

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 15, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

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

Announcements/Discussion: none

HEARING ON HOUSE BILL 292

Presentation and Opening Statement by Sponsor:

Representative Steve Benedict, District 64, said SB 292 takes a small financial drag off the clerks of court for postage, copying, certified mail, and search fees. He explained that the agencies benefitting from these financial services will pay for them instead of the clerks of court.

Proponents' Testimony:

Tom Harrison, Montana Association of Clerks of Court, said the bill provides for a user fee. He commented that most clerks are working by this standard now, and that the bill clarifies continuation of this practice. Mr. Harrison said Lewis and Clark County has discontinued mailing out orders to save on postage costs, and has initiated a pick-up system.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Halligan asked if there would be a charge for district court records transferred to the Supreme Court. Mr. Harris replied there would not be, and said movement of appeals is not covered by this bill.

Senator Halligan said he was concerned because all orders have to be certified. Tom Harrison replied he would check this.

Closing by Sponsor:

Representative Benedict closed without comment.

HEARING ON HOUSE BILL 228

Presentation and Opening Statement by Sponsor:

Representative Don Larson, District 65, said the bill was brought by rural fire departments to permit them to recover costs of clean-up operations from responsible parties, as a result of the expanded hazard arena. He told the Committee he had no objection to amendments.

Proponents' Testimony:

Leo Berry, representing Burlington Northern (BN), said BN supported HB 228 in the House. He stated that a technical flaw on page 2, line 5 needs amending (Exhibit #1). Mr. Berry advised the Committee that Valencia Lane looked at the amendment, and said it needs to be modified.

Bruce Sueman, Missoula and Lockwood Rural Fire Departments, said he supported the statements made by Representative Larson

James Lofftus, President, Montana Fire Districts Association, stated his support of HB 228.

Dave Anderson, Jefferson County Commissioner, told the Committee he is also the County Fire Warden and Disaster and Emergency Services Coordinator. He said he supports the bill on the basis of the proposed amendments.

Tim Bergstrom, Montana State Firemen's Association, said fire departments incur tremendous costs during clean-up, especially in personnel time. He commented that there is no way for cities to anticipate these incidents and to budget for them.

Lyle Nagel, Montana State Volunteer Firemen's Association, stated his support of the bill.

Ed Flies, Montana State Council of Firefighters, and Helena Firefighters, told the Committee HB 228 is important, and said he supported the proposed amendment.

Opponents' Testimony:

There were no opponents of the bill.

Questions from Members of the Committee:

Senator Doherty asked what an "episodic occasion" is. Leo Berry replied the term should be "release".

Senator Grosfield asked about the language "endangers property". Leo Berry replied that the House decided to change this, and that his clients did not object to this change in standards. He explained that rural fire districts or emergency responders will be able to recover costs under this bill. He commented that whether it causes damage or not is material, and said the language could be made to read "either/or".

Senator Harp referred to the 1989 bill on superfund sites, and asked if oil was not excluded. He commented that item (b) says "any petroleum product". Leo Berry replied oil was not excluded.

Closing by Sponsor:

Representative Larson advised the Committee that there are 400 rural fire districts in Montana, and that the bill establishes a network for emergency response. He commented that Senator Vaughn would carry the bill.

HEARING ON HOUSE BILL 503

Presentation and Opening Statement by Sponsor:

Representative Fritz Daily, District 69, said HB 503 would legalize sports tabs which, he said, are similar to the sports pools that are legal in Montana. He explained that a tab board contains 100 tabs, and that different numbers are received when tabs are purchased.

Representative Daily stated that language on page 4, lines 1-4 allows the seller to retain 10 percent of sale proceeds to cover the cost of purchasing the tab boards. He said page 3, lines 21-24 provide that the cost of a tab may not exceed \$5, and that the maximum payout may not exceed \$500.

Representative Daily advised the Committee that he defines sports tabs as recreational gambling, and said that until SB 341

passed in 1989, sports tabs were played in Montana. He said he has a 77-year-old aunt who loved to play sports tabs.

Representative Daily told the Committee that amendments have been prepared by Lois Menzies, Gambling Control Division, Department of Justice (DOJ). He explained that the amendments require that the total payout be made on the value of the tabs and not on the number of tabs sold (Exhibit #2).

Proponents' Testimony:

Representative Bob Pavlovich, District 70, explained the differences between regular sports pool boards and sports tab boards (Exhibits #3 and #3a). He commented that each tab would normally sell for \$2, that the payout would be 90 percent, and said the bill is not a profit-maker.

Marie Durkee, Executive Director, Montana Tavern Association, stated her support of the bill.

Michael LaForge, representing himself, stated his support of HB 503.

Jim _____, said he represented a few tavern people in Cascade County, and stated his support of the bill.

Opponents' Testimony:

Harley Warner, Montana Association of Churches, said he opposed expansion of gambling. He stated that sports tabs are a new game and that is the reason for his opposition to HB 503.

Joe Roberts, Don't Gamble with the Future, said he opposed the bill as he believes it is expansion of gambling. He told the committee that HB 503 started out as a "terrible bill", and that since it was substantially amended in the House it is just a "bad bill" now. Mr. Roberts suggested that payouts beyond \$100 are well beyond the recreational arena.

Mr. Roberts advised the Committee that he cannot make sense of the bill now. He said the payout on sports pools is 100 percent, while the proposed payout for sports tabs is 90 percent, and said there is no indication of what the sports tax will raise. Mr. Roberts stated that subsection (c) on page 5, line 4, has an incomplete sentence which makes no sense at all. He asked the Committee to look at the bill very carefully, so they don't authorize something they don't intend to authorize.

Lois Menzies, Administrative Officer, Gambling Control Division, DOJ, told the Committee she is neither an opponent nor a proponent of the bill, although she testified in the House as an opponent. She stated there are no caps in the bill on payouts for sports tabs, and that it has an immediate effective date.

Ms. Menzies said she believes the additional proposed amendments provide adequate clarification. She told the Committee that DOJ is not an advocate of expanded gambling, but she believes the bill is clear enough for administrative purposes (Exhibit #4).

Questions From Committee Members:

Senator Crippen said he was confused by Lois Menzies' statement that the Attorney is opposed to the expansion of gambling, and that the amendments would make the bill clear enough for administrative purposes. Lois Menzies agreed that sports tabs are an expansion of gambling, and that the Department would take the passage of HB 503 as a policy decision. She stated that "21" is a unique type of gambling enterprise, and that she did not see sports tabs in the same category.

Senator Crippen asked if establishments make money on sports tabs. Representative Pavlovich replied that the bill is a trade stimulator, but no money will be made by establishments. He explained that the cost of cards varies from \$3.50 to \$4, depending upon how many are purchased.

Senator Crippen asked how the state gets any money. Representative Pavlovich replied there is a \$1 tax.

Senator Brown asked where a potential \$10,000 payoff would fit in with the Indian Gaming Regulatory Act. Lois Menzies replied that under the Act, sports tabs would be considered a Class II game and would be permitted on the reservations; if it were passed by the Legislature; and the tribes pass an ordinance to approve it; and it is then approved by the Chairman of the Indian Gaming Commission.

Senator Brown asked if sports tabs could be used on reservations in their introduced form if the amended bill passes. Lois Menzies replied affirmatively.

Senator Svrcek asked if sports pools are legal now. Lois Menzies replied they are.

Senator Svrcek asked if the bill would legalize sports tabs. Lois Menzies replied it would.

Senator Svrcek asked if pools and tabs are essentially the same thing. He asked why people would want tabs when pools are free. Representative Pavlovich replied that people in Butte like to have the numbers to take home when they buy them.

Senator Harp referred to Joe Roberts' statement that HB 503 is a "bad bill", and to Lois Menzies' statement that she believes the amendments provide clarification. He asked Mr. Roberts why he was at conflict with DOJ. Joe Roberts replied that the amendment made the bill more workable, and that he is in accord with them, but he is unable to make sense out of the second reading copy of the bill.

Senator Harp asked if sports pools are Class II games. Lois Menzies replied she believes they are.

Senator Harp asked how long sports pools have been in Montana. Lois Menzies replied they were legalized in 1974.

Senator Harp asked what the reservations have done in this area. Bob Robinson replied he didn't have an answer, and said it hasn't been a problem.

Senator Pinsoneault asked how many sports games are played on Sundays, and if an establishment could have ten tabs for one day. Representative Daily replied that this doesn't happen, as tabs are usually sold for games that are on television.

Senator Pinsoneault asked if tabs could be sold on local high school games. Representative Daily replied they could be.

Senator Grosfield asked if there is another kind of gambling other than recreational. Representative Daily replied that the Attorney General's definition is that "21" is a different form of gambling. He said he believes people would lose large sums of money playing "21", but there is no word to use other than "recreational" for "21".

Senator Mazurek advised the Committee that Class II games are not subject to negotiation as are Class III games. He said the tribes would need to adopt ordinances to be approved by the Chairman of the Indian Gaming Regulatory Council.

Senator Crippen asked who can sell sports tabs. Lois Menzies replied that is a good point, and said she was unsure after the comments made by Joe Roberts.

Senator Crippen asked if there were any way to estimate the amount sold. Lois Menzies replied she had not made any estimates.

Closing by Sponsor:

Representative Daily told the Committee he appreciated the opposing testimony of Joe Roberts, and said he did not intend to sell tabs for \$100 even though this was done prior to SB 341 in 1989. He stated that sports tabs should not be treated any differently from sports pools, and that he would appreciate an amendment to do this.

Representative Daily said he had no problem with DOJ amendments and supported them in the House. He stated it was not his intent to increase gambling, but to reinstate a form of gambling that has been in Montana for more than 50 years. Representative Daily further stated that sports tabs are only an alternative to sports pools. He reiterated that the tabs are made in Montana, and said maybe a couple of jobs would be created in

making and selling tabs. Representative Daily told the Committee that Senator Lynch would carry the bill.

Senator Pinsoneault commented that there are no parameters in the bill as to where the tabs may be played or sold. Representative Daily replied he had no problems with adding language to clarify this.

HEARING ON HOUSE BILL 405

Presentation and Opening Statement by Sponsor:

Representative Wallin, District 78, advised the Committee that the Hospital Lien Act was enacted in 1979, requiring hospitals to pay health provider claims. He stated that a 1987 law designated Blue Cross/Blue Shield (BCBS) as an insurer, but didn't make them subject to the Lien Act provisions. Representative Wallin told the Committee that HB 405 corrects this situation (Exhibit #5).

Representative Wallin explained that he is serving his ninth year as a trustee of the Bozeman Deaconess Hospital, which charges off about \$1 million annually for people who don't pay.

Proponents' Testimony:

Jim Ahrens, President, Montana Hospital Association, read from prepared testimony in support of HB 405, including letters from Toole County Hospital and Pondera Medical Center (Exhibit #6). He explained that the Association is not intending to punish BCBS, and is trying to promote fairness (Exhibit #7). He urged the Committee to support the bill.

Ellen Feaver, CPA, advised the Committee she is the Treasurer and Chair of the Finance Committee at St. Peter's Hospital in Helena. She explained that the hospital needs to be reimbursed for cost of care given, and that when the hospital is not reimbursed it presents a problem to the community. Ms. Feaver said hospitals have a lot of incentive to control costs, and have taken a number of major initiatives, one of which is very critical peer review.

Ellen Feaver told the Committee that the hospital budgets to more than break-even, but in three of the past seven years it has operated at a loss. She stated that the hospital has experienced tremendous growth during the past two years, particular in out-patient services. Ms. Feaver said the hospital is also experiencing revenue growth, and that these dollars are plowed back in new alternatives to quality health care.

Ms. Feaver commented that she believes there is a need to deal with the expectations of people concerning care. She said she also believes this can be done by dealing with health rather than sickness. Ms. Feaver stated that this country currently rations health care, and cited spending thousands of dollars to save a one pound baby, but not spending \$100 for pre-natal health care. She

said the Legislature can support nursing education programs in the state, as more than 60 percent of costs are for personnel. She commented that hospitals often have to recruit nurses from out of state.

Bill Warfield, Trustee, Livingston Memorial Hospital, said he is a former legislator. He told the Committee the hospital is down to 30-plus beds, and has added ancillary services. Mr. Warfield stated that, last year, the hospital operated at a four percent profit, but would run behind this year. He said 60-70 percent of income is from Medicare and a little Medicaid, and that without it the hospital would not be in operation long.

Mr. Warfield advised the Committee the hospital is aware of cost containment, and has set up a more flexible staffing pattern with cross-training. He said the hospital has gone to joint purchasing of supplies, and is a member of the Cardiac Network. Mr. Warfield reported that technology and equipment are carefully examined for need, and said the hospital buys competitively and at reasonable costs. He said the hospital also looks at the ability of equipment to pay for itself, and urged the Committee to support HB 405.

Gary Kenner, Administrator, Bozeman Deaconess Hospital, said it is not fair for health service corporations to ignore agreements with insured and providers. He stated that the cost-shift is not fair, and said no other third party providers have the opportunities of BCBS.

Carl Hanson, Pondera Medical Center, told the Committee that HB 405 has significant rural implications, as more cash is needed to finance accounts receivable.

Joel Langford, Vice President of Finance, Columbus Hospital, Great Falls, stated that in Summer 1990 BCBS attempted to negotiate member contracts with hospitals, and asked for the contractual right to determine prices and to pre-determine the rate of price escalation. He said these contracts would have given BCBS exclusive right to adjudicate the medical necessity of hospitalization. Mr. Langford encouraged the Committee not to allow this type of power to pass to a body who does not have to answer to the public-at-large.

Tom _____, attorney, St. Vincent Hospital, Billings, read from an October 29, 1990 court decision which holds BCBS is not placed under that Physicians Lien Act, under Title 71 (Exhibit #9). He said page 3, lines 23-24 of the bill include "health service corporation", and asked the Committee to be aware of this language.

Loren Jacobson, Vice President and Financial Officer, St. Patrick Hospital, Missoula, advised the Committee that the initial reason for the 1979 Physicians Lien Act remains valid today - to be

paid for services provided. He said it should apply the same for insurance companies as for health service corporations.

Mr. Jacobson told the Committee that rate increases for hospitals were single digits, while rate increases for BCBS have been double digits. He said benefits at St. Patrick Hospital are in the form of discounts to insurers who provide prompt payment, as prompt payment reduces billing and collection costs. Mr. Jacobson stated that these arrangements have not resulted in shifting of costs to other areas. He said the hospital believes it is not okay to pass costs on to other payers. Mr. Jacobson commented that BCBS said they would make payments directly to the patient and not to hospitals if the hospitals did not sign BCBS contracts. He commented that HB 405 is necessary.

David Barnhill, Deputy Insurance Commission, Office of the State Auditor, stated his support of the bill, and said it is based on fairness.

Opponents' Testimony:

John Alke, Helena attorney representing Blue Cross/Blue Shield (BCBS), told the Committee that the title of HB 405 says BCBS would be made subject to the Physicians Lien Act. He commented that no commercial insurers are presently asking to level the playing field. Mr. Alke stated that BCBS is defined by state law as a disability insurer. He asked the Committee to open the Code and look to the Title Section of the Part on personal injury claims. He explained that the Part does not talk about that, but about health care benefits paid.

Mr. Alke further stated that in 1979 the Montana Hospital Association asked for amendment of the Physicians Lien Act, which resulted in a substantial rewrite even though it was presented as not being a big change. He said "injury or diseases" was inserted in the language then (Appendix A, Supreme Court Brief) (Exhibit #7).

Mr. Alke stated that in the 1979 Session, the Legislature took the Montana Hospital Association at its word concerning amending 71-3-118, MCA, on "parentry". He commented that now they want to do it again. He advised the Committee that BS was formed by doctors who knew that a small minority of themselves charged too much. He said this set up the distinction between member and non-member doctors, and that member doctors agreed to accept lower payments. Mr. Alke explained that BCBS pays member doctors directly and pays patients of non-member doctors.

Mr. Alke asked if HB 405 were necessary. He said the last page of his exhibit shows that 55 of 56 hospitals are members and 980 of 1200 physicians are members. Mr. Alke explained that BCBS pays a great number of providers who are not members, as there is no membership classification. He said \$140 million is a lot of money, especially if it is assumed that about half of that figure

hoses to facilities. Mr. Alke further stated that 70 percent of money paid to hospitals goes to the 12 big city hospitals in the state.

John Alke advised the Committee that he attached documentation from Medicare, and ran totals on Medicare information showing gross revenue in excess of \$1.5 billion or 10 times the amount it is assumed BCBS controls. He stated that BCBS does trust most health care providers, but one hospital hired KWA from California who, he said, has been investigated by congress. He explained that KWA goes through a hospital and makes a new bill for additional charges.

Mr. Alke stated that BCBS is currently in litigation for \$750,000 in additional bills as a result of companies like KWA. He said a second hospital had plans to hire a similar firm, but discontinued those plans. Mr. Alke urged the Committee on behalf of the average person in Montana not to pass special interest legislation.

Renenna Robson, Administrator, Park Clinic, Livingston, said the Clinic has 10 multi-faceted practitioners, and that it has been in operation since 1917. She said the Clinic has been a member of BCBS since 1946, and was among the original physicians joining MPS. Mrs. Robson told the Committee the Park Clinic has had a good working relationship with BCBS for 45 years. She said physicians at the Clinic are employers as well as health care providers, and that they seek to contain costs. Mrs. Robson stated that HB 405 is an anti-consumer bill.

Mrs. Robson read a letter from Carol Erickson, Administrator, Missoula Medical Oncology, in opposition to the bill (Exhibit #8).

Lee Roth, Deaconess Medical Center, Billings, said he believes HB 405 is unnecessary. He advised the Committee that the bill has to do with collection of hospital costs, and not simply hospital costs. He commented that the issues of BCBS forcing hospitals to sign agreements should be a process of a gentlemen's agreement and a signed contract. Mr. Roth said he believes hospitals are asking for more power to arbitrate against BCBS, and asked as a past president of the Montana Hospital Association, that HB 405 do not pass.

John Laughton, City Manager of Great Falls, said he was speaking as a consumer of medical care. He stated that his insured group operated at loss ratios of 137 and 110 percent respectively for the past 2 years. Mr. Laughton explained there are 150 employees enrolled in their 100 percent self-insured medical plan. He stated they hired a third-party administrator, a contractor from Seattle, to get costs back in control. Mr. Laughton further explained that, because of these losses, his group went out for bid and selected BCBS. He stated BCBS's provider agreement showed lower health care costs, and they managed care programs. Mr. Laughton commented that this brought money back to Montana.

Mr. Laughton stated that employees and taxpayers always pay without provider agreements. He commented that he is not a health care expert, but knows why his group chose BCBS.

Bill Houston, Independent Insurance Agent, said his clients include the Montana Association of Counties and the Montana League of Cities and Town. He stated that approximately one-third of the people in Montana are without health insurance, and said he must deal with rising costs in selling group insurance. Mr. Houston said cost containment is important, and many groups are saying they can't afford coverage anymore.

Joyce Broom, State Personnel Division, Department of Administration (DOA), told the Committee she administers the state health insurance program. She explained that current proposals would cover less than half of anticipated costs, so the state looked for alternatives and, like Great Falls, turned to BCBS. She stated that health care costs must level, and that consumers don't have the expertise of third-party administrators in controlling costs.

Frank Valgenti, Independent Insurance Brokers, Bozeman, told the Committee he primarily works with farmers and ranchers. He said he believes this bill would remove the incentive to work with providers to control costs. Mr. Valgenti further stated that he believes hospitals do a great job in Montana, but there tends to be duplication of services in the larger cities. He said he believes everyone wants a piece of high-tech medical equipment, and urged the committee to oppose HB 405.

Keith Kovash, Manager, Risk Benefits, Montana Power Company (PC), told the Committee that PC paid \$3,783,000 for medical care in 1989, and \$6,971,000 in 1990. He said PC is now utilizing BCBS to save money, and that he believes HB 405 jeopardizes this arrangement.

Bruce Noxheim, Chairman, Health Benefits Committee, School District #1, Helena, told the Committee he comes as a consumer who is very concerned with cost containment. He stated that each year the District is faced with 23 percent or more increases for health care benefits. Mr. Noxheim stated he is very much aware of cost containment problems, and that is why the District changed to a partially self-funded program.

Clyde Daily, Montana Senior Citizens, said he never heard a better argument for a single-payer health care system. He told the Committee he has a tough time believing some hospitals are non-profit. Mr. Daily stated that the bottom line is this legislature is weak in its attempts. He said it is important to get a handle on costs, and that this legislature won't do that.

Sandra _____, office manager for three Helena area family physicians for the past 20 years, said HB 405 is not in the best interest of consumer patients.

Questions From Committee Members:

Senator Mazurek asked Dave Barnhill to explain his statement that HB 405 is a fairness bill. Mr. Barnhill replied that, in practice, other health insurance companies honor health care costs, and BCBS does not. He said he believes BCBS honors it as income protection insurance rather than as health insurance. Mr. Barnhill stated that insurance companies have more difficulty interpreting the law than does BCBS.

Senator Mazurek asked if HB 405 would allow assignment essentially the same as Medicare does. Mr. Barnhill replied he was not sure, but providers would have to pay for what the contract calls for between the patient and the insurer.

Senator Mazurek said he believed Mr. Barnhill was mistaken, and said that if a doctor charges more, he has to pay the difference. He asked Mr. Barnhill why the Insurance Commissioner is advocating this bill. Dave Barnhill replied he believes costs are shifted.

Senator Mazurek asked if this were an insurance regulatory concern. Mr. Barnhill replied he believes it is.

Senator Svrcek asked what the difference is between BCBS and other insurance providers in terms of services provided. Mr. Butler, Senior Vice President of Operations, BCBS, replied that BCBS is a non-profit organization doing business only in Montana.

Senator Svrcek said he has had calls from constituents on this bill on how BCBS affects insurance they provide to their employees. He asked if BCBS is willing to provide copies of letters they send to employers and employees. Mr. Butler replied he would be happy to send letters from BCBS and from the other side, as well.

Senator Doherty asked Mr. Butler why BCBS does not accept assignments. Mr. Butler replied BCBS has system member doctors and member hospitals.

Senator Doherty asked if BCBS has taken the time to establish contractual relationships with health care providers, and said he understands that the private insurers do accept assignments now. He asked if the private companies would seek an exemption under the Lien Law. Joyce Broom replied her understanding is that the private companies are not covered by Lien Law. She said she would like to see other companies act more like BCBS.

Senator Doherty asked John Laughton about his statement that there would be no more incentive to do provider agreements. Ken _____, Montana Hospital Association, replied he did not believe that was true.

Senator Towe said the opponents stated this would interfere with cost containment of BCBS. He asked how the bill does affect

cost containment. John Alke replied that the bill only puts a lien in place so that if BCBS puts in a contract it has to pay twice. He said the hospitals want to expose BCBS to the risk of dual payment so it will disband. He explained that a doctor who signs a BCBS contract expressly agrees to give up the right to pursue cost to the patient over provider fees. He said that if the patient doesn't pay his or her bill, BCBS would be subject to paying the doctor again.


Mr. Alke stated that the fundamental reason is that BCBS has never been an insurance indemnity company, and said even that is no change as BSBS has subsidized co-payment. He said indemnity carriers are in business to make money, and that BCBS gets everyone else. Mr. Alke stated that BCBS is trying to keep down unreasonable charges.

Closing by Sponsor:

Representative Wallin said that under HB 405 all insurance companies will be required to honor hospital liens. He said BCBS is "insurance people" and should pay the same as anyone else.

ADJOURNMENT

Adjournment At: 12:30 p.m.



Senator Dick Pinsoneault, Chairman



Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 15 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe			

Each day attach to minutes.

1 HOUSE BILL NO. 228

2 INTRODUCED BY LARSON, PIPINICH, BERGSAGEL,
3 KIMBERLEY, DAVIS, FORRESTER, G. BECK, SOUTHWORTH,
4 TOOLE, J. JOHNSON, GOULD, SCHYE, KILPATRICK

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN EMERGENCY
7 RESPONDER TO RECOVER FROM THE RESPONSIBLE PARTY COSTS
8 INVOLVED--IN--RESPONDING ^{directly} RELATED TO A HAZARDOUS MATERIAL
9 INCIDENT."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Definitions. As used in
13 [sections 1 and 2], the following definitions apply:

14 (1) "Emergency responder" means a public or private
15 safety agency OR A PRIVATE ENTITY ACTING UNDER A REQUEST
16 FROM OR AUTHORITY GRANTED BY A GOVERNMENT AGENCY, including
17 law enforcement, firefighting, ambulance or medical, and
18 civil defense, that provides services in an emergency
19 situation.

20 (2) "Hazardous material incident" means ^{a release} ~~an~~ episode
21 ~~occurring~~ involving ^{or deleterious} hazardous substance, ~~as defined in~~
22 ~~50-30-201 and 75-10-602~~ that results--in--widespread--or
23 severe-damage-to-property-or-life ENDANGERS PROPERTY, PUBLIC
24 HEALTH, OR PUBLIC SAFETY.

25 NEW SECTION. Section 2. Recovery of costs. (1) An

1 emergency responder has the right to a--cause--of--action
2 against RECOVER FROM the responsible party for the EMERGENCY
3 RESPONDER'S full costs involved-in-responding-to ^{directly} RELATED TO
4 a hazardous material incident.
5 (2) THE PROVISIONS OF PART 7 OF THIS CHAPTER APPLY TO
6 [SECTION 1] AND THIS SECTION TO THE EXTENT THAT THEY CAN BE
7 APPLIED AND TO THE EXTENT THAT THEY DO NOT CONFLICT WITH THE
8 PROVISIONS OF [SECTION 1] AND THIS SECTION.

9 NEW SECTION. SECTION 3. CODIFICATION INSTRUCTION.
10 This Act is
11 ~~[SECTIONS 1 AND 2] ARE INTENDED TO BE CODIFIED AS AN~~
12 INTEGRAL PART OF TITLE 75, CHAPTER 10, PART 6, AND THE
13 PROVISIONS OF TITLE 75, CHAPTER 10, PART 6, APPLY TO
[SECTIONS 1 AND 2].

-End-

15 Mar 99
HB 228

EX # 15
15 May 91
88228

Proposed Amendments to HB 228
Prepared by Leo Berry
for Burlington Northern Railroad Company

1. Page 1, line 8,
Following: "RESPONDING"
Insert: "DIRECTLY"
2. Page 1, line 20
Following: "means"
Strike: "an"
Insert: "a release"
3. Page 1, line 21
Strike "Occasion"
4. Page 1, line 21
Following: "involving"
Insert: "a"
5. Page 1, line 21
Following: "hazardous"
Insert: "or deleterious"
6. Page 1, line 21
Following: "substance"
Strike: "as defined in" through "75-10-603," on page 1, line 22
7. Page 2, line 3
Following: "to"
Insert: "directly"
8. Page 2, line 3
Following: "a"
Strike: "hazardous material incident"
Insert: "release"
9. Page 2, line 5
Strike: all of line 5 through line 8
10. Page 2, line 10
Strike: "[SECTIONS 1 AND 2] ARE"
Insert: "THIS ACT IS"
11. Page 2, line 11
Following: "CHAPTER 10,"
Strike: "PART 6" through "[SECTIONS 1 AND 2" on line 13 and
Insert: "PART 7"

EXHIBIT #2
15 Mar 91
HB 503

AMENDMENTS TO HOUSE BILL NO. 503
(Blue copy -- corrected third reading version)

March 15,, 1991

1. Title, line 10.
Following: "SECTIONS"
Insert: "23-5-152,"
2. Page 3, line 23.
Strike: "ANY INDIVIDUAL"
Insert: "a"
Following: "TAB"
Insert: "game"
3. Page 4, lines 1 and 2.
Following: "total" on line 1
Strike: "amount" through "all" on line 2
Insert: "cost of the 100"
4. Page 4, line 2.
Strike: "sold"
5. Page 4, line 10.
Strike: "AMOUNT" through "ALL"
Insert: "cost of the 100"
6. Page 4, line 11.
Strike: "SOLD"
Insert: "in a sports tab game"
7. Page 4, line 22.
Following: "TAB"
Insert: "game"
8. Page 5, line 5.
Following: "FOR"
Insert: "inspection by the department upon request."
9. Page 5.
Following: line 7
Insert: "Section 5. Section 23-5-152, MCA, is amended to read:
"23-5-152. Possession of illegal gambling device
prohibited -- exception. (1) Except as provided in 23-5-153
and subsection (2) of this section, it is a misdemeanor
punishable under 23-5-161 for a person to purposely or
knowingly have in his possession or under his control or to
purposely or knowingly permit to be placed, maintained, or
kept in any room, space, enclosure, or building owned,
leased, or occupied by him or under his management or
control an illegal gambling device. This section does not
apply to a public officer or to a person coming into

possession of an illegal gambling device in or by reason of the performance of an official duty and holding it to be disposed of according to law.

(2)(a) The department may adopt rules to license persons to manufacture:

(i) gambling devices that are not legal for public play in the state and are manufactured only for export from the state; and

(ii) sports tabs for use in conducting sports tab games as provided for in part 5.

(b) A person may not manufacture or possess an illegal gambling device for export from the state without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing the license."

NEW SECTION. Section 6. Use of sports tabs restricted. Nothing in this part permits the use of sports tabs except in conducting a sports tab game as authorized in this part.

NEW SECTION. Section 7. Codification instruction. [Sections 4 and 6] are intended to be codified as an integral part of Title 23, chapter 5, part 5, and the provisions of Title 23, chapter 5, part 5, apply to [sections 4 and 6]."

Renumber: subsequent section

Exhibits 3 & 3a consist of a sheet of pull tabs and a sports pool board. The originals are available at the Montana Historical Society, 225 North Roberts, Helena, MT 59601. (Phone 406-444-4775)

STATE OF MONTANA
DEPARTMENT OF JUSTICE
GAMBLING CONTROL DIVISION

Exhibit #4
15 Mar 91
HB 503

Marc Racicot
Attorney General



2687 Airport Road
Helena, MT 59620-1424

TESTIMONY ON HOUSE BILL NO. 503 (HB 503)

Submitted by Lois Menzies, Administrative Officer
Gambling Control Division, Department of Justice

March 15, 1991

The Department of Justice supports the proposed amendments to HB 503.

The Department testified as an opponent to HB 503 during the hearing in the House Business and Economic Development Committee. Our major objections to the bill included the vague definition of sports tab, insufficient rules for conducting the game, no cap on wagers or payouts, and an immediate effective date. The House Committee asked the Department to draft amendments to address these concerns. We did so, and the amendments were adopted. We believe that the proposed amendments further clarify the bill.

The Department has not been an advocate for introducing new forms of gambling in the state and is not an advocate for legalizing sports tabs. However, if the Legislature authorizes sports tab wagering, we believe that the requirements and responsibilities under this bill as amended are clearly stated for administrative purposes.

ZL6616, t #5
15 Mar 91
HB 405

Testimony by Rep. Norm Wallin
before the
Senate Judiciary Committee
on HB 405

In 1979, Montana enacted a law -- known as the Hospital Lien Act -- that requires insurance companies to pay health providers' claims assigned to them by insured patients.

In 1987, we enacted a law that designates Blue Cross/Blue Shield as an insurer.

Unfortunately, in 1987, the Legislature failed to amend the 1979 Lien Act, as well. That is, we forgot to make Blue Cross/Blue Shield subject to the Lien Act's provisions.

HB 405 corrects this omission. Under its provisions, Blue Cross/Blue Shield would be treated like all other insurers in Montana.

The other health insurance companies cooperate with hospitals and make payments directly to them. Under this bill, Blue Cross/Blue Shield would be required to do the same.

Blue Cross/Blue Shield opposes this bill. They suggest that they are trying to control health costs and that hospitals are not.

In truth, the Blues are threatening hospitals by demanding preferential treatment in the form of discounts in exchange for timely payment for services provided.

In Montana, Blue Cross/Blue Shield writes as much health insurance as all other health insurance companies combined. The Blues would like to place hospitals and other providers at a disadvantage.

Suppose the insurance company sends its check to the patient instead of to the hospital. When the patient gets the check, he may have other priorities for the use of that money.

Hence, many hospital claims do not get paid, which places further financial pressure on our hospitals.

In the House, the state insurance commissioner's staff testified in favor of this bill. They testified that HB 405 levels the playing field among all health insurance companies.

Laws have to be fair, and this bill would restore fairness to the Lien Act's treatment of health insurers.

In closing, collecting payments is one of the biggest problems hospitals face. In all but three cities in Montana, there is only one hospital.

These hospitals have to admit every patient for treatment. Hospitals provide care for those who can't pay, no matter what their social or financial status.

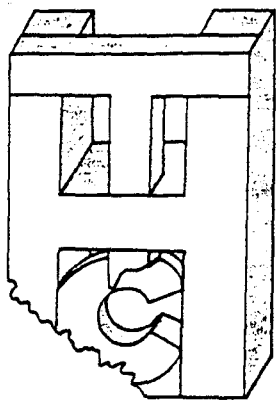
For those who can't pay, the cost of providing treatment is just written off. In our hospital in Bozeman, for example, about \$1 million is written off each year.

Failure to ensure payments to hospitals for services increases the cost of care for other patients. Ultimately the bad debts suffered by providers must be passed on to other payers.

These other payers are your local taxpayers, and businesses, individuals and families who are are forced to pay higher insurance premiums to cover the unpaid bills of others.

Your hospital is vital to the health of your community and is of tremendous importance to your local economy. Most likely, it's the largest or second to the largest employer.

Passage of HB 405 will give Montana hospitals the protection that was intended by the Legislature when it passed the 1987 law, and will help enable your hospital to continue to make a major contribution to your community.



Toole County Hospital

and Nursing Home

640 Park Drive

P.O. Box P

Shelby, Montana 59474

Phone: 434-5536

Ex. 6

3-15-91

HB 405

Feb 28, 1991

FEB 28 1991

Jim Ahrens, Exec Dir

MHA
Helena, MT

Re: Cost Cutting @ TCH & MHA

Dear Jim,

Want to Send a note to follow-up on your 2/26 Legislative Update. TCH has had to cut costs to survive. Examples included 60% reduction in education expenses, 9% reduction in total Man-hours, Riffing positions and combining functions to streamline, repairing equipment + not replacing because the cash flow on repair remains cheaper than financing (County facilities can only debt service maximum 5yr terms).

Our specific results are from our last FY: (ie. 7 months)

Payroll Costs Down 1.5% while Pati. Rev increase 8.2% p Rate increase
Non Payroll Costs up 9.9%. With CPI of 3 1/2% (estm), the
(operational) added pati. services of 8.2% would approximate
a 12% "equal" increase in costs overall.
Therefore 9.9% indicates an overall cost
reduction per static Revenue Dollar.

Hope this Helps!

Roger J. Schneider, Adm.



Pondera Medical Center

406-278-3211 805 Sunset Blvd. Conrad, MT 59425

2X. 6
3-15-91
HB 405

March 1, 1991

The Honorable
Montana Senate
Capital Station
Helena, MT. 59620

RECEIVED
MAR 11 1991

Dear Senator :

I am writing in support of HB 405. I have also testified on behalf of this bill in Helena last month.

I support HB 405, the "Hospital Lien Act," for the following reasons:

- 1- Without this legislation, accounts receivable will increase needlessly. I will need a minimum of \$21,000 per year to operate Pondera Medical Center. That money would have to come from the county government and/or other paying patients. That money would be required each year to pay for accounts receivable growth. Blue Cross opposes this bill because it would prohibit them from controlling healthcare costs. I disagree. Blue Cross is only trying to lower health insurance premiums without reducing their overhead;
- 2- A major effort in 1990 at Pondera Medical Center was to control expense growth. The effort succeeded in that total operating expense for the year was 1% less than the total operating expense in 1989. One of the ways this was accomplished was to drop Blue Cross as the facility health insurance carrier. Blue Cross rates increased over 40% per year for three consecutive years. It was just unaffordable. The facility saved 35% on healthcare costs by purchasing health insurance from another group. I see Blue Cross efforts to defeat HB 405 as a way to perpetuate their own high overhead and excessive costs by forcing providers to accept Blue Cross payment rates.
- 3- This bill, if passed, would allow continued local control of healthcare. Blue Cross, Medicare, Medicaid, various HMOs and PPOs have limited what they will pay for medical procedures performed in hospitals. Nearly 70% of all work done at Pondera Medical Center is reimbursed at predetermined rates, many of which are below cost. This removes local control of the hospital from the local boards and physicians. Money begins to influence what is medically appropriate. This bill will allow continued control of the reimbursement from the 30% of patients paying their hospital bills;

- 4- If this bill is not passed, it will be more difficult for Pondera Medical Center to survive. This bill has distinct rural health risks. The eight or ten big hospitals in the state may not notice any significant change if this bill passes. But rural facilities will have a more difficult time surviving if Blue Cross can pay the patient instead of the provider. And there are more than forty small hospitals scattered throughout the state.

For these reasons, please support HB 405. If you have questions regarding my letter or my position, please call.

Sincerely,

Carl Hanson
Administrator

cc: Pondera Medical Center Board of Directors
Montana Hospital Association



15 Mar 91
HB 405

**Testimony by
James F. Ahrens, President
Montana Hospital Association
before the Senate Judiciary Committee
March 15, 1991**

To understand why the Montana Hospital Association supports this bill, you must understand the state of hospital finances.

Montana's hospitals provided \$20 million in uncompensated care in 1989. We were paid \$10 million less than we charged for treating Workers Comp. patients, \$13 million less than we charged Medicaid and \$67 million less than we charged Medicare.

There is a limit to the losses we can suffer and still provide health care services.

Now Blue Cross doesn't want to pay its fair share of the cost of hospital services.

If the Blues don't pay their share, that doesn't reduce our actual cost of providing care. The only costs that have been cut are the Blues' costs.

Hospitals still have to pay their staff, buy medical supplies and pay the cost of maintenance. HB 405 won't affect these costs in any way.

Instead, someone else must make up the difference. And that someone else is your local taxpayers and other privately-insured patients.

Our community hospitals think it's unfair that the Blues can pay less than their fair share of hospital costs and let someone else pick up the slack.

HB 405 is designed to prevent further cost shifting.

Opponents of this bill raise several issues.

- They say this bill would inhibit the Blues' ability to control **health care costs**.

That argument sounds appealing, because all of us are concerned about rising health care costs. But the fact is this bill has nothing to do with health care costs.

Health care costs in Montana are already among the lowest in the nation. Hospital expenses in Montana, per admission, are fifth lowest in the nation, nearly a third below the national average.

Montana's hospitals are working hard to lower health care costs even more by holding down capital expenditures, sharing services and streamlining management.

Attached to my testimony are letters from two hospital administrators that illustrate their efforts to reduce costs.

- Opponents also point to the revenue collected by a number of hospitals in the past year. True. Some facilities are doing better, but only in recent years.

Some of the other witnesses today will talk about the specific financial situation of their hospitals.

The fact is that overall **Montana's hospitals are in a precarious financial condition.**

In 1989, our state's hospitals had a 1.8 percent profit margin; 9 of 10 had operating margins of under 1 percent.

The 31 hospitals with fewer than 30 beds had a negative 10.4 percent profit margin -- the sixth consecutive year they lost money.

For many of these facilities, the slightest variance in costs or payments can mean the difference between remaining open or being forced to close their doors.

- Opponents also say this bill will result in hospitals refusing to sign contracts with Blue Cross/Blue Shield. Nonsense.

Hospitals will continue to negotiate with Blue Cross, and if they get a fair deal, they won't hesitate to sign a contract.

The battle over this bill has been hard fought. It is not MHA's intent to punish Blue Cross or to impair their ability to survive. The Blues are an important part of Montana's health care community.

In the past few days, some have tried to paint this bill with the anti-trust brush and to make you think hospitals are engaging in some sort of collusion.

Far from being collusion, this is democracy in action. We're here, in accord with our basic constitutional right, to petition our legislature to change an unfair law.

Finally, this bill was prompted by a recent Montana Supreme Court decision.

The Court, in effect, found that the Legislature inadvertently failed in 1987 to designate Blue Cross as an insurer subject to the provisions of the Lien Act.

We are not here today to reargue that decision. Rather, we ask that you correct that oversight.

If you have questions on that point, you can refer them to MHA legal counsel who is here today.

Thank you.

Exhibit #7
15 Mar 91
HB 405

1990 MHA Hospitals At-A-Glance

Montana Hospital Association

Exhibit # 8
15 Mar 91
HB 405

TESTIMONY IN SUPPORT OF HOUSE BILL 405
THE HOSPITAL LIEN ACT

Saint Vincent Hospital and Health Center supports HB 405, the Hospital Lien Act, because it will reduce the costs of doing business for a physician and/or hospital. Blue Cross/Blue Shield as a health service corporation, argues that without the leverage of directing payments to the beneficiary, rather than to the provider such as a physician or hospital, it will not be able to force physicians and hospitals to sign participating agreements with Blue Cross/Blue Shield. In their estimation, costs will go up. This seems a bit confusing from a business standpoint. Just as an aside, being a participating provider means that the provider agrees to accept payment for services based on a fee schedule set by Blue Cross/Blue Shield. The provider is prevented from billing the patient the difference between the fee schedule negotiated by Blue Cross and the provider's customary fees.

Any time Blue Cross/Blue Shield sends payment directly to the patient there is an automatic delay in payment for the physician or hospital. Patients recovering from a traumatic experience with illness are not focused on the payment issues, nor should they be forced to be. Patients in general have limited knowledge and experience with insurance claims and payment processes. The patient may be physically unable to manage the paperwork. They may be dependent upon family whom they see infrequently for assistance with check writing, bank deposits, bill paying, grocery shopping, etc. Keep in mind, the patient may be receiving deductible, co-insurance and other related payment information from a primary physician, a surgeon, an anesthesiologist,

a pathologist, a consulting physician, a radiologist, etc., plus the hospital bill itself. This is almost an overwhelming experience. Hospitals and physicians pay people to do this for patients. While the patient tries to deal with all of this, the physicians' accounts receivable grows, driving up the cost of providing service to other patients and members. The physicians or hospital must cover this cash shortfall that occurs because of this accounts receivable growth.

In addition there are those patients who due to the loss of income during an illness may use the Blue Cross/Blue Shield physician or hospital payment for the living expenses. This results in bad debt for the physician, again contributing to the cost of doing business.

Physicians are forced to put into place expensive cash management tools in the form of computer systems to track these outstanding accounts, the staff to run them, and the paper and postage to bill and to bill and to bill in order to collect. The list goes on because now the physician is in the position of extending credit to his patients. This is one of the biggest cash drains on any business and requires careful cash management to remain financially viable. Extending credit as we all know is expensive. How can this cost be controlled? The physician can ask the patient to pay the several thousand dollars for his/her surgery at the time of service. Rather than the physician waiting for the payment, he will make the patient wait for Blue Cross' payment. Or the physician could ask for deposits in advance to help him offset these costs. If you were asked to provide payment in

advance or at the time of service, could you do that? At that point in time, you would probably start asking yourself: "Why am I even buying insurance if I have to put up with this hassle?" The patient and physician need to be focused on helping the patient - not on billing paperwork that can be more simply dealt with in an efficient and cost effective manner directly with Blue Cross and Blue Shield by people who are trained to bill and collect.

In summary, keeping adequate cash in business is always a challenge. If Blue Cross/Blue Shield is allowed direct payments to beneficiaries the cash shortage or eventual bad debt will force providers to raise rates to cover this shortfall or bad debt expense. It also puts an unnecessary burden of paperwork on the patient and/or their family members when they need to be recovering and putting their lives back in order. We encourage the Legislature to take care of the patient by removing this burden from them to help physicians and hospitals maintain cash in their business to ultimately reduce the cost of doing business.

Thank you.

Exhibit # 9
15 Mar 91
146405

STATE REPORTER
Box 749
Helena, Montana 59624

VOLUME 47

No. 90-068

ANESTHESIOLOGY, P.C.; DR. C.W. McCOY; DR. GERALD H. ~~SIEMENS~~; DR. NORMAN J. NICKMAN; and DR. J.E. JARRETT,

Plaintiffs and Respondents,

Submitted: Sep. 5, 1990
Decided: Oct. 26, 1990

v.

BLUE CROSS AND BLUE SHIELD OF MONTANA, A Corporation,

Defendant and Appellant.

JUDGMENT, SUMMARY--INSURANCE, Action by nonmember doctors to enforce physician liens asserted against benefits payable to ~~their~~ patients by insurance company. The Supreme Court held:

1. The legislature never intended the 1987 amendments to the insurance code to imply that health service corporations are now subject to physicians' lien statutes of 1979.

Appeal from the First Judicial District Court, Lewis and Clark County, Honorable Thomas C. Honzel, Judge

For Appellant: Hughes, Kellner, Sullivan & Alke, Helena

For Respondent: Snavelly & Phillips, Missoula

Mr. John Alke argued the case orally for Appellant; Mr. Robert J. Phillips for Respondent.

Opinion by Justice Hunt; Chief Justice Turnage and Justices Harrison, Barz, McDonough and Weber concur. Justice Sheehy did not participate.

Reversed and remanded.

____ Mont. ____

____ P.2d ____

Ex # 9
3-15-91
HB 405

Anesthesiology, P.C., Plaintiffs and Respondents, v.
Blue Cross and Blue Shield, Defendant and Appellant
St.Rep. 2015

Justice Hunt delivered the Opinion of the Court.

Appellant and defendant Blue Cross and Blue Shield of Montana appeals from the order of the District Court of the First Judicial District, Lewis and Clark County, granting summary judgment to plaintiff and respondent, Dr. C. W. McCoy, for a lien filed for services rendered to an insured of the defendant.

We reverse and remand for further proceedings in accordance with this opinion.

The sole issue raised by this appeal is whether the 1987 amendments to the Montana Insurance Code affect appellant's immunity from liens under the Physicians' Lien Act.

Blue Cross is a health service corporation, governed by sec. 33-30-101 through sec. -1102, MCA, operating a nonprofit health care plan within the State of Montana. It enters into contracts with health care providers for services to its insureds. In the case of a contract between Blue Cross and a physician, the physician becomes a "professional member." The professional member agrees to accept, as payment in full, a fee established by Blue Cross for services to Blue Cross insureds. The physician also forfeits the right to "balance bill" the Blue Cross insured for any difference between the physician's charge and the fee allowed by Blue Cross. The contract between Blue Cross and the professional member allows the professional member to directly bill Blue Cross for services provided to the insured.

A physician who does not have a contract with Blue Cross is a "nonmember physician." A nonmember physician must bill the insured for the entire cost of the services provided, and look to the insured for payment of those costs. Payments made by Blue Cross for services rendered by nonmember physicians are made directly to the insured. Any balance of the bill must be paid by the insured.

Respondent, Dr. C. W. McCoy (a nonmember physician) provided health care services to Pamela Dark on December 15, 1987. Pamela was billed \$1,790.00 for these services. On January 4, 1988, Dr. McCoy sent a lien notice to Blue Cross, claiming a lien against insurance benefits payable by Blue Cross to or on behalf of Pamela. Blue Cross ignored the lien and made payment directly to Pamela.

In the action against Blue Cross, plaintiff McCoy was joined by Anesthesiology, P.C. The District Court granted judgment to Dr. McCoy but found that because Anesthesiology had filed its claim on November 2, 1987, before the 1987 amendments to the insurance code became effective, its claim was barred. Anesthesiology did not appeal that decision and is not a party to these proceedings.

Appellant argues that the physicians' lien statutes of 1979 were not affected by the 1987 amendments to the Montana Insurance Code; and that appellant's immunity from physicians' liens still exists. The physicians' lien statutes, sec. 71-3-1111 through sec. 71-3-1118, MCA, were enacted in 1979. They provide in part:

"If a person is an insured or a beneficiary under insurance which

esthesiology, P.C., Plaintiffs and Respondents, v.
Blue Cross and Blue Shield, Defendant and Appellant
47 St.Rep. 2015

provides coverage in the event of injury or disease, a physician . . . upon giving the required notice of lien, has a lien for the value of services rendered on all proceeds or payments. . . ."

Section 71-3-1114(2), MCA. At the time the lien statutes were enacted, health corporations such as Blue Cross were specifically excluded from the guidelines of Title 33 of the Montana Code (the Montana Insurance Code).

The corporations were excluded by the 1979 insurance code. Specifically the legislature provided:

"This code shall not apply to health service corporations to the extent that the existence and operations of such corporations are authorized by Title 35, chapter 2, and related sections of the Montana Code Annotated."

Section 33-1-102(3), MCA. In 1987 the legislature amended the insurance code to include health service corporations.

"For the purposes of this code, the following definitions apply unless the context requires otherwise:

"(6) 'Insurer' includes a health service corporation in the provisions listed in 33-30-102."

Section 33-1-201, MCA.

[1] The District Court found that because health service corporations were excluded from the insurance code from 1979 to 1987, they were not subject to physicians liens during that time. The court then found that the legislature intended that physicians liens apply to health service corporations after the 1987 amendments. Appellant argues otherwise, contending that the legislature never intended the 1987 amendments to the insurance code to imply that health service corporations are now subject to physicians' lien statutes of 1979. We agree with appellant.

This Court will not intrude in areas properly the province of the legislature. We have consistently held that only in extreme circumstances is it appropriate to construe a subsequent statute against a former one without express legislative direction. "The presumption is that the legislature passes a law with deliberation and with a full knowledge of all existing ones on the same subject, and does not intend to interfere with or abrogate a former law relating to the same matter unless the repugnancy between the two is irreconcilable." London G. & A. Co., v. Industrial Accident Board, 82 Mont. 304, 310, 266 P. 1103, 1105 (1928). The Court followed the London reasoning in Fletcher v. Paige, 124 Mont. 114, 220 P.2d 484 (1950): "It will not be presumed that a subsequent enactment of the legislature intended to repeal former laws upon the subject when former laws were not mentioned." Fletcher at 119, 220 P.2d at 487.

In the case before us, the legislature failed to mention the physicians' lien statutes when it amended the code in 1987. That the legislature intended the amendments to apply only to health service corporations is clear from the language of the amendments.

anesthesiology, P.C., Plaintiffs and Respondents, v.
Blue Cross and Blue Shield, Defendant and Appellant
7 St.Rep. 2015

Ex # 9
3-15-91
HB 405

which states: "For the purposes of this code, the following definitions apply . . ." (Emphasis added.) Section 33-1-201, MCA. By leaving intact these introductory words, the legislature clearly intended that the 1987 amendments be limited to the insurance code.

Had the legislature intended to amend the physicians' lien statutes when it revised the insurance code, it would have expressly stated that intention. Unless and until the legislature specifically amends the physicians' lien statutes, we will not infer an intent to do so.

Reversed and remanded for further proceedings in accordance with this opinion.

DEPARTMENT OF ADMINISTRATION
STATE PERSONNEL DIVISION

Exhibit #10
15 Mar 91
HB 405



STAN STEPHENS, GOVERNOR

ROOM 130, MITCHELL BUILDING

STATE OF MONTANA

(406) 444-3871

HELENA, MONTANA 59620

Testimony in opposition to HB405
before the Senate Judiciary Committee

Mr. Chairman, members of the Committee, I am Joyce Brown, Chief of the Employee Benefits Bureau, Department of Administration. I administer the State employee health plan. Following is an outline of my testimony.

HB405 eliminates one of the only tools employers have to control the increases in health care costs that are threatening their ability to provide adequate health insurance for their employees.

If you agree with the following premises, I think you will agree that HB405 is bad public policy:

1. Health care costs cannot continue to rise at current rates.

Increases are fueling a destructive spiral: individuals and employers are being priced out of the health care market which results in cost shifting to the remaining insureds which forces still more into the ranks of the uninsured or underinsured.

The State health plan is similar to other employer plans in that funding has not kept pace with cost increases forcing benefit cuts and cost shifting to plan members. We are opposing this bill to prevent further erosion of State employee benefits to our 28,000 plan members.

2. Since neither federal or state government show signs of controlling costs, the task is left to consumers in cooperation with their third party payer (their insurance company or claims processor for self-insured groups).

3. Market forces -- the ability and willingness of consumers to pay as a control on costs is already tenuous when it comes to the health care industry.

Health care providers determine what medical services are needed and what the costs will be. Consumers generally do not have the expertise to refuse unnecessary services, nor do they have any power to negotiate reasonable rates except through their insurer.

4. The last thing that is needed is a bill that further restricts the ability of health insurers to control runaway costs.

EX # 10
3-15-91
HB 405

HB405 places all health insurers (including BC\BS) under the Physician's/Hospital's Lien Act. This allows physicians, hospitals and other health care providers to effectively attach health insurance funds without a meeting of minds on acceptable charges.

HB405 will guarantee hospitals/physicians the convenience of direct payment through the lien process. They will no longer have to offer consumers something in exchange. The member physician and hospital agreements that BC/BS has negotiated on our and other consumer's behalf and the cost savings contained in those agreements will be in jeopardy.



HB 292
3-15-91

GLACIER COUNTY

CUT BANK, MONTANA

MARY PHIPPEN
CLERK OF DISTRICT COURT
GLACIER COUNTY COURTHOUSE
512 EAST MAIN STREET
CUT BANK MT 59427
(406) 873-5063 Ext. 36

March 14, 1991

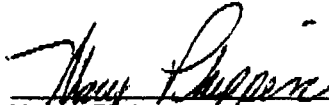
Richard J. Pinsoneault, Chairman
Senate Judiciary Committee
State Capitol
Helena MT 59620

RE: HB 292 and HB 290

Dear Mr. Pinsoneault:

Please be advised that I am in support of House Bill No. 292 - Requiring Governmental Entities to Pay Certain Fees and House Bill 290 - Allowing Clerks To Maintain Records On Computers. Your support of these Bills is appreciated.

Very truly yours,



Mary Phippen
Clerk of District Court
Glacier County

*"Protecting the Big Sky Country"***MONTANA STATE FIRE CHIEFS' ASSOCIATION**

Senator Joseph Mazurek

Senate Judiciary Committee

*"Protecting the Big Sky Country"***Montana State
Fire Chiefs' Association**Duane Larson
Lobbyist
Phone 755-6376

1111 8th Ave. East • Kalispell, MT 59901

The Montana State Fire Chiefs' Association urges your support of HB 228. As technology advances and Hazardous Materials Incidents become more commonplace, recovery of costs for the handling of an incident is very important. Our environment has become more and more important to each of us and its protection is paramount. To protect environment and quality of life, even life itself, we need to handle Haz. Mat. Incidents with thorough and quality methods. Thorough and quality methods equate to many man-hours, specialized equipment, large amounts of resources, and expendable materials which in turn equates to Dollars!! There is no possible way that during budget preparation an emergency responder or agency can anticipate costs of potential Haz. Mat. Incidents. When incidents occur they are handled with a resulting strained budget. Other areas of Public Safety are then short-changed. If an emergency responder has a right to a cause of action against the RESPONSIBLE PARTY, then we are putting the cost burden back where it belongs. Persons, companies, agencies, corporations need to be held responsible for their actions or inactions. Please support HB 228.

Sincerely,

 A handwritten signature in cursive script that reads "M. Duane Larson".

M. Duane Larson

DATE

15 Mar 71

1 of 2

COMMITTEE ON

Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Joe Bering	RWRR	HB 228	X amended	
HARLEY WARREN	MONT. ASSOC. OF MACHINISTS	HB 503		X
Bruce Swanson	Montana Rural FD	HB 228	X amended	
Steve Browning	MT Hosp Assn	HB 405	✓	
JAMES A. LOFFTUS	MT FIRE DIST ASSOC	HB 228	✓	
Henry E. Lotter	MT St. Vol Firefighters Assn	HB 228	X	
Lyle Nagel	MT St. Vol Firefighters Assn	HB 228	X	
Ellen Fleener	St Peter's Hospital	HB 405	✓	
Keith Kovasch	Montana Trailer Hosp.	HB 405		X
GARY Kewner	Bozeman Deaconess Hosp.	HB 405	✓	
Bill Warfield	Livingston Memorial Hosp.	HB 405	✓	
Tim BERGSTROM	MT. STATE FIREMEN'S ASSOC	HB 228	✓	
EDWARD FLIES	MT. STATE COUNCIL OF FIREFIGHTERS	HB 228	✓	
MARIE E. DURKEE	MT TAVERN ASSN	HB 503	✓	
Dave Barnhill	Insurance dept.	HB 405	✓	
Michael J. Sherwood	MTLA	HB 405	✓ Amendment in House re: life	
John Fitzpatrick	Picatus Gold Co.	HB 228	Amended	
DAVE Anderson	Jefferson Co. Commission	228	✓ w/ Amendment	
H. Lee Korte	Deaconess Med Center	HB 405		✓
Nichelle	Self	HB 503	✓	
Catharine Donnelly	MT Hosp ASSO	HB 405	✓	
Jim Robert	Dr. G. G. G. with F. L. L.	HB 503		✓
Loren Jacobson	St. Patrick's Hospital	HB 405	✓	
Joel Lankford	Columbus Hospital	HB 405	✓	
CARL HANSON	PONDERA MEDICAL CENTER	HB 405	✓	
FRANK VALGOUTH	INSURANCE INSURANCE	HB 405		✓

DATE 15 Mar 91 2 of 2

COMMITTEE ON State Judiciary

VISITORS' REGISTER

[illegible]