

MINUTES

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

Call to Order: By Chairman J.D. Lynch, on March 12, 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 HOUSE BILL 297

Presentation and Opening Statement by Sponsor:

Representative Wilbur Spring, sponsor of the bill, stated that this bill was requested by Andy Bennett, commissioner of insurance. This bill is designed to promote the interests of Montana insurance consumers. It would do so by submitting the mid term cancellation of surplus items of surplus line insurance, and would reduce the cost of surplus line insurance. The bill would also make the Montana law consistent with the federal law. The inconsistencies between the Montana law and the federal law presents an enforcement problem for the Montana insurance department. If this bill were enacted into law, chances of abuse would be greatly reduced.

Proponents' Testimony:

Dave Barnhill, deputy insurance commissioner, spoke in favor of the bill (See Exhibit 1).

Roger McGlenn, executive director of the independent insurance agent's association of Montana and the executive director of the Montana surplus lines agent's association, stated that the major forces of HB 297 require that the purchasing group identify a licensed surplus lines producer. The bill subjects surplus line's insurers to the Montana insurance codes regarding premium changes and cancellations. One special division of the surplus lines law was to require resident surplus lines agent that the insurance consumer was informed that the coverage was in an unauthorized insurance company. The unauthorized, or non admitted carriers of surplus lines companies, which the bill address, are on an approved list to do business in the state. They do not participate in the guaranteed fund. Under section one, line twenty, by striking the word "resident", Montana would allow non resident agents and producers to provide these services. The insurance department told him that there are eight other states that allow non residents to be licensed at this time. It is probably necessary to allow non residents to be licensed as residents under the federal law. Montana insurance producers feel that if other states began to pass similar legislation, they would like to come back to the legislature if this passes and add a provision for reciprocity. Reciprocity would allow our agents an equal playing field with agents in other states.

Opponents' Testimony:

Jacqueline Terrell, representing the American insurance association, spoke in favor of the bill (See Exhibit 2).

Questions From Committee Members:

Senator Williams asked if section four was omitted, what would be left.

David Barnhill replied that section four is the guts of the bill.

Senator Thayer asked that David Barnhill respond to the argument that this would increase costs, and decrease availability.

David Barnhill stated that the surplus lines insurers wrote about ten million dollars of business in Montana in 1989, and about eleven million dollars in this past year. If a person has surplus lines insurance as part of their business plan, and that is taken from them, it is a far harder blow to them than the difficulty that they may have obtaining it in the first place.

Senator Thayer asked that Roger McGlenn respond to the same question asked to David Barnhill.

Roger McGlenn stated that the independent agents are very concerned about market availability in the state. In this case, because this will only subject them to subject them to part eleven, in essence we are saying that you do not have to honor your contract.

Senator Thayer asked if there were customers that were mistreated in midstream that brought about this. How many states

have adopted similar legislation.

Roger McGlenn replied that often times, policies are delayed six to eight months after the effective date of the coverage before the policy was ever delivered.

Senator Noble asked if there has been problems in the past.

David Barnhill replied that there has been problems in the past dealing with mid term cancellation, and dramatic midterm premium increase.

Closing by Sponsor:

Representative Spring closed by saying that looking out for the consumer should be the number one thing. Senator Grosfield will carry the bill to the floor.

HEARING ON HOUSE BILL 248

Presentation and Opening Statement by Sponsor:

Representative Royal Johnson, sponsor of the bill, stated that allow this is a very simple bill, it does a lot of things in the investment insurance business. There are two distinct types of annuities in Montana, one is called a fixed income annuity, and the other is called a variable annuity. The difference between these two annuities is how they are backed and how they are secured. A fixed income annuity is secured by fixed income assets. A variable annuity is an annuity that is backed usually by stocks. The auditor's office currently handles all insurance, and all investment matters. This bill will take variable annuities out from underneath the exemption that fixed annuities will have. The reason for doing that is that variable annuities are not the same type of investment. They are securities investments. This is a consumer bill. There has been a number of complaints from people who do not understand what a variable annuity is, and they buy it thinking that their money is always going to be intact. There was twelve complaints last year.

Proponents' Testimony:

David Barnhill, deputy insurance commissioner, spoke in favor of the bill (See Exhibit 3).

Robyn Young, deputy securities commissioner, spoke in favor of the bill (See Exhibit 4).

Larry Akey, representing the Montana association of life underwriters, stated that they support this bill in the form as it came out of the house.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Noble asked how many bills the state auditor's office have had this session.

Robyn Young replied that this is the forth securities department bill.

David Barnhill replied that the insurance department sponsored seven bills in total.

Senator Gage asked what section 30-10-202 through 30-10-207 covers.

Robyn Young replied that those sections cover the registrations requirements for security. Sections 30-10-202 through 30-10-207 deal with registering the product.

Closing by Sponsor:

Representative Johnson closed by saying that Senator Doherty will carry the bill to the floor if it passes.

HEARING ON HOUSE BILL 197

Presentation and Opening Statement by Sponsor:

Representative William Boharski, sponsor of the bill, stated that this bill clarifies what some specific language is. This bill clarifies the two situations when a claimant is unfairly delayed in receiving his benefits. The first situation is where a worker's compensation judge makes a ruling that the claimant is entitled to benefits, then the insurance company delays payments benefits. The second situation is when an insurance company has accepted responsibility, and then on his own delayed payment benefits. The most important part of the bill is lines 18-21, page one of the bill. This states that the insurer is responsible for an additional twenty percent of the benefits that were owed during the period between whether he accepted responsibility, or was ruled to be at fault by the worker's compensation judge.

Proponents' Testimony:

Mike Sherwood, representing the Montana trial lawyer's association (MTLA), stated that this bill was initiated as a result of the code commissioner's concern over potential conflicts in the law.

George Wood, executive secretary for the Montana self insurer's association and speaking on behalf on Jacqueline Terrell of the American insurance association and Gene Phillips of the insurance alliance who could not attend the meeting. He stated that they are in support of the bill for the reasons stated.

Nancy Butler, general council for the state fund, stated that they support the bill as it was amended in the house.

Opponents' Testimony:

None

Questions From Committee Members:

None

Closing by Sponsor:

Representative Boharski closed by asking Senator Thayer to carry the bill to the floor if it passes.

HEARING ON HOUSE BILL 411

Presentation and Opening Statement by Sponsor:

Representative Mike Kadas, sponsor of the bill, stated that this is an audit committee bill. It rises out of an audit committee exception where the department of revenue requires common carriers of beer, table wine, and cigarettes to file certain reports. They aren't filing those reports, because they don't need that information. They can get the information from other sources. This bill makes the filing of those reports permissive at the discretion of the department of revenue.

Proponents' Testimony:

John Northey, from the legislative auditor's office, stated that he would be able to answer any questions.

Opponents' Testimony:

None

Questions From Committee Members:

None

Closing by Sponsor:

Representative Kadas closed by saying that Senator Jergeson will carry the bill to the floor.

HEARING ON HOUSE JOINT RESOLUTION 33

Presentation and Opening Statement by Sponsor:

Representative Sheila Rice, sponsor of the bill, stated that in Great Falls, Montana, they had a process called the vision two

thousand planning process. It worked very well. The department of commerce asked that this resolution be encouraged to develop this long range planning process throughout the state.

Proponents' Testimony:

None

Opponents' Testimony:

None

Questions From Committee Members:

None

Closing by Sponsor:

Representative Rice closed by saying that Senator Franklin will carry this bill.

EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 33

Motion:

Senator Noble moved that HJR 33 be concurred in.

Senator Franklin moved that HJR 33 be placed on the consent calendar.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion made that HJR 33 be concurred in passed unanimously.

The motion made that HJR 33 be placed on the consent calendar passed unanimously. Senator Franklin will carry HJR 33 to the floor.

EXECUTIVE ACTION ON HOUSE BILL 411

Motion:

Senator Williams moved that HB 411 be concurred in.

Senator Gage moved that HB 411 be placed on the consent calendar.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion made that HB 411 be concurred in passed unanimously.

The motion made that HB 411 be placed on the consent calendar passed unanimously. Senator Jergeson will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 297

Motion:

Senator Noble moved that HB 297 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion made that HB 297 be concurred in passed unanimously. Senator Grosfield will carry the bill to the floor.

EXECUTIVE ACTION ON 248

Motion:

Senator Gage moved that HB 248 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion made that HB 248 be concurred in passed unanimously. Senator Doherty will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 197

Motion:

Senator Thayer moved that HB 197 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion made that HB 197 be concurred in passed unanimously. Senator Thayer will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 863

Motion:

Senator Thayer moved that a statement of intent be added to the bill.

Senator Noble moved the amendment proposed by Senator Tveit.

Senator Noble moved the amendment proposed by Mr. Barrett.

Senator Thayer moved to amend section C, changing "may" to "shall".

Senator Thayer moved that HB 863 be concurred in as amended.

Discussion:

Senator Lynch stated that a statement of intent is needed to take the small business capital company, and all of the local area development corporations have been after something like this for a long time. It possibly could infuse as much as forty eight million dollars into the loan program. They need to have the small business investment capital company in order to do it, other than the individuals.

Senator Thayer stated that we leave the rule making up to the department. That is the one thing that the legislature does wrong. It is an extra precaution that the legislature write its legislative intent in the bill. If their rules come out substantially different, then it is automatically applied. It

will be the intent of the legislature that this company be selected on the basis of its geographic makeup from representing the whole state.

Amendments, Discussion, and Votes:

The motion to move the amendments proposed by Senator Tveit passed unanimously.

The motion to move the Barrett amendments passed unanimously.

The motion made to amend section C, changing "may" to "shall" passed unanimously.

Recommendation and Vote:

The motion made that a statement of intent be added to the bill passed unanimously.

The motion made that HB 863 be concurred in as amended passed unanimously. Senator Mazurek will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 610

Motion:

Senator Williams moved that HB 610 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion made that HB 610 be concurred in passed by a 7 to 2 votes.

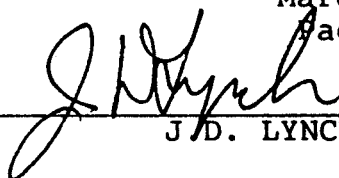
ADJOURNMENT

Adjournment At: 11:30 a.m.

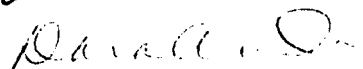
SENATE BUSINESS & INDUSTRY COMMITTEE

March 12, 1991

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J.D. LYNCH, Chairman



DARA ANDERSON, Secretary

JDL/dia

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

DATE 3/12/91

52ND LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BRUSKI	Y		
SENATOR FRANKLIN	X		
SENATOR GAGE	Y		
SENATOR HAGER	Y		
SENATOR NOBLE	X		
SENATOR THAYER	X		
SENATOR WILLIAMS	X		
SENATOR KENNEDY	X		
SENATOR LYNCH	Y		

Each day attach to minutes.

(Please leave prepared statement with Secretary)

WITNESS STATEMENT

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

Dated this 12 day of March, 1991.

Name: _____

Address: _____

Telephone Number: _____

Representing whom?

Appearing on which proposal?

Do you: Support? yes Amend? _____ Oppose? _____

Comments:

support so long as no amendments

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

House Bill 297
Senate Business and Industry Committee
March 12, 1991
David Barnhill, Deputy Commissioner of Insurance

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

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

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

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

The bill would also eliminate the placement fee.

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

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

Currently, some producers believe that the placement fee ought to be retained to cover the net bid situation.

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

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

to become licensed would solve the problem. The change in law is indicated at line 21 of page 1.

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

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

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

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

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

The net result is that purchasing groups operate in Montana without registering with the insurance department the name of their designated surplus lines producer. Consequently, the ability of the department to collect the surplus lines tax and monitor the marketing activities is impaired. Allowing nonresidents to become licensed surplus lines producer would enable the department to require the complete registration of purchasing groups, collect premium taxes, monitor marketing activities and successfully prosecute enforcement actions.

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

I am available for questions. Thank you.

DB/fhp(889)

STATEMENT OF
AMERICAN INSURANCE ASSOCIATION
BY
JACQUELINE TERRELL
RE: HB 297

Mr. Chairman and members of the committee:

My name is Jacqueline Terrell. I am a lawyer from Helena and a lobbyist for the American Insurance Association. The American Insurance Association is a national trade association that promotes the economic, legislative, and public standing of its some 240-member property-casualty insurance companies. The AIA represents its participating companies before federal and state legislatures on matters of industry concern.

We, the American Insurance Association oppose HB 297.

While the AIA does not object to any requirement that its surplus lines carriers provide appropriate notice of midterm cancellation or nonrenewal, the amendment to the Insurance Code goes farther than that and imposes a requirement on surplus lines carriers that ignores the way in which the market operates.

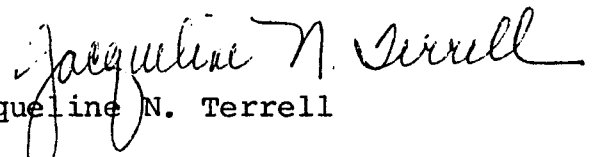
Surplus lines insurance is obtained when the insured is not able to obtain insurance in the regular insurance marketplace-- with regularly admitted carriers.

Typically at the end of a policy term the insured is working closely with his producer (agent) shopping that risk in the admitted market and with other surplus lines carriers to obtain the best coverage for the insured at the best price. Thus, the policy is often not renewed by the policyholder and the price not finalized until the insured is satisfied that there is no other coverage available. This determination is in many cases

made within the thirty-day period the bill seeks to impose upon insurers when the policy can only be renewed on less favorable terms or at a higher rating plan. In short, the bill simply imposes unrealistic burdens on surplus lines carriers that are inconsistent with the way the market operates and will only serve to increase cost and decrease availability of this important insurance product.

Submitted to Senate Business and Industry Committee for hearing on House Bill 297, March 12, 1991, 10:00 a.m.

Respectfully submitted,


Jacqueline N. Terrell

March 12, 1991

House Bill 248

Senate Business and Industry Committee

David R. Barnhill, Deputy Insurance Commissioner

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

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

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

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

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

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

I am available for questions. Thank you.

DB/amp(884)

TESTIMONY

EXHIBIT NO. 4DATE 3/12/91BILL NO. 118245

March 12, 1991

Senate Business and Industry Committee

House Bill 248

Robyn J. Young, Deputy Securities Commissioner

Montana Securities Department

For the record, my name is Robyn Young. I am the Deputy Commissioner of Securities. I am here representing the State Auditor, Andrea "Andy" Bennett, and the Montana Securities Department in support of House Bill 248.

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

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

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

Traditional brokerage firms are also actively marketing variable annuities. In fact, a 1989 survey of full service broker-dealers indicated that revenue from the sale of variable life and annuities represented an average of 6% of their total revenues.

Salesmen working for brokerage firms, and life insurance agents, are in direct competition when selling variable annuities. Insurance agents have to pass an exam to qualify for membership as registered representatives of the broker-dealer that markets the variable annuity. Securities salesmen have to pass insurance exams and become licensed to sell life insurance in order to sell variable annuities. Many of these dually licensed and regulated salesmen also advertise themselves as "financial

planners" and therefore may also be subject to the investment adviser provisions of the Securities Act. In reality, House Bill 248 will have minimal impact on the registration requirements for the salesmen selling variable annuities.

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

The Montana Securities Department frequently receives telephone calls from investors with complaints involving variable annuities. The investor calls us because they expect us to assist them with their "investment" problems. In many cases, they do not even understand that they have purchased an insurance product. The complaint may involve a salesman and a broker-dealer that are already registered with the Securities Department because they sell other types of investments. House Bill 248 would enable the Securities Department to investigate these complaints.

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

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

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

The Securities Act provides investors better protection from "fraud" or "misrepresentations." With 80 years of history

behind state securities regulation, there is a substantial body of law to support the fact that securities fraud covers omissions and half-truths that are often not covered, or may be difficult to prove, under insurance laws or common law.

The purchaser of a variable annuity must have the same right to "full disclosure" and other protection that is provided to mutual fund and other investors under the Securities Act. Concepts that are understood to be basic rules of ethical practice for securities salesmen include the responsibility to: know your customer; make only "suitable" investment recommendations; disclose commissions, fees and other compensation; and act as a "fiduciary". House Bill 248 would allow the Securities Department to apply these rules to transactions involving the sale of variable annuities.

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

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

(hb248.tst)

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HJ33. Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	V	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	Y	
SENATOR KENNEDY	Y	
SENATOR LYNCH	X	

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

Motion: BE CONCURRED IN

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HJ33 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	Y	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

Motion:

CONSENT CALENDAR

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB411 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR THAYER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR NOBLE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR HAGER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR GAGE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR FRANKLIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR BRUSKI	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR KENNEDY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR LYNCH	<input checked="" type="checkbox"/>	<input type="checkbox"/>

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

Motion: BE CONSIDERED IN CONSENT
SEN. JERGESON, KEATING CALENDAR

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB248 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

Motion: Be CONCURRED IN.

SN. DOHERTY To CARRY

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB 297 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

Motion:

BE CONCURRED IN
SN. GROSSFIELD TO CARRY

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB197 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

Motion: BE CONCURRED IN
SN. THAYER TO CARRY

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. H0863 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

Motion: SMT OF INTENT

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB863 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

Motion: AMENDMT FROM TWEET

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB863 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

Motion: BARRETT AMENDMENTS

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB863 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	/	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

Motion: Sec C. AMEND CUE FROM 'MAY' TO
'SHAZZ'

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB863 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	Y	
SENATOR THAYER	Y	
SENATOR NOBLE	Y	
SENATOR HAGER	Y	
SENATOR GAGE	Y	
SENATOR FRANKLIN	Y	
SENATOR BRUSKI	Y	
SENATOR KENNEDY	Y	
SENATOR LYNCH	Y	

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

Motion: BE CONCURRED IN AS AMENDED
MAZUREK

Amendments to House Bill No. 863
Third Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
March 12, 1991

1. Page 1, line 16.

Insert: "STATEMENT OF INTENT"

A statement of intent is required for this bill in order to provide a guideline for the board of investments to follow in certifying a Montana small business investment capital company. The board shall take the steps necessary to ensure that the company certified as the small business investment capital company will represent and be concerned with the economic development needs of all communities of the state and not just one geographic area of the state."

2. Page 16, line 3.

Strike: "UP TO".

Insert: "not less than"

3. Page 16, line 14.

Strike: "CERTIFIED"

Insert: "qualified"

4. Page 16, line 15.

Strike: "a"

Insert: "the certified Montana small business investment capital"

Strike: "that"

Insert: "once it".

5. Page 18, line 13.

Strike: "MAY"

Insert: "must"

6. Page 19, line 10.

Following: "the"

Insert: "qualified"

7. Page 19, line 12.

Following: "taxpayer"

Insert: "and the tax credit limitation relating to a capital investment in the qualified Montana small business investment capital company must be in addition to any other tax credit limitation in this section"

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB 610 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN		X
SENATOR BRUSKI		X
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

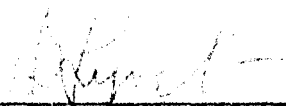
Motion: BE CONCURRED IN
LYNCH TO CARRY

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 12, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Joint Resolution No. 33 (third reading copy - blue), respectfully report that House Joint Resolution No. 33 be concurred in and unanimously recommend that it be placed on the Consent Calendar.

Signed: 
John "J.D." Lynch, Chairman

ji 3/12/91
Amd. Coord.

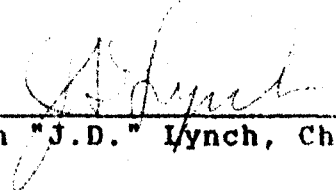
SA 3/12 1:00
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 12, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 197 (third reading copy -- blue), respectfully report that House Bill No. 197 be concurred in.

Signed: 
John "J.D." Lynch, Chairman

LB 3/12/91
Amd. Coord.

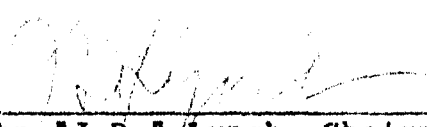
SB 3/12 1:00
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 12, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 411 (third reading copy -- blue), respectfully report that House Bill No. 411 be concurred in and unanimously recommend that it be placed on the Consent Calendar.

Signed: 
John "J.D." Lynch, Chairman

Dana

LB 3/12/91
Amd. Coord.

SR 3/12/91
Sec. of Senate

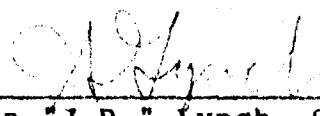
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 12, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 297 (third reading copy -- blue), respectfully report that House Bill No. 297 be concurred in.

Signed: _____


John "J.D." Lynch, Chairman

LB 3/12/91
And. Coord.

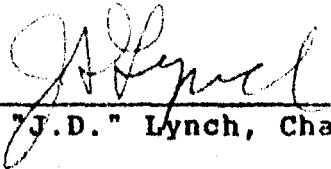
SR 3/12 1:00
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 12, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 610 (third reading copy -- blue), respectfully report that House Bill No. 610 be concurred in.

Signed, 

John "J.D." Lynch, Chairman

LB 3/12/91
Amd. Coord.

SR 3/12 1:00
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 12, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 863 (third reading copy as amended, second printing -- blue), respectfully report that House Bill No. 863 be amended and as so amended be concurred in:

1. Page 1, line 16.

Insert: "STATEMENT OF INTENT"

A statement of intent is required for this bill in order to provide a guideline for the board of investments to follow in certifying a Montana small business investment capital company. The board shall take the steps necessary to ensure that the company certified as the small business investment capital company will represent and be concerned with the economic development needs of all communities of the state and not just one geographic area of the state."

2. Page 16, line 3.

Strike: "UP TO".

Insert: "not less than"

3. Page 16, line 14.

Strike: "CERTIFIED"

Insert: "qualified"

4. Page 16, line 15.

Strike: "a"

Insert: "the certified Montana small business investment capital"

Strike: "that"

Insert: "once it".

5. Page 18, line 13.

Strike: "MAY"

Insert: "must"

6. Page 19, line 10.

Following: "the"

Insert: "qualified"

7. Page 19, line 12.

Following: "taxpayer"

Insert: "and the tax credit limitation relating to a capital investment in the qualified Montana small business investment capital company must be in addition to any other tax credit limitation in this section"

Signed: _____

J.D. Lynch
John "J.D." Lynch, Chairman

JP 3-12-91
Amd. Coord.

JP 3/12 2:15
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 12, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 248 (third reading copy -- blue), respectfully report that House Bill No. 248 be concurred in.

Signed: 
John "J.D." Lynch, Chairman

LB 3/12/91
Amd. Coord.

SR 3/12 1:00
Sec. of Senate