

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT**

**Call to Order:** By REP. BOB BACHINI, CHAIRMAN, on February 7, 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 479 and HB 442 were to be heard and Executive Action taken on HB 442, HB 479, HB 76 and HB 405.

#### **HEARING ON HOUSE BILL 479**

##### **Presentation and Opening Statement by Sponsor:**

REP. HARRIET HAYNE, HD 10, most of Pondera County and a portion of Cut Bank and Glacier Counties explained HB 479 would require the Board of Investments to allow certain non-profit corporations to qualify for in-state investments of state funds; and amends Section 17-6-308, MCA. The Board of Investments (BOI) has no doubt performed a thorough research on each loan they are

required to make. The BOI is designed to assist businesses by making available to them long-term fixed rate financing at competitive rates for a variety of reasons. Retirement residence business in Montana and nationally at this time is a very necessary business. The retirement facilities she is familiar with are well run businesses and now have 100% occupancy. In addition, there is also a waiting list of 102. They must expand to meet the ever-increasing number of elderly in Montana. Today the senior citizens stay healthy and comparatively physically fit much longer than in the past. Modern medicine and science has made this possible. However, many of the older citizens need a place that provides them a few of the services that are needed, especially if they are alone.

She has some amendments that remove the last part of this bill, on Page 3. The criteria being removed would not apply to non-profit entities. EXHIBIT 1 BOI rules should recognize that different directions are needed for nonprofit corporations than for for-profit corporations. There are several witnesses present who wish to testify.

#### Proponents' Testimony:

Robert E. MacGilvra, is a volunteer member of the Board of Directors of the Horizon Lodge, Inc., Conrad. He is in support of HB 479. Horizon Lodge was built 14 years ago as a retirement business with 84 apartments. The project was financed by a commercial bank loan guaranteed by HUD. This operation was incorporated as a nonprofit Montana corporation. The operation employs 35 people with an annual operating budget of approximately \$620,000 per year. The Lodge presently serves 124 residents and has an audited waiting list of 102 hopeful people. Horizon Lodge has always operated as a financially feasible operation. The debt and operating expenses have always been serviced in a timely manner.

Three years ago Horizon Lodge instituted a program to provide assistant living, sometimes called personal care, for a limited number of its residents. They believe this service has strengthened their waiting list. It certainly serves their community. This has been confirmed both by audit and preliminary feasibility studies to determine the wisdom of enlarging their facilities.

They have undertaken preliminary architectural work and explored methods of financing an expansion on the order of 50 additional apartments. One of their finance options was a loan from the BOI office of development and finance using Montana Coal Severance Tax funds which is why he is here today. Proceeds of the Montana Coal Severance Tax are administered and invested by the Montana BOI. Presently this Coal Tax fund amounts to approximately \$450 million of which approximately \$80 million is uncommitted and immediately available to qualified borrowers. Only \$45 million or 10% of that money is invested in Montana due to a lack of

qualified borrowers in our State. Most of this money is being invested outside of Montana. The first paragraph of the purpose of the Coal Tax Fund was read by REP. HAYNE. That paragraph mentions the State of Montana specifically twice and the State's economy four times in one paragraph that the Coal Tax money is to be used to augment and assist in employment opportunities and the economy of Montana. This paragraph closely describes the purpose of the BOI and is a perfect match with the Horizon Lodge mission.

Paragraph 2 enumerates the financial institutions in Montana which administer and make these loans. Paragraph 3 provides for several types of loans to match particular business needs. The problem Horizon Lodge faces is in the five borrowers' eligibility requirements. There is no problem with five rules 1, 2, 4, 5. The problem is in group 3. Rule 3 reads as follows: "Eligibility - loans to any government entity or nonprofit corporations will not be funded under this program". Horizon Lodge is a nonprofit corporation. There are nonprofit corporations and then there are non-profit nonprofit corporations. By law nonprofit corporations are forbidden to establish any financial reserves on their balance sheet. They cannot establish a retained earnings account for future maintenance and obsolescence. They are a charitable nonprofit corporation. Horizon Lodge may be considered a poor credit risk as far as commercial lending institutions are concerned. Even after 14 years of successful operation and a facility that is appraised at over \$4 million with a 25% debt to assets status, they have been unable to interest any commercial lending institution to lend them money to expand simply because they do not have one cent in retained earnings.

The proposed bill as read answers their needs. His point is, the word 'nonprofit' is much too broad a term. There are nonprofit corporations that should be excluded such as churches, fraternal organizations, service clubs, etc. as examples. Others who fulfill the goals and purposes the Montana Legislature has put into law to be carried out by the BOI should not be excluded, including Horizon Lodge. Passage of this bill in the Legislature would allow investment of Coal Tax funds in naturally viable nonprofit corporations which would enhance Montana, create jobs, and make Montana a better place to live and retire, and would boost our Montana economy and otherwise fulfill the very purpose of the BOI.

Thus Montana now has approximately \$450 million of Coal Tax money which is constrained by the vagary of law. It is not being invested in Montana. Presently primary Montana businesses are the financial institutions who process and administer these loans. How many jobs does this create? What additions to Montana's economy are being made? There is \$80 million presently uncommitted for short term loan instruments rather than long term, therefore money is available. Horizon Lodge would like to be permitted to apply for a loan which will add approximately 35 new jobs with an annual payroll of approximately \$700,000 a year. Let the BOI make the evaluations and decision on their

application, and on other deserving naturally viable nonprofit organizations in Montana like Horizon Lodge.

Gene D. Todd and Associates, Administrator of Eagles Manor in Great Falls for 25 years, said the company has built 14 projects in the State of Montana. Several of them were retirement projects and some were for low income housing. All are subsidized housing for both the elderly and families. He was the consultant and put together the program for Horizon Lodge 14 years ago. They have operated and managed most of the projects they built for the past 25 years. They have not been able to finance the projects in the State of Montana. They are in the process of doing a feasibility study on a pre-rental program for the Lost Tree organization. In securing tentative frontend funding they had to go to California.

The type of project they anticipate building in Great Falls is for 20% low income people and 80% for salaried medium income people. Most of the projects in Montana are in the field of elderly housing and deal only with the low income category. That means there are a lot of people in the State who don't qualify for low income housing, and consequently a great share of them are going out of state for the type of services they need after they reach the age of 65 on up. They have a long waiting list for occupancy of their Great Falls project. Their vacancy rate is 101% but over the period of 25 years they have had periods when they may have one or two vacancies for a short time. They do have a long waiting list, both for singles or couples. Consequently there are some qualified and needed areas.

The problem with this particular bill is the restriction of \$3 million. You can't build a project at this time for \$3 million because in his experience if they try to build projects that are below a 100 units, they can't put in full food services, can't have exercise programs, all the other necessary things. They are in the process of negotiating a project now costing in the area of \$5.5 million. If this bill is passed to make nonprofits eligible for in-state investment fund loans, then the financing for these new projects could take place out of this program. This particular project he is talking about would benefit about 30 new employees because it also will carry with it a personal care program that allows people to be in projects much longer than what they are now. Using state money is a good idea.

They are paying big fees to out-of-state bonding companies to do their program. They have to meet their strict requirements. One good point about it is they have an interest rate of about 7.5% on this one project. With the changes in the interest rates now throughout the country 7.5% might be high six months from now. Every time they drop a half a percent means a \$1 million drop in their costs over a period of time. They think this program should be checked out carefully as to the amounts that nonprofits have to deal with in building that type of project.

Stephen C. Stanley, Conrad, Horizon Lodge and Vice President of

the American Association Home for the Aging, Montana, a group of 26 nonprofit nursing homes and retirement centers in the State of Montana, supports HB 479. Fifteen of them are retirement centers. All of them are looking at the figures coming at them on the elderly growth in population, and all see the expansion going to have to take place. They want to keep the retired people in the State of Montana. If we can offer the same quality of living in Montana we are going to keep them, their money and their families in the State. The nonprofit groups as already pointed out do have trouble finding financing. They don't have much to show in their reserves but do want to serve the needs of Montana for the elderly, and feel this bill would certainly help those in the nonprofit sector to help better Montana.

There were other proponents - please see the Visitor's Register.

#### Informational Testimony:

Dave Lewis, Executive Director of the State Board of Investments, wanted to make sure they have their positions heard before the Committee before this bill is considered. They administer the almost 200 funds in their portfolio for the benefit of the beneficiaries of that particular fund. For instance, there are retirement funds which are run for the clear benefit of the retirees. In the case of the Coal Trust the Legislature through legislation and the people by the Constitution have laid out a couple of different goals that were addressed under the Coal Trust fund. One of them is economic development. They have totally gone along with that, however the Legislature writes the law, and that is the way they run it.

They are not here as proponents so much as to explain what the intent of this legislation might be and how it might be coordinated with other legislation that is going through right now, so that if the Legislature chooses to pass this bill they will understand the total impact.

A little history - back in 1983 when I-95 was approved by the people the Legislature through legislation implemented the In-state Investment Act. There was a lot of discussion in the committees who were considering the legislation about the demand for the funds. There was a feeling they were going to have to have an effective allocation process so they knew what the priorities were as far as which things the loans should go for first, because there was a general feeling there was a line around the Capitol twice that would provide a perfect demand for these funds.

The Legislature also chose, wisely so, to not allow the Board to make direct loans. They only buy loans that are presented to them by approved lenders so the deal to loan was controlled by the banks in the State. The Legislature also in the law says the bank that sells them a loan has to be willing to take 20% of that loan. They sell the BOI 80%. Those two things, the fact that it

has to be a bankable loan, and the originating lender has to take 20% of that loan have in fact restricted the flow of loans offered to the Board. They have done about \$80 million worth of loans since 1983. They have about \$45 million in outstanding principal right now. They have had repayments over that period of time that accounts for the difference between loans made and what is on the books at the moment.

The Legislature is concerned about whether or not they should meet all the loan demands. The Board adopted the original rules. The restriction against loans to nonprofits was included because there was a feeling at the original Board meetings about the affect of possible double-dipping. It happens when a corporation also applies for a low interest loan - there was a lot of concern about that; and a lot of concern about whether that should be a lower priority than the loans to for-profit businesses in the State. History has indicated they weren't overwhelmed with demand, they have about \$45 million in loans out right now.

There is another bill going through the Legislature right now, SB 26, that rewrites the program and effectively allows the Board to use 25% of the total trust fund for in-state investments which would increase the amount available to about (on a \$450 million trust) \$112.5 million. That would give them approximately \$80 million worth of unused loan capacity at the present time. They don't take the position as to whether or not nonprofits should be eligible for a loan. That is properly a public policy decision the Legislature should make, so they are not taking a position on this issue.

SB 26 which was heard in House Taxation yesterday takes out a large portion of the statute that is shown in HB 479. Under Section 1 (2) and (3) it talks about a guarantee program. That is where the \$3 million issue comes up that was referred to in previous testimony. That guarantee program was found unconstitutional by the Montana Supreme Court about three years ago. Those portions of the statute are repealed in SB 26. There is a coordinating clause in SB 26 that would deal with that issue if HB 479 were to pass. That is not really a problem. The only operating Sections of the bill are Section 4 which reflects what is going on now with the Montana Science and Tech program, and Section 5 which is amended basically to say the BOI can make loans to nonprofits.

The Board would make its own rules to establish the criteria for those particular loans as they have with all the other loans. They have extensive administrative rules that have been adopted through the Administrative Procedure Act dealing with all the qualifications for those loans. He wanted to make real clear that if this bill were passed, they could make loans to nonprofits, but they would be subject to the very same process of procedure that everyone else is subject to. First they have to find a bank that is willing to originate the loan and hold 20% of the deal. Then the bank will sell 80% to the BOI and that has to meet the

BOI's basic criteria as far as collateral, repayment ability, etc. He thinks Horizon Lodge is being used as an example of types of facilities that could be financed through the program, but they want to make it clear to the Committee and Horizon Lodge they are going to have to meet the same requirements for a loan the same as anyone else if this legislation were to be approved. He is not taking a position on behalf of the BOI as to whether or not nonprofits should be eligible.

Opponents' Testimony: None

Questions From Committee Members:

REP. LARSON asked how nonprofit corporations could be made eligible for tax fund loans. Mr. Lewis said the banks are going to look at the same requirements as the BOI looks at, the collateral, first mortgage, cash flow. There are opportunities because some of the retirement facilities have a very good cash flow and are attractive investments. They have made loans for for-profit nursing homes, so they have some exposure to that particular industry. Retirement homes are getting very popular.

REP. BENEDICT asked in that 80/20 ratio does the bank only come in for 20% of the collateral in the first position, and you have 80% in collateral? Mr. Lewis answered they share on the 80/20 ratio all collateral and all recoveries. They are not second.

REP. PAVLOVICH asked what the impact would be if SB 26 passed. Mr. Lewis said it won't really affect HB 479 because the operative section would be the new language which said to make loans to nonprofit corporations. SB 26 takes out some of this old language. The meat of this bill is the New Section.

REP. ELLIS asked if SB 26 will take out the part about the \$3 million limitation. Mr. Lewis answered that it does.

REP. ELLIS asked if BOI is currently lending more than \$3 million for for-profit institutions? Mr. Lewis said one of the sections in SB 26 establishes a maximum loan of one percent of the coal trust, so if the whole trust is \$450 million, the maximum loan would be \$4.5 million.

REP. BARNETT asked if he would like to respond to REP. LARSON's question on the debt to asset ratio. Gene Todd said the debt to asset ratio they deal with now in their bonding program is ten percent, and that ten percent can be in the form of land, or whatever. It doesn't have to be in cash. The bond costs probably one-third of the bank cost. It costs too much to go through a bank and meet their criteria of 20%. They can't build for nonprofit organizations and meet peoples' requirements. In most cases the bank will add 3 or 4 points to the program before you can get financed, so it absolutely eliminates Montanans from being able to deal in this kind of a program. They have built lots of properties in many different states, both for-profit and

nonprofit.

The most successful projects are the nonprofits because they are run better, meet the requirements of the people much better than the for-profit units do. They don't have a criteria that you have to meet to pay off more than the mortgage. Consequently since they are not paying stockholders, they run their programs much more efficiently and they do make money in their nonprofit operations. They have extensive reserves that run between \$300,000 and \$500,000 in Montana. But those reserves are kept there to meet any type of requirement there might be down the line. Reserves could be used to do a large replacement program. They don't have to go back to the government to borrow more money.

REP. BACHINI said you pointed out when going through this bill there isn't much meat in this bill, is there? Would SB 26 take care of it or do we need to require the BOI to allow nonprofits to be eligible? Mr. Lewis said that is true, the New Section is needed.

REP. STELLA JEAN HANSEN said in the first testimony he referred to the fact that not much of that 25% is really lent out, is that right? Mr. Lewis said at the present time the in-state investment fund amounts to about \$60 million, they have \$45 million lent out. What they want to do and in SB 26 it does say they can use up to 25% of the entire trust for in-state loans which would bring that up to \$112 million; so we have the difference between that \$45 million and \$112 million that can be used.

REP. STELLA JEAN HANSEN asked do you feel that the numbers of loans that you have been able to make is accurate, or do you feel the trust hasn't been used that much? Mr. Lewis answered over the period of years they have loaned out-of-state \$1 million. It is not as much as everyone thought would be done at the beginning and part of it has to do with them watching that line. The Legislature said that under the 'prudent expert' rule, the Board shall make an effort to invest in the State for purposes of improving the Montana economy, so they have to look at it as having two masters. There are two purposes established for the Trust, one is the long-term rate of return and income producing ability; and one is economic development. It depends on how many qualified demands come along because they have a requirement to earn the best return and to make prudent loans. On the other side, they have to try to be aggressive in getting the money out.

REP. S.J.HANSEN asked if he felt that lack of interest in the banks in making these loans is part of the reason? Mr. Lewis said a lot of the banks in the State are not loaned up. They run statistics and the loans to deposit ratio in Montana is in the 50s and in the Midwest it's up in the high 70s. They don't have a need for a market for secondary loans. If they make a loan they just keep it on their books, they don't need a secondary market. The BOI basically services a good secondary market for smaller

banks who may have loans offered to them that are marginal and they can't carry so they use the BOI for that purpose. It is hard to say that it is a problem with the banks. It is always a place to get a loan if you have twice as much collateral as is needed and a good cash flow. It is the ones that are a little riskier that are tough to finance.

REP. S.J.HANSEN asked if it is thought the nonprofits have had problems getting that kind of a loan. Mr. Lewis said it would depend on the particular nonprofit and the strength of their financial statements. It is like everything else, some are going to make it and some aren't.

REP. BENEDICT asked if this will help the nonprofits if they still have to go through the banks and pay higher interest rates. Mr. Todd answered No, it will not because there aren't enough nonprofits that have sufficient reserves to be able to participate in the program. Besides that their loans have been through the Department of Housing and Urban Development (HUD) and they can't mortgage any of that program. HUD has the first mortgage, and a second mortgage is not allowed. If they want to expand or build something new, the only program that is available at this time is through the IDR tax exempt bonds for nonprofits. For-profits can use partnership programs, general partners, and limited partnerships, and then are able to come up with enough cash to justify getting loans through banking appropriations to do a project. Nonprofits are limited.

REP. BENEDICT said Mr. Todd just said that this bill will not help the nonprofits the way it is written because of the regulations you have requiring them to go through a bank. What flexibility is there in your rules or regulations to allow them not to have to go through a bank to be able to borrow directly from the BOI? Mr. Lewis answered that requirement is statutory, you have to go through an approved lender. They don't have that flexibility. REP. BENEDICT said then basically this bill doesn't work? Mr. Lewis answered it may have limited applicability. He is not willing to say that there aren't any nonprofits qualified to apply.

REP. WALLIN asked if your competitor, the SBA, would require higher interest rates or would their rates be identical where you have to go through a bank; are they identical or is there a difference? Mr. Lewis said one advantage in the BOI rates is in SB 26 there are rules worked out whereby they suggest the language be adopted in statutes in SB 26, where they give a .5 basis point interest rate break for each job created up to a maximum of 250 basis points or 2.5% off the loan rate. They work a lot with SBA, they buy a lot of SBA guaranteed and partially guaranteed loans. Right now the BOI base rate on loans is somewhere in the ten range; and so if you were getting a loan that added 50 new jobs, they would be able to reduce the cost of that money to 7.5% on a fixed rate loan. That is pretty attractive.

REP. STEPLER said the fiscal note says it should be specified whether governmental entities are eligible for loans. If this bill were passed so the nursing homes, some of the nonprofit hospitals that are financed by local governments, whether by county or city, would they be eligible for any of this? Mr. Lewis said that was his suggestion when they drafted the fiscal note. That should be addressed because right now even with this the rules they have chosen would say no to governmental entities. The statutes do not allow that. They still are restricted from making loans to governmental entities. If the Legislature decides they want to open that door, they should make that specific in the legislation. He was not sure what the impact would be. They have inquiries every now and then from governments who would like to borrow or use this to borrow to build a building for a new business, or something like that. They have said No, they don't make loans to governmental entities. Again, it is a policy issue that can be considered and included if so desired. This is an appropriate place to put it in the statute.

REP. RICE is concerned this may not help Horizon Lodge because of the bank points that are currently in the statutes. What are your thoughts and what might be done on this? REP. HAYNE said she didn't know what could be done. She feels the BOI does a very good job in scrutinizing all the applications they get. If the nonprofit organization is a viable place to put the loan, they will do so.

REP. BENEDICT said something would have to be done statutorily in order to let the BOI make direct loans to nonprofit residential establishments because they are statutorily required right now to go through a bank. We would have to do something with this bill, if we want to, to allow them the flexibility to make direct loans. REP. HAYNE said they have her permission to do that.

Closing by Sponsor:

REP. HAYNE feels the hearing has been very fair. The word 'nonprofit' is the key to the bill. She hoped the Committee would look favorably on HB 479 and give it a Do Pass.

HEARING ON HOUSE BILL 442

Presentation and Opening Statement by Sponsor:

REP. TOM NELSON, HD 95, Billings, explained HB 442 defines a 'personal solicitation' sale on Page 2, line 9. It is an Act excepting from the definition of 'personal solicitation' an attempted sale in which the seller has an existing business relationship with the buyer; and amending Section 30-14-502, MCA. It means the purchase, lease, or rental of any goods or services following a personal solicitation where it would be one on one, face to face, and it could also be over the telephone, by the seller or person acting for the seller (which would be a salesman

or agent). This bill is at the request of U.S. West Communications, and the bill itself is an amendment to the Montana Personal Solicitation Sales Act which was passed in 1973 designed to protect consumers from high pressure sales tactics. **EXHIBIT 2** With the Public Service Commission (PSC) safeguards in place, it makes no sense to put USWC (and its customers) to the additional cost of mailing forms to buyers when a sale to an existing customer is made by telephone. The law should be amended by exempting sales where there is an existing business relationship. This will clarify the exemption that is already in place. There is recourse through the PSC safeguards.

#### Proponents' Testimony:

Dan Walker, representative of U.S. West Communications, Helena, said as stated by the sponsor they support this bill strongly, and do utilize telephone sales in most of the 14 states where they operate. Montana is an exception to that practice. They do not make telephone sales in Montana at this time. They have taken the position that to avoid the question of whether or not they might be in violation of the exceptions of the state as stated in the Act, they feel it is more prudent to work through this legislation which deals with existing business relationship. They would probably go forward with follow-up sales when they introduced a new product with advertising. A USWC salesman could call a potential customer, explain the product that had been advertised, hopefully make the sale, and thereby both parties would benefit. This is all the more important as they are looking forward to modernizing their network. Features such as call forwarding are made possible by modern telecommunication systems. That is their business. They are trying to improve their systems in the larger areas and thereby the smaller communities will be served.

#### Opponents' Testimony: None

#### Questions From Committee Members:

REP. CROMLEY had some concern about whether the new part (e) is already covered by (a). Mr. Walker explained their attorneys have taken the position that because the buyer may not personally know the personal service representative who is talking with a customer, there could be a question with the identity of the goods offered for sale. In this case the goods or service offered was a 'call over forward' option. The customer would be interested in that because of the success of that product, but may not know the exact name of it, so they see there is an opportunity or possibility for there to be questions in that section. They are attempting to clear that up, meanwhile they have determined that because of that possibility it is unwise to be performing these sales in Montana and they are not doing so.

REP. CROMLEY asked if the kinds of goods or services would be broad enough to allow that to be done? Mr. Walker said he was not

an attorney, but their attorneys have taken the position and advised their sales organization this stipulation is in fact a problem and have advised against selling in this manner. They instead suggested they work on existing sales or existing relationships.

REP. RICE asked if the only issue you have with the Personal Solicitation Sales Act is the cooling off period and the paperwork requirement with that? Is that the only reasons you don't do the telephone sales. Mr. Walker answered No, they don't think they are covered by the question that REP. CROMLEY asked. Secondly, they believe that an existing business relationship and the regulations they operate under as governed by the PSC are adequate substitutes for the letter and the three-day waiting period.

REP. RICE was not concerned about U.S. West in this bill as much as it seems to open the door to anybody who could claim an existing business relationship. That seems pretty broad. Anybody you have a credit card with, etc. Should this be narrowed even more? REP. NELSON thought the fact that it is covered by regulation of the PSC a safeguard is provided, whereas a credit card company would not necessarily provide that same safeguard since they are not regulated in that manner. That is an area that provides some safeguards.

REP. CROMLEY asked if he knew who could clear up the difference in the meaning of seller in parts (a) and (e)? REP. NELSON said that was explained earlier. They are interpreting (e) as corporation or company. It is not explained in the bill itself.

Closing by Sponsor:

REP. NELSON closed.

EXECUTIVE ACTION ON HOUSE BILL 442

Motion: REP. SONNY HANSON moved HB 442 do pass.

Discussion: REP. CROMLEY has some problems with the bill. The seller means one thing in part (a) and another in part (e). He agrees with the intent.

REP. BACHINI asked if he had language that would clarify the problem. REP. CROMLEY explained if the seller means 'business' in part (e) (in his mind the seller means business in part (a) also), he can't think of any situation that is not covered by part (a). REP. BACHINI said the seller is defined in part (4). REP. CROMLEY said in his mind the seller is 'in call forwarding', Bob Brown calls U.S. West, Bob Brown is not selling 'call forwarding' U.S. West is, so he knows the identity of the seller.

REP. LARSON asked isn't a corporation treated as an individual in

common law? REP. CROMLEY answered in some respects. Here the seller would be in the selling business no matter whether it is U.S. West. The contract would be with U.S. West, not with Bob Brown.

REP. ELLIS asked if it would be better to define the intent of the bill by defining seller as the person or business making a sale?

Mr. Verdon suggested moving part (e) to make two subsections under (a) after "attempted sale" (1) in which the buyer personally knows; and after "sale" (2) or the seller has an existing business relationship with the buyer.

REP. BENEDICT liked that because the key to this whole thing is the existing relationship with the buyer which makes it work logistically.

REP. SCOTT has a problem with the vagueness of 'existing business'. There is a network of marketing companies who sell in a marketing company's name. Consequently you could be tied up as doing business with a subscription to a magazine for two or three years and not even be aware of it. This might open up the door where your phone would ring and people would be trying to sell you something. When you say you don't know who they are, they say you are buying something from somebody and this is the same company you are already buying from. He would like to see this tightened up to be more specific as to the type of business it would cover.

REP. RICE read from the entire Section being dealt with in The Personal Sales Solicitation Act - the purpose of this part is to afford consumers subjected to high pressure personal sales solicitation sales tactics, a cooling off period. The intent of the original act, not HB 442, was if you are subject to high pressure sales, you have a cooling off period. HB 442 presents a really narrow idea which isn't all bad. To make it an existing business relationship, a worst case might be when you were subjected to a high pressure sales tactic and you bought whatever three years ago and you are still paying for that. There is an existing business relationship - I know you are an easy mark - I can call you up and sell you another high-priced something or an add-on, and not have to allow the cooling off period because of this Act we are looking at today.

REP. BENEDICT stated if somebody called me three years ago and slamdunked me into something I didn't really want, and I still had an existing business relationship with because I was still paying for it, I would hang up on them. That to him is the existing business relationship. If it is not good, I'm not going to renew that relationship, so that takes care of that. If it is a good relationship, why should they have to go through the hoops of the three-day thing? If it is a bad relationship, you are not going to be doing business with them again.

REP. LARSON asked what if as a seller you had an organization?  
REP. CROMLEY said as long as we don't have an (a) in it. REP.  
BACHINI said an amendment would be presented after discussion.

REP. DOWELL seconded what REP. BENEDICT said. If he were in a relationship and had been stuck by someone and was still paying, he wouldn't want to buy anything more from that person. But neither he nor I are the people we are looking to protect. We are trying to protect the unwary and easily swayed and somewhat incompetent who is listed as an easy mark. He would have to oppose the bill on those grounds.

REP. BENEDICT said if the person is not competent enough and gets drawn into this relationship, the three-day waiting period isn't going to do any good anyway. They're probably still going to end up paying for the service. They will ignore the three-day waiting period anyway. All this does is just give them a notice there is a three-day waiting period. He thinks it is a good bill.

Motion: REP. CROMLEY offered an amendment as prepared by Mr. Verdon. EXHIBIT 2.

REP. BACHINI asked if he approved of the proposed amendment. Mr. Walker said it satisfied their needs and clarified the seller.

Vote: Amendment passed unanimously.

Motion/Vote: Motion to DO PASS HB 442 AS AMENDED.

Discussion: REP. RICE was still concerned about having too broad a bill and exempting everyone who has any kind of an existing relationship from a three-day cooling off period.

REP. BENEDICT wanted to know how the other 13 states U.S. West sells to treat such a situation. Mr. Walker explained Montana and North Dakota are not dealing this way. It falls under the existing business relationship, which is the most common. They don't seem to have a problem with that.

Vote: Motion HB 442 DO PASS AS AMENDED passed 11-7 with REPS. RICE, KNOX, DOWELL, KILPATRICK, TUNBY, SCOTT, BACHINI voting NO.

#### EXECUTIVE ACTION ON HOUSE BILL 479

REP. BACHINI explained HB 479 would not do much for the nonprofit organizations if they have to follow the prescribed rules the BOI has. We probably don't want to get into the direct loan aspect. If this bill is changed the banks would object.

Motion: REP. SCOTT moved HB 479 DO NOT PASS.

Discussion: REP. LARSON wanted to know if there is a possibility in Section 5 of merging nonprofit corporations with SB 26. Mr.

Verdon said there would be, but that does not address the objection Mr. Todd raised.

REP. BENEDICT asked if there would be a lot of objections from the bankers if the direct loan program were just limited to nonprofits. REP. BACHINI thought that would be a problem, but that is up to this Committee. When the BOI is making this kind of loans, there should be certain criteria that has to be met for everybody. However, it is up to the Committee. REP. BENEDICT did not think state government should run in competition with private businesses.

REP. HANSON pointed out it is very valid for investment rules to be set up that pretty much guarantee a return of the dollar. If the BOI is permitted to allow nonprofit organizations to obtain loans the Legislature should be liable for any bad loans. That is bad policy.

Motion/Vote: REP. SONNY HANSON moved the amendments as offered to HB 479 be adopted. Amendments were adopted unanimously.

Motion: Motion HB 479 AS AMENDED DO NOT PASS.

REP. RICE said SB 26 made major changes to the in-state investment Act, and was concerned about needing to make sure these dovetail, so since we don't know what is in SB 26, it is inappropriate to take this action right now.

Substitute Motion/Vote: REP. SHEILA RICE moved to TABLE HB 479 AS AMENDED. Motion carried with REPS. PAVLOVICH, STEPPLER, BARNETT, AND SONNY HANSEN Voting NO.

#### EXECUTIVE ACTION ON HOUSE BILL 76

Motion: REP. LARSON moved HB 76 DO PASS. He also moved amendments HB007603.APV EXHIBIT 4.

REP. PAVLOVICH handed out copies of a proposed Statement of Intent EXHIBIT 5, and explained the amendments in EXHIBIT 4. HB 76 deals with the wine distributors' problems, and has been before the Legislature the last three sessions. The subcommittee had concurred with proposed amendments. REP. PAVLOVICH had some reservations with one statement, but would leave it in if the Committee thought it was alright.

REP. PAVLOVICH said it would be necessary to adopt the Statement of Intent EXHIBIT 5 since the bill has rule making authority in it.

REP. BACHINI said the amendments had been heard and explained. Did the sponsor agree? REP. GOULD thought it was a pretty good compromise and if adopted the way it is, it would be a good bill. It is something that can at least be worked with and in a few

years see how it is working, and maybe at that time, something could be changed. It is very difficult to think of everything in a bill of this magnitude. He hoped the bill would be adopted and can be started to work.

REP. BACHINI asked if any other subcommittee people wished to respond to the amendments. REP. WALLIN said he had heard this bill a number of times and carried it, and is glad to see that a consensus has been reached. Both parties gave a little and held onto what was essential to them. He thought the amendments should pass.

REP. LARSON said he felt the same way. REP. PAVLOVICH and he represented the tavern industry, Roger Tippy and Mona Jamison represented the wineries in this discussion. They shared the discussion whether or not a winery had the right to withdraw a brand from a distributorship. This bill tries to address that equity situation and establish fairness to all parties involved. He recommended a Do Pass on the amendments.

REP. BACHINI asked how he felt about the amendment in Section 6. The Chairman of the subcommittee suggested the last portion of that section, starting with "The department, upon the ..." to the end of that paragraph be stricken. REP. LARSON did not remember discussing that. He didn't understand what the intent was. He didn't have any trouble with it, however.

REP. BACHINI said the Statement of Intent was included in the motion to adopt the amendments.

REP. BENEDICT stated the New Section 6 will reduce the agreement to writing and file it with the department. It will be good protection for both parties because it will be a permanent public record.

REP. PAVLOVICH said they discussed that part of the New Section 6 in their deliberations but they did not agree to it.

Motion: REP. PAVLOVICH moved the last two sentences in New Section 6 be removed.

REP. BACHINI asked with the permission of the Committee that Mona Jamison and Roger Tippy explain in a short response their views on the proposed amendments. Ms. Jamison, representing the Wine Industry, believed the amendments represent the best they could do in the subcommittee. They don't like the bill with these amendments; however, they are an improvement over the bill.

REP. PAVLOVICH advised Roger Tippy had agreed to take the last two sentences in Section 6 out, too. Ms. Jamison urged they be deleted. That never came up directly in subcommittee for discussion, so they urged that be taken out.

REP. BACHINI said the motion to strike the language in Section 6

is included in the amendments. The Statement of Intent is also included with the proposed amendments.

There were no questions on the amendments.

Vote: Unanimous adoption of the proposed amendments including the Statement of Intent and elimination of the last two sentences in the New Section 6.

Vote: Motion HB 76 DO PASS AS AMENDED WITH STATEMENT OF INTENT was adopted with REPS. CROMLEY AND STEPPLER voting NO.

EXECUTIVE ACTION ON HOUSE BILL 405

Motion: REP. WALLIN moved HB 405 DO PASS. He also moved amendments EXHIBIT 6.

REP. WALLIN explained the amendment brings the bill into conformity with the title. It was never intended that a lien could be applied against life insurance or compensation awarded people for workers' compensation claims and pay for loss of earnings, so they get something in addition to the hospitalization. Pay for loss of earnings is not to be construed as part of this. This clears that up so there is no conflict with the title.

REP. TUNBY requested response from the Insurance Department. Dave Barnhill, Deputy Insurance Commissioner, was asked to respond to the amendment. He explained this amendment would make it clear the Physicians Lien Act would not apply in certain income policies which are called disability policies by ordinary street language, so by virtue of this amendment the proceeds of the policy included in the property casualty policy or a health policy, for instance, would apply only for medical services rendered by a provider. The department supports the bill with this amendment.

Vote: Amendments were unanimously adopted.

Discussion: On HB 405 as amended. REP. WALLIN read his support of HB 405. EXHIBIT 8. There has been a lot of work done on this bill on both sides. Much of it has to do with what the bill might project in cost. This bill places Blue Cross under the same law as other insurers.

REP. STEPPLER commented whether Blue Cross has \$162 million in premiums should have absolutely no bearing on this at all. We are not here to discuss how much money they make. The second paragraph talks about patients who can't pay, and some who are not worthy of credit, this bill doesn't apply to that. Those people aren't protected by Blue Cross and Blue Shield, so the hospitals aren't going to collect from those people anyway. His problem with this is that Blue Cross has an obligation to the

people who have a policy with them, and their first objective should be taking care of those who have policies, and not pay the money directly to the hospital. They should be paying it to the people who have the policies. It should be between the hospital and the patients. He disagrees with this bill totally.

REP. WALLIN responded it would be fine if the people would pay the hospital for services already provided. This provides that Blue Cross pays the hospitals directly. The hospitals would be required to accept this assignment when they admit the patient and the assignment would be binding with whatever insurance company it was. The hospital would be paid for its service. He sits on the committee that acts on the credit extended by the hospitals, and they all operate the same because they do take in patients who can't pay. Once every three months they go through all those unpaid hospital bills. They charge off around \$80,000 worth of bills a month, which amounts to a million dollars a year. Hospital bills would be much less if everybody paid theirs. If this bill doesn't go through and people who get their checks don't pay, hospitals will not be able to keep operating. Another misconception is that hospitals make so much money they don't need to be paid.

REP. BACHINI thought most of the hospitals are enrolled in the Blues, then is the check issued to the hospital and the insured. John Alke with permission of the Committee answered every hospital is a member of the Blues. Payment is made directly to the hospital, it is not made to the hospital jointly with the patient. The purpose of the bill is to change that.

REP. WALLIN commented in negotiating the Blues are not willing to accept the figures the hospitals have to live by as far as their insurance is concerned. The Blues want to come in and basically tell the hospitals what they will pay, and the hospitals would have to accept that amount whether it is what they bill or not. All hospital rates are not the same because they are based on costs. Hospitals have to establish justification for their costs. The Blues like to negotiate and say what they will pay and if the hospital doesn't negotiate and accept what they will pay, then they say they won't pay the hospital direct, and will pay the policy holder, and the hospital can get its money however it can. That is the whole battle.

REP. PAVLOVICH asked what does this bill do, is it going to raise hospital costs or insurance premiums? REP. WALLIN said if we don't pass this and the money these people are getting where the hospitals are not settling for the forced rates, obviously there is going to be a raise in hospital costs because somebody else - the people who don't have any insurance and pay cash or other insurance companies are going to have to pick that up.

REP. SONNY HANSON had a list of some of the premiums that have been paid. Basically he disagrees with REP. STEPLER. Cost is important because that dictates cost shifting. All those

insurance companies from 2 on down do not object. They take the bills, they respond as a typical insurance company. Blue Shield Blue Cross does not. They say we are only going to pay this, so the hospitals then are in a position that if they cannot get the monies needed for this operation or those expenses, then they have to raise costs for the other insurance companies. That wouldn't be very bad and you could accept that cost shifting if it were Universal Life Insurance that was raising the issue because they only have about \$2 million in premiums, but we are talking about an insurance company that by law, Montana is unique, is not classified as an insurance company. They have almost 50% of the total premiums and no matter how you look at it, that is a ten ton gorilla coming down the road to the hospital, and the hospital has to accept what they give. Even if they do not want to accept, they have to accept, they have no choice, eighty cents on the dollar. They then take that other twenty cents and add it to the rest of the bills of those others participating. This whole bill thrust is to say this is an insurance company, let's treat them all the same, and proceed on that basis.

REP. PAVLOVICH asked how accurate he thinks this list is. Mr. Alke, Blue Cross Blue Shield, said he received it yesterday. It shows Blue Cross Blue Shield has \$162 million in premiums and lists 25 companies. EXHIBIT 7 Whoever prepared that sheet was purposely trying to shave the facts they were giving to you. He added up lines 2 through 25 and found they only showed \$103 million in premiums other than the Blues. They called the Insurance Auditor's office and were advised there were \$169 million that is in premiums issued by companies other than Blue Cross Blue Shield in Montana. Additionally, the figure of \$162 million given is not Blue Cross Blue Shield's premiums from insurance; Blue Cross Blue Shield reports to the Insurance Commissioner's office not only its premium dollars but the money it makes as a third party administrator for service costs. The Insurance Commissioner's office knows that, and in fact in 1988 they had to calculate the share of the risk pool billed out to all the other insurers. The risk pool is for people who can't get insurance and the cost of the risk pool is then spread among all health insurers on the basis of premium dollars. The insurance company took the figure of \$162 million, on a different year it was \$144 million, and they deducted out for purposes of computing our share of the risk pool all of the third party administrator costs they earned. In fact, Blue Cross Blue Shield averages somewhere around 42% to 46% of the market share. They have done that for 12 years. It is fairly close to half and has been that way for year after year.

REP. SONNY HANSON had handed out EXHIBIT 7. It was made up by the Montana State Auditor's Office. The problem that was just expressed with this list that was put out says 48.9%. Mr. Alke just stated 42-46%. It agrees basically with what he said. He should have looked at the list handed out.

HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

February 7, 1991

Page 20 of 20

**Vote:** Motion to DO PASS HB 405 AS AMENDED passed with REPS.  
**McCULLOCH, STEPPLER, KILPATRICK AND SCOTT** voting NO.

**ADJOURNMENT**

**Adjournment:** 11:15 A.M.

  
\_\_\_\_\_  
REP. BOB BACHINI, CHAIRMAN

  
\_\_\_\_\_  
JO LAHTI, SECRETARY

BB/jl

**BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE**

DATE Feb. 7, 1991

[illegible]

HOUSE STANDING COMMITTEE REPORT

February 7, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 442 (first reading copy -- white) do pass as amended .

Signed: Bob Bachini  
Bob Bachini, Chairman

And, that such amendments read:

1. Page 1, line 22.

Following: "the"

Insert: ":

(i)"

2. Page 1, line 25.

Following: "sale;"

Insert: "or

(ii) seller has an existing business relationship with the buyer;"

3. Page 2, line 5.

Following: "or"

Insert: "or"

4. Page 2, lines 6 through 8.

Following: "policy" on line 6

Strike: remainder of lines 6 and 7 in their entirety and line 8 through "buyer"

2:40  
2-7-91  
JDB

HOUSE STANDING COMMITTEE REPORT

February 7, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 76 (first reading copy -- white) do pass as amended .

Signed: \_\_\_\_\_

Bob Bachini, Chairman

And, that such amendments read:

1. Page 1, line 13.

Following: line 12

Insert: "

STATEMENT OF INTENT

Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)], regarding the designation of sales territories for wine distributors by a winery."

2. Page 2, line 19.

Strike: "; or"

Insert: "."

3. Page 2, lines 20 through 23.

Strike: subsection (3) in its entirety

4. Page 2, line 25.

Following: "provisions."

Insert: "(1) A supplier or table wine distributor may not fail or refuse to reduce to writing an agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor."

Renumber: subsequent subsections

5. Page 2, line 25 through page 3, line 1.

Following: "must" on line 25

Strike: "be in writing and must"

2:40

2-7-91

JDB

February 7, 1991

Page 2 of 1

6. Page 3, line 6 through line 10.

Following: "termination." on line 6

Strike: remainder of line 6 through line 10 in their entirety

Insert: "Notice of termination is void if within 60 days of the notice the table wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection."

7. Page 4, line 5.

Following: line 4

Insert: "(5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of distributorship for a legitimate business reason not within the definition of good cause if an arbitrator appointed by the department finds, after hearing the supplier and the table wine distributor, that the termination is in the best interest of the table wine brand concerned. Arbitration under this section must be conducted under the provisions of Title 27, chapter 5."

8. Page 5, line 6.

Following: "support"

Insert: "-- alternate supplier"

Following: "."

Insert: "(1)"

9. Page 5, line 13.

Following: line 12

Insert: "(2) The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of his license or a photocopy of his license, personally obtain from any distributor's warehouse a quantity of table wine that the licensee may agree to buy and that the distributor may agree to sell."

NEW SECTION. Section 6. Applicability. Within 60 days after [the effective date of this act] or within 60 days after the conclusion of a new agreement by the parties, whichever is later, an agreement of distributorship must be reduced to writing and an exact copy of the agreement must be filed with the department as a public document and must be available to any of the parties to a dispute. Upon filing with the department, the agreement becomes subject to the provisions of [this act]."

Renumber: subsequent sections

10. Page 10, lines 7 and 10.

Strike: "6"

Insert: "7"

JDB

201354SC.Hpd

HOUSE STANDING COMMITTEE REPORT

February 7, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 405 (first reading copy -- white) do pass as amended .

Signed: \_\_\_\_\_  
Bob Bachini, Chairman

And, that such amendments read:

1. Page 2, line 10.

Following: "~~er~~"

Insert: "a policy of life insurance or group life insurance; a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital; or"

Amendments to House Bill No. 479  
First Reading Copy

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

Prepared by Bart Campbell  
February 6, 1991

1. Page 3, lines 5 and 6.  
Following: "assistance"  
Strike: "if" on line 5 through "criteria:" on line 6  
Insert: ". The rules should recognize that different criteria  
may be needed for nonprofit corporations than for for-profit  
corporations."
2. Page 3, lines 7 through 16.  
Following: line 6  
Strike: subsections (a) through (d) in their entirety

U S WEST Communications  
HB 442  
PERSONAL SOLICITATION SALES ACT AMENDMENT

The Montana Personal Solicitation Sales Act (Act), passed in 1973, is designed to protect consumers from high pressure sales tactics. The Act applies to sales made by telephone or in person. It requires that buyers be given a "cooling off period". Sellers covered by the Act are required to mail to buyers a written form spelling out the buyer's right to cancel a sale within 3 days.

The Act exempts certain transactions. Among these are sales in which the buyer knows the seller and the kind of goods offered for sale. Also specifically exempted are sales in which the contact was initiated by the buyer, newspaper subscription sales by a minor and sales of insurance policies.

U S WEST Communications (USWC) utilizes telephone sales in most of the 14 states in which it operates. The exemption in current law for the situation in which the buyer knows the seller and the kind of products sold is close to the USWC sales practice described above. However, a buyer will probably not know the individual representing USWC in a telephone sale. Also, it is unclear whether a new product would necessarily be of a kind that a buyer would recognize without some explanation. To clear up this uncertainty, USWC supports an amendment exempting from the Act sales in which the seller has an existing business relationship with the buyer.

USWC's sales practices are closely regulated by the Public Service Commission (PSC). When a new service order is placed, a "catalog" is mailed to the customer to inform him or her of all service alternatives, together with their prices. The PSC's rules require detailed monthly bills that inform customers exactly what they are paying for. The PSC is available to deal with customer problems and has a full time staff member working on utility service issues.

With these safeguards in place today, it makes no sense to put USWC (and its customers) to the additional cost of mailing forms to buyers when a sale to an existing customer is made by telephone. Instead, the law should be amended by exempting sales where there is an existing business relationship. This will clarify the exemption that is already in place (Sec. 30-14-502(2)(a), MCA).

Amendments to House Bill No. 442  
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon  
February 7, 1991

1. Page 1, line 22.  
Following: "the"  
Insert: ":"  
(i)"

2. Page 1, line 25.  
Following: "sale;"  
Insert: "or  
(ii) seller has an existing business relationship with the  
buyer;"

3. Page 2, line 5.  
Following: "ex"  
Insert: "or"

4. Page 2, lines 6 through 8.  
Following: "policy;" on line 6  
Strike: remainder of lines 6 and 7 in their entirety and line 8  
through "buyer"

Amendments to House Bill No. 76  
First Reading Copy

Requested by Subcommittee on HB 76  
For the Committee on Business and Economic Development

Prepared by Paul Verdon  
February 4, 1991

1. Page 2, line 19.

Strike: "; or"

Insert: "."

2. Page 2, lines 20 through 23.

Strike: subsection (3) in its entirety

3. Page 2, line 25.

Following: "provisions."

Insert: "(1) A supplier or table wine distributor may not fail or refuse to reduce to writing an agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor."

Renumber: subsequent subsections

4. Page 2, line 25 through page 3, line 1.

Following: "must" on line 25

Strike: "be in writing and must"

5. Page 3, line 6 through line 10.

Following: "termination." on line 6

Strike: remainder of line 6 through line 10 in their entirety

Insert: "Notice of termination is void if within 60 days of the notice the table wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection."

6. Page 4, line 5.

Following: line 4

Insert: "(5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of distributorship for a legitimate business reason not within the definition of good cause if an arbitrator appointed by the department finds, after hearing the supplier and the table wine distributor, that the termination is in the best interest of the table wine brand concerned."

7. Page 5, line 5.

Following: "support"

Insert: "-- alternate supplier"

Following: "."

Insert: "(1)"

8. Page 5, line 13.

Ex. 4

2-7-91

HB 79

Following: line 12

Insert: "(2) The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of his license or a photocopy of his license, personally obtain from any distributor's warehouse a quantity of table wine that the licensee may agree to buy and that the distributor may agree to sell.

NEW SECTION. Section 6. Applicability. Within 60 days after [the effective date of this act] or within 60 days after the conclusion of an agreement by the parties, whichever is later, an agreement of distributorship must be reduced to writing and an exact copy of the agreement must be filed with the department as a public document and must be available to any of the parties to a dispute. Upon filing with the department, the agreement becomes subject to the provisions of [this act]. (The department, upon the instigation of an action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. A contract, agreement, or franchise not upon record with the department may not be considered by a court as having any force or effect.")

Renumber: subsequent sections

9. Page 10, lines 7 and 10.

Strike: "6"

Insert: "7"

HB 76 - Roger Tippy

EXHIBIT 5  
DATE Feb. 7, 1991  
HB 76

#### STATEMENT OF INTENT

Since the department of revenue has rulemaking authority under 16-1-303 (2) (m), MCA, a statement of intent may be necessary. The department should consider the rules and interpretations of the Washington wholesaler/supplier equity agreement act, RCW 19.126.010 et seq., a statute upon which many of the sections of this bill are based. It is not intended that the department adopt any rules interpreting or implementing section 3 (2), regarding the designation of sales territories for wine distributors by a winery.

Amendments to House Bill No. 405  
First Reading Copy

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

Prepared by Bart Campbell  
January 30, 1991

1. Page 2, line 10.

Following: "~~or~~"

Insert: "a policy of life insurance or group life insurance; a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital; or"

ACCIDENT AND HEALTH

1989 DIRECT A & H  
PREMIUMS WRITTEN IN MONTANA

IK

INSURER

1 BLUE CROSS/BLUE SHIELD OF MT.	\$162,957,526	48.94%
2 PRUDENTIAL INS. CO. OF AMERICA	\$12,481,653	3.75%
3 PRINCIPAL MUTUAL LIFE INS. CO	\$11,470,157	3.45%
4 CONTINENTAL ASSURANCE CO.	\$7,866,843	2.36%
5 BANKERS LIFE AND CASUALTY CO.	\$7,828,448	2.35%
6 MUTUAL OF OMAHA INS. CO.	\$5,675,593	1.70%
7 FEDERAL HOME LIFE INS. CO.	\$4,933,507	1.48%
8 STATE FARM MUTUAL AUTO INS. CO.	\$4,662,290	1.40%
9 JOHN ALDEN LIFE INS. CO.	\$4,600,358	1.38%
0 AETNA LIFE INS. CO.	\$4,429,966	1.33%
1 UNITED OF OMAHA LIFE INS. CO.	\$4,271,658	1.28%
2 TRAVELERS INS. CO.	\$3,349,172	1.01%
3 UNION BANKERS INS. CO.	\$3,324,206	1.00%
4 AETNA LIFE INSURANCE & ANNUITY CO.	\$3,312,481	0.99%
5 LIFE INVESTORS INS. CO. AMERICA	\$3,021,522	0.91%
6 COMBINED INSURANCE CO. OF AMERICA	\$2,793,424	0.84%
7 UNITED AMERICAN INS. CO.	\$2,758,867	0.83%
8 JOHN HANCOCK MUTUAL LIFE INS. CO.	\$2,612,540	0.78%
9 PROVIDENT LIFE & ACCIDENT INS. CO.	\$2,538,414	0.76%
0 LINCOLN NATIONAL LIFE INS. CO.	\$2,394,641	0.72%
1 CUNA MUTUAL INS. SOCIETY	\$2,624,780	0.79%
2 WASHINGTON NATIONAL INS. CO.	\$2,265,449	0.68%
3 PIONEER LIFE INS. CO. OF ILLINOIS	\$2,258,121	0.68%
4 NORTH CENTRAL LIFE INS. CO.	\$1,984,760	0.60%
5 NORTH AMERICAN LIFE AND CASUALTY	\$1,984,129	0.60%
6 UNIVERSE LIFE INS. CO.	\$1,963,762	0.59%

TOTAL: \$270,364,267 81.20%  
TOTAL PREMIUMS PAID IN MT. IN 1989: \$332,940,480

SOURCE: MONTANA STATE AUDITOR'S OFFICE  
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

## TESTIMONY

If Blue Cross says they are now writing their insurance policies at prices which could change if this bill is passed, we say we have no objection to that. That is their decision to make. Their sales in 1989 were \$162,957,526 premiums for accident and health coverage - at least one half of the total in the state. The next in line, only \$12,481,653, was Prudential Insurance Company of America. I suggest Blue Cross is in a good position to absorb some costs - much more than the hospitals. Their rates are only passed after audit by the Montana Hospital Review Committee.

Hospitals in all but three cities of Montana are "Sole Providers", that is, there are no other hospitals providing acute care in other communities. Obviously, they must provide health care to everyone that doctors admit as patients. They do not have the option of refusing care to anyone that requires care. They end up with a lot of patients who can not pay and some who are not worthy of credit. This is the reason for this bill. Hospitals have to be paid by all who can pay.

That is why the Physician Lien Act was passed in 1987. In that act, the legislature made Blue Cross subject to the Montana Insurance Code. Since Blue Cross is identical to health insurers in fundamental respects, they should be treated identically under the Physician Lien Act. It is the right of a patient to assign his insurance claims to a hospital and it

requires the insurance company to write the check to the hospital.

You wont find anything else in this bill. It places all on the same playing field - the same language used by Mr. Barnhill of the Insurance Division in his testimony at the hearing.

The hospital or hospitals in your communities are probably the largest employer in town and it is in the communities' best interests to keep them operating. HB 405 is a key in that effort so I hope you can see the whole picture as I do, serving on our Hospital Board now and for the past eight plus years!

We are elected to write laws that are fair to all and to correct statutes that are unfair. This bill addresses fairness and places Blue Cross under the same law as the other insurers.

---

Norm Wallin

**HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER**

Business & Econ Dev. COMMITTEE BILL NO. HB 479  
 DATE Feb. 7, 1991 SPONSOR(S) Rep. H. Hayne  
 PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Robert E Mac Givira	Horizon Lodge (Conrad)	X	
KEITH E. TYNER	HORIZON LODGE (CONRAD)	X	
JACK HAYNE		X	
Stephen C. Stanley	Horizon Lodge Conrad	X	
Tony B. Kasper	Horizon Lodge Conrad	X	
Gene D. Todd	Eagles Homes Inc	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 442  
DATE Feb. 7, 1991 SPONSOR(S) Rep. Tom Nelson

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DAN WALKER <sup>Helena</sup> Mt.	U S WEST	X	

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