

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS & INDUSTRY**

**Call to Order:** By Chairman J.D. Lynch, on January 24, 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 131**

**Presentation and Opening Statement by Sponsor:**

Senator Harry Fritz, sponsor of the bill, stated that SB 131 is a vehicle which will allow small insurance companies that are created in other states and tailored to individual and specialized risks to relocate in Montana. The proponents will propose an amendment that will allow these captive insurance companies to begin operations in Montana. It would allow small companies existing elsewhere to relocate here, and specialized insurance companies to start up in Montana.

**Proponents' Testimony:**

Robert Minto, an attorney in Missoula and also the president of attorneys liability protection society (ALPS), spoke in favor of the bill. He has a special interest in this piece of legislation because Jim Borchardt and himself just went through a

very interesting process of trying to figure out how to bring this type of business into Montana. With the cooperation and the help of the department they were able to do that. Montana has a reputation of not being a place that's a good place to do business. As an insurer, he tells us this is not the case. We have a very cooperative department, a very well educated work force, and a work force that has an extremely high work ethic. He has traveled around the country for the past five years organizing this particular company, and has discovered that Montana has a lot more to offer in the insurance area than we are letting the world know about. We are the best kept secret in the country. The bill was originally designed to allow small companies to come into Montana, which is exactly what ALPS did that is to bring businesses out side the state in. When he originally asked Senator Fritz to introduce the original bill, he had the misconception that a lot of these companies were mutual and stock companies. It became clear to him that many of these are known as captives. A captive is an association sponsored company that is owned by the insurers. Insurers for example, ALPS is a mutual company that could be a captive, but it's authority from the department would insure lawyers against legal malpractice. The people that it would insure would be only members of the association that sponsored it. The original bill, while still beneficial to the state of Montana, was somewhat deficient in that we did not have the ability to attract these captive companies. He sees this as an opportunity for Montana to go out and bring in some business that does not pollute, provides quality high paying jobs, and puts something to show the public that Montana is not a bad place to do business. He has researched the various captive laws in Montana, there are about twelve of them.

Dave Barnhill, deputy commissioner of insurance, spoke in favor of the bill. This bill is patterned after the national association of insurance commissioners and is intended for use in all states. The state auditor and commissioner of insurance supports the redomestication statute here in Montana, because it has the possibility of promoting new companies and businesses in this state. ALPS has domesticated to Montana, but had this bill been law at that time it would have expedited the process. With respect to the amendment that relates to captive insurers, as Mr. Minto pointed out they have not had an opportunity to review that in substance. The amendment was just received this morning. They are willing to work with the committee to make sure the captive amendment would conform with the other insurance laws in Montana.

Jacqueline Terrell, representing the American insurance association, stated that she is not to speak either in support or in opposition of this bill. She requested that the committee have a rehearing on the bill. It has been substantially amended this morning from the bill as it was originally introduced. Her client would like the opportunity to review the bill, and perhaps support it but at least know what is involved.

Gene Phillips, representing the national association of independent insurers, and the alliance of the american insurers, stated that they would also like the opportunity to review the

bill.

**Opponents' Testimony:**

None

**Questions From Committee Members:**

Senator Lynch stated that we will in fact reschedule a hearing, and he will speak with the president to make sure that it is printed in its new form.

Senator Thayer asked if they put the amendment with the Illinois language in this bill, is this substantially the same bill that he carried in the last session that got killed in this committee.

Dave Barnhill deferred to Mr. Borchardt.

Jim Borchardt, chief examiner of the Montana insurance department, stated that he did not attend the meeting last year, or in the last session in regards to SB 248. In a large measure it is substantially the same. The minimum capital and surplus standards is unclear that were in SB 248. He has not had an opportunity to see if they are the same or different.

Senator Thayer stated that the bill has a lot of sex appeal because it has a possibility of bringing jobs into Montana. Unless you meet the industry standards you can also leave a lot of people uninsured in the process.

Senator Lynch suggested that Bart Campbell get a copy of last sessions SB 248 so that they can be compared.

Senator Thayer asked why all of the language and the amendment discussed, and why wasn't the bill substantially put in the same form as it was in the last session rather than bringing in a three page bill with an eighteen page amendment.

Senator Fritz replied that he wasn't aware that this had been a matter discussed in the previous legislature. In response to Senator Thayer's previous question, Senator Fritz asked Mr. Minto to respond.

Mr. Minto stated that the responsibility for not having the amendment was his and not Senator Fritz's. When he originally introduced it, he did not feel that it was a necessary component to get the redomestication part of the bill. He looked into the industry he was trying to attract to Montana and it became clear that a captive component to the bill was needed. That occurred after the original bill was submitted to legislative council for drafting. He was also unaware that there were similar bills in the last session.

Senator Thayer stated that he asked the question to clarify what Mr. Minto had testified earlier, saying that he had worked with the state auditor's department. Senator Thayer went on to say that he was surprised that the information from the previous bill didn't come up.

Mr. Minto stated that he worked with the state auditor's department to bring his company to Montana. They have just become involved.

**Closing by Sponsor:**

Senator Fritz stated that there was a page on the way with

copies of the captive amendment. The proponent's, the department, and himself have absolutely no opposition to working together a full bill, and whether the committee demands a rehearing or a executive session they can all be present when that occurs.

Senator Lynch verified that there would be a rehearing, because it is very difficult for people involved to be able to respond to something that they really don't know what is in the bill. This is an unusual situation, because it is not a mere amendment, it is rather substantial.


Senator Thayer asked if they could put it in draft form so they could see what the real bill would look like.

Bart Campbell stated that in this situation he could do that.

Senator Lynch stated that the committee didn't need the copy of the amendments. He would rather just see the end result. He went on to say that Mr. Minto should visit with Bart Campbell.

ADJOURNMENT

Adjournment At: 10:25 a.m.

  
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J.D. LYNCH, Chairman  
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DARA ANDERSON, Secretary

JDL/dia



ROLL CALL

Business&Industry COMMITTEE

DATE 1/24/91

LEGISLATIVE SESSION

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

Each day attach to minutes.

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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.