

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS & INDUSTRY**

**Call to Order:** By Chairman J.D. Lynch, on January 23, 1991, at 10:00 a.m.

#### **ROLL CALL**

**Members Present:**

J.D. Lynch, Chairman (D)  
John Jr. Kennedy, Vice Chairman (D)  
Betty Bruski (D)  
Eve Franklin (D)  
Delwyn Gage (R)  
Thomas Hager (R)  
Jerry Noble (R)  
Gene Thayer (R)  
Bob Williams (D)

**Members Excused:** None

**Staff Present:** Bart Campbell (Legislative Council).

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

**Announcements/Discussion:** None

#### **HEARING ON SENATE BILL 118**

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

Senator Gerry Noble, sponsor of the bill, stated that he had a copy of the section of the law that he is pertaining to (See Exhibit 1). This is a simple house keeping bill, and he would like to repeal some of the law that is in place in the statutes. This law originally was put in in 1933, the supreme court found it unconstitutional the next year and it was revamped and put back in 1935. Since that time it has not been used. Senator Noble was on a subcommittee for motor fuel marketing, which pertained to this statute. The attorney general was there and he tested that it was not enforceable, and it had never been enforceable. He went on to say that he thinks it needs to be taken out of law.

##### **Proponents' Testimony:**

Steve Visdean, a member of the western marketers

association, spoke in favor of the bill. The law that currently exists provides for unfair competition, it does not support the competitive market place.

Beth Baker, representative of the department of justice, spoke in favor of the bill. Section 82-15-203 exhibits charging a higher price for any standard petroleum product in one part of the state, and the price being collected at substantially the same time in a different part of the state or in the nearest adjoining state. The statute provides a defense- a company can justify their price differences based on transportation, quantity of sales, emergencies, cost of doing business, or similar differences under the same conditions. In 1990 the attorney general's office conducted an investigation of several oil companies under the statute after the reports were received of different prices being charged in different locations of the state. Although an exhausted inquiry was difficult due to the limited resources of their office, the attorney general concluded that the companies that were involved would be able to justify their price differences on the grounds of the statute. The appeal of this law would not have the significant impact on the gasoline prices in Montana. Because of its sweeping language the law is difficult if not impossible to enforce and therefore creates a false sense of comfort to the consumers. The constitutionality of the law is subject to some question. Their investigation was the first of its kind since the enactment of the law. Not suggesting that pricing practices should not be scrutinized, she believes the state has an important interest in seeing that Montana consumers are treated fairly. There are other bills being considered that address this problem more affectively. Two other measures may come before the legislature this session on marketing of motor fuels. One would prohibit the low cost sale of motor fuels, and the other would prohibit discrimination in the price charged. These measures are more in step with federal anti-trust laws, and will provide better enforcement capabilities than title 82 chapter 15. While they support strong consumer protection laws in Montana, they are not opposed to the appeal of the present gas price discrimination laws because enforcement is extremely difficult.

Ben Havdahl, representing the Montana motor carriers association, spoke in favor of the bill. The trucking industry in the state supports this bill. He added that he wasn't real certain, but is sure that diesel fuel is included in this bill. When the law was originally written in 1933 there wasn't much use for diesel fuel. They support the bill but repeal these particular laws. Their position is that the free market place is a place to control prices of fuel making it a competitive industry.

#### Opponents' Testimony:

John Taggart, representing the automotive trades of Montana, and the service station dealers association, supports the bill. They are the people who brought the bills that Beth Baker

referred to that were discussed in the hearings this summer. He stated that his position on the bill is that it is a consumer's protection bill. It has a few problems, but it would be against the people to remove this bill from the statutes. If somebody really feels this bill needs attention, they feel the bill should be amended to improve it. They don't feel it is the position of our elected representatives to remove consumer oriented bills from the books, and our legislators time is too valuable to worry about repealing this bill. This bill is protecting the consumer. It wasn't the consumers who asked to repeal the bill. This bill is acting in an anti-consumer matter.

Ron Leland, representative of the automotive trades of Montana and also a service station, spoke in favor of this bill. Three years ago, he inquired to the attorney general's office concerning this bill. The attorney general did do a limited investigation concerning price differences in the state of Montana. There was discrepancies, and they were unable to pursue this because of a limited budget, limited personnel, and problems with this law. This last summer, the Montana legislative council with its joint sub committee did a survey in May along with market association in Montana (See Exhibit 2). This bill has never been tried in court to the knowledge of the attorney general's office. It had never even been brought up until about three years ago.

#### Questions From Committee Members:

Senator Gage commented that Mr. Taggart had mentioned other bills that are in the session that have not passed yet, and asked if these bills do pass the session would he still be opposed to repeal.

Taggart replied that generally in concept, yes. He likes the concept of the bill. It is a good bill, it has some problems in language that could be amended. There is nothing offending with this bill in concept.

Senator Gage commented that the figures on Exhibit 2 as he understands the statutes it talks about a person, or a corporation having different prices in different parts of the state as opposed to a multitude of different dealers having price differences across the state. Is this saying that same dealer has these outlets, and these are the differences in his prices, or this is the difference in pricing in different areas of the state.

Ron Leland responded by saying it was the difference in pricing in the different areas of the state. That was the lowest price in each town on the day of the survey.

Senator Gage asked if they had a schedule that said (take Cennex for instance) this price in Great Falls, this price in Billings, this price in Lewistown, etc.

Ron Leland answered this survey did not tell that.

Senator Williams asked if Steve Visdean is a member of both associations, the service station association and ATOM.

Steve Visdean replied that the group he represents, represents the wholesalers in Montana. There are three major

entities, dealers, wholesalers, and refiners. Many wholesalers, like himself, also have wholesale outlets.

Senator Williams asked if this bill has anything to do with the below cost pricing.

Senator Noble replied no. He is in the sub committee of below cost selling. The question arose that this part of the law has never been used, and is unworkable. There are several other gas pricing bills coming along, and the committee may want to hold this for the other bills.

Senator Hager asked if the survey of margins reported includes the delivery costs.

Leland replied yes it does.

Senator Gage asked in as much as these are averages, it has been indicated that some dealers could be in multitudes. Since these are averages is it not possible that Cennex could have the same margins in these areas.

Leland replied that when the survey was taken, this was the lowest price in that town on that day. Cennex could be related, and could have a higher margin. This was not an average price. When they did the survey they asked the dealer in that town to report the lowest retail street price at that time.

Senator Gage commented that this was not an average of all of the gasoline dealers.

Leland replied no. In Billings at that time, the lowest price that they found the margin was at that point was 7.4 cents. That was not the average.

Taggart commented that the real concept of the bill and the language that it contains is that multiple unit operators, which is not your moms and pops, are prohibited in the bill from arbitrarily buying a market. Those multiple unit operators can make up that loss by gauging the public in another town. There is a thirty cents a gallon price difference of the same brand within the state of Montana that they do not feel is justifiable.

Senator Williams asked if it were Taggart's actions that instigated the action of the AG's office.

Taggart answered that his group instigated the action specifically here in Helena.

Senator Williams asked if Taggart was unsatisfied with the investigation because they had the lack of funds to conduct a complete investigation.

Taggart replied yes.

Senator Thayer commented that Mr. Taggart made the statement that he didn't think legislators should spend their time repealing bills, and asked how would we legislate if we didn't repeal bills.

Taggart replied that he hadn't said that the legislature didn't have the authority to repeal the bills, he's saying that the legislator's time is too valuable; in his opinion, to repeal a bill that is good for the consumer.

Senator Franklin commented that Beth Baker had said the bill was unenforceable, and asked her to further comment on that.

Beth Baker replied that when the investigation was conducted there were a number of problems. One of which was the inability to do a thorough investigation because the major anti-trust

resources were not available. The other problem was the language of the present statute which currently gives the gas company a lot of leave way to justify their prices. The statute specifically says to justify the prices. The company can show transportation costs, quantity of sales, emergencies, cost of doing business which is not declined by the statute, or similar differences under the respected conditions. This is how vague the language is and that is one of the problems they encountered. This is a criminal action. The company is guilty of discrimination which is here by declared to be a fraud. In order to prosecute it would be extremely difficult to go in and make the kind of proof that would be necessary for a violation in this section.

Senator Franklin commented that Beth Baker didn't disagree with the spirit of the legislation, but is suggesting that there might be some tighter type of consumer protection.

Beth Baker replied yes. Section 30-14-207 is titled unfair competition of sales.

Senator Hager asked if section 30-14-207 has been used.

Baker replied that the enforcement of this act is up to the department of commerce. The attorney general does have some authority to get involved, but the consumers affairs unit department only has two employees. They address all of the concerns and complaints. Baker's office has no budget allocation anymore for any kind of consumer protection or anti-trust enforcement.

Jim Kembel, administrator to the public safety division, commented that the consumer affairs division is not part of his division, but there are just two employees handling complaints of all types.

Senator Hager asked if Mr. Kembel knows if the law has been successfully used.

Jim Kembel replied no.

Senator Gage commented that it is costing the tax payers in the state of Montana so much money for investigation and enforcement.

Senator Lynch commented that if we no longer want to prohibit discrimination, the antonym would be that now we are going to allow discrimination. That is a terrible image to the public to see that we are repealing a bill. It would appear that we are anti-protection to the consumer.

Senator Noble replied that there was some basis for that.

Closing by Sponsor:

Senator Noble closed by saying that they talked a little bit about anti-trust, and the feds have been working on that for fifteen years and they can't figure it out. In below cost selling, in the petroleum industry is anti-trust. The attorney general may have to pick up another fifteen, twenty people to bother with this. Referring to the survey, each and every one of the petroleum suppliers are making different margins because they all need different margins. Everybody's cost of doing business is different. As far as the consumers go, if there is somebody selling below cost, tell them where it is so they can go gas

their vehicles up. This is the opening volley of some of the problems that are involved here that are so confusing that nobody could figure out. The committee may want to hold this bill up in light that there is legislation coming along. The below cost motor fuel pricing sub committee does have a bill out. He stated that he is only trying to get rid of some confusing parts of a law that are unworkable and that we don't need.

Senator Lynch commented that because of the opposition, he would not act on the bill today. Unless there is strong opposition from the committee he'd like to hold this up until the other bill dealing with the subject comes along.

Senator Williams explained that he may want to ask for a committee bill concerning affixing the tax on the cigarette packages. It is costing Safeway about one hundred thousand dollars a year because their warehouse is in Spokane, yet they have to ship their cigarettes somewhere in Montana to have that tax put on and then distribute to their stores. It is costing them a lot of money.

Senator Noble commented that in his taxation committee meeting this morning they just had a bill that pertains to this same thing. In four or five years Pitney Bowes, which makes the stamping machines that put the tax on the cigarette package, will be fazing those machines out and they will go out of business. And there are going to be new methods of doing that.

Charles Brooks, representing the Montana retail association, stated that Safeway pulled out of Butte. They have twelve to thirteen stores primarily in Montana. There is an administrative rule that states that when you purchase the stamps to be applied to cigarettes, they are picked up at the county treasurers office and then they must be affixed within the state. Those retailers that do not have a warehouse in the state or facilities to do that, have to go to the wholesalers. The wholesaler affixes the stamp, and then Safeway distributes the tobacco to their stores. Safeway can document that they are spending over one hundred thousand dollars a year with the people that they consider to be their competitors. They feel that the one hundred thousand dollars is unnecessary. He has addressed the department of commerce several times on this issue and they have said that this is an industry problem, and they don't want to be involved.

Senator Williams commented that he thought he should bring it to the committee's attention, and if the committee would even consider a committee bill if better information was given to the committee.

Senator Lynch stated that the committee should ponder on this before jumping into any committee bills because you must anticipate that you will have some opposition. However, he stated if you could refrain it as revenue bill of some sort you could still get it under the guidelines without a committee.

Senator Gage commented that he would take a look at it in taxation. It appears that if you could do it by rule, and saying they have to be affixed in the state, we could probably say those have to be affixed before sale within the state.

Brooks stated that it is an option, but there would be opposition from the wholesalers because they would want to keep

that one hundred thousand dollar volume.

Senator Thayer asked how many other companies like Safeway would jump on the same band wagon.

Brooks stated that they are not sure, but he has asked Safeway to supply this information to him.

Senator Gage commented that Safeway would have to be clarified as a wholesaler.

Brooks stated that may be a problem.

Senator Noble stated that approximately 20% of the cigarettes coming into Montana are sold by wholesalers out of state. They do not have to pay state tax until it is here. The wholesalers in Montana the day that comes into their shop have to pay the tax. Outside wholesalers do have an advantage in another way that the instate wholesalers don't have.

Brooks stated that the real problem is that one little administrative rule says it must be affixed within the state.

Senator Lynch commented that they should look into the issues and come back to it.

Senator Gage stated that he wanted to bring up an issue to the committee for review. It has to do with peer reviews and confidentiality of those reviews for CPA's. The medical association currently has legislation that indicates that the reviews on doctors cannot be used in any case. (See attached letter)

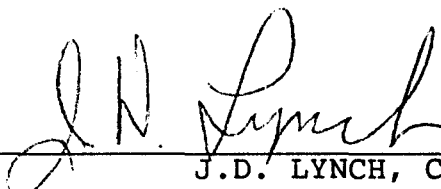
Senator Lynch asked at the present time, is this information available to the press.

Senator Gage answered yes.

Senator Lynch stated that the committee should have some time to think about it.

ADJOURNMENT

Adjournment At: 10:45 a.m.

  
J.D. LYNCH, Chairman

  
DARA ANDERSON, Secretary

JDL/dia

4/23/91

✓ BUSINESS & INDUSTRY

# VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

ROLL CALL

Business & Industry COMMITTEE

DATE 1/23/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Bruski	X		
Senator Franklin	X		
Senator Gage	X		
Senator Hager	X		
Senator Noble	X		
Senator Thayer	X		
Senator Williams	X		
Senator Kennedy	X		
Senator Lynch	X		

Each day attach to minutes.

by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment.

History: En. 60-244 by Sec. 11, Ch. 77, L. 1977; R.C.M. 1947, 60-244.

**82-15-112. Injunction against violations.** The department may apply to any court of competent jurisdiction for a temporary or permanent injunction, or both, restraining any person for violating any provision of this part or any rule promulgated by the department pursuant to this part.

History: En. 60-245 by Sec. 12, Ch. 77, L. 1977; R.C.M. 1947, 60-245.

**Cross-References**

Injunctions, Title 27, ch. 19.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

Part 2

DATE

1/23/91

Price Discrimination

BILL NO.

SB118

**82-15-201. Standard petroleum product defined.** The term "standard petroleum product" as used herein refers to and includes gasoline, fuel oil, distillates, greases, and lubricating oils.

History: En. Sec. 2, Ch. 111, L. 1935; re-en. Sec. 4193.2, R.C.M. 1935; R.C.M. 1947, 60-402.

**82-15-202. Purpose.** This part is intended to compel a person, firm, company, association, or corporation doing business in the state of Montana and engaged in the selling of and dealing in standard petroleum products to treat a customer in one part of the state of Montana on an equal basis with a customer in another part of the state or in the nearest adjoining state and to promote the uniform application of the law of the state of Montana providing a tax on gasoline used by a motor vehicle when traveling over a public highway. This part shall be liberally construed to accomplish those purposes.

History: En. Sec. 3, Ch. 111, L. 1935; re-en. Sec. 4193.3, R.C.M. 1935; R.C.M. 1947, 60-403; amd. Sec. 8, Ch. 201, L. 1979.

**Cross-References**

Gasoline and vehicle fuels taxes, Title 15, ch. 70.

**82-15-203. Discrimination in price of petroleum products.** (1) Any person, firm, company, association, or corporation, either domestic or foreign, doing business in the state of Montana and engaged in the selling of any standard petroleum product that shall demand or collect from any person or customer a higher price for any standard petroleum product in one part of the state of Montana than the price being demanded or collected at substantially the same time by such person, firm, company, association, or corporation from other persons or customers in another part of the state of Montana or in the nearest adjoining state for a like article of standard petroleum product shall be guilty of discrimination which is hereby declared to be a fraud and the agents or officers of such person, firm, company, association, or corporation participating, guilty of a misdemeanor.

(2) In the trial of an action under the provisions of this part, in the determination of the justification of the price demanded or collected by a person, firm, company, association, or corporation charged with a violation of the provisions of this part, transportation, quantity of sales, emergencies, cost of

doing business, or similar differences under the respective conditions may be offered as a matter of defense or justification for the differences in price demanded or collected. When competent evidence is offered in the trial of any action under this part of a demand for or the receipt of a higher price for any standard petroleum product in the state of Montana by any person, firm, company, association, or corporation than such person, firm, company, association, or corporation demanded, collected, or received at substantially the same time for the same or a similar article of standard petroleum product in another part of the state of Montana or in the nearest adjoining state, the burden of proof shall then be upon such person, firm, company, association, or corporation or agents or officers on trial to prove that the difference in the price demanded or collected was justified.

History: En. Sec. 1, Ch. 111, L. 1935; re-en. Sec. 4193.1, R.C.M. 1935; R.C.M. 1947, 60-401.

#### Cross-References

Unfair competition in sales, 30-14-207.

Accountability for conduct of corporation,  
45-2-312.

**82-15-204. Investigation of complaints — revocation of license.** If complaint shall be made to the attorney general that any person, firm, company, association, or corporation is guilty of discrimination as defined by this part, he shall forthwith investigate such complaint, and for that purpose he shall subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit or license of such person, firm, company, association, or corporation, as the case may be, and to permanently enjoin such person, firm, company, association, or corporation from doing business in this state. If in such action the court shall find that such person, firm, company, association, or corporation is guilty of discrimination as defined by this part, such court shall annul the charter or revoke the permit or license of such person, firm, company, association, or corporation and may permanently enjoin it or them from transacting business in this state.

History: En. Sec. 4, Ch. 111, L. 1935; re-en. Sec. 4193.4, R.C.M. 1935; R.C.M. 1947, 60-404.

**82-15-205. County attorney to prosecute violations.** If any person shall present to the county attorney of any county in the state of Montana, in which county such discriminatory acts of any person, firm, company, association, or corporation shall have been committed, a sworn written statement of the price paid, the date, and the parties selling and buying and reasonably reliable information of the price demanded or collected by such person, firm, company, association, or corporation for a corresponding or similar article of standard petroleum product sold or offered for sale in another part of the state of Montana or in the nearest adjoining state by such person, firm, company, association, or corporation, then it shall be the duty of such county attorney to promptly investigate and either commence and prosecute an action or furnish the informant with a written statement of his reasons for not commencing and prosecuting an action under this part.

History: En. Sec. 4-A, Ch. 111, L. 1935; re-en. Sec. 4193.5, R.C.M. 1935; R.C.M. 1947, 60-405.

**82-15-206. Penalty.** Any person, firm, company, association, or corporation violating any of the provisions of this part shall be guilty of a misdemeanor and shall be punishable by a fine of not exceeding \$500.

**History:** En. Sec. 5, Ch. 111, L. 1935; re-en. Sec. 4193.6, R.C.M. 1935; R.C.M. 1947, 60-406.

**Cross-References**

Criminal responsibility of corporations,  
45-2-311.

Accountability for conduct of corporation,  
45-2-312.

Disposition of fines and forfeitures,  
46-18-603.

**82-15-207. Liability for civil and exemplary damages.** In addition to the penalty above prescribed, any customer of such person, firm, company, association, or corporation may bring a civil action in any county in which such offending person, firm, company, association, or corporation may be doing business and recover therein not only actual damages for violation of this part but also exemplary damages for such reasonable sum as the jury may deem proper punishment for the unlawful practice of discrimination as herein defined.

**History:** En. Sec. 6, Ch. 111, L. 1935; re-en. Sec. 4193.7, R.C.M. 1935; R.C.M. 1947, 60-407.

**Cross-References**

Damages, Title 27, ch. 1, part 2.

When exemplary damages allowed, 27-1-221.

Measure of damages, Title 27, ch. 1, part 3.

**AVERAGE PER GALLON MARGINS REPORTED  
BY GASOLINE DEALERS**

As Compiled from Returns in May 1990 Survey

**\$ Per Gallon**

Regular Gasoline

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 1/23/91

BILL NO. SB118

Margin  
Reported  
4/24/90

Billings	.0744
Bozeman	.0554
Butte	.0718
Choteau	.0738
Culbertson	.1249
Cut Bank	.0754
Deer Lodge	.0838
Drummond	.1328
Glasgow	.0598
Glendive	.0539
Great Falls	.0054
Hamilton	.1137
Hardin	.0847
Havre	.0300
Helena	-.0146
Kalispell	.0680
Laurel	.0844
Lima	.1789
Livingston	.0498
Malta	.0778
Miles City	.0573
Missoula	.0734
Polson	.0289
Shelby	.1098
Sidney	.0533
Thompson Falls	.1114
West Yellowstone	.1564
Whitefish	.0647
Wisdom	.1859
Wolf Point	.0729

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 23 day of JAN, 1991.

Name: JOHN TAGGART

Address: 8192 HUFFINE LN  
BOZEMAN, MT

Telephone Number: 587-1000

Representing whom?

A.T.O.M.

Appearing on which proposal?

S.B. 118

Do you: Support? \_\_\_\_\_ Amend? \_\_\_\_\_ Oppose? X REPEAL

Comments:

Repeal is Anti-Consumer

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

*Harrison, Loendorf & Poston, P. C.*  
*Attorneys at Law*

SUITE 21, PROFESSIONAL CENTER  
2225 ELEVENTH AVENUE

*Helena, Montana 59601*

406-442-6350


JAMES T. HARRISON, JR.  
JEROME T. LOENDORF  
JOHN P. POSTON

STEPHEN R. McCUE\*  
JAMES C. CUMMING  
GREGORY W. DUNCAN\*

FAX NO. (406) 443-7427  
\* MEMBER OF WASHINGTON BAR

January 21, 1991

TO: The Honorable Del Gage  
Montana State Senator

FROM: James T. Harrison, Jr. 

RE: Request for Committee Bill for Peer Review in  
Certified Public Accounting and Public Accounting  
to Provide Confidentiality and Non-Liability

This request for proposed legislation results from a national increase in litigation against all professionals, and specifically in the area of accountancy. There are two distinct problems which result when peer reviews are conducted of professionals, and those reviews are maintained as records:

1. There are discovery requests made relative to finding and evaluating the peer review reports by parties engaged in suit against a particular professional. If these peer review reports are to be made available to litigants, the next step is the subpoenaing of persons engaged in the peer review and their records to appear as witnesses against the particular professional. This has two adverse results: First, the peer reviewer knowing his report and records may become public, is thereby encouraged to be less than candid, and to otherwise be placed in apprehension that he, himself, may end up as a public witness in condemnation of another professional, and/or may as a result of that action be subject to a later suit by the reviewed professional.

2. Secondly, and in addition to the possibility of the individual, the information contained in the proceedings and records of the professional peer review or ethics review committee may be separately available, and obviously this purpose is far beyond the reason or justification for peer review.

In summary, it is submitted that these professionals should have peer review proceedings and ethical review proceedings available for the protection of their professional membership and standards, without fear that those same procedures will be turned upon their members in a non-relevant matter to the detriment of the entire profession. This proposal follows the Montana statutory guidelines set forth in peer review for medical professionals. A copy of the medical statute is attached hereto, being section 37-2-201, MCA.

## Part 2

### Nonliability for Peer Review

#### Part Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care information, Title 50, ch. 16.

**37-2-201. Nonliability — evidential privilege — application to nonprofit corporations.** (1) No member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee.

**History:** En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979; amd. Sec. 1, Ch. 380, L. 1989.

#### Compiler's Comments

**1989 Amendment:** In four places inserted reference to medical ethics review.

#### Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Medical legal panel created, 27-6-104.

Reporting obligations of physicians, Title 37, ch. 3, part 4.