

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN STEVE BENEDICT, on March 8, 1993, at
9:30 a.m.

ROLL CALL

Members Present:

Rep. Steve Benedict, Chairman (R)
Rep. Sonny Hanson, Vice Chairman (R)
Rep. Bob Bachini (D)
Rep. Joe Barnett (R)
Rep. Ray Brandewie (R)
Rep. Vicki Cocchiarella (D)
Rep. Fritz Daily (D)
Rep. Tim Dowell (D)
Rep. Alvin Ellis (R)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Dick Knox (R)
Rep. Don Larson (D)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carley Tuss (R)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Claudia Johnson, Committee Secretary

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

Committee Business Summary:

Hearing: SB 377 and SB 387
Executive Action: SB 377 and SB 387

HEARING ON SB 377

Opening Statement by Sponsor:

SEN. SUE BARTLETT, Senate District 23, Helena, said SB 377 will
require employers in Montana to provide employees with a ten

minute rest period within each continual 4 hours of work. She said SB 377 is a result of some of her constituents who work for a company in Montana who provided rest periods until 2 years ago when a national company took over, and refuses to let the employees have rest periods because Montana law does not require them. She said when the employees discussed this with the employer who forwarded the message to the headquarters out-of-state, they were informed they would not receive a rest period until it was required by state law. She mentioned a number of states that have state law requiring a 10 minute break: Colorado, Utah, Washington, Idaho, Oregon and Washington. She said rest periods contribute to work place safety and productivity, which are major concerns to the business communities. Claims turned in to Workers' Compensation are usually from jobs that have repetitive motion which causes injury. Rest periods can have a direct impact keeping the claims to a minimum. She said breaks are good management and are desirable for employers who should recognize this on their own so there wouldn't be any need for state government to become involved. She was informed by the Department of Labor there wouldn't be any fiscal impact from SB 377. The money involved will come from the unemployment insurance administrative tax funds. She said rest periods will not be provided for the following: 1) emergency; 2) single job site that serves the general public and has less than 3 employees on a shift; 4) if employees total time worked in a day is less than 4 hours; 5) if the requirements did not conflict with any federal law; 6) would not be provided to teachers that are certified by the Office of Public Instruction; and 7) railroads would not be required if the provisions of this statute conflict with the provisions on rest periods in an existing collective bargaining agreement. She said there is a provision for the Department of Labor and Industry to adopt rules to deal with other employment situations on a case-by-case basis. Exemptions can be granted from rest periods if the demands of public safety would prevent the employer from complying or if complying with the rest periods would be operationally impossible.

Proponents' Testimony:

Darrell Holzer, representing the Montana State AFL-CIO, said this bill is similar legislation that was before the committee last session. He said their position is the same this time as last time for certain groups to be exempted from this requirement. SB 377 is a conservative effort from the individual groups that were objectionable to this concept in the last session. He said it is important for the Department of Labor to administer the rules on a case-by-case basis.

Leonard Calvin, President of the Southeastern Montana Central Labor Council, said the Central Labor Council supports SB 377. He said other states provide for their workers, and Montana should take care of their own. On a personal note, he has had open heart surgery, and if it wasn't for the rest periods offered

with his job, he would not be able to maintain his job to help maintain his family.

Melissa Case, Hotel & Restaurant Employees Union, said on behalf of the members, they rise in support of this legislation. She said they receive at least one telephone call a week from angry non-union workers wondering what laws are there in Montana to protect them for break periods. She is forced to inform them that Montana doesn't have a law for breaks, and tells them the employer can force an employee to work any shift, no matter how long, without a break. She urged the committee to lend support to the workers who are not protected by any bargaining agreement contract by concurring on SB 377.

Opponents' Testimony:

David Owen, Montana Chamber of Commerce, Helena, said the Chamber of Commerce is not in opposition and that employees should be able to take a break. His main concern is the majority of the Montana businesses who do offer breaks, i.e., a construction company who might be pouring concrete cannot stop in the middle of what they are doing and have a break. He said half of the companies the Commerce polled said they do not have a policy in place, but, they do it on the individual need basis by having an informal work environment. He said the issue is handled individually and gave examples of an employee who comes in late every week and offers an apology stating they will work through their break, or an employee who wants to take a vacation and works through their lunches and breaks to make up time so they can leave earlier. He said if this bill is in place, will the employers be violating the law?

Charles Brooks, Montana Retail Association and Montana Hardware Implement, said they are in opposition to the bill, but not to coffee breaks and rest periods. Mr. Brooks said SB 377 will be setting law into concrete and telling employers they must do this by state law. He hoped the employers would offer the breaks because they recognize the value of their employees and recognize the value they contribute to the enterprise to develop a good sound working relationship.

Riley Johnson, National Federation of Independent Businesses, said they oppose SB 377 for the above reasons already given. It is poor public policy to be micro-managing the private sector. He hoped information would come out during the committee members question and answer period to ask the Department of Labor what the cost of will be if this bill is made into law. He has been informed there will be considerable FTE time spent and a cost to the department to place this into law. He heard the unemployment insurance fund would be tapped to pay for the cost. He asked the committee to let the private sector businesses of Montana micro-manage their own affairs.

Russ Ritter, Washington Corporation, Missoula, said Washington Corp. represents 13 companies throughout Montana and other states. He said for the reasons already stated, they are in opposition to SB 377. He did compliment SEN. BARTLETT for the theory of this bill. The frustration of this issue is 99.9% of the businesses are doing it right. He felt the businesses should not be penalized because of 1 or 2 companies. He said Washington Corp. offers a positive environment by giving the employees the opportunity of leaving early, coffee breaks, etc. He said if this law goes into effect and businesses have to guard every coffee break, the flexibility will be gone.

Greg Van Horssen, State Farm Insurance Companies, said State Farm opposes SB 377. He said SB 377 is well intended, but impractical. He said State Farm has 250 employees across the state of Montana, and SB 377 would create a problem with the way they relate to their employees. It interferes with the employers and employee's rights in negotiating employment contracts. He said an amendment has already been added for exemptions in the Senate for existence of collective bargaining. He said there should be an amendment that would provide for any other arrangement which is reached between an employer and employee be exempted from this bill.

Questions From Committee Members and Responses:

REP. LARSON asked Riley Johnson if this bill gave employers guidelines to follow? Mr. Johnson said it does. But state government should not be directing or giving guidelines to the private sector on when to open, have coffee breaks or rest periods, and when to close.

REP. STELLA JEAN HANSEN asked SEN. BARTLETT how would SB 377 be enforced? SEN. BARTLETT said the Department of Labor and Industry would be the enforcement mechanism to act on complaints. REP. HANSEN asked if this would only effect an employee that an employer would have an complaint on? SEN. BARTLETT said that is correct.

REP. STELLA JEAN HANSEN asked Darrell Holzer if most labor contracts are negotiated on for breaks? Mr. Holzer said they are.

REP. KNOX asked Brian McCullough, Department of Labor if he had any figures what the cost of this would be for the department? Mr. McCullough said the department is estimating it will take 1 FTE to deal with the issues involved. The cost will be \$34,112 in FY 1994, and \$37,896 in FY 1995. The difference in the figures is if the bill is passed it won't take effect until October of 1994. The funding will come from the unemployment insurance administrative tax, not the unemployment insurance grant dollars. He said a tenth of 1% of the administrative tax fees provides funding to the Job Service Division, and the wage and hour activities of which SB 377 would be a part. He said SB

377 would not have an adverse effect on the unemployment trust fund.

REP. BACHINI asked Brian McCullough why is another FTE needed? Mr. McCullough said it will create extra work in the department, and if they don't add another FTE they would have to take someone away from another division which would create extra work in that position. REP. BACHINI asked did they determine to take the funds from the unemployment funds for this program? Mr. McCullough said the wage and hour functions are currently funded by the unemployment insurance administrative tax, and this falls under that function. REP. BACHINI asked how many complaints does the department receive regarding this issue? Mr. McCullough said it is estimated between 30 to 50 calls a month.

REP. BRANDEWIE asked Brian McCullough if the \$71,000 is in the budget now? Mr. McCullough said it is not, but in terms of the revenue coming into the account at this time they would be able to cover the \$71,000. Mr. McCullough distributed a draft of the new fiscal note which is waiting for approval by the Office of Budget and Program Planning. EXHIBIT 1

REP. TUSS asked Greg Van Horssen if State Farm Insurance had a policy in place that would formalize State Farm's agreement with their employees, and if so, how is it communicated to the employees? Mr. Van Horssen said State Farm doesn't have an agreement with their employees for break time.

REP. MILLS asked SEN. BARTLETT if the federal wage and hour laws effect this issue? SEN. BARTLETT said not to her knowledge. She said if there were federal requirements the states would not have to bring bills like this before the Legislature.

Closing by Sponsor:

SEN. BARTLETT closed stating that the Department of Labor that deals with complaints on working conditions said the most frequent complaints and questions from employees if Montana laws require an employer to provide a rest period. She said a lot of employers testified today, but the employees who need this the most are not in a position to hire lobbyists or take time off from work. She said if the employees could come before the committee today with the same equal time the employers have, there would be a different picture. She said SB 377 is flexible so the individual employer could meet the needs of the individual employee on a case by case individual basis. SEN. BARTLETT asked the committee to give SB 377 a be concurred in recommendation.

HEARING ON SB 387

Opening Statement by Sponsor:

SEN. DON BIANCHI, Senate District 39, Belgrade, said SB 387 is a consumer protection act with compromise language to protect the

awarding attorney fees. This implies that the insured can bring a suit against the insurance company if the county attorney does not. He urged the committee to vote against SB 387.

Jacqueline Lenmark, American Insurance Association (AIA), said the AIA supports the comments made by Gene Phillips and Ron Waterman. She said SB 387 is attempting to require an insurance company to sell a product when they have made a business decision that this is not the appropriate way to do business. Insurance is not a right, but a product that is purchased by the consumers. She said SB 387 will add cost to all insurance policies for the consumers of Montana. She said this will be a disincentive for insurance companies to bring a new product into the state. She urged a be not concurred in recommendation.

Debbie Berney, Professional Insurance Agents Association (PIAA), said SB 387 will have an overall negative effect on consumers. She urged the committee to vote no on SB 387.

Greg Van Horssen, State Farm Insurance Company, said the comments made by Ron Waterman, Gene Phillips and Jacqueline Lenmark are the feelings of State Farm. He said for the reasons mentioned, State Farm wants to be on record in opposition of SB 387.

Cindy Clawson, PIAA, said if SB 387 is for fire, theft and liability policies, the consumer protection is not true. If the insurance companies cannot get out from some of their court cases, i.e., theft can take 2 to 3 years time, and the rest of the consumers will pick up the cost. She asked the committee that SB 387 be tabled.

Questions From Committee Members and Responses:

REP. SIMON asked for a definition of a rating territory? **Rosann Richeson** said the insurance companies are required to file their rates with the office of the Auditors. These rates are listed with the territories which are numbered by the insurance companies.

REP. PAVLOVICH asked Ron Waterman how earthquakes would apply to this bill? **Mr. Waterman** said there is a separate endorsement of insurance that can be purchased which will cover earthquake damage at an additional premium charge.

Closing by Sponsor:

SEN. BIANCHI said the basic issue of SB 387 is for better control as an insurer, so when hail storms come along and wipe these people out, the insurance company cannot cancel the policy for that reason alone.

EXECUTIVE ACTION ON SB 387

Motion: REP. DAILY MOVED SB 387 BE CONCURRED IN.

Discussion: REP. PAVLOVICH moved to adopt an amendment to replace "insurer" to "insured" on page 4. The question was called. Voice vote was taken. Motion carried unanimously.

REP. LARSON said he had a problem with the bill. He wanted an amendment that would cover commercial businesses also.

REP. BACHINI asked Susan Fox if this bill could also apply towards commercially owned buildings? Ms. Fox said the title would have to be amended, because it is a basic non-cancellation policy. Ms. Fox said commercial could be inserted on page 1, section 1, line 14, following "purchased homeowner."

REP. BRANDEWIE said "commercial" is not defined, and would not vote for the amendment.

REP. BACHINI spoke to his motion. If the homeowners can have a non-cancellation policy, a small business commercial owner should have one also. If there is no real definition of the bill, there shouldn't be any problem with the language "commercial" fitting into the bill.

REP. BACHINI called the question to adopt the amendment. Voice vote was taken. Motion failed 3 - 15 with REPS. BACHINI, DAILY AND PAVLOVICH voting yes.

Motion/Vote: REP. BACHINI MOVED SB 378 BE CONCURRED IN AS AMENDED. The question was called. Roll call vote was taken. Motion failed 8 - 10. EXHIBIT 5

Motion/Vote: REP. BRANDEWIE MADE A SUBSTITUTE MOTION THAT SB 387 BE TABLED. Reverse vote was used from EXHIBIT 5. Motion carried 10 - 8.

Vote: SB 387 BE TABLED. Motion carried 10 - 8.

EXECUTIVE ACTION ON SB 377

Motion: REP. BACHINI MOVED SB 377 BE CONCURRED IN.

Discussion: None

Motion/Vote: REP. SIMON MADE A SUBSTITUTE MOTION THAT SB 377 BE TABLED. Roll call vote was taken. Motion carried 11 - 7. EXHIBIT 6

Vote: SB 377 BE TABLED. Motion carried 11 - 7.

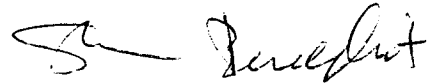
HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

March 8, 1993

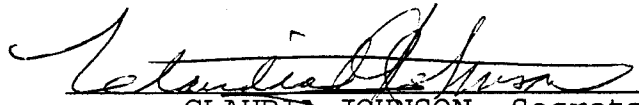
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ADJOURNMENT

Adjournment: 10:45 A.M.



STEVE BENEDICT, Chairman



CLAUDIA JOHNSON, Secretary

SB/cj

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE 3-8-93

NAME	PRESENT	ABSENT	EXCUSED
REP. ALVIN ELLIS	✓		
REP. DICK KNOX	✓		
REP. NORM MILLS	✓		
REP. JOE BARNETT	✓		
REP. RAY BRANDEWIE	✓		
REP. JACK HERRON	✓		
REP. TIM DOWELL	✓		
REP. CARLEY TUSS	✓		
REP. STELLA JEAN HANSEN	✓		
REP. BOB PAVLOVICH	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRITZ DAILY	✓		
REP. BOB BACHINI	✓		
REP. DON LARSON	✓		
REP. BRUCE SIMON	✓		
REP. DOUG WAGNER	✓		
REP. SONNY HANSON, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT, CHAIRMAN	✓		

HR:1993
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STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB 377, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: "An act requiring an employer to provide employee rest periods: providing certain exemptions; and authorizing the department of Labor and Industry to adopt rules to provide limited additional exemptions."

ASSUMPTIONS:

- 1) Some employees and employers are likely to disagree over implementation of, length of, and the right to use rest periods. Employee/employer discrepancies over rest periods taken and/or provided are likely not to be documented. Some lack of documentation would complicate the department's investigation and determination of the correct amount of rest time earned by the employee and owed by the employer.
- 2) Initially, it will be necessary to meet with employer/employee groups for input into rule making and rule adoption. This is estimated to take about 5 months. During this time, the department will incur a backlog of both complaints and requests for exemptions.
- 3) During the rule making period and until rules are adopted, employers will be applying for exemptions and a backlog on exemption-processing will arise. We anticipate an on-going workload of applications for exemptions after the backlog is addressed. Investigation Unit Staff will have to prepare for hearings and defend decisions.
- 4) 1 FTE Compliance Specialist (Grade 12), at a salary and benefits of \$19,702 (for 75% of FY94) and \$26,750 (FY95), operating costs, and one-time office equipment costs can address this workload. The investigations of complaints will be on-going work. Working with 6 compliance specialists (including prevailing wage specialist) each compliance specialist closed an average of 200 cases each year or 17 cases per month. We are assuming that on a monthly basis initially we will be receiving at least 36 calls a month which will result in at least 18 new cases per month.

DERIVATION OF ESTIMATES:

- 1) Salary and benefits are based on current state salary and benefits matrices, but FY94 will incur 75% operating cost: since the effective date is 10-1-93. (3/4 of the fiscal year).
- 2) Actual FY92 operating costs for a compliance specialist in the Investigations unit was \$11,146. One-time office equipment costs will include one desk (\$550), one chair (\$380), one 4 drawer legal sized file cabinet (\$220), and one hutch (\$400), for a total of \$1,550. One-time capital outlay for a PC system with total \$4,500 which includes one PC, one printer and a standard set of required software (word processing, spreadsheet, database, and LAN connectivity).

FISCAL IMPACT:

Expenditures:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Personal Services	0	\$19,702	\$19,702	0	\$26,750	\$26,750
Operating Cost	0	\$9,910	\$9,910	0	\$11,146	\$11,146
Equipment	0	\$4,500	\$4,500	0	0	0
Total	0	\$34,112	\$34,112	0	\$37,896	\$37,896
Funding:						
UI Admin Tax	0	\$34,112	\$34,112	0	\$37,896	\$37,896

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AARP Testimony

Insurance Bill SB 387

March 8 , 1993

Mr. Chairman & Members of the Committee:

For the record I am Bill Olson and I am a member of the State Legislative Committee for the American Association of Retired Persons (AARP). AARP has approximately 110,000 members in the State of Montana - one in every eight persons in the state. Our members are 50 years of age and older.

AARP's state legislative program is determined by a survey of AARP chapters throughout the state and priorities are developed as a result of that survey. From the material distributed to you, you will note that one of our 1993 legislative priorities is the issue of cancellation/non-renewal of insurance policies as addressed in SB 387. We strongly support SB 387 and urge your favorable consideration of the bill.

One might look upon SB 387 as a consumers protection bill. As outlined in Section 1, lines 12 thru 20, that is true. I would point out however, that paragraphs (2), (3) and (4) are insurer oriented by spelling out circumstances that provides the insurer the right to assess a surcharge and/or not renew a policy.

Para. (5) lines 15 thru 19 is consumers protection as is para. (6), outlining notification of possible non-renewal.



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The bill, in our estimation, has enough checks and balances so it cannot be perceived as totally consumer oriented or totally insurer oriented. You may wonder about automobile insurance. A thorough review by the state Insurance Commissioner's office has determined that current code 61-6-103(7) addresses adequately motor vehicle coverage. Application of forementioned subsection (7) to motor vehicle policies has been the practice of the insurance commissioners' office and it provides consumer protection in much the same manner as SB 387 does for homeowner/ranch-farm owner (Sec. 1 lines 12 thru 20).

AARP strongly supports SB 387, which is a good bill, and deserves your full support and "do pass" recommendation.

Thank you.

William Olson

insurance companies. He said there is one error in the bill on page 2, line 4, should be "insured", not "insurer". He said SB 387 tells insurance companies that homeowners' plans and insurance on buildings cannot be cancelled if there is an act of God and the insurer has a claim. He pointed out that SB 387 only covers homeowner type policies, i.e., fire and theft policies, etc. He said this law is already in effect with car insurance and cannot be cancelled if there is a fire, theft, etc. The only time this will not be effective is if a person has violated some state law, or statutes of the city or county. On page 2, sub section (3), it states a policy can be cancelled if the insured files two or more claims in a 2-year period. The insurance company can assess an additional premium surcharge not to exceed 10% of the total premium. If an insured has more than three claims in a 2-year period and they are not an act of God, the insurance company can notify the insured they will be canceled, or charged an additional 25% surcharge.

Proponents' Testimony:

Bill Olson, AARP, said AARP has approximately 110,000 members in the state of Montana and the members are 50 years of age and older. He said AARP supports SB 387 because it is a consumer protection bill. Mr. Olson distributed written testimony.

EXHIBIT 2

Rosann Richeson, State Auditors Office, said the purpose of SB 387 is to protect the Montana insurance consumer from having their home or ranch owner policies cancelled or non-renewed for claims resulting from an act of God. She said the insured has no control over hail storms, wind storms and tornadoes. **Ms. Richeson** distributed written testimony. **EXHIBIT 3**

Opponents' Testimony:

Ron Waterman, Farmers Insurance Companies, said the committee should reject SB 387, because the fundamental flaw in this legislation will make an act of cancellation or non-renewal of an insurance policy a crime by using the vague term "acts of God" as the determining factor. The bill violates substantive due process and is unconstitutional. He urged a be not concurred in recommendation. **EXHIBIT 4**

Gene Phillips, National Association of Independent Insurers (NAII), Kalispell, said the NAII is a trade association which has over 550 property and casualty insurance companies. He said there isn't any place in the statutes that defines an "act of God". He gave an example of the hurricane in Florida where all the roofs blew off the homes. In the investigation, it was determined that the homes were not built according to state code. They did not have the foresight to build better homes so the hurricane wouldn't have done so much damage. He said SB 387 sets up a criminal offense, by giving the insured a "private right of action". On page 3, sub section 2, it sets precedence for



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**Montana AARP State Legislative Committee
1992 Position Paper**

INSURANCE CANCELLATION

POSITION: The Montana AARP State Legislative Committee strongly supports the enactment of state insurance statutes which prohibit insurance companies from canceling health and automobile policies without reasonable cause.

PROBLEM: It has been the policy of some insurance companies to cancel insurance without reasonable cause. When the insurance is canceled, the information is communicated through CLUE, thus immediately notifying other insurance companies of the cancellation. One must pay a higher rate to obtain insurance.

SOLUTION: Establish a standard guide or regulation to be enacted by a state auditor or the Commissioner of Insurance to supervise and control the operations of a business that affects the general public. The Commissioner of Insurance should have the authority in statute to establish regulations and enforce them for the protection of society.

CONTACT: Mr. Gene Quenemoen, State Legislative Committee Chairman
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Belgrade, MT 59714
(406) 388-6982

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EXHIBIT 2
DATE 3-8-93
53 387

(ii) \$50,000 because of bodily injury to or death of two or more persons in any one accident; and

(iii) \$10,000 because of injury to or destruction of property of others in any one accident.

(3) An operator's policy of liability insurance must insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to the operator's policy of liability insurance.

(4) A motor vehicle liability policy must state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability and contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this part as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this part.

(5) A motor vehicle liability policy need not insure any liability under any workers' compensation law or any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance, or repair of a motor vehicle or any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(6) A motor vehicle liability policy is subject to the following provisions, which need not be contained therein:

(a) The liability of the insurance carrier with respect to the insurance required by this part becomes absolute whenever injury or damage covered by the motor vehicle liability policy occurs. The policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage. No statement made by the insured or on his behalf and no violation of the policy may defeat or void the policy.

(b) The satisfaction by the insured of a judgment for the injury or damage may not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.

(c) The insurance carrier has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount is deductible from the limits of liability specified in subsection (2)(b).

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this part constitute the entire contract between the parties.

(7) A motor vehicle policy is not subject to cancellation, termination, nonrenewal, or premium increase due to injury or damage incurred by the insured or operator unless the insured or operator is found to have violated a traffic law or ordinance of the state or a city, is found negligent or contributorily negligent in a court of law or by the arbitration proceedings contained in chapter 5 of Title 27, or pays damages to another party, whether by settlement or otherwise. In no event may a premium be increased during the term of the policy unless there is a change in exposure.

EXHIBIT 2
DATE 3-8-93
FILE SB 387

STATE AUDITOR
STATE OF MONTANA

EXHIBIT 3
DATE 3-8-93
SB 387



Mark O'Keefe
STATE AUDITOR

COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

SB 387

March 5, 1993

The purpose of this bill is to protect the Montana insurance consumer from having their home or ranch owner policies cancelled or nonrenewed for claims resulting from an act of God. For example, insureds have no control over hail storms, wind storms and tornadoes.

As I am sure you are aware, there were at least three (3) major hail storms that hit the eastern part of Montana in 1991. The storms in themselves were a great hardship on the State of Montana and her people. In 1992 however, another "storm" so to speak, hit these consumers. It was the storm of their insurance policies being cancelled or nonrenewed for frequency of claims. This action has not been limited to any one insurance company.

There is an obvious risk to insurers providing coverage in areas where hail and wind storms are prevalent. Passage of this bill would protect the Montana consumer while still allowing the insurance industry to surcharge for losses attributable to an act of God if the surcharge is in effect for the entire rating territory.

In addition to the aforementioned, this bill would also keep the Montana consumer abreast of his standing with his insurance coverage. This bill requires an insurer to provide notice to an insured who has filed 2 claims not attributable to an act of God, in a period of less than 2 years, if the insured files a third claim during the 2 year period the company may decline to renew the policy.

There has been some opposition raised regarding the definition of an "Act of God". I have handed out a copy of the definition of an "Act of God" from the Dictionary of Insurance, Sixth Revised Edition. I believe this definition would be applicable to the intent of this proposed bill.

The proposed bill is not intended nor should it eliminate the insurers capability of cancellation as stated in MCA Title 33 §33-15-1101 through 33-15-1107. For example, cancellation for failure to pay a premium when due or material misrepresentation.

Act of God An accident or event that is the result of natural causes, without any human intervention or agency, that could not have been prevented by reasonable foresight or care, such as floods, lightning, earthquake, or storms.

DICTIONARY OF INSURANCE

Lewis E. Davids

Illinois Bankers Professor of Bank Management
College of Business and Administration
Southern Illinois University—Carbondale

Sixth Revised Edition
1983

EXHIBIT 3
DATE 3-8-93
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Premium Changes and Cancellation Property or Casualty Insurance

Property insurance, Title 33, ch. 24.

Part Cross-References
Casualty insurance, Title 33, ch. 23.

33-15-1101. Purpose — applicability. (1) The purpose of this part is to protect the public with regard to insurance transactions that involve cancellation, renewal, nonrenewal, or premium increases on contracts of property or casualty insurance by:

- (a) regulating the grounds for midterm cancellation of an insurance policy;
 - (b) prohibiting midterm increases in premiums;
 - (c) increasing the opportunity for insureds to shop for replacement or substitute insurance;
 - (d) reducing the opportunity for breach of contract, misrepresentation by omission or untimely disclosure, and unfair discrimination among insureds; and
 - (e) increasing the opportunity for insurance producers to compete freely.
- (2) This part applies to those forms of insurance defined in 33-1-206 and 33-1-210, except to the extent they conflict with chapter 23 of this title.
- (3) This part does not limit the activities that may constitute undefined unfair trade practices prohibited by 33-18-1003. The commissioner may apply other provisions of this code to insurance transactions involving cancellation, renewal, nonrenewal, or premium increases on contracts of property or casualty insurance. Policies may provide terms more favorable to insureds than are required by this part. The rights provided by this part are in addition to and do not prejudice any other rights that the insured may have under common law, statutes, or rules.

History: En. Sec. 1, Ch. 120, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-15-1102. Definitions. As used in this part, the following definitions apply unless the context requires otherwise:

- (1) "Anniversary date" means the month and day that rates, rating plans, and rating systems are initially applied to a policy in effect. The term includes each annual anniversary thereafter unless the insurer establishes a different date by a filing with the commissioner.
- (2) "Cancellation" means the decision by the insurer to terminate an insurance policy prior to the expiration of its term.
- (3) "Classification" means an arrangement of insurance risks into an underwriting or rating group according to a classification system used by an insurer as a basis for tabulating statistical experience and determining premium rates.
- (4) "Classification system" means a schedule of classifications and a rule used by an insurer for determining the classifications applicable to an insured.

(5) "Insurer" means an insurer authorized to transact property or casualty insurance in this state or an unauthorized insurer transacting surplus lines insurance in this state.

(6) "Premium" means the contractual consideration charged to an insured for insurance for a specified period of time, regardless of the timing of actual charges.

(7) "Rate" means a monetary amount applied to the units of exposure assigned to a classification and used by an insurer to determine the premium for an insured.

(8) "Rating plan" means a rule used by an insurer to calculate:

- (a) the premium for an insured; and
- (b) the parameter values used in such calculation after application of classification premium rates to units of exposure.

(9) "Renewal" means an agreement between an insurer and an insured to extend or continue an existing insurance policy for 90 days or more.

History: En. Sec. 2, Ch. 120, L. 1987; amd. Sec. 4, Ch. 180, L. 1991.

Compiler's Comments
1991 Amendment: In definition of insurer, at end, inserted "or an unauthorized insurer transacting surplus lines insurance in this state".

33-15-1103. Midterm cancellation. (1) An insurer may not cancel an insurance policy before either the expiration of the agreed term or 1 year from the effective date of the policy or renewal date, whichever is less, except:

- (a) for reasons specifically allowed by statute;
 - (b) for failure to pay a premium when due; or
 - (c) on grounds stated in the policy which pertain to the following:
 - (i) material misrepresentation;
 - (ii) substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk when the contract was written;
 - (iii) substantial breaches of contractual duties, conditions, or warranties;
 - (iv) determination by the commissioner that continuation of the policy would place the insurer in violation of this code;
 - (v) financial impairment of the insurer; or
 - (vi) any other reason approved by the commissioner.
- (2) Cancellation under subsection (1) is not effective until 10 days after a notice of cancellation is either delivered or mailed to the insured.
- (3) Subsections (1) and (2) do not apply to a newly issued insurance policy if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. No cancellation under this subsection is effective until 10 days after the notice is delivered or mailed to the insured.
- (4) If a policy has been issued for a term longer than 1 year and if either the premium is prepaid or an agreed term is guaranteed for additional premium consideration, the insurer may not cancel the policy except:
- (a) for reasons specifically allowed by statute;
 - (b) for failure to pay a premium when due; or
 - (c) on grounds stated in the policy which pertain to those grounds listed in subsection (1)(c).

History: En. Sec. 3, Ch. 120, L. 1987.

EXHIBIT

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33-15-1104. Anniversary cancellation — anniversary rate increases. (1) An insurer may issue a policy for a term longer than 1 year or for an indefinite term if the policy contains a clause that allows cancellation by the insurer if the insurer gives notice 30 days prior to an anniversary date. (2) If a policy has been issued for a term longer than 1 year and for additional premium consideration an annual premium has been guaranteed, the insurer may not increase the annual premium for the term of that policy.

History: En. Sec. 4, Ch. 120, L. 1987.

33-15-1105. Nonrenewal — renewal premium. (1) An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute or unless a longer term is provided in the policy, at least 30 days prior to the expiration date provided in the policy, an insurer who does not intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a notice of such intention. The insurer shall also mail or deliver a copy to the insured's insurance producer.

(2) An insurer shall give notice of premium due not more than 60 days or less than 10 days before the due date of a renewal premium. The notice must clearly state the effect of nonpayment of the premium on or before the due date.

(3) Subsections (1) and (2) do not apply if:

- (a) the insured has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal; or
- (b) the policy is expressly designated as nonrenewable.

History: En. Sec. 5, Ch. 120, L. 1987; amd. Sec. 1, Ch. 713, L. 1989.

33-15-1106. Renewal with altered terms. (1) If an insurer offers or purports to renew a policy but on less favorable terms, at a higher rate, or at a higher rating plan, the new terms, rate, or rating plan take effect on the policy renewal date only if the insurer has mailed or delivered notice of the new terms, rate, or rating plan to the insured at least 30 days before the expiration date. If the insured has not been so notified, he may cancel the renewal policy within 30 days after receiving the notice. The insurer shall continue coverage for a period of not less than 30 days after mailing or delivery of the notice. If the insured terminates the policy within the 30-day period, the insurer shall calculate the earned premium pro rata based upon the prior policy's rate. The new rate is effective only after the required 30-day notification period has been met. If the insured does not terminate the policy, the premium increase and other changes are effective the day following the prior policy's expiration or anniversary date.

(2) This section does not apply if the increase in the rate or the rating plan, or both, results from a classification change based on the altered nature or extent of the risk insured against.

History: En. Sec. 6, Ch. 120, L. 1987; amd. Sec. 4, Ch. 699, L. 1991.

Compiler's Comments

1991 Amendment: Deleted (2)(a) that read: "(a) the change is a rate or rating plan filed with the commissioner and applicable to the entire classification or classification system to which the policy belongs"; and made minor changes in style.

3-8-93

33-15-1107. Information about grounds for nonrenewal. (1) If an insured questions the facts upon which an insurer's decision to cancel or not renew is based, the insurer shall mail or deliver such information to the insured within 15 working days of receiving a written request from the insured. A notice is not effective unless it contains adequate information about the insured's right to make the request.

(2) This section does not apply if the ground for cancellation or nonrenewal is nonpayment of the premium and the notice so states.

History: En. Sec. 7, Ch. 120, L. 1987.

33-15-1108 through 33-15-1110 reserved.

33-15-1111. Homeowner insurance not affected by day-care operations. (1) No insurer writing homeowner insurance in this state may deny an applicant homeowner insurance or cancel or refuse to renew a homeowner insurance policy covering a dwelling located in this state for the principal reason that an insured under the policy operates at the insured location a day-care facility, as defined in 52-2-703, that satisfies the requirements of 52-2-723 or 52-2-724.

(2) This section does not prevent an insurer from excluding or limiting coverage with respect to liability or property losses arising out of an insured's business pursuits, including those related to the operation of a day-care facility.

History: En. Sec. 8, Ch. 120, L. 1987.

Cross-References

Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty, 33-23-401.

33-15-1112 through 33-15-1120 reserved.

33-15-1121. Unfair trade practices. (1) The failure of an insurer to comply with this part constitutes an unfair trade practice under 33-18-1003.

(2) Midterm premium increases and policy coverage reductions not in compliance with this part that are attempted or executed constitute unfair trade practices under 33-18-1003.

History: En. Sec. 9, Ch. 120, L. 1987.

CHAPTER 16

RATES — RATING AND ADVISORY ORGANIZATIONS

Part 1 — General Provisions

33-16-101. Purpose and intent.

33-16-102. Definitions.

33-16-103. Application.

33-16-104. Payment of dividends, savings, or unabsorbed premium deposits not prohibited or regulated — plan for payment not rating system.

Senate Bill 387

The Farmers Insurance Companies oppose SB 387. While there are numerous technical reasons for this committee to reject this legislation, the fundamental flaw with this proposed legislation is that by making act of cancellation or nonrenewal of an insurance policy a crime and using the vague term "acts of God" as the determining factor, the entire bill violates substantive due process. This proposed legislation is hopelessly unconstitutional.

The primary difficulty stems from using the term "acts of God" without providing any definition of the term. Since this term does not have a singular, uniform meaning and events cannot be clearly categorized as falling within or outside the term, the result is that insurers cannot determine whether their conduct does or does not comply with the bill's requirements. This vagueness violates an insurer's due process. The bill, as written, is unenforceable.

There are also numerous technical problems with the bill. Section 1(2) prohibits an insurer from cancelling or not renewing a policy, due to a claim arising "in whole or in part" from an act of God. Since most claims involve some interaction between man and nature, this creates an objection to just about every proposed policy cancellation or nonrenewal.

The same section permits imposition of a surcharge. The bill is silent as to when a surcharge could be imposed and is completely open ended in amount or duration of the surcharge.

Section 1(3), as passed by the Senate, appears to use the wrong term, "insurer", when the word "insured" should be used. See page 2, line 4. As passed by the Senate, this subsection does not make sense. Likewise, as written, the subsection authorizes a surcharge upon a surcharge and appears to require an insurer to anticipate events in future years, authorizing an insurer to set some surcharges prospectively.

Section 1(4) imposes unrealistic limits upon insurers as to when they can cancel for claims which are the fault of the insured. This, I submit, is both the heart of the bill and another reason why the bill should be rejected. An insurer must have greater flexibility to cancel or not renew a policy than to have to await until the insured has been responsible for three or more claims in a two year period. This language means that poor risks cannot be eliminated from the rate base. The careful consumer will pay greater premiums if this section is adopted. The only party who benefits is the careless insurance consumer with losses in several years. This section, especially its reference to "any 2 year period" is again vague and provides neither the insurer nor

the insurance commissioner guidance of how this bill can be enforced.

Section 1(6), like other sections, refers again to the phrase " act of God". The subsection does not suggest when an insurer is to determine whether a loss is attributable to an act of God and thus an insurer is unable to determine when the notice required by this subsection should be given.

Section 2 makes any violation of Section 1 a crime. Indeed this section authorizes penalizing an insurer three separate ways for the same single violation. Not only does the vagueness described above, make this act unconstitutional, so also does the opportunity to penalize an insurer three times for the same act result in due process problems with this bill.

SB 387 is hopelessly vague and violates basic due process rights of insurers. The legislation should receive a DO NOT PASS recommendation.

EXHIBIT 5
DATE 3-8-93
SB 387

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
ROLL CALL VOTE

DATE 3-8-93 BILL NO. SB 387 NUMBER

MOTION: Rep Bachini Moved SB 387 BC AA
Motion Failed 8-10. Reverse Motion
by Rep Brandewie to table. Carried 10-8

NAME	AYE	NO
REP. ALVIN ELLIS		✓
REP. DICK KNOX		✓
REP. NORM MILLS		✓
REP. JOE BARNETT		✓
REP. RAY BRANDEWIE		✓
REP. JACK HERRON		✓
REP. TIM DOWELL	✓	
REP. CARLEY TUSS	✓	
REP. STELLA JEAN HANSEN	✓	
REP. BOB PAVLOVICH	✓	
REP. VICKI COCCHIARELLA	✓	
REP. FRITZ DAILY	✓	
REP. BOB BACHINI	✓	
REP. DON LARSON	✓	
REP. BRUCE SIMON		✓
REP. DOUG WAGNER		✓
REP. SONNY HANSON, VICE CHAIRMAN		✓
REP. STEVE BENEDICT, CHAIRMAN		✓
	8	10

EXHIBIT 6
DATE 3-8-93
SB 377

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
ROLL CALL VOTE

DATE 3-8-93 BILL NO. SB 377 NUMBER _____

MOTION: Rep Simon Mad Substitute Motion
to table SB 377. Motion Carried 11-7

NAME	AYE	NO
REP. ALVIN ELLIS	✓	
REP. DICK KNOX	✓	
REP. NORM MILLS	✓	
REP. JOE BARNETT	✓	
REP. RAY BRANDEWIE	✓	
REP. JACK HERRON	✓	
REP. TIM DOWELL		✓
REP. CARLEY TUSS		✓
REP. STELLA JEAN HANSEN	✓	
REP. BOB PAVLOVICH		✓
REP. VICKI COCCHIARELLA		✓
REP. FRITZ DAILY		✓
REP. BOB BACHINI		✓
REP. DON LARSON		✓
REP. BRUCE SIMON	✓	
REP. DOUG WAGNER	✓	
REP. SONNY HANSON, VICE CHAIRMAN	✓	
REP. STEVE BENEDICT, CHAIRMAN	✓	
	11	7

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Business & Ec

COMMITTEE

BILL NO.

SB 377

DATE

March 8, 1993

SPONSOR(S)

S. Bartlett

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Riley Johnson	NFIB		X
Dennis Zeilen	DEPT. OF LABOR & INDUSTRY		
John Andrew	Dgt. & Labor & Industry		
Gregg Van Harsen	State Farm		X
Jacqueline Denmark	Am. Ind. Assoc.		X
Darrell Holzer	Mt. St. AFL-CIO	X	
Jim Edgcomb	State Personnel Div		
Herb O. Rabin	M.V.D. Camp		X
Charles R. Brooks	NAT. Retail Assoc.		X
GENE PHILLIPS	NAII		X
L.H. Cohen	South Eastern Mide Central Labor Council	X	
Brian McCullough	Labor		
Russ Reller	Wash Camp		X
Melissa Case	Hotel & Restaurant Employ	X	

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DATE March 8, 1993 SPONSOR(S) D. Bianchi
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Paul W. Ins. Companies		X
Jacqueline J. Denmark	Am. Ins. Assoc.		X
Greg Van ...	State Farm Ins. Co.		X
Bill Olson	AARP	X	
Mosanna Rielsen	Ins. Comm. / St. Auditor	X	
DEBBIE BERNEY	P.I.A. (Prof. Ins. Agts.)		X
CINDY CLAWSON	P.I.A. (Prof. Ins. Agts.)		X

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Bus. Econ Devel. COMMITTEE BILL NO. 377
DATE 3/8/93 SPONSOR(S) S. Bartlett

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
David Owen	mt Chamber		✓

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