

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on February 18, 1993, at 6:50 p.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: Greg Pettish, Legislative Council
Kristie Wolter, Committee Secretary

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

Committee Business Summary:

Hearing: None.
Executive Action: SB 331, SB 337, SB 361, SB 367, SB 372,
SB 51, SJR 20, SB 18.

EXECUTIVE ACTION ON SB 331

Discussion:

Senator Lynch stated there were proposed amendments to SB 331 (Exhibit #1). He stated he was dropping the willing provider clause. He stated the "system of competitive bids be open so the health care providers involved in the area" will have the chance at true competition. He stated "all PPO's entered into or

renewed after the effective date (immediate passage on approval) will provide equal opportunity for the health care providers to submit a competitive bid or offer." Senator Lynch stated Senator Gage's concern was addressed, and if no bid is received an insurer may not establish a PPO in the area except pursuing a new request for proposal. He stated the insurer may reject the bids or proposals. He stated his amendments answered most of what SB 331 wants to achieve in Montana.

Motion/Vote:

Senator Wilson moved SB 331 BE AMENDED.

Discussion:

Senator Gage asked Senator Lynch what would "close" a bid. Senator Lynch stated if a bid isn't submitted, they are closed out of the bidding process.

Senator Christiaens asked Greg Pettish if there were any problems with anti-trust legislation with the proposed amendments. Mr. Petesch replied, "no."

Senator Kennedy asked Senator Lynch if SB 331 would include pharmacies. Senator Lynch stated he believed it did, but the PPO's on pharmacies will be handled differently because there will be a rate charge which everyone agrees to. He stated the general trend of insurers regarding pharmacies and physicians is they are on a list as preferred providers with charges and rate scales.

Senator Kennedy asked Mr. Pettish to define geographic area. Mr. Pettish stated "geographic area" is the area in which the PPO decides to provide health service.

Senator Bruski-Maus asked Senator Lynch if a geographic area could include two different cities or small towns. Senator Lynch stated it could and currently may.

Senator Bruski-Maus stated her concern about the medical center in Glendive, which has 79% of their patients as medicare/medicaid. She stated if a PPO was offered to the Sidney Hospital and included people in the Glendive area, it would break the Glendive hospital. Senator Lynch stated the situation could currently occur.

Senator Toews stated the community has to decide if they want PPO's in order to prevent the type of situation presented by Senator Bruski-Maus.

Senator Lynch stated after a PPO is established, the hospital is the sole provider and any other hospital would be excluded from the PPO. He stated SB 331 would allow for a bidding process on

PPO's before they are established.

Senator Kennedy asked Senator Lynch if the hospitals were the only entities bidding. Senator Lynch stated the hospitals are going to have to bid, but they are not the only entities bidding.

Bonnie Tippy, Board of Pharmacy, stated exclusive PPO's are happening in pharmacies already.

Senator Lynch stated he felt Mr. Staples was incorrect. He stated if GP's sign up under the insured plan, they are in. He stated if they don't want to belong, then they don't have to. Senator Lynch asked Mr. Butler, BCBS, if under a PPO there would be a significant number of people cut out of the contract. Mr. Butler stated there was no plan to cut out any single type of provider. He stated the proposal would afford all providers an opportunity to participate.

Vote:

The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Christiaens moved SB 331 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 337

Discussion:

Mr. Petesch stated there had been several amendments proposed, but no Committee member had approached him regarding the amendments.

Senator Lynch stated there was a suggested amendment on page 2, line 8 to strike "licensure" and insert "permitting". He stated there was an amendment to eliminate subsection 5 on page 14. Senator Lynch stated on page 17, lines 24-25 and on page 18, lines 1-2, there had been language struck. He stated there was a proposed amendment to reinsert the language above.

Stuart Dogget, Manufactured Housing proposed an amendment to strike lines 18-20, page 11. He stated the concern was that the Department of Commerce was trying to establish regulations and authority over permanent foundations for manufactured housing.

Motion/Vote:

Senator Toews moved SB 337 BE AMENDED (lines 18-20, page 11 be

struck). The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Harding moved SB 337 BE AMENDED (page 2, line 8 - strike "licensure" and insert "permitting"). The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Mesaros moved SB 337 BE AMENDED (strike subsection 5, page 14). The motion CARRIED UNANIMOUSLY.

Discussion:

Senator Klampe referred to page 12, the issuance of a certificate of occupancy, and he stated the trial lawyers objected to the issue and he agreed with them. Senator Klampe stated the issuance of certificates would slow the process down and the Department admits they can't fully inspect every building. He stated the Department issuing the certificates would make the Department liable if the building wasn't up to code, but the Department didn't want to be responsible.

Senator Lynch stated there was a problem with that, but didn't know how to remedy it. He stated the certificate should not be used as sole evidence.

Senator Klampe stated he didn't see why the Department should issue the certificates at all. He stated he could see both sides of the issue.

Senator Rea referred to page 11, subsection 7, line 15 and asked what its intent was. Senator Lynch stated the reason this section was inserted was to clarify the Department's authority to determine the proper use of a building and structure in relationship to the type or method of construction. He stated mobile homes constructed under HUD provisions, being converted to other uses should be prohibited for uses other than residential use for safety reasons. He stated he wasn't sure what the Department was referring to. He stated there was an incongruity because HUD does not build homes. He stated HUD comes up with specifications that must be met, but those specifications aren't high enough to use the home for anything other than family residence. He stated he felt this section was restrictive.

Senator Gage stated the standards are set up for a purpose. He stated the Department would like to put rules together which would allow for a different standard for anything outside of resident use of a mobile home.

Senator Gage referred to page 8, lines 10 - 13 and asked if this section should be included in subsection 2. He suggested the Committee insert "1(a)(i)" instead of "1" in this section.

Motion/Vote:

Senator Gage moved SB 337 BE AMENDED (insert "1(a)(i)" instead of "1" into subsection 2. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Christiaens moved SB 337 DO PASS AS AMENDED. MOTION CARRIED 12 to 1 with Senator Klampe voting NO.

EXECUTIVE ACTION ON SB 361

Discussion:

Mr. Pettish supplied the Committee with copies of proposed amendments to SB 361 (Exhibit #2).

Motion:

Senator Gage moved SB 361 BE AMENDED and added an amendment of passage of approval.

Discussion:

Senator Lynch asked if the lower rate pawnshops will increase their rates upon passage of SB 361. He stated he hoped the competition would keep the rates low.

Senator Mesaros asked if 25% was a legitimate figure.

Senator Christiaens stated the 25% figure was high, and the majority of the people were charging 20%. He stated the 25% language could become usurious.

Senator Klampe stated he had reservations about the purchase option charge.

Senator Lynch stated the purchase order option is in the amendments.

Senator Lynch stated the pawnbrokers probably wouldn't pay attention to SB 361 since they haven't paid attention to the law as it stands.

Senator Toews stated the 25% was excessive since the amount of money loaned was so small.

Senator Lynch stated even though SB 361 came in late, the people are aware of it and it could still be changed in the House.

Senator Rea asked if SB 361 would authorize an additional 25% charge every 30 days. Senator Lynch stated every 30 days would be a new loan and they could be charge 25%.

Vote:

The motion CARRIED 12 to 1 with Senator Rea voting NO.

Motion/Vote:

Senator Christiaens moved SB 361 DO PASS AS AMENDED. The motion CARRIED 12 to 1 with Senator Read voting NO.

EXECUTIVE ACTION ON SB 367

Discussion:

Senator Lynch stated he didn't like SB 367 and it wasn't "set up right."

Senator Christiaens stated there are strict definitions of "independent contractor". He stated SB 367 would make people think they were going to be excluded from employee status.

Senator Bruski-Maus stated there would be a problem with some construction jobs if all contractors were required to bid as contractors.

Senator Lynch stated SB 367 would make a person an "independent contractor" permanently, and it could not be reversed.

Senator Christiaens stated workers are independent contractors only if the person they are working under never told them how to do the job.

Senator Rea referred to page 5 and stated upon qualification of independent contractor status, the "employer" is not obligated to pay workers' compensation. Senator Lynch stated that was correct, but upon moving to an employee status, the person with the independent contractor card would be exempt from any employee benefits or workers' compensation benefits because of his ownership of the independent contractor card.

Senator Toews asked if there would be a problem with whether the employer would be required to deduct taxes or not.

Senator Gage referred to subsection d, page 4 and stated it would cover the situation of change in employee status.

Motion/Vote:

Senator Christiaens moved SB 367 be TABLED. The motion CARRIED 10 to 3 ON ROLL CALL VOTE.

EXECUTIVE ACTION ON SB 372

Motion/Vote:

Senator Toews moved SB 372 DO PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 51

Discussion:

Senator Lynch stated there was a "gray bill" on SB 51 which included all the amendments (Exhibit #3).

Senator Klampe stated the head of the Department has only been in the position for 6 weeks and she needs the chance to make changes in the Department.

Motion/Vote:

Senator Mesaros moved SB 51 BE AMENDED. The motion CARRIED UNANIMOUSLY.

Motion:

Senator Mesaros moved SB 51 DO PASS AS AMENDED.

Discussion:

Senator Rea asked if the investigations by the liquor division and the revenue division could be integrated. Mark Staple, Montana Tavern Association, stated there was a bill coming which would address this issue.

Senator Klampe stated Oregon owns its machines, so there is no comparison to Montana.

Senator Toews stated he supported SB 51 because of the two types of authority, and it affords the Department two opportunities to deny licenses.

Senator Mesaros stated he supports the issuance of temporary licenses, and there was no objection to the investigation.

Senator Rea asked what the time period for issuance of a temporary license had been changed to. Mr. Staples stated it had been changed to 30 days.

Vote:

The motion CARRIED 11 TO 2 by ROLL CALL VOTE.

EXECUTIVE ACTION ON SJR 20

Discussion:

Senator Lynch stated there were two proposed amendments in Committee.

Motion/Vote:

Senator Christiaens moved SJR 20 BE AMENDED. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Christiaens moved SJR 20 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 18

Discussion:

Senator Gage stated he had met with Roger Tippy and supplied the Committee with copies of the proposed amendments (Exhibit #4). Senator Gage stated the amendments were now a new bill. He stated he objected to the amendment on subsection b, page 1. He stated the original bill didn't have this language in it, and he stated the agent has no control over the operating expenses.

Senator Klampe stated the language referred to by Senator Gage had been inadvertently omitted from the original bill. He stated the agencies monitor their overhead expenses closely.

Senator Lynch asked if it would do any good to say "actual operating expenses". Senator Klampe stated it wouldn't.

Senator Christiaens asked Roger McGlenn, Independent Insurance Agents Association, what is included in the loss ratio reports.

Senator Lynch opened the floor to comments from the audience.

Roger McGlenn stated the loss ratio reports would include premium

earned less claims paid. He stated it also includes incurred but not reported reserves and operating expenses.

Frank Hodges, Insurance Commissioner, stated the loss ratio experience deals with a total loss experience, not just a ratio. He stated the other factor is the operating expense.

Senator Christiaens asked about agencies which represent a number of companies and how they calculate their operating expenses. Greg Van Horssen, State Farm Insurance Company, stated he felt SB 18 was not meant to focus on operations such as State Farm. He stated he would like to propose an amendment to SB 18 which would state:

Section 3: These sections do not apply to an agent who, by contract, has agreed to represent one insurer or group of insurers under common management where the company renews such policies through another agent appointed by the company.

Senator Christiaens asked Mr. Van Horssen if the new amendment would be excluding State Farm, Farmers Insurance, and Farmers Mutual, or all mutual companies. Mr. Van Horssen stated he couldn't answer the question because it would depend on the contractual agreement between the companies and their agents.

Senator Lynch asked if the Insurance Commissioner agrees with the intent of the new amendment. Mr. Hodges stated he did. He added SB 18 is not contended because of the regulations, but to provide additional time for the consumer in the case where an agent's contract is terminated with the insurance company.

Senator Lynch asked Mr. McGlenn if he had any problems with the proposed amendment. Mr. McGlenn stated he didn't oppose the amendment, but he urged the Committee to ask Senator Doherty if he opposed the amendment.

Mr. Hodges stated the policies written by State Farm belong to State Farm upon termination of an agent. He stated the book of business, which an independent agent has, belongs to the agent and not to the company.

Senator Klampe asked Mr. McGlenn how the 18 month period was arrived at. Mr. McGlenn stated the 18 months was arrived at based on Connecticut language. He stated the value of the 18 month language was the time needed for the consumer to find another carrier.

Senator Gage stated "less operating expenses" might be addressing the agents operating expenses. He stated it is addressing the insurance company's expenses.

Jacqueline Lenmark, American Insurance Association stated she objects to SB 18 as amended. She supplied the Committee with a

list of her objections (Exhibit #5).

Gene Phillips, National Association Independent Insurers, stated he opposed the amendments and SB 18.

Dan Whyte, Farmers Insurance Agency stated he opposed SB 18 as amended.

Senator Klampe asked the opponents if changing the 18 month language to 12 months would appease them. Ms. Lenmark stated the change would help but they would still be opposed to SB 18.

Motion:

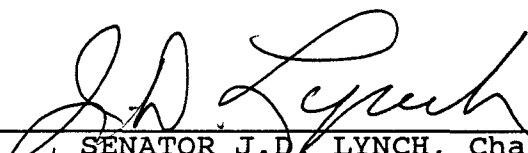
Senator Klampe moved SB 18 BE AMENDED (change 18 months to 12 months).

Motion:

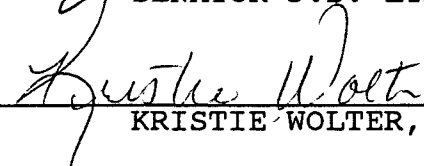
Senator Gage made a substitute motion that SB 18 DO NOT PASS. The motion CARRIED 9 to 4 by ROLL CALL VOTE.

ADJOURNMENT

Adjournment: 7:10 p.m.



SENATOR J.D. LYNCH, Chair



KRISTIE WOLTER, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business & Industry DATE 2/18/93

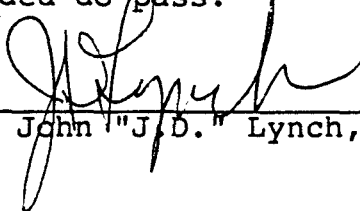
NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christaens	✓		
Senator Bruski-Maus	✓		
Senator Gage	✓		
Senator Hager	✓		
Senator Harding	✓		
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Toews	✓		
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 19, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Joint Resolution No. 20 (first reading copy -- white), respectfully report that Senate Joint Resolution No. 20 be amended as follows, and as so amended do pass.

Signed: 
Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, line 6.

Following: "DELEGATION"

Insert: ", THE CONGRESS, AND THE PRESIDENT"

2. Page 1, line 15.

Strike: "market"

Insert: "and natural gas markets"

3. Page 2, line 5.

Following: "transportation"

Insert: "and energy resource"

4. Page 2, line 25.

Strike: "and"

Insert: "(5) immediately eliminating the tariff on feeder cattle imported from Mexico and potentially increasing imports of Mexican feeder cattle by 100%, which would equal 10% of all cattle on feed in the U.S., thereby preempting the Meat Import Act of 1979, which limits beef imports in the U.S. and, as a result, allows Mexico to ship more of its current domestic production to the U.S. and to supply Mexico's domestic demand with cheaper imported beef and undermines consumer confidence in the safety of the imported beef, thereby placing greater strain on the already overburdened and underfunded U.S. border inspection system and threatens livestock feeding operations by driving closely associated meatpacking plants to Mexico; and"

5. Page 5, line 23.

Strike: "."

Insert: "; and

(9) increased border inspections for meat safety, protection against Mexican imports of beef from Europe and South America, and protection against the flooding of the U.S. feeder market."



Amd. Coord.
Sec. of Senate

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6. Page 6, line 1.
Following: "Senate"
Insert: ", "
Strike: the first "and"
Following: "Representatives"
Insert: ", the President,"
Strike: "to"

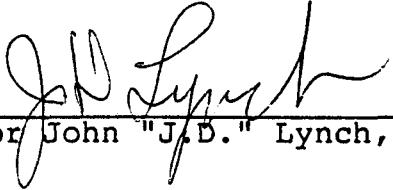
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SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 19, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 361 (first reading copy -- white), respectfully report that Senate Bill No. 361 be amended as follows and as so amended do pass.

Signed: 
Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, line 8.

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 1, line 18.

Following: "charge"

Insert: "a fee of"

3. Page 1, lines 18 through 20.

Strike: "3%" on line 18 through "pledged" on line 20

Insert: "25% of the amount of the loan for a 30-day period"

Following: "." on line 20

Insert: "The fee for extending a pawn agreement for 30 days may not exceed 25% of the amount of the loan. For purposes of this section, a fee includes all costs or fees charged, including but not limited to interest, commission, discount, storage, care of property, and purchase option."

4. Page 1, line 21.

Following: "charging"

Insert: "of"

5. Page 1, line 22.

Strike: "rate of interest"

Insert: "fee"

6. Page 1, line 24.

Strike: "interest, commission, discount, or"

Insert: "the"

7. Page 2, line 5.

Strike: "interest or charge"

Insert: "the fee"

8. Page 2, line 7.

Strike: "interest or charge"

Insert: "fee"

9. Page 2, line 9.

Strike: "interest or charge"

Insert: "fee"

10. Page 2, line 10.

Following: line 9

Insert: "NEW SECTION. Section 2. Effective date. [This act] is
effective on passage and approval."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 19, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 337 (first reading copy -- white), respectfully report that Senate Bill No. 337 be amended as follows and as so amended do pass.

Signed: 
Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, page 2, line 8.

Strike: "LICENSURE"

Insert: "PERMITTING REQUIREMENTS"

2. Page 8, lines 21 and 22.

Following: "to in" on line 21

Strike: remainder of line 21 through "(1)" on line 21

Insert: "subsections (1)(a)(i) and (1)(b)"

3. Page 9, line 3.

Strike: "subsection (1)"

Insert: "subsections (1)(a)(i) and (1)(b)"

4. Page 11, line 14.

Following: " ; "

Insert: "and"

5. Page 11, lines 17 through 20.

Following: "structures" on line 17

Strike: remainder of line 17 through "housing" on line 20

-6. Page 14, lines 6 through 15.

Strike: subsection (5) in its entirety

Renumber: subsequent subsections

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 3
February 19, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 331 (first reading copy -- white), respectfully report that Senate Bill No. 331 be amended as follows and as so amended do pass.

Signed: 
Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, lines 5 through 9.

Following: ";" on line 5

Strike: remainder of line 5 through ";" on line 9

Insert: "PROVIDING FOR COMPETITION IN AWARDING PREFERRED PROVIDER AGREEMENTS;"

2. Title, lines 10 through 12.

Following: ";" on line 10

Strike: remainder of line 10 through ";" on line 11

Following: "DATE" on line 11

Strike: remainder of line 11 through "DATE" on line 12

3. Page 1, line 14 through page 2, line 9.

Strike: preamble in its entirety

4. Page 2, line 12 through page 5, line 10.

Strike: sections 1 through 3 in their entirety

Insert: "Section 1. Section 33-22-1704, MCA, is amended to read:

"33-22-1704. (Temporary) Preferred provider agreements authorized. (1) Notwithstanding any other provision of law to the contrary, a health care insurer may:

— (a) enter into agreements with providers relating to health-care services that may be rendered to insureds or subscribers on whose behalf the health care insurer is providing health care coverage, including preferred provider agreements relating to:

(i) the amounts an insured may be charged for services rendered; and

(ii) the amount and manner of payment to the provider; and

(b) issue or administer policies or subscriber contracts in this state that include incentives for the insured to use the services of a provider that has entered into an agreement with the insurer pursuant to subsection (1)(a).

~~(2) A health care insurer shall establish terms and conditions to be met by providers wishing to enter into an agreement with the health care insurer under subsection (1)(a). These terms and conditions may not discriminate against or among providers. For the purposes of this subsection, price differences among hospitals or other institutional providers produced by a process of individual negotiation or by price differences among different geographical areas or different specialties do not constitute discrimination. A health care insurer may not deny a provider the right to enter into an agreement under subsection (1)(a) if the provider is willing to meet the terms and conditions established in that agreement.~~

~~(3) A preferred provider agreement issued or delivered in this state may not unfairly deny health benefits for health care services covered.~~

(3) A preferred provider agreement entered into or renewed after [the effective date of this act] must provide each health care provider with the opportunity to participate on the basis of a competitive bid or offer. For each health care service that an insurer proposes to obtain for its insureds from a preferred provider in the geographic area covered by the proposal, the insurer shall provide all known providers of the health care service in that area with an equal opportunity to submit a competitive bid or offer to become a preferred provider. Except as provided in subsection (5), the insurer shall issue a request for proposals and shall select the lowest cost bid or offer. If only one bid or offer is received, the insurer may enter into a preferred provider agreement with the health care provider.

(4) If a bid or an offer is not received in response to a request for proposals under subsection (3), the insurer may not establish a preferred provider agreement for that service in the geographic area except pursuant to a new request for proposals.

(5) An insurer may reserve the right in its request for proposals to reject bids or offers submitted in response to the request, including the lowest cost bid or offer. A bid or offer must be rejected in the manner established in the request for proposals. An insurer may not enter into a preferred provider agreement for a health care service except pursuant to a request for proposals. (Terminates July 1, 1993--sec. 3, Ch. 714, L. 1991.)

33-22-1704. (Effective July 1, 1993) Preferred provider agreements authorized. (1) Notwithstanding any other provision of law to the contrary, a health care insurer may:

(a) enter into agreements with providers relating to health care services that may be rendered to insureds or subscribers on whose behalf the health care insurer is providing health care coverage, including preferred provider agreements relating to:

(i) the amounts an insured may be charged for services rendered; and

(ii) the amount and manner of payment to the provider; and

(b) issue or administer policies or subscriber contracts in this state that include incentives for the insured to use the services of a provider that has entered into an agreement with the insurer pursuant to subsection (1)(a).

(2) A preferred provider agreement issued or delivered in this state may not unfairly deny health benefits for health care services covered.

~~(3) This part does not require that an insurer negotiate or enter into agreements with any specific provider or class of providers. A preferred provider agreement entered into or renewed after [the effective date of this act] must provide each health care provider with the opportunity to participate on the basis of a competitive bid or offer. For each health care service that an insurer proposes to obtain for its insureds from a preferred provider in the geographic area covered by the proposal, the insurer shall provide all known providers of the health care service in that area with an equal opportunity to submit a competitive bid or offer to become a preferred provider. Except as provided in subsection (5), the insurer shall issue a request for proposals and shall select the lowest cost bid or offer. If only one bid or offer is received, the insurer may enter into a preferred provider agreement with the health care provider.~~

~~(4) If a bid or an offer is not received in response to a request for proposals under subsection (3), the insurer may not establish a preferred provider agreement for that service in the geographic area except pursuant to a new request for proposals.~~

~~(5) An insurer may reserve the right in its request for proposals to reject bids or offers submitted in response to the request, including the lowest cost bid or offer. A bid or offer must be rejected in the manner established in the request for proposals. An insurer may not enter into a preferred provider agreement for a health care service except pursuant to a request for proposals."~~

Renumber: subsequent section

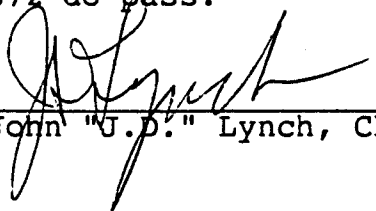
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 19, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 372 (first reading copy -- white), respectfully report that Senate Bill No. 372 do pass.

Signed: 
Senator John "J.D." Lynch, Chair

 Amd. Coord.
Sec. of Senate

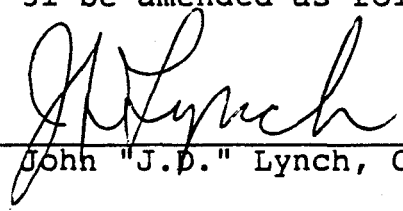
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SENATE STANDING COMMITTEE REPORT

Page 1 of 8
February 19, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 51 (first reading copy -- white), respectfully report that Senate Bill No. 51 be amended as follows and as so amended do pass.

Signed: 

Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, line 4.

Following: "ACT"

Strike: "REQUIRING"

Insert: "PROVIDING"

2. Title, line 5.

Following: "LICENSE"

Insert: "MAY"

3. Title, lines 5 and 6.

Strike: the second "A" on line 5 through "APPLICATION" on line 6

Insert: "TEMPORARY OPERATING AUTHORITY, PENDING THE DEPARTMENT OF JUSTICE'S DECISION ON THE APPLICATION FOR A PERMANENT LICENSE; PROVIDING FOR A COMPLETENESS REVIEW; AMENDING SECTIONS 23-5-112 AND 23-5-177, MCA"

4. Page 1, line 10 through line 22.

Strike: Section 1 in its entirety

Insert: "

NEW SECTION. Section 1. Purpose. The legislature finds that it is in the public interest to facilitate the orderly and timely transfer of ownership interests in licensed gambling establishments to new qualified owners. The unwarranted cessation of business in a gambling establishment pending the grant of a permanent license may result in economic hardship to the buyer, seller, or employees of the establishment and the loss of gambling tax revenue to local government entities.

Section 2. Section 23-5-112, "MCA, is amended to read:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 6 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 6 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. No more than 75 numbers may be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover a previously designated arrangement of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from another person equipment of any kind for use in gambling activities; and

(b) sells, leases, or otherwise furnishes the equipment to another person for use in public.

(11) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise. The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) "Gross proceeds" means gross revenue received less prizes paid out.

(15) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under chapter 7 or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

(16) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, includes craps, hazard, or chuck-a-luck, but does not include an activity in which a participant rolls one or more dice for a chance to obtain a drink or music; and

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in chapter 4 of this title and parts 2 and 5 of this chapter.

(17) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(18) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(19) "License" means an operator's, dealer's, or manufacturer-distributor's license issued to a person by the department.

(20) "Licensee" means a person who has received a license from the department.

(21) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(22) "Lottery" or "gift enterprise" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. However, "gift enterprise" does not mean:

(a) lotteries authorized under chapter 7; or

(b) cash or merchandise attendance prizes or premiums that the county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos.

(23) "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device.

(24) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

(25) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 6 of this chapter.

(26) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 6 of this chapter.

(27) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(28) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(29) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it.

(30) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(31) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(32) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of family services.

(33) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(34) "Temporary operating authority" means the permission that may be granted to an applicant to operate a gambling establishment if the applicant has submitted a completed application for a permanent gambling license. The permission may be granted, denied, or revoked by the department without notice or opportunity for hearing, provided that the department gives

notice and an opportunity for hearing prior to a final determination on the application. Temporary operating authority does not constitute a gambling license.

~~(34)~~(35) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

NEW SECTION. Section 3. Temporary operating authority.

(1) The department may grant an applicant for a gaming operator's license temporary operating authority for an initial period not to exceed 60 days if:

(a) the applicant has submitted a complete gambling operator's license application as required by the department;

(b) the applicant has received temporary operating authority from the department of revenue for the applicant's alcoholic beverage establishment; and

(c) the application, accompanying personal histories, and initial department investigations do not reveal any convictions or outstanding charges for felonies or crimes involving theft or false swearing.

(2) The department may without notice revoke temporary operating authority for any applicant if during its investigation, it finds that the applicant misrepresented or omitted information on the application or that any grounds exist that might result in the ultimate denial of the operator's license.

(3) An applicant is not entitled to notice or a contested case hearing with respect to a decision by the department to deny or revoke temporary operating authority.

(4) A grant of temporary operating authority automatically expires after 60 days. If at that time the department has not approved or denied the application for a gaming operator's license, the department may extend the temporary operating authority for 30 days at a time until the application is accepted or denied.

Section 4. Section 23-5-177, MCA, is amended to read:

"23-5-177. Operator of gambling establishment -- license -- fee. (1) It is a misdemeanor for a person who is not licensed by the department as an operator to make available to the public for play a gambling device or gambling enterprise for which a permit must be obtained from the department.

(2) To obtain an operator's license, a person shall submit to the department:

(a) a completed operator's license application on a form prescribed and furnished by the department;

(b) any other relevant information requested by the department; and

(c) a license application processing fee, as required in subsection ~~(8)~~(9).

(3) The department shall review the application form and other information for completeness and shall notify the applicant in writing within 10 working days of receipt of the application of any deficiencies in the application. An application is considered complete if the applicant is not notified of any deficiencies pursuant to this subsection.

~~(3)~~(4) Before issuing an operator's license, the department shall approve, in accordance with 23-5-117, the premises in which the gambling activity is to be conducted.

~~(4)~~(5) Except as provided in 23-5-117, regardless of the number of on-premises alcoholic beverage licenses issued for a premises, the department may issue only one operator's license for the premises.

~~(5)~~(6) An operator's license must include the following information:

(a) a description of the premises upon which the gambling will take place;

(b) the operator's name;

(c) a description of each gambling device or card game table for which a permit has been issued to the operator by the department for play upon the premises, including the type of game and permit number for each game; and

(d) any other relevant information determined necessary by the department.

~~(6)~~(7) The operator's license must be issued annually along with all other permits for gambling devices or games issued to the operator.

~~(7)~~(8) The operator's license must be updated each time a video gambling machine, bingo, keno, or card game table permit is newly issued or the machine or game is removed from the premises.

~~(8)~~(9) The department shall charge an applicant who has submitted an operator's license application on or after July 1, 1991, a one-time license application processing fee to cover the actual cost incurred by the department in determining whether the applicant qualifies for licensure under 23-5-176. After making its determination, the department shall refund any overpayment or charge and collect amounts sufficient to reimburse the department for any underpayment of actual costs.

~~(9)~~(10) The operator's license must be prominently displayed upon the premises for which it is issued."

Renumber: subsequent sections

5. Page 1, line 24

Following: line 23

Strike: "[Section 1]"

Insert: "[Sections 1 and 3]".

6. Page 2, line 1.
Following: "to"
Strike: "[section 1]"
Insert: "[sections 1 and 3]"

-END-

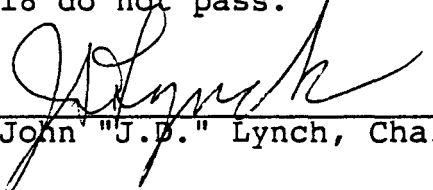
ADVERSE

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 19, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 18 (first reading copy -- white), respectfully report that Senate Bill No. 18 do not pass.

Signed: 

Senator John "J.D." Lynch, Chair

ROLL CALL VOTE

SENATE COMMITTEE Business & Industry BILL NO. SB 367

DATE 2/18/93 TIME 6:30 A.M. P.M.

NAME	YES	NO
Senator Gage		X
Senator Hager	✓	
Senator Harding	✓	
Senator Mesaros		✓
Senator Toews	✓	
Senator Wilson	✓	
Senator Rea		✓
Senator Klampe	✓	
Senator Koehnke	✓	
Senator Bruski-Maus	✓	
Senator Kennedy	✓	
Senator Christlaens	✓	
Senator Lynch	✓	

Kristie Walt
SECRETARY

JR Lynch
CHAIR

MOTION: table SB 367

ROLL CALL VOTE

SENATE COMMITTEE Business & Industry BILL NO. SB 51

DATE 2/18/93 TIME 1:45 A.M. P.M.

NAME

YES

NO

[illegible]

Kristine Woz
SECRETARY

J. D. Lynch
CHAIR

MOTION: To Pass as Amended

ROLL CALL VOTE

SENATE COMMITTEE Business & Industry BILL NO. SB 19

DATE 2/18/93 TIME 7:10 A.M. P.M.

NAME	YES	NO
Senator Gage	✓	
Senator Hager	✓	
Senator Harding	✓	
Senator Misaros	✓	
Senator Toews	✓	
Senator Wilson		✓
Senator Rea		✓
Senator Klampe	✓	
Senator Boehnke	✓	
Senator Bruski-Mails	✓	
Senator Kennedy		✓
Senator Christlaens	✓	
Senator Lynch		✓

Kristin Wirth
SECRETARY

J. B. Lynch
CHAIR

MOTION: Do Not Pass

Amendments to Senate Bill No. 331
First Reading Copy

Requested by Senator Lynch
For the Committee on Business and Industry

Prepared by Greg Petesch
February 18, 1993

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 2/18/93

BILL NO. SB 331

1. Title, lines 5 through 9.

Following: ";" on line 5

Strike: remainder of line 5 through ";" on line 9

Insert: "PROVIDING FOR COMPETITION IN AWARDED PREFERRED PROVIDER
AGREEMENTS;"

2. Title, lines 10 through 12.

Following: ";" on line 10

Strike: remainder of line 10 through ";" on line 11

Following: "DATE" on line 11

Strike: remainder of line 11 through "DATE" on line 12

3. Page 1, line 14 through page 2, line 9.

Strike: preamble in its entirety

4. Page 2, line 12 through page 5, line 10.

Strike: sections 1 through 3 in their entirety

Insert: "Section 1. Section 33-22-1704, MCA, is amended to read:

"33-22-1704. (Temporary) Preferred provider agreements
authorized. (1) Notwithstanding any other provision of law to the
contrary, a health care insurer may:

(a) enter into agreements with providers relating to health
care services that may be rendered to insureds or subscribers on
whose behalf the health care insurer is providing health care
coverage, including preferred provider agreements relating to:

(i) the amounts an insured may be charged for services
rendered; and

(ii) the amount and manner of payment to the provider; and

(b) issue or administer policies or subscriber contracts in
this state that include incentives for the insured to use the
services of a provider that has entered into an agreement with
the insurer pursuant to subsection (1) (a).

(2) ~~A health care insurer shall establish terms and
conditions to be met by providers wishing to enter into an
agreement with the health care insurer under subsection (1) (a).
These terms and conditions may not discriminate against or among
providers. For the purposes of this subsection, price differences
among hospitals or other institutional providers produced by a
process of individual negotiation or by price differences among
different geographical areas or different specialties do not
constitute discrimination. A health care insurer may not deny a
provider the right to enter into an agreement under subsection
(1) (a) if the provider is willing to meet the terms and
conditions established in that agreement.~~

(3) A preferred provider agreement issued or delivered in

this state may not unfairly deny health benefits for health care services covered.

(3) A preferred provider agreement entered into or renewed after [the effective date of this act] must provide each health care provider with the opportunity to participate on the basis of a competitive bid or offer. For each health care service that an insurer proposes to obtain for its insureds from a preferred provider in the geographic area covered by the proposal, the insurer shall provide all known providers of the health care service in that area with an equal opportunity to submit a competitive bid or offer to become a preferred provider. Except as provided in subsection (5), the insurer shall issue a request for proposals and shall select the lowest cost bid or offer. If only one bid or offer is received, the insurer may enter into a preferred provider agreement with the health care provider.

(4) If a bid or an offer is not received in response to a request for proposals under subsection (3), the insurer may not establish a preferred provider agreement for that service in the geographic area except pursuant to a new request for proposals.

(5) An insurer may reserve the right in its request for proposals to reject bids or offers submitted in response to the request, including the lowest cost bid or offer. A bid or offer must be rejected in the manner established in the request for proposals. An insurer may not enter into a preferred provider agreement for a health care service except pursuant to a request for proposals. (Terminates July 1, 1993--sec. 3, Ch. 714, L. 1991.)

33-22-1704. (Effective July 1, 1993) Preferred provider agreements authorized. (1) Notwithstanding any other provision of law to the contrary, a health care insurer may:

(a) enter into agreements with providers relating to health care services that may be rendered to insureds or subscribers on whose behalf the health care insurer is providing health care coverage, including preferred provider agreements relating to:

(i) the amounts an insured may be charged for services rendered; and

(ii) the amount and manner of payment to the provider; and

(b) issue or administer policies or subscriber contracts in this state that include incentives for the insured to use the services of a provider that has entered into an agreement with the insurer pursuant to subsection (1)(a).

(2) A preferred provider agreement issued or delivered in this state may not unfairly deny health benefits for health care services covered.

~~(3) This part does not require that an insurer negotiate or enter into agreements with any specific provider or class of providers.~~ A preferred provider agreement entered into or renewed after [the effective date of this act] must provide each health care provider with the opportunity to participate on the basis of a competitive bid or offer. For each health care service that an insurer proposes to obtain for its insureds from a preferred provider in the geographic area covered by the proposal, the insurer shall provide all known providers of the health care service in that area with an equal opportunity to submit a competitive bid or offer to become a preferred provider.

Except as provided in subsection (5), the insurer shall issue a request for proposals and shall select the lowest cost bid or offer. If only one bid or offer is received, the insurer may enter into a preferred provider agreement with the health care provider.

(4) If a bid or an offer is not received in response to a request for proposals under subsection (3), the insurer may not establish a preferred provider agreement for that service in the geographic area except pursuant to a new request for proposals.

(5) An insurer may reserve the right in its request for proposals to reject bids or offers submitted in response to the request, including the lowest cost bid or offer. A bid or offer must be rejected in the manner established in the request for proposals. An insurer may not enter into a preferred provider agreement for a health care service except pursuant to a request for proposals."

Renumber: subsequent section

Amendments to Senate Bill No. 361
First Reading Copy

Requested by Senator Towe
For the Committee on Business and Industry

Prepared by Bart Campbell
February 18, 1993

1. Page 1, line 18.

Following: "charge"

Insert: "a fee of"

2. Page 1, lines 18 through 20.

Strike: "3%" on line 18 through "pledged" on line 19

Insert: "25% of the amount of the loan for a 30-day period"

3. Page 1, line 20.

Following: "."

Insert: "The fee for extending a pawn agreement for 30 days may not exceed 25% of the amount of the loan. For purposes of this section, a fee includes all costs or fees charged, including but not limited to interest, commission, discount, storage, care of property, and purchase option."

4. Page 1, line 21.

Following: "charging"

Insert: "of"

5. Page 1, line 22.

Strike: "rate of interest"

Insert: "fee"

6. Page 1, line 24.

Strike: "interest, commission, discount, or"

Insert: "the"

7. Page 2, line 5.

Strike: "interest or charge"

Insert: "the fee"

8. Page 2, line 7.

Strike: "interest or charge"

Insert: "fee"

9. Page 2, line 9.

Strike: "interest or charge"

Insert: "fee"

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 2/18/93

BILL NO. SB 361

SENATE BILL NO. 51

EXHIBIT NO. 3

INTRODUCED BY BIANCHI

DATE 2/18/93BILL NO. SB 51

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PROVIDING THAT AN APPLICANT FOR A GAMBLING OPERATOR'S LICENSE MAY BE GRANTED ~~A PROVISIONAL LICENSE WITHIN 5 DAYS OF APPLICATION~~ TEMPORARY OPERATING AUTHORITY, PENDING THAT AGENCY'S DECISION ON HIS APPLICATION FOR A PERMANENT LICENSE; PROVIDING FOR A "COMPLETENESS" REVIEW; AMENDING SECTIONS 23-5-112 AND 23-5-177, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

~~NEW SECTION. Section 1. Provisional operator's license.~~

~~An applicant for an operator's license must be issued a provisional operator's license within 5 working days from the date on which the department receives the application. The holder of a provisional license has the same rights and duties under this chapter as the holder of an operator's license. The provisional license is valid until the operator's license is granted or denied. Issuance of a provisional license creates no presumption or evidence that the applicant is qualified for an operator's license. The fee for a provisional license is \$25, which the department shall retain for purposes of processing the license.~~

~~NEW SECTION. Section 2. Codification instruction.~~

~~{Section 1} is intended to be codified as an integral part of Title 23, chapter 5, part 1, and the provisions of Title 23,~~

chapter 5, apply to [section 1].

Section 1. "Purpose. The legislature finds that it is in the public interest to facilitate the orderly and timely transfer of ownership interests in a licensed gambling establishment to a new qualified owner. Unwarranted cessation of business in such establishments pending the granting of a permanent license to a new owner may unnecessarily result in the layoff of current employees and the loss of gambling tax revenues to local governmental entities."

Section 2. Section 23-5-112, MCA, is amended to read as follows:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 6 of this chapter:

(1) - (33) [unchanged].

(34) "Temporary operating authority" means the discretionary authority or permission to operate a gambling establishment which may be granted, denied or revoked by the department to an applicant for licensing who has submitted a complete application for a gambling operator's license. This discretionary authority or permission may not be construed to be a license, entitled to due process or contested case provisions under the Montana Administrative Procedure Act.

~~(34)~~ (35) [unchanged]."

NEW SECTION. **Section 3. Temporary Operating Authority.** (1) The department [of justice] may, in its

1 discretion, issue an applicant for a gaming operator's license
2 temporary gaming authority for a period not to exceed ^{Sixty}~~ninety~~
3 (60) days if:

4 (a) the applicant has submitted a complete gambling
5 operator's license application as is required by the
6 department;

7 (b) the applicant has received from the department of
8 revenue temporary operating authority for his alcoholic
9 beverage establishment pending it's review and decision on
10 granting him the authority to transfer ownership of the
11 alcoholic beverage license;

12 (c) the application, accompanying personal histories, and
13 initial department investigations do not reveal any
14 convictions or outstanding charges for felonies or crimes
15 involving theft or false swearing;

16 (2) The department may revoke or withdraw temporary
17 gaming authority to any applicant without notice if during its
18 investigation of the applicant it finds that the applicant
19 lied or omitted information from his application for a gaming
20 license or that any grounds exist for ultimate denial of the
21 operator's license.

22 (3) The temporary gaming authority contemplated by this
23 section may not be construed to be a license under the
24 provisions of the Montana Administrative Procedure Act, nor
25 may the applicant request a contested case hearing on a
26 decision by the department to deny or revoke such authority.

(4) The department's decision to grant, deny or revoke temporary gaming authority is not required to be preceded by prior notice or a hearing since the applicant for a gaming operator's license is entitled to a hearing on the department's final decision to grant, deny or revoke his application for a gaming operator's license.

(5) After 60 days the temporary authority shall automatically expire. However, if the department has still not approved or denied the application, the department may extend temporary authority for 30 days at a time until such ultimate denial or grant is rendered.

NEW SECTION. **Section 4.** Section 23-5-177 is amended to read:

"23-5-177. Operator of gambling establishment -- license -- fee. [Subsections 1 and 2 unchanged.]

(3) The department shall review the application form and other information for completeness and shall notify the applicant in writing within ten working days of any deficiencies in the application. An application is deemed complete unless an applicant is notified of deficiencies pursuant to this subsection."

[Renumber subsections 3 through 7 and correct internal references.]

NEW SECTION. **Section 4 5.** **Effective date.** [This act] is effective on passage and approval.

-End-

Amendments to Senate Bill No. 18
First Reading CopyEXHIBIT NO. 4
DATE 2/19/93
BILL NO. SB 18Requested by Senator Doherty
For the Committee on Business and IndustryPrepared by Bart Campbell
February 15, 1993

1. Title, lines 6 and 7.

Strike: "BASED" on line 6 through "EXPERIENCE" on line 7

Insert: "AMENDING SECTION 33-17-232, MCA;"

2. Page 1, line 10.

Strike: Section 1 in its entirety

Insert: "

NEW SECTION. Section 1. Termination or restriction of insurance producer's contract. (1)(a) An insurance company, authorized to issue property and casualty insurance in this state, shall, upon terminating or restricting an insurance producer's contract with the company, permit the producer to renew all contracts for insurance, written by the producer, for a period of 18 months following the termination or restriction. Review of these contracts will be pursuant to the individual underwriting requirements of the company.

(b) If a contract does not meet the company's underwriting requirements, the company shall give the insured and the producer notice as provided in Title 33, chapter 15, part 11, unless the insurance commissioner deems shorter period of time to give notice is necessary to adequately protect the insured or to secure the solvency of the company.

(c) A notice given pursuant to this subsection must contain the reasons for the termination or restriction, except that a notice does not have to be given if the company is terminating a producer's contract where the producer has received a written demand to pay money due the company pursuant to the contract, and the producer has failed to forward the money.

(d) During the 18 month period following termination or restriction of a contract, the producer may not write or bind any new business on the company's behalf without the company's written approval. Nothing in this section prohibits the amendment of the contract during the 18 month period following termination or restriction of the contract.

(2)(a) A company may not terminate or restrict a producer's contract to write property and casualty insurance based solely on the producer's loss ratio experience for the 2 years preceding the proposed termination or restriction, on lines of insurance that the company requires submission of an application for approval and for policies the company accepts without application approval, if the information of the application or policy is not intentionally or substantially incorrect or misleading.

(b) For purposes of this section, "loss ratio experience" means the amount of money received by the insurer in payment of premiums, minus operating expenses, divided by the amount of money expended by the insurance company in payment of claims on

policies written by the producer, for a specified period of time.

(3) The company shall pay the producer commissions for renewals during the 18 month period following termination or restriction, in the same amount as the company paid the producer for similar policies during the 12 months preceding the termination or restriction.

Section 2. Section 33-17-232, "MCA, is amended to read:

"33-17-232. Rights of insurance producer following termination of appointment. (1) Following termination of any such agency appointment as to property, casualty, or surety insurance and subject to the terms of any agreement between the insurance producer and the insurer, the insurance producer may continue to service and receive from the insurer commissions or other compensation relative to business written by ~~him~~ the insurance producer for the insurer during the existence of the appointment.

(2) This Except as provided in [section 1], this section does not apply as to insurance producers of direct writing insurers or insurance producers or insurers between whom the relationship of employer and employee exists."

{Internal References to 33-17-232: None.}

Renumber: subsequent sections

AMERICAN INSURANCE ASSOCIATION
POSITION STATEMENT

AGENT TERMINATION LEGISLATION

Most member companies of the American Insurance Association rely upon the American Agency System for the marketing of their products. This system is based on individual contracts between a company and an independent agent. In exchange for a commission or other negotiated remuneration, the agent undertakes the negotiation and sale of property-casualty policies to the consumer, as well as their subsequent servicing. The relationship between an agent and a company is fundamentally a private affair that is developed over time. The terms of the relationship are almost always memorialized in written agreements negotiated by the agent and the company.

Agitation for government supervision of the company-agent relationship in the past decade has resulted in many states enacting laws affecting company-agent relationships. Initiatives for this kind of legislation are inspired by local agent groups concerned by allegedly large numbers of agency terminations by insurers doing business in their locale.

The Association opposes government intrusion into company-agent affairs. Battles on agent termination legislation breed animosity rather than cooperation between companies and agents to the detriment of both parties. Such laws punish respectable companies with healthy agent relations in an effort to regulate a few insurers which may not deal with agents in good faith.

Paradoxically, many agent termination statutes actually hurt agents in different ways at different times. They hurt young agents who want a company to take a chance on them; make it difficult for existing agencies to add companies; deter companies from appointing lifetime agencies; and devalue existing agencies for purposes of selling an agency. Small agencies are hurt because companies will prefer to sign only larger agencies due to relative management costs.

By requiring companies to keep an inefficient or costly agent, agent termination restrictions force societal subsidization of bad agents as added company costs are passed on to the consumer. Two results occur: consumers pay higher premiums, and efficient agents become less competitive compared to direct writers as these agents must assess the consumer the

higher premiums. This latter result is especially true in light of the lack of uniformity between different state statutes: company agent management costs increase each time a state enacts a statute different from other state statutes.

Statutory protections for agents are illusionary because bad business relationships do not turn good by mere enactment of law. Agent termination restrictions will accelerate the trend away from the American Agency System, for the easiest way for a company to avoid statutory restrictions is to convert to a direct writing or alternative marketing mode.

Ultimately, no value is derived from government intervention in the important relationship between a company and its agent. Nongovernmental solutions to problems will best serve the interest of all parties involved -- including those of insurance consumers.

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