

MINUTES

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

COMMITTEE ON BUSINESS & INDUSTRY

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

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. John Brenden (R)
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. Bill Wilson (D)

Members Excused: Senator Hager

Members Absent: None.

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

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

Committee Business Summary:

Hearing: HB 464, HB 493, HB 513
Executive Action: HB 493, HB 513

HEARING ON HB 493

Opening Statement by Sponsor:

Representative Tim Dowell, House District 5, stated HB 493 would increase the maximum penalties for insurance agencies which may be imposed following an administrative hearing on the violations of the Montana Insurance Code. He stated the penalties are a combination of fines, which are limited to \$500 per violation, and suspensions, which may be for a maximum period of a year. He stated HB 493 would provide that fines were limited to not less

than \$50 and not more than \$1,000. He stated the penalties including time spent in a county jail to be not less than 30 days and not more than 90 days. He stated the law was changed in 1969 to remove the jail time and set the maximum fine to \$5,000 for insurance companies. He stated the 1969 change also set the maximum fine on insurers, consultants and adjusters at \$500. He stated the 1987 session raised the maximum fine to \$25,000, with the \$500 fine remaining unchanged. Representative Dowell stated the \$500 fine had to be commensurate with today's incomes and inflation.

Proponents' Testimony:

Frank Cote, Deputy Insurance Commissioner, stated non-residents are subject to fines of \$50,000 for each violation and their license may be suspended or revoked for a period of up to 5 years. He stated HB 493 would bring the maximum penalties for residents and non-residents closer together. Mr. Cote stated the present penalties are not significant deterrents. He stated the penalties do not vary despite the severity of the violation committed. He stated the administrative hearings are expensive processes and can cost up to \$10,000. He stated the fines are direct income to the general fund. Mr. Cote stated the hearing costs are deducted from the general fund also so an increase in fines would reimburse the fund equally.

Larry Akey, Montana Association of Life Underwriters, stated his support of HB 493.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Brenden asked Mr. Cote how HB 493 would compare with the penalties in other states. Mr. Cote stated he would get that information for Senator Brenden. Senator Brenden asked Mr. Cote if an insurance agent were to make a very small, but illegal, technical mistake, could the penalties still be high. Mr. Cote stated the producer who makes a little mistake was not the Commission's concern. He stated the amount of the fine would depend on the mistake. He added the amount would be up to the discretion of the Commission.

Senator Brenden asked Melissa Brach, Securities Attorney, State Auditors Office if the Commission would be required to fine a person for a minor, technical mistake. Ms. Brach stated the Commissioner would have the discretion to impose or not to impose a fine.

Senator Gage asked Mr. Cote if the Commission reserved the right to revoke a license. Mr. Cote stated yes. He added a license could only be revoked for up to one year. Senator Gage asked Mr. Cote if the Commission had the power to permanently revoke a license. Mr. Cote stated they did not have the right to revoke a license permanently if only one violation had occurred. He stated if there were repeated violations, there could be a permanent revocation.

Closing by Sponsor:

Representative Dowell closed on HB 493.

HEARING ON HB 513

Opening Statement by Sponsor:

Representative Dowell, House District 5, stated HB 513 would put the policy already instituted in the State Auditor's Office into statute. He stated HB 513 would make protection of consumers a statutory responsibility of the State Auditor.

Proponents' Testimony:

Frank Cote, Deputy Insurance Commissioner, stated the purpose of the State Auditor's office is to protect consumers. He stated HB 513 would have the Auditor hire people to handle policy holder's complaints. He stated there are already six people who handle these complaints.

Jacqueline Lenmark, American Insurance Association, stated her support of HB 513.

Gene Phillips, National Association of Independent Insurers, stated his support of HB 513.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Representative Dowell closed on HB 513 and asked Senator Kennedy to carry HB 513 and HB 493 on the Senate floor.

EXECUTIVE ACTION ON HB 513

Motion/Vote:

Senator Klampe moved HB 513 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 493

Motion:

Senator Kennedy moved HB 493 BE CONCURRED IN. The motion CARRIED 11 to 1 with Senator Gage voting NO.

HEARING ON HB 464

Opening Statement by Sponsor:

Representative Dorothy Fisher, House District 3, stated HB 464 had two major parts. She stated the first part is a consumer protection section which addresses firms or brokers which are giving out financial advice. These would be classified advisors and must pass a state test. She stated the second part of HB 464 would not require people who are listed as a Broker/Dealer and a Registered Investment Advisor register as both.

Proponents' Testimony:

Melissa Brach, Securities Attorney, State Auditor's Office, read from prepared testimony in support of HB 464 (Exhibit #1).

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Representative Fisher closed on HB 464. She asked Senator Kennedy to carry HB 464.

EXECUTIVE ACTION ON 464

Motion/Vote:

Senator Rea moved HB 464 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 305

Motion:

Senator Kennedy moved HB 305 BE AMENDED to allow limousines to go out of their designated counties in order to retrieve a customer which they would bring back into their area. He also proposed an amendment to change the 2 hour rule to 12 hours.

Discussion:

Senator Gage stated the first amendment proposed did not address the problem which had caused the evolution of HB 305.

Senator Kennedy stated he would like to revert to the original law and then add the amendment. He stated the amendments would allow for the limousine drivers to meet the need of areas where they could not go before.

Senator Lynch stated the title of the bill was completely different than what the proposed amendments were addressing.

Mr. Campbell stated if Senator Kennedy's amendments were adopted, the result would be the opposite of the intent of HB 305 as it was introduced.

Senator Gage stated he felt the proposed amendments would effect the trucking authorities and other interstate commerce.

Senator Lynch stated the amendments were out of order.

Senator Kennedy withdrew the motion.

Motion:

Senator Klampe moved HB 305 be amended to change the hours to 24 hours, and to change the passenger size of the cars from 13 to 9.

Motion:

Senator Gage made a substitute motion HB 305 BE NOT CONCURRED IN. The motion failed on ROLL CALL VOTE.

EXECUTIVE ACTION ON HB 222

Motion:

Senator Gage moved HB 222 BE AMENDED TO ALTERNATIVE 3.

Discussion:

Senator Brenden stated he concurred with Senator Gage on Alternative 3. He stated he felt it was the insurance agencies' responsibility to require inspections and not the state's.

Senator Lynch stated it was the legislature's responsibility to protect the consumer. He stated he would not want to be responsible for a fire due to lack of inspection.

Vote:

The motion FAILED ON ROLL CALL VOTE.

Motion\Vote:

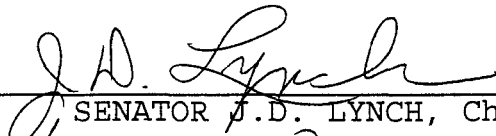
Senator Bruski-Maus moved HB 222 BE AMENDED TO ALTERNATIVE 2.
The motion carried on ROLL CALL VOTE.

Motion\Vote:

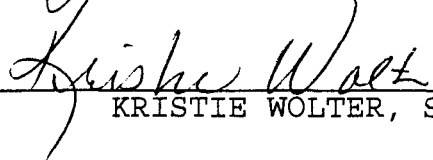
Senator Klampe moved HB 222 BE CONCURRED IN AS AMENDED. The motion was defeated on ROLL CALL VOTE.

ADJOURNMENT

Adjournment: 11:43 a.m.



SENATOR J.D. LYNCH, Chair



KRISTIE WOLTER, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business & Industry DATE 3/10

NAME PRESENT ABSENT EXCUSED

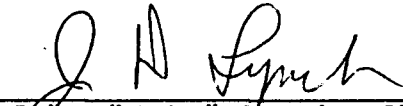
Senator Lynch	✓		
Senator Christiaens	✓		
Senator Brenden	✓		
Senator Gage	✓		
Senator Hager	pm		✓
Senator Harding	✓		
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Bruski-Maus	✓		
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

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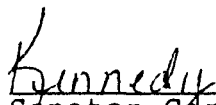
MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 464 (first reading copy -- blue), respectfully report that House Bill No. 464 be concurred in.

Signed: 

Senator John "J.D." Lynch, Chair

my Amd. Coord.
01 Sec. of Senate


Senator Carrying Bill

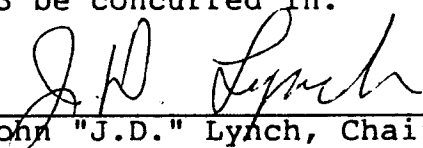
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SENATE STANDING COMMITTEE REPORT

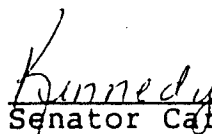
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MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 493 (first reading copy -- blue), respectfully report that House Bill No. 493 be concurred in.

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

m Amd. Coord.
m Sec. of Senate


Senator Carrying Bill

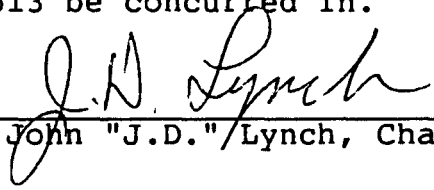
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SENATE STANDING COMMITTEE REPORT

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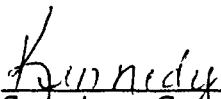
MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 513 (first reading copy -- blue), respectfully report that House Bill No. 513 be concurred in.

Signed: 

Senator John "J.D." Lynch, Chair

m - Amd. Coord.
mv Sec. of Senate


Senator Carrying Bill

541056SC.Sma

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry BILL NO. HB 305

DATE 3/10/93 TIME 10:00 A.M. P.M.

NAME YES NO

Senator Gage	✓	
Senator Hager		
Senator Harding		✓
Senator Mesaros	✓	
Senator Brenden	✓	
Senator Wilson		✓
Senator Rea		✓
Senator Klampe		✓
Senator Koehnke		✓
Senator Bruski-Maus		✓
Senator Kennedy	✓	
Senator Christiaens	✓	
Senator Lynch	✓	

Kristen White
SECRETARY

J.D. Lynch
CHAIR

MOTION: HB 305 Be Not Concurred In

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry BILL NO. HB 222

DATE 3/10/93 TIME 10:00 A.M. P.M.

NAME

YES

NO

Senator Gage	✓	
Senator Hager		
Senator Harding	✓	
Senator Mesaros	✓	
Senator Brenden	✓	
Senator Wilson		✓
Senator Rea		✓
Senator Klampe		✓
Senator Koehnke	✓	
Senator Bruski-Maus		✓
Senator Kennedy		✓
Senator Christiaens		✓
Senator Lynch		✓

Donna White
SECRETARY

J. J. Lynch
CHAIR

MOTION: HB 222 Be Amended for Alternative #3

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry BILL NO. HB222

DATE 3/10/93 TIME 10:00 A.M. P.M.

NAME YES NO

Senator Gage		✓
Senator Hager		
Senator Harding		✓
Senator Mesaros		✓
Senator Brenden		✓
Senator Wilson	✓	
Senator Rea	✓	
Senator Klampe	✓	
Senator Koehnke	✓	
Senator Bruski-Maus	✓	
Senator Kennedy	✓	
Senator Christiaens	✓	NO
Senator Lynch		✓

Trish Weh
SECRETARY

J D Lynch
CHAIR

MOTION: Amend to Alternative 2

ROLL CALL VOTE

SENATE COMMITTEE Business & Industry BILL NO. HB 222

DATE 3/10/93 TIME 10:00 A.M. P.M.

NAME

YES

NO

Senator Gage		✓
Senator Hager		
Senator Harding		✓
Senator Mesaros		✓
Senator Brenden		✓
Senator Wilson	✓	
Senator Rea	✓	
Senator Klampe	✓	
Senator Koehnke	✓	
Senator Bruski-Maus	✓	
Senator Kennedy		✓
Senator Christiaens	✓	
Senator Lynch		✓

Leslie Worth
SECRETARY

J. D. Lynch
CHAIR

MOTION: Be Concurred In As Amended (Alternative 2)

STATE AUDITOR
STATE OF MONTANA



Mark O'Keefe
STATE AUDITOR

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 3/10/93

BILL NO. HB-464

COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

TESTIMONY ON HOUSE BILL 464

Mr. Chairman, members of the committee, for the record, my name is Melissa Broch. I am the staff attorney for the Securities Department of the State Auditor's Office.

House Bill 464 expands consumer protection in Montana as a reflection of recent changes in the securities industry. Banks, broker-dealers, insurance companies are broadening the types of services provided to their clients in an effort to more adequately meet their clients' needs. Those clients need the reassurance that the Securities Department is able to respond to their changing needs for consumer protection.

What House Bill 464 does in a nutshell is extend the coverage of the anti-fraud provisions related to investment advisers to broker-dealers and their salespeople that are selling investment advice. Let me explain how it works.

Section 30-10-103 defines who falls within the definition of an investment adviser or an investment adviser representative. Section 30-10-201 then identifies which of those firms or individuals needs to register. So, there is a two-step test to determine whether the firm or individual has to register.

The first thing HB 464 does is include broker-dealers in the definition of investment adviser if the broker-dealer performs investment advisory services that are not "solely incidental" to executing trades in the customer's account. Section 30-10-201 now states that registered broker-dealers don't have to register as investment advisers. So, this change imposes no additional substantive burden on broker-dealers.

Similarly, registered salespeople are now excluded from the definition of investment adviser representatives. HB 464 would include within the definition of investment adviser representative individuals who actually give investment advice to consumers.

What effect do these changes have? The anti-fraud provisions of the Securities Act provide specific safeguards for clients of investment advisers. For example, an investment

adviser cannot give accounts to another investment adviser without the client's consent or charge fees based on the gains in the client's account. These protections are not available for clients who currently receive investment advice from a broker-dealer.

If a salesperson is giving investment advice for compensation, that person will have to register as an investment adviser representative in Montana. In order to register, the salesperson must pass an examination geared towards individuals providing investment advisory services. The cost of the exam is \$15, it is given once a month at the College of Great Falls and over 75% of the people who take the exam pass it. This is not the same exam that salespeople take. Right now, clients of salespeople giving investment advice do not have any assurance that the salesperson meets the minimum qualifications for offering those services.

HB 464 will eliminate the requirement that sole proprietors dually registers. An example: a sole proprietor must now register as both an investment adviser and an investment adviser representative. If the sole proprietor is also a broker-dealer, that individual will have to maintain four registrations in Montana. HB 464 reduces this burden by only requiring the sole proprietor to register as an investment adviser or broker-dealer.

In sum, this bill provides important consumer protection and we urge the committee to pass HB 464.

DATE March 10, 1993

SENATE COMMITTEE ON Business & Industry

BILLS BEING HEARD TODAY: HB 464, HB 493, HB 513

Name	Representing	Bill No.	Check One	
			Support	Oppose
FRANK COTE	S. A. O.	493 513	✓	
LARRY AKEY	MT ASSOC OF LIFE UNDERWRITERS	493 513	✓	
GENE PHILLIPS	N. A. I. I.	459 513	X	
Jacqueline Denmark	Am. Ins. Assoc.	493 513	X	
Melissa Troch	State And Office	464	✓	
Don Whyte	Farmers Insurance	493		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY