain would go to these states for that grain before turning to Montana.

Senate Bill # 48 continued:

We support the same bond with an increase to cover all transactions----1 million max. and 20,000 min. This may reduce the amount available to the Montana producer. In 1985 the Bill was changed to give the Montana producer more protection . Senate Bill 48 would actually lessen protection to the producer.

Thank you.

Dan Place

Dan Place
Montana Grain Elevator Assoc. and Broadwater Grain

DATE 1/30/91
HB 297

House Bill 297
House Business and Economic Development Committee
January 30, 1991
David Barnhill, Deputy Commissioner of Insurance

Mr. Chairman, members of the committee, good morning. I am Dave Barnhill, Deputy Insurance Commissioner, testifying as a proponent for House Bill 297 on behalf of Andrea "Andy" Bennett, Commissioner of Insurance. This bill is presented to you as a consumer protection bill that also helps promote a better business climate. The field of surplus lines insurance is complex. Please indulge me in some background comment.

Surplus lines insurance is often called the misunderstood market. Generally, insurance can be acquired only from carriers authorized to conduct business in Montana. These insurers meet the minimum capital requirements of Montana law and the policies sold by authorized insurers are backed by the guaranty fund of the state. The problem is many lines of business liability insurance are not offered by admitted or authorized carriers. These lines are essential to business operation, covering the mundane to the esoteric, from unoccupied structure, to ski resort, to explosives manufacturer.

Surplus lines insurance is insurance offered by unauthorized insurers that is not available from authorized insurers. It is surplus lines insurers that provide liability coverage for unoccupied structures, ski resorts, explosive manufacturers and many other lines of business liability insurance. Surplus lines insurers do not meet the capital requirements of Montana law that authorized insurers do, nor are the policies of surplus lines insurers backed by the protection of the Montana guaranty fund. Surplus lines insurer's can conduct business in Montana only if the line of insurance in question is not available from an authorized insurer.

Surplus lines insurance often is necessary to conduct business and difficult to acquire. When a surplus lines insurer cancels a policy midterm, or drastically raises the premium so that the policy becomes unaffordable, the insured may not be able to find other coverage. The insured might have no choice but to cease operation. Authorized property/casualty insurer's now are prohibited from cancelling or raising premium midterm unless there is misconduct by the insured. These basic consumer protections do not extend to surplus lines. This bill would do just that. This is done by adding the underlined language as indicated near the bottom of page 6 of the bill. The reasons for prohibiting unjustified midterm cancellations or premium increases are even more compelling in the case of surplus lines increases.

The bill would also help consumers by reducing the cost of buying surplus lines insurance. This is done through elimination of the placement fee.

Surplus lines insurance can be sold only by surplus lines insurance producers. Montana law requires that surplus lines producers be residents of Montana. Only those who have been licensed as a property, casualty, and surety insurance producer continuously for 5 years can apply to be licensed as a surplus lines producer. A normal producer may not place surplus lines insurance. The law requires the surplus lines producer to collect the premium taxes upon sales of surplus lines policies and pay the tax to the insurance department annually. The surplus lines insurer must also file an annual report with the department that reports the transactions and tax. Section 33-2-306, Montana Code Annotated, authorizes the surplus lines producer to charge a placement fee of 0.5% of the premium charged to cover the costs of issuing and delivering the policy. The fee may not be less than $10.00 or more than $100.00. This bill would eliminate the placement fee, and thereby reduce the cost of each surplus lines policy by $10.00 to $100.00.

The original purpose of the placement fee was to compensate a surplus lines producers for bearing the cost of physical inspection of the property to be insured. Insurers charged the cost of inspection to the producer. The placement fee allowed the surplus lines producer to offset some of the expense. The 1989 legislature passed a bill that authorizes surplus lines producers to charge to the insured the actual costs of inspecting a risk. The retention of the placement fee creates a windfall profit for the surplus lines producer at the expense of the consumer. The placement fee ought to be eliminated. Striking the language as indicated on page 4 accomplishes just that.

Now the rationale for having a placement fee is to cover the net bid situation.

Some insurers quote a rate for an insurance policy based upon the risk and the insurer's expectation of profit only. The rate is devoid of any commission for the producer. This is called a net bid. Montana law prohibits a producer from increasing a quoted price. In some instances then, where the insurer quotes a rate on a net bid basis, the surplus lines producer does not earn a commission. In these instances the placement fee is the only compensation for the producer. This would be eliminated. These instances, however, are rare. In any event, the placement fee is not a well reasoned response to the net bid situation. The law needs to be cleaned before the situation can be addressed rationally.

The final change in law under this bill would be to allow nonresident licensed property, casualty and surety producer to become licensed as surplus lines producers. It is needed so that Montana's purchasing group law will conform to federal law unenforceable. Right now, a portion of the law conflicts with federal law, making the state law unenforceable. Allowing nonresidents to become licensed would solve the problem. The change in law is indicated at line 21 of page 1.

Although the change in law is in the chapter that regulates surplus lines insurers, the material effects will be on the Chapter 11 of the insurance code which regulates purchasing groups.

Purchasing groups consist of persons whose businesses or activities are similar and whose liability exposure are related. These persons unite to become members of a group which purchases liability insurance; thus, the term "purchasing group."

Purchasing groups were formed in compliance with the Federal Product Liability Risk Retention Act of 1981, which preempted certain state laws that tended to inhibit the formation of purchasing groups. The Liability Risk Retention Act of 1986 expanded the scope of the 1981 preemption to enable purchasing groups to purchase all types of liability insurance.

Purchasing groups may purchase liability insurance from surplus lines insurers eligible to conduct business in this state. Section 33-2-305 of the Montana Code Annotated provides that a person may not procure surplus lines insurance unless licensed as a resident property, casualty, and surety insurance producer and possesses a current surplus lines insurance license. Remember that only residents can obtain such licenses. This conflicts with Section 3903 (c) of the Federal Liability Risk Retention Act of 1986 which states:

> A state may require that a person acting or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State <u>may not</u> impose any qualification or requirement which discriminates against a non-resident agent or broker.

The net result is that purchasing groups operate in Montana without registering with the insurance department the name of their designated surplus lines producer. Consequently, the

ability of the department to collect the surplus lines tax and monitor the marketing activities is impaired. Allowing nonresidents to become licensed surplus lines producer would enable the department to require the complete registration of purchasing groups, collect premium taxes, monitor marketing activities and successfully prosecute enforcement actions.

Although HB 297 relates to complicated areas of law, its purposes are basic, protect Montana consumers and promote a better business climate. The goals would be accomplished by prohibiting midterm policy cancellations and premium increases, eliminating the placement fee, and allowing nonresidents to become licensed surplus lines producers. I urge you to give this bill a do pass recommendation.

I am available for questions. Thank you.

DB/flo(889)

EXHIBIT 4
DATE 1/30/91
HB 297

4

OUTLINE FOR TESTIMONY ON HB-297
1/30/91 HOUSE BUSINESS AND ECONOMIC DEVELOPMENT

Roger McGlenn
IIAM Executive Director
MSLAA Executive Director

IIAM stands in support of the major portions of HB-297

Requiring purchasing groups to identify a licensed surplus lines producer; and subjecting surplus lines insurers to the Montana Insurance Code concerning premium changes and cancellation.

Because the area of surplus lines insurance is complex, and confusing, it has been referred to as the "misunderstood market place." Specialty and hard to place lines of coverage. (possible examples)

I would like to review and briefly discuss a few areas of this bill.

Because surplus lines companies are nonadmitted, (unauthorized), not licensed as are admitted carriers and are not under the guaranty fund, and not subject to other sections of Montana insurance law, they are governed by separate sections of Montana insurance law.

One special provision of the surplus lines law was to require a resident surplus lines agent insure that the insurance consumer was informed that the coverage was in an unauthorized insurer and not covered by the protection of the guaranteed fund, as well as collecting the state premium tax and holding it in trust until remitted to the state. This also provided some regulatory control for the insurance department.

Under section 1 line 21 of this bill, by striking the word resident, Montana would allow nonresident agents "producers" to provided these services. The insurance department informs us that about 8 other states allow this and that it will not impede the regulatory trail and control. After our discussions with the department, we trust this will be the case. Montana insurance producers feel that, if other states begin to pass similar laws, that a provision should be added to this law to allow reciprocity and allow Montana "producers" agents and equal playing field when doing business in those other states.

[redacted]

Ex. 7
1/30/91
HB 297

In section two of the bill the placement fee is being deleted:
HISTORY
RESIDENT SURPLUS LINES REIMBURSED FOR ADMINISTRATIVE COST
NET BIDS (explain) Minimum Commissions 2-2.5%
Mr. Barnhill has agreed to work with us in regard to this matter.

Under section 3 of the bill, we would like to offer and amendment for clarification purposes.

LINE 22

identify the MONTANA licensed insurance producer or Montana licensed surplus lines producer through which the purchasing group intends to place its business;

This amendment would also require and amendment in the title on line nine inserting the word Montana after the word a and before the word licensed.

we believe this amendment is important to insure that this will not be construed to mean a licensed producer of any state and to insure regulatory authority and control over these producers.

In closing we believe that the protection provided the Montana insurance consumer in the areas of premium changes and cancellations and purchasing groups identifying a Montana licensed producer are important protections and support HB-297.

Thank you for your consideration of the proposed amendments and the bill as amended.

EXHIBIT 5
DATE 1/30/91
HB 297

1/30/91
SB 48

Amendments to House Bill No. 297
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon
January 30, 1991

Title, line 9.
llowing: "A"
se t: "MONTANA-"

Title, line 11.
ti e: "PRODUCERS"
se t: "INSURERS"

P ge 4, line 22.
ll ving: "identifies the"
sert: "Montana-licensed"
llowing: "producer"
se t: "or Montana-licensed surplus insurance lines producer"

EXHIBIT 1
DATE 1/30/91
HB 203

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL VOTE

DATE Jan. 30, 1991 **BILL NO.** HB 203 **NUMBER** 2

MOTION: Do 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	11	7

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Business & Econ Dev. COMMITTEE BILL NO. SB48

DATE 1/30/91 SPONSOR(S) _____

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
MEL SCHULZ 3435 6Ave S GREAT FALLS	STEGNER GRAIN MONTANA GRAIN ELEV ASS'N		X	
ROY BJORNSON	Dept. of Agric.	SB48		
Pam Langley	MBEA / MABA	SB48	X	

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

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Econ Dev. COMMITTEE BILL NO. HB 297

DATE Jan. 30, 1991 SPONSOR(S) Rep. Spring

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Dave Barnhill	Insurance department	✓	
Roger McGlenn	IIAM MSLAA	✓	

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