

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on January 5, 1993, at
10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Tom Hager (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Daryl Toews (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

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

Committee Business Summary:

Hearing: SB 18, SB 43
Executive Action: None.

Announcements/Discussion:

Chair Lynch announced that there would be no seconds on motions.

HEARING ON SB 18

Opening Statement by Sponsor:

Senator Steve Doherty, Senate District 20, Great Falls, brought SB 18 before the Committee which was brought to him by a number of insurance agents. The agents were concerned with the current ability of an insurer to limit, restrict, or cancel an agents ability to write casualty insurance in Montana. SB 18 is based

on loss ratio. Loss ratio is the amount of the incoming premiums in comparison to the amount of claims paid out during a year. The situation in Montana is that the insurance agent will write an insurance contract, but the actual contractual agreement is between the insured and the insurance company. In the event of a claim on the insurance, there is a chance that the company will pay out more claims than they have premiums coming in. The insurance company then goes to the insurance agent and tells the agent they are not going to let them write that kind of insurance any more because of their loss ratio. The insurance company does not consider the agents integrity, or the consumers needs. It just considers loss claims.

Senator Doherty told the committee SB 18 is patterned after a bill in Nevada, and will protect the agents and the consumers. SB 18 will also help the relationship between the agent and his customer in that the agent won't have to turn the customer down for a certain kind of insurance the agent has been providing to the customer. SB 18 is a good small business bill and a good consumer bill.

Proponents' Testimony:

Roger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, stated that he was in support of the concerns addressed in SB 18. Mr. McGlenn added that the issue was not only an agents issue, but a consumers issue, because when an agent's authority or contract is terminated by the company because of loss ratio it displaces entire blocks of consumers in the marketplace and forces them to go back to the market place when they are in the middle of an insurance crisis and try to replace the coverage. The coverage the consumer needs may be restricted because of outlying factors, i.e., natural disaster. The agents concern is that the bill does not address all the areas of concern raised by the issue. There are different relationships between agents and their companies. Some agents work directly for their company and are called "direct writers". Independent agents often contract with the company but own their own expirations, meaning that upon termination, the consumer owns their own insurance policy and the ability to place it where they want to. In the case of termination the independent agent has the choice to place the policy with another company rather than the original supplier of the insurance. There is a concern with company rights. Mr. McGlenn said SB 18 needs to be amended so it will protect the company against abuse by agents. SB 18 should also address the possibility of rehabilitation programs to be set up so the companies and agents can work together to preserve the good conduct of the agent and the consumers. The independent insurance agents of Montana anticipate the bill will look at reviewing the problems with insurance company solvency and providing protection for the consumer in the case of insolvency. There is the area of abandonment, gross and willful misconduct and failure to pay over

to a company the money that has been paid to an agent and then not forwarded on to a company. In closing, Mr. McGlenn asked that the Committee look at the draft work that is going on by the Montana Insurance Department regarding many of the issues raised by SB 18.

Richard Ferie, Bozeman, Insurance Agent for one of the three largest Property and Casualty Insurance Company, expanded on loss ratio, stating that it is basically a premium paid in proportion to the amount of claims paid out. Agents are evaluated on their loss ratio and not on if they are considering their clients needs in the formulation of a policy. He concluded by saying he was in support of SB 18.

Opponents' Testimony:

Ron Ashobraner, Representative of State Farm Insurance Company, rose in opposition SB 18 for several reasons. State Farm agents are independent contractors. State Farm has a contractual relationship with the insured. As a business, State Farm has a right to a contract, and the passing of SB 18 would interfere with State Farms governmental right to a contract. Mr. Ashobraner feels that SB 18 is in front of the legislature to protect the agents. State Farm assures coverage even if the agent is terminated. SB 18 would afford independent contractors the same privileges and rights as employees and also grant the agents additional job protection usually only granted employees. Mr. Ashobraner added that upon passage, SB 18 could only be on future contracts and agents; not on existing contracts and agents. He concluded that the passing of SB 18 would raise a legal question on existing contracts.

Ward Shanahan, Representing the Farmers Insurance Group, supplied prepared testimony. (Exhibit #1)

Jacqueline Lenmark, Representing the American Insurance Association, a trade association comprised of some 240 Property and Casualty Insurance Companies endorsed the testimony of Ron Ashobraner and Ward Shanahan. Mrs. Lenmark also stated her opposition to SB 18. She believes that SB 18 is based on anecdotal information and there isn't a wide spread problem. There is no clear definition of loss ratio and there is no clear definition of a period of time contemplated by SB 18. Mrs. Lenmark added that there was no statement of intent to provide for a rule making procedure or delegation of authority to the agency to make any rules. She is concerned this will interfere with the Department of Insurance's regulation of companies that may be insolvent or on the brink of insolvency. She added that SB 18 interferes with the relationship between the company and the agent. The potential adverse effects of SB 18 would be the companies already writing insurance in the state of Montana are going to carefully scrutinize their current agents and see if they want to retain them or if they are safe to retain. The passage of SB 18 would also "scare off" new companies looking at

entering the state. Mrs. Lenmark asked that the Committee give a "do not pass" recommendation on SB 18 and that they defer consideration of SB 18 until another bill, which will be presented, be brought before the Committee.

Gene Phillips, National Association of Independent Insurers, a trade association similar to the one of Mrs. Lenmark. He endorses the "do not pass" requests of other opponents and feels that SB 18 interferes with the contractual relationships between carriers and their agents. SB 18 would cause an unnecessary restriction on insurers.

Andre Graa, State Farm Agent, opposes SB 18, stating that consistently unprofitable agents are the only ones that get terminated. An agent that is unprofitable for a couple of years is generally not terminated. Anyone that is unprofitable can be put through programs that will help them. Rates of a profitable agent are jeopardized by unprofitable agents in a territory. Mr. Graa said SB 18 bill is one-sided and if a company cannot control losses, then the losses are going to be passed on to the consumer. SB 18 would guarantee an agent a job for his or her lifetime with no accountability or responsibility on their part.

Jerry Reisbech, District Manager for Farmers Group Insurance, is concerned with the company's ability to flex with adverse changes. Mr. Reisbech stated that this legislation is going to restrict the ability of the insurance company to flex. Farmers Group special programs designed for the agents in the case of loss ratio, and has not terminated any agents because of loss ratio experience. Mr. Reisbech concluded that he is not representing the company, but his personal view point of opposition to SB 18.

Informational Testimony:

Frank Cody, states that he has no position on the issue and presented prepared testimony to the committee. (Exhibit #2)

Questions From Committee Members and Responses:

Senator Klampe addressed Jacqueline Lenmark and asked about any adverse effects that Nevada may have experienced. Mrs. Lenmark has heard that there has been some troubles with the insurance industry but that she doesn't know of any effects in direct relation to this legislation.

Senator Kennedy addressed Senator Doherty and asked if the companies discourage agents from testifying for the bill. Senator Doherty replied that he has heard from individual agents that have been threatened; if they support this legislation, they will have difficulty maintaining their contracts, their business and their ability to maintain their coverage.

Senator Christiaens asked Mr. McGlenn what is considered a satisfactory loss ratio and if it varies depending on what kind

of insurance it is written on. Mr. McGlenn said that a bad ratio can be from 75 to 80% with some varying as far down as 62% depending on other factors. Senator Christiaens asked if SB 18 is addressing property and casualty insurance or other types of losses. Mr. McGlenn said that SB 18 is mainly property and casualty insurance. Senator Christiaens asked if the rule was over a three year average or if the loss ratio reports were over one years losses. Mr. McGlenn stated that the rules vary depending on contractual relationship and that the contract spells out the relationship.

Senator Christiaens addressed Mr. Shanahan and asked him if, because he was an independent contractor, were his agents not subject to loss ratio analysis, also. Mr. Shanahan replied that they were.

Senator Gage addressed the opponents as a whole and inquired whether there were any other states where the law exists. Mr. McGlenn responded that it was active in the state of Minnesota and Arizona.

Senator Gage asked if the "insurance producer" meant the agents and was answered in the affirmative by Mr. McGlenn. He then asked if SB 18 would not effect the case with an individual insured, but only the relationship between the agent and the insurance company. Mr. Shanahan answered that that was correct. Senator Gage then asked if anyone knew what the "specified period" referred to on line 3 on page 2 was. Mr. Doherty replied that the "specified period" had to be tightened down.

Senator Lynch stated that he will hold SB 18 until the insurance commission presents their information.

Closing by Sponsor:

Senator Doherty closed stating that the information presented was not anecdotal, that it was real and a problem the business people in our communities are facing. He added that the insurance agent binds the insured with the insurance company and that the final decision rests with the insurance company. He concluded that if the insurance company can make the final decision, the insurance agent shouldn't have to suffer because of a bad underwriting decision. The insurance business is a highly regulated industry by the state of Montana. The contracts are, therefore, subject to review by the state.

HEARING ON SB 43

Opening Statement by Sponsor:

Senator Doherty, Senate District 20, Great Falls, presented SB 43 which would repeal the sunset clause on HB 405 which was carried by Representative Norm Wallin in the 1991 session. What HB 405

did was provide that all insureds in Montana would be subject to the hospital physician health care provider lien law. This lien law is such that if a person gets medical services and the medical provider wants to get paid and that person has insurance, the medical provider under the lien law, can send a notice to the insurer for payment. The insurer can then pay the medical provider directly. There had been questions in the past whether or not Blue Cross/Blue Shield Insurance Company had been subject to the lien law. HB 405 passed making all the insurers subject to the hospital lien law; the provider gets paid directly. If the provider does not file a lien, the insurer could then send payment to the patient, and the patient could then pay the provider. Some patients decided to take the money sent to them and not pay their hospital bills. The hospital then had to collect the outstanding bills from the patient. HB 405 provided that all providers and all insurance companies would fall under the law. During the last session the Senate added a 2 year sunset clause to see how HB 405 would work. The current legislation will become ineffective on April 17 if the sunset clause is not repealed. HB 405 has worked, and the health care profession is getting the money for the services they have provided. The direct payment method is saving the health care field from shifting costs of bill collecting and lost earnings to the patients.

Proponents' Testimony:

Robert Bakko, President of Montana Clinical Mental Health Counselors Association, faxed a letter stating that association's endorsement of SB 43. (Exhibit #3)

Jim Ahrens, President, Montana Hospital Association, stated that SB 43 is a basic bill to extend HB 405 into the future. HB 405 applies to all health care and insurance companies now. There are no major problems with HB 405 in the hospitals. The underlying tension is health care costs. HB 405 and SB 43 will not solve health care costs. The question is whether or not a health care provider has a right to file a lien and whether or not Blue Cross should be subject to the act. He strongly urged the extension of HB 405 through the passing of SB 43.

Tom Ebzery, Attorney representing Saint Vincent Hospital and Health Center, Billings, is in support of SB 43. Mr. Ebzery explained under SB 43, if a health care provider provides care for an insured patient, the provider can send a notice of a lien to the patients insurer and the insurer is then required to send the payment directly to the provider. Prior to the 1991 amendment, Blue Cross/Blue Shield (BC/BS) discriminated between "member" and "non-member" physicians and hospitals by sending a payment directly to the provider only if you were a member provider. If the provider wasn't a member, the payment would go directly to the patient. BC/BS stated in the '91 session hospitals would "charge what they wanted" if HB 405 were to pass. Mr. Ebzery believes that this has not happened. Montana

Association of Physicians (MAPY) asked that Mr. Ebzery testify on their behalf. MAPY said to their knowledge, no one has dropped out of BC/BS membership in their group of 110. MAPY advised that the benefit of being a member of BC/BS is that it helps them process their claims more quickly. Mr Ebzery concluded that SB 43 should be enacted and the sunset clause removed.

Steve Browning, Helena Attorney representing the Montana Hospital Association, stated that the act of collecting money owed to hospitals by patients whom have received payment directly from the insurance company would increase costs and be passed on to the clients of the health care provider. He urged that the Committee pass SB 43.

Beda Lovitt, Representing the Montana Medical Association, told the Committee she supported HB 405 and supports SB 43.

Mona Jamison, Representing the Montana Chapter of American Physical Therapy Association, states that her association supported HB 405 and support SB 43 this session. She stated that health service corporations should not be exempt when other insurance companies aren't. She also stated that SB 43 was a bill of equity towards the insurance companies and for the providers. She urged the Committee's support of SB 43.

Opponents' Testimony:

John Alke, Helena Attorney appearing on behalf of Blue Cross/Blue Shield (BC/BS), stated that he is in opposition to the bill. BC/BS was established by doctors who were cognizant of a problem with members of the health care profession who charged on the high end of medical charges. BC/BS has a cost containment provision in its contracts with all member physicians. In order to control the costs of the health care providers, the member physicians gave BC/BS the right to review the reasonableness of the doctors charges. BC/BS would then only pay the reasonable charge that they felt was due to the member doctor, and the member doctor would agree not to charge the patient for the difference between what he charged and what he had been paid by BC/BS. This program saved over four million dollars last year. The only catch is that the only way the doctor can be paid directly is if he/she is a member doctor. If the doctor was not a member, the payment was sent directly to the patient.

Out of 1200 physicians in Montana, over 1000 of them are member physicians. Every hospital in Montana is a member hospital.

Mr. Alke gave the committee a copy of the lien statute. (Exhibit #4) There is an exemption in the physicians lien statute for dis-ability insurance. The original set of exemptions are on the second page under MCA 71-3-118, effective April 17, 1993. Under sub-paragraph 3, line 2, there is an express exemption from the physicians lien statute. The reason for the lien was to give the

physician a lien on insurance proceeds in accident cases. In the cases of accidents, upon settlement, the plaintiff would collect the money and not pay the health care providers. Under the absence of SB 43, the physicians lien statute does not apply to any carrier of disability insurance.

Mr. Alke presented statistics (Exhibit #5) and explained the reason for this hand out is to prove that BC/BS is not a monopoly in Montana, and is not taking advantage of the hospitals and the doctors. He feels SB 43 is trying to take away from the member doctors of BC/BS the right to modify prices and contain the soaring prices of health care. He strongly suggests that the Committee give SB 43 a "do not pass".

Joyce Brown, Montana Benefits Bureau and State Administration, stated that she was in opposition to SB 43 and presented prepared testimony. (Exhibit #6)

Terry Minow, Montana Federation of Teachers, Montana Federation of State Employees, stated that they oppose SB 43 and support legislation that will contain health care costs.

Questions From Committee Members and Responses:

Senator Gage asked what other states had this kind of legislation, or if it is unique to Montana. Jim Ahers of the Montana Hospital Association stated that approximately 15 states have assignment of benefits laws. He then redirected the question to Blue Cross. John Alke stated that he knew South Dakota had the law. Senator Gage asked if the SB 43 fell under the lien filing law of Montana. John Alke answered that in the case of SB 43 it is a non-file lien and doesn't fall under the lien filing law of Montana because it is a claim against a lien. Bart Campbell, Legislative Attorney answered Senator Gage's question by saying that if a person was going to file an action to collect on the lien, then that person would have to file the lien. Senator Gage then asked if there were any cost problems to the state. There was no reply from any of the parties.

Senator Klampe addressed Mr. Alke as to what the intent of the Missoula doctors who originally filed the case that caused the drafting of SB 43 was. He wanted to know if they wanted to get the amount of the bill or just a check from the insurance company. Mr. Alke responded that the doctors intent was unclear in that they sued for more than the coverage.

Senator Christiaens asked that if all hospitals in the state are currently members of Blue Cross, why they were in support of SB 43. Mr. Ahers answered they were in support of SB 43 for protection. There are disputes on contracts and the threat of BC/BS is that if the contract isn't signed, then the patients will get paid directly and cost the hospitals money.

Senator Koehnke asked Mr. Alke if SB 43 doesn't pass, where would

the payments go. Mr. Alke responded that the payment will go back to the way before the enacting of HB 405 with member providers getting direct payment.

Closing by Sponsor:

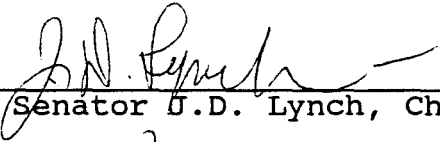
Senator Doherty closed, thanking the Committee. He stated that the other insurers weren't present because they are already complying with HB 405 and the only health care entity arguing against SB 43 is BC/BS. The Missoula physicians who were trying to "beat the system" actually had a legitimate concern on whether they were going to get paid or not. The bill is not about how much gets paid, but who gets paid. The medical provider should be able to receive payment for the services provided without having to chase down the patient. SB 43 will be a cost saver for the medical providers and also a cost saver for the consumer. He stated that HB 405 has worked for the intervening two years and he strongly suggests the Committee repeal the sunset clause through the passage of SB 43.

Announcement:

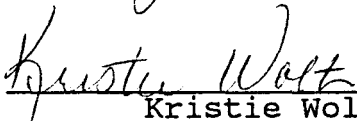
Chair Lynch announced to the members of the Committee that if a bill has opposition, the Committee will never act on that bill the same day. The secretary will send out notices on which bills the Committee is going to take executive action on.

ADJOURNMENT

Adjournment: Committee adjourned at 11:38 a.m.



Senator J.D. Lynch, Chair



Kristie Wolter, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business & Industry DATE Jan. 5, 1993

NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	/		
Senator Christiaens	D	/	
Senator Bruski-Maus	D	/	
Senator Gage	/		
Senator Nager	D	/	
Senator Harding	/		
Senator Kennedy	/		
Senator Klampe	/		
Senator Koehnke	/		
Senator Mesaros	/		
Senator Rea	/		
Senator Torre-Torris	/		
Senator Wilson	/		

STATEMENT FOR FARMERS INSURANCE GROUP

Senate Bill 18 (Doherty)
January 5, 1993

Mr. Chairman and Members of the Senate Business and Industry Committee, for the record my name is Ward Shanahan. I'm an attorney who has practiced in Helena for 35 years. I represent Farmers Insurance Group. I have represented them for almost 25 years.

FARMERS INSURANCE GROUP OPPOSES SENATE BILL 18. It opposes this bill for several reasons:

- (a) The bill addresses a theoretical "fear" rather than a real problem.
- (b) The bill would interfere with contracts between insurers and their agents.
- (c) The bill would try to prevent cancellation of an agent's contract where the most valid reason exists to cancel such a contract, the repeated placing of insurance with "high risk" insureds.
- (d) The bill would eliminate the agent's responsibility to properly evaluate a risk and make honest representations, to an insurer.

We submit, that if Montana sets out on a course of regulation which requires insurance to be issued in all instances, regardless of the honest evaluation of the risk experience of the agent or the insured parties, the result is clearly predictable. Increased rates. This result should be expected when the right to contract for lawful purposes is restricted, and honest factual evaluation of risks cannot be made without increased costs.

WE RESPECTFULLY REQUEST THAT YOU VOTE "DO NOT PASS" ON SENATE BILL 18.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 1/5/93
BILL NO. SB 18

STATE AUDITOR
STATE OF MONTANA



Mark O'Keefe
STATE AUDITOR

COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

Testimony of Frank Cote, deputy insurance commissioner of the Montana State Auditor's office, on Senate Bill 18 before the Senate Business and Industry Committee, January 5, 1992

Mr. Chairman, members of the committee, I am Frank Cote, deputy insurance commissioner of the Montana State Auditor's office. We are taking no position on Senate Bill 18 because we will propose similar legislation that has the same intent of this bill.

That bill will address the issue, raised in this bill, more specifically and directly.

We would ask that Senate Bill 18 be held and, if possible, combined with the bill we have requested.

Our legislation would allow our agency to better enforce the intent of both bills.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 1/5/93
BILL NO. SB 18

MONTANA CLINICAL MENTAL HEALTH COUNSELORS ASSOCIATION



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GEORGE W. ARTHUR
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Legislative
JOHN R. FOSTER
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Insurance Oversight
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Missoula, MT

Membership
THOMAS J. FERRO
Billings, MT

Nominations
NANCY A. TIAHRT
Bozeman, MT

Ethics
CHARD "Rick" HALVERSON
Kalispell, MT

Research, Statistics
& Evaluations
HENRY "Hank" WINTERS
Hamilton, MT

January 4, 1993

Business and Industry Committee
Capitol Station
Helena, MT

Dear Senator Lynch, Chair,

MCMHCA supports Senate Bill #43 introduced by Senator Doherty.

IN ADDITION:

Insurance companies require that all third party reimbursable mental health providers utilize the same format as any other medical provider. The Montana Clinical Mental Health Counselors Association plans to introduce an identical bill to Senate Bill #43, which will ensure that licensed mental health providers, including Licensed Professional Counselors, Social Workers, and Psychologists, will be able to be paid directly by the insurance company for services rendered.

Sincerely,

A handwritten signature in cursive script that reads "Bob".

Dr. Robert G. Bakko
President

SENATE BUSINESS & INDUSTRY
TRANSMIT NO. 3
DATE 1/5/93
BILL NO. 5043

An Affiliate of:
American Mental Health Counselors Association
American Counseling Association
Montana Counseling Association

71-3-1106 through 71-3-1110 reserved.

71-3-1111. Short title. This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, Chiropractor, Dentist, and Hospital Lien Act".

History: En. Sec. 1, Ch. 532, L. 1979; amd. Sec. 1, Ch. 85, L. 1987.

71-3-1112. Purpose. The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals when a person receiving medical treatment:

- (1) is injured through the fault or neglect of another; or
(2) is either insured or a beneficiary under insurance.

History: En. Sec. 2, Ch. 532, L. 1979; amd. Sec. 2, Ch. 496, L. 1983; amd. Sec. 2, Ch. 85, L. 1987.

71-3-1113. (Temporary) Definitions. As used in this part, the following definitions apply:

- (1) "Beneficiary" means a person entitled to insurance benefits.
(2) "Insurance" means a contract whereby a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.
(3) "Person" means an individual, a corporation, an organization, or other legal entity.

71-3-1113. (Effective April 17, 1993) Definitions. As used in this part, the following definitions apply:

- (1) "Beneficiary" means a person entitled to insurance benefits.
(2) "Insurance" means a contract whereby a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.
(3) "Person" means an individual, a corporation, an organization, or other legal entity.

History: En. Sec. 3, Ch. 532, L. 1979; amd. Sec. 1, Ch. 469, L. 1991.

Compiler's Comments 1991 Amendment: In definition of insurance inserted second sentence to include a health service corporation. Amendment effective April 17, 1991, and terminates April 17, 1993.

71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals. (1) Whenever a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital renders services to a person injured through the fault or neglect of another, the physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on:

- (a) any claim or cause of action the injured person, his estate, or successors may have for injury, disease, or death;

71-3-1011. Notice to purchaser of oil and gas. Anything in this part to the contrary notwithstanding, any lien claimed by virtue of this part insofar as it may extend to oil or gas or the proceeds of the sale of oil or gas shall not be effective against any purchaser of such oil or gas until written notice of such claim has been delivered to such purchaser at his residence or principal place of business. Such notice shall state the name of the claimant, his address, the amount for which the lien is claimed, and a description of the interest upon which the lien is claimed. Such notice shall be delivered personally to the purchaser or by registered or certified letter deposited in the United States mail. Until such notice is delivered as above provided, no such purchaser shall be liable to the claimant for any oil or gas produced from the interest upon which the lien is claimed or the proceeds thereof, except to the extent of such part of the purchase price of such oil or gas or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice. Such purchaser shall withhold payments for such oil or gas runs to the extent of the lien amount claimed until delivery of notice in writing that the claim has been paid.

History: En. 45-1010 by Sec. 10, Ch. 143, L. 1957; R.C.M. 1947, 45-1010.

71-3-1012. Effect on interest which is less than fee interest. If a lien provided for in this part attaches to an estate less than the fee, forfeiture of such estate shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which said lien has attached prior to forfeiture. If a lien provided for in this part attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which said lien attached prior to such failure.

History: En. 45-1011 by Sec. 11, Ch. 143, L. 1957; R.C.M. 1947, 45-1011 (part).

Part 11

Liens of Physicians, Nurses, Physical Therapists, Occupational Therapists, Chiropractors, Dentists, and Hospitals in Personal Injury Claims

Acknowledgment of lien satisfaction penalty, 71-3-131.

Part Cross-References Assignment of right to periodic installments for certain future damages, 25-9-405.

71-3-1101 through 71-3-1105. Repealed. Sec. 9, Ch. 532, L. 1979. 8395.1 through 8395.5, R.C.M. 1935; R.C.M. 1947, 45-1201 through 45-1205.

Compiler's Comments Histories of Repealed Sections: 71-3-1101 through 71-3-1105. En. Sec. 1 through 5, Ch. 57, L. 1931; re-en. Sec.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4
DATE 1/5/93
BILL NO. SB 43

(b) any judgment the injured person, his estate, or successors may obtain for injury, disease, or death; and

(c) all money paid in satisfaction of such judgment or in settlement of the claim or cause of action.

(2) If a person is an insured or a beneficiary under insurance which provides coverage in the event of injury or disease, a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) The lien is subject to the lien of an attorney provided in 37-61-420.

History: En. Sec. 4, Ch. 532, L. 1979; amd. Sec. 3, Ch. 85, L. 1987.

71-3-1115. Notice of lien. (1) A physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital claiming a lien shall serve written notice upon the person and upon his insurer, if any, against whom liability for injury, disease, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

History: En. Sec. 5, Ch. 532, L. 1979; amd. Sec. 4, Ch. 85, L. 1987.

71-3-1116. Notice of lien — filing with clerk of court. If an action is commenced for recovery for injury, disease, or death, a copy of the notice of lien may be filed in the office of the clerk of court in which the action is pending, and the filing is notice to all parties to the action.

History: En. Sec. 6, Ch. 532, L. 1979.

71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of lien, makes payment on account of injury, disease, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital has not been paid, the insurer or person is liable to the physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital for the reasonable value of the services.

History: En. Sec. 7, Ch. 532, L. 1979; amd. Sec. 5, Ch. 85, L. 1987.

71-3-1118. (Temporary) Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical, therapy, chiropractic, dentistry, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under a policy of life insurance or group life insurance; a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital; or an annuity contract or to pension benefits payable under a qualified pension plan. (*Terminates April 17, 1993—sec. 4, Ch. 469, L. 1991.*)

71-3-1118. (Effective April 17, 1993) Applicability. (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical, therapy, chiropractic, dentistry, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under a policy of life insurance or group life insurance, a contract of disability insurance, or an annuity contract or to pension benefits payable under a qualified pension plan. History: En. Sec. 8, Ch. 532, L. 1979; amd. Sec. 1, Ch. 496, L. 1983; amd. Sec. 6, Ch. 85, L. 1987; amd. Sec. 2, Ch. 469, L. 1991.

Compiler's Comments after the effective date of this act.) Effective April 17, 1991, and terminates April 17, 1993.

1991 Amendment: In (3), near middle after "disability insurance", inserted exception clause. Amendment effective April 17, 1991.

Cross-References Workers' Compensation Act, Title 39, ch. 71.

Termination Date: Section 4, Ch. 469, L. 1991, provided: "This act terminates 2 years after the effective date of this act."

Occupational Disease Act, Title 39, ch. 72.

Part 12

Agisters' Liens and Liens for Service

Part Cross-References Bailment, Title 70, ch. 6.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1201. Who may have lien. (1) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a ranchman, farmer, agister, herder, hotelkeeper, livery, or stablekeeper to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock and may retain possession thereof until the sum due is paid.

(2) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safekeeping, or carriage thereof has a special lien thereon, dependent on possession, for the compensation, if any, that is due to him from the owner or

BCBS PAYMENTS AS A PERCENT OF HOSPITAL REVENUES

According to the Montana Hospital Association, Montana's hospitals generated \$553 million in total revenues in 1990. That same year, BCBS of Montana paid \$77 million to both in-state and out-of-state facilities for both inpatient and outpatient services, including services for chemical dependency and mental health.

Set out below are inpatient revenue statistics reported to the federal government by the five Montana hospitals having the highest level of inpatient revenues. Also provided is the money paid by BCBS in 1990 to those hospitals.

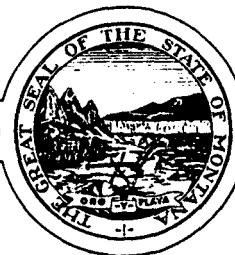
HOSPITAL	TOTAL INPATIENT REVENUES [Millions]	BCBS PAYMENTS FOR HOSPITAL SERVICES [Millions]
Deaconess Medical Center, Billings	84.9	8.45
St. Vincent's Hospital, Billings	66.4	7.37
Montana Deaconess Hospital, Great Falls	48.5	5.85
St. Patrick's Hospital, Missoula	44.3	5.22
Columbus Hospital, Great Falls	32.7	4.14

In other words, the money paid to Montana hospitals by BCBS is only a small fraction of their total revenues.

SENATE BUSINESS & INDUSTRY
 EXHIBIT NO. 5
 DATE 1/5/93
 BILL NO. SB 43

DEPARTMENT OF ADMINISTRATION

STATE PERSONNEL DIVISION



STAN STEPHENS, GOVERNOR

ROOM 130, MITCHELL BUILDING

STATE OF MONTANA

(406) 444-3871

HELENA, MONTANA 59620

Testimony in opposition to SB43 before the Senate Committee on Business and Industry

Mr. Chairman, members of the Committee, I am Joyce Brown, Chief of the Employee Benefits Bureau, Department of Administration, which administers the State employee health plan.

As a purchaser of health care services, I opposed the health providers lien act before the Senate Judiciary Committee last session.

Although it is probably more difficult to sunset a bill than to defeat it in the first place, I am more optimistic this session for a couple of reasons:

1. With such an early introduction, the bill should get more debate. Last session it slipped through with very little debate. Health care purchasers (employers and union trusts) typically don't get involved with lien laws.
2. Over the past two years, the crisis in costs and access to health care have taken center stage. Everyone is a lot more sophisticated about what is causing hyperinflation in the health care industry and what reforms are needed to make it affordable. The health care lien act can now be evaluated in that context of needed health care reform. Does it help or hinder?

The health care provider's lien act is contrary to needed cost control reforms for the following reasons:

A. THE PROBLEM: Most economists agree that health care is not subject to normal market forces which contain costs in other industries. It is supply side driven. Health care providers can generate demand and dictate fees, because consumers don't directly pay the bills.

B. PROPOSED REFORMS: Most reforms, that stop short of a Canadian style government-run solution, concentrate on making the market work. That is what president Clinton's managed competition and many other reform proposals are about. They involve strengthening purchasers -- bringing them together in larger more powerful blocks so they have more purchasing power.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 6

DATE 11/5/93

BILL NO. SB43

C. THE LIEN ACT: Contrary to what is needed, the lien act further strengthens the role of providers in a market that already suffers from provider domination. In an area of trade that was previously determined by business agreements between health care providers and purchasers or their insurers/third party administrators (Blue Cross and Blue Shield), the lien act legislates in favor of the providers. The lien act assures providers a form of direct payment without them having to offer anything in exchange.

I, consequently, urge you to vote no on SB 43 to remove the sunset on the health care providers lien act.

DATE January 5
 SENATE COMMITTEE ON Business Industry
 BILLS BEING HEARD TODAY: SB 18, 43

Name	Representing	Bill No.	Check One	
			Support	Oppose
GENE PHILLIPS	NAAI	SB 18		X
William E. LEARY	MBA	SB 18		X
WARD SHANAHAN	Farmers Ins. Group	SB 18		X
Jim AITRENS	IM. Hospital Assoc	SB 43	X	
Steve Browning	MHA	SB 43	X	
ROGER MCGLENN	IIAM	SB 18	X	
Bede Lovitt	MMA	SB 43	X	
TOM EBZEVY	St Vincent Hosp. ^{Billings}	SB 43	X	
Katharine Donnelly	MHA	SB 43	X	
Jaqueline Denmark	American One Assoc	SB 18		X
Ron Ashobraner	State Farm Ins	SB 18		X
John Alko	BCBS	SB 43		X
FRANK COTE	STATE Auditor	SB 18		
ANDRE CARAA	State Farmers	18		X
JERRY REISBECK	Farmers Ins Group	SB 18		X
Mona Jamison	MCAPTA (Physical Therapists)	SB 43	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE January 5

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: SB 18, 43

Name	Representing	Bill No.	Check One	
			Support	Oppose
LARRY AKEI	MT ASSOC OF LIFE UNDERWRITERS	SB 18	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jay Brown	MT Dept of Admin	SB 43	<input type="checkbox"/>	<input checked="" type="checkbox"/>
STEVE BROWN	Blue Cross - Blue Shield	SB 43	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Terry Minow	MT Fed of Teachers MT Fed of State Employees	SB 43	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mary McCue	Mt. Clinical mental Health Counselors		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Janya Ask	Blue Cross & Blue Shield	SB 43	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Carol Ferrie		SB 18	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rach Ferrie	CONCERNED AGENT AND CONSUMER	SB 18	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY