

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on February 16, 1995,
at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

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

Committee Business Summary:

Hearing: HB 549, HB 559, HB 557, HB 556
Executive Action: HB 549, HB 557, HB 556, HB 518, HB 487
HB 458 Remove from Table

HEARING ON HB 549

Opening Statement by Sponsor:

REP. DEBBIE SHEA, HD 35, Silver Bow County stated this bill was
an act revising the laws relating to retail beer and table wine

retail licenses for off-premises consumption and providing for the issuance of conditional licenses to accommodate new or remodeled facilities. She offered written testimony. **EXHIBIT 1**

Proponents' Testimony:

Ward Shanahan, Attorney, Buttrey Food and Drug Company, suggested an amendment to this bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. DAVID EWER asked if he was supportive of the legislation. Gary Blewett, Liquor Division, Department of Revenue, said it was not a matter of support, but the bill can be administered as it is proposed. They have held the position that public policy should or should not be changed with regard to public notices. REP. EWER said the Department was entitled to have a position or an opinion on public policy. This has been the law for a long time. He said he was absolutely neutral on this bill. Mr. Blewett said yes he was also neutral.

CHAIRMAN SIMON said if this bill passes will it simplify operations in the division. Mr. Blewett said yes.

Closing by Sponsor:

The sponsor closed.

EXECUTIVE ACTION ON HB 549

Motion: REP. BOB PAVLOVICH MOVED HB 549 DO PASS. REP. PAVLOVICH MOVED THE AMENDMENTS.

Vote: Motion carried to adopt the amendments 18-0.

Motion/Vote: REP. PAVLOVICH MOVED HB 549 DO PASS AS AMENDED. Motion carried 18-0.

HEARING ON HB 559

Opening Statement by Sponsor:

REP. WILLIAM "RED" MENAHAN, HD 57, Deer Lodge County, said this bill was an act exempting pinochle tournaments from certain provisions of the card game laws.

Proponents' Testimony:

REP. PAVLOVICH stated he supported this bill.

Janet Jessup, Administrator, Gambling Control Division, Department of Justice, said they would support the bill with the amendments proposed. These amendments would change the current language which is shown on the bill to require this be operated by a non-profit organization. These amendments pick up the same language that is provided for in casino nights. It parallels that kind of language and provides for the non-profit to be able to operate. They further proposed the permit fee be dropped from \$50 to \$25.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. EWER questioned the amount of winnings in the game. REP. MENAHAN said the usual fee was \$20. The point system follows and they pay, depending on how many participants, 20 places are paid. It is a trade stimulator for the community and the game outcome is similar to the Whisk tournament in Glasgow. REP. EWER then said this was truly for entertainment value. REP. MENAHAN said yes and the top prize in one state was \$500.

REP. DON LARSON asked if there was an entry fee involved. Ms. Jessup said yes. The chief difference with this bill is that it would allow a non-profit organization to do this. This could not be done now unless the organization was under the auspices of a casino.

Closing by Sponsor:

The sponsor closed.

EXECUTIVE ACTION ON HB 559

Motion: REP. PAVLOVICH MOVED HB 599 DO PASS. REP. PAVLOVICH MOVED THE AMENDMENTS.

Vote: Motion carried to adopt the amendments 18-0.

Motion/Vote: REP. PAVLOVICH MOVED HB 599 DO PASS AS AMENDED. Motion carried 18-0.

EXECUTIVE ACTION ON HB 458

Motion/Vote: REP. LARSON MOVED HB 458 BE REMOVED FROM TABLE. Motion carried 18-0.

HEARING ON 557Opening Statement by Sponsor:

REP. JON ELLINGSON, HD 65, Missoula County, said this bill was an act allowing the Department of Health and Environmental Sciences and local health boards to establish sanitation standards regulating the practice of tattooing.

Proponents' Testimony:

Beda Lovitt, Montana Medical Association, stated this issue has come forward because doctors have indicated individuals using needles are not subject to any kind of sanitation requirements or any type of regulations. Because of the concern of communicable diseases, this is a place for regulation. In consultation with the Department of Health during the drafting of this legislation, they had, as early as 1984, encountered some difficulties in trying to regulate tattooing.

John Halseth, M.D., said this bill was prompted by the experiences he has had with the people in the Great Falls area where parents had consulted him regarding children wanting tattoos. They were all under age. The parents were extremely upset because of the possibility of the transmission of viral diseases. Upon checking the public health department, it was determined there was no control, licensure or inspection of tattoo parlors. This is a big mistake and reason for this bill.

Dave Anderson said he had a tattoo studio in Helena and is also representing a facility for tattooing in Bozeman. He favored this bill. He felt regulations were necessary in the state.

Maureen Cleary-Schwinden said she was the mother of two boys and one has had a recent tattoo. Prior to her son receiving his tattoo she said she had been concerned. Before allowing her son to acquire his tattoo she checked with several tattoo parlors in Helena and determined that some of them did not have autoclaves for sterilization of equipment. Some did not use disposable needles. Some of the artists did not use rubber gloves or did not wash their hands. The parlors were unsanitary. She said she had spent considerable time finding a parlor which was sanitary. The one parlor in which the owner was conscientious of his work surroundings was from California and relocated in Helena. She said they had a lengthy conversation about parlors in the state. Among young people in the state there is a resurgence of tattooing. It is becoming a very popular thing for young people to do. The artist was appalled and surprised that there were no regulations. He was very supportive of the concept of getting some kind of minimum regulations. She supported the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. EWER asked if there was a minimum age for children to receive tattoos. REP. ELLINGSON stated there was not a minimum age. Ms. Cleary-Swinden stated some of the parlors do require the parents' signature and others do not.

REP. BARNETT asked if there was a fiscal note and if it is unfunded. REP. ELLINGSON said it was an authorization and not a mandate. The local board may do any of these listed activities including the regulation as necessary. If the local board does feel that regulation is necessary, there is no requirement for the local board to do so.

REP. BARNETT questioned whether statistics had been derived to indicate any contacting of disease through a tattoo. Dr. Halseth stated, no but the potential is there.

REP. CARLEY TUSS said the new language authorizes the licensing of tattoo artists. Which department would do that licensing?

REP. ELLINGSON stated since this portion of the bill addresses the powers of the local board, the intent of this portion of the bill is to allow licensing by the local board of health. REP. TUSS said the bill speaks to the licensing of tattoo artists which could be performed by local health authorities. Are there any other licensing practices which are conducted by that entity? Steve Meloy, Occupational Licensing Bureau, Department of Commerce, said the bill was more a question of sanitation than of credentials.

REP. LARSON asked if a local board may have the authority to adopt fees necessary to administer the cost of the program. REP. ELLINGSON stated no.

CHAIRMAN SIMON asked where the Department might go in this matter. Dale Taliafaro, Administrator, Health Services Division, Department of Health, said they had considered the issue and standards could be set. CHAIRMAN SIMON said he hoped the Department, in looking at the regulations, would be looking at it from a public health standpoint. Mr. Taliafaro said yes.

REP. LARSON asked if tattoo parlors should be registered, certified, or licensed. Mr. Taliafaro said registering would be the most desirable.

Closing by Sponsor:

The sponsor closed.

EXECUTIVE ACTION ON HB 557

Motion: REP. ELLINGSON MOVED HB 557 DO PASS. REP. ELLINGSON MOVED THE AMENDMENTS.

Discussion:

REP. ELLINGSON explained the amendments.

Motion: REP. ELLIS MOVED THE ELLIS AMENDMENTS.

Vote: Motion carried to adopt the Ellis amendment 18-0. Motion to adopt the Ellingson amendment carried 18-0.

Motion/Vote: REP. ELLINGSON MOVED ON HB 557 DO PASS AS AMENDED. Motion carried 18-0.

CHAIRMAN SIMON relinquished the chair to VICE CHAIRMAN MILLS.

HEARING ON HB 556

Opening Statement by Sponsor:

REP. BRUCE SIMON, HD 18, Yellowstone County stated this bill was an act generally revising state insurance law and providing for the disclosure of material transactions and creating a Risk-based Capital for Insurers Act.

Proponents' Testimony:

Frank Coty, Deputy Insurance Commissioner, provided the insurance code amendments summary from the State Auditor's Office, Department of Insurance and the National Association of Insurance Commissioners financial regulation standards and accreditation program. EXHIBITS 2 and 3

Larry Akey, Montana Association of Life Underwriters and the National Association of Independent Insurers said this bill is a clean up bill. The Insurance Commissioner's office has been very willing to work with people in the industry to make certain the language is acceptable.

Jacqueline Lenmark, American Insurance Association, stated she supported the bill.

Ward Shanahan, Farmers Insurance Group, said they supported the bill.

Tom Hopgood, Health Insurance Association of America, also supported the bill.

Roger McGlenn, Executive Director, Independent Insurance Agency of Montana, supported this bill.

Debby Berney, Professional Insurance Agents of Montana, said they supported the bill.

Denny Moreen, American Counsel of Life Insurance, supported the bill.

Tanya Ask, Blue Cross/Blue Shield of Montana, supported the bill.

Greg VanHorssen, State Farm Insurance Company, stated they supported the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. EWER questioned the meaning of seasoned corporate bonds. Mr. Coty said this is a securities term which is the yield on bonds.

Closing by Sponsor:

The sponsor closed.

EXECUTIVE ACTION ON HB 556

Motion/Vote: REP. SIMON MOVED HB 556 DO PASS. Motion carried 18-0.

EXECUTIVE ACTION ON HB 518

Motion: REP. TUSS MOVED HB 518 DO PASS. REP. TUSS MOVED THE AMENDMENTS.

Vote: Motion to adopt the amendments carried 18-0.

Motion/Vote: REP. TUSS MOVED HB 518 DO PASS AS AMENDED. Motion carried 18-0 on HB 518.

VICE CHAIRMAN MILLS relinquished the chair to CHAIRMAN SIMON.

EXECUTIVE ACTION ON HB 487

Motion: REP. SLITER MOVED HB 487 DO NOT PASS. REP. PAVLOVICH MADE A SUBSTITUTE MOTION ON HB 487 DO PASS.

Discussion:

REP. ELLIS indicated the committee has heard this bill before to remove the statutes. There are many questions this bill raises and this bill does not provide many answers.

REP. KARL OHS stated the testimony was very plain. Rural areas, with the adoption of this bill, would not be able to compete.

REP. COCCHIARELLA said there were higher gas prices in Missoula than any other part of the state. Price fixing occurred. She felt consumers were better protected in Missoula by this kind of legislation.

REP. MILLS stated this bill does away with the government price fixing. Government has granted to the county attorneys to stop the person who sells less than someone else unless they can prove his costs are less.

REP. PAUL SLITER said he had spoken to most of the members of the committee and indicated he had been a lobbyist during the last two sessions. Part of his job was to get the law passed in which this law would repeal.

REP. LARSON opposed the bill because competitive pricing does exist. This bill is a "club over the heads" of distributors. County attorneys are not overly taxed. The industry is policing itself a little better and allowing competition to range. When there is a monopoly situation, price management is good.

REP. BARNETT said he spoke against the do pass motion.

REP. EWER said he opposed the bill. He had many concerns against this being anti-competitive trade. There are two reasons for not passing this bill. The bill has only been in effect for 24 months and "the dust should settle" before the bill is amended. If this bill is adopted, Lewis and Clark County has prepared a case which will be "thrown out" because it is a moot point. The law is off the books.

REP. ELLIS said the bill was passed in 1991 and amended in 1993 so it would be easier to enforce.

CHAIRMAN SIMON stated he recognized the agony in which a number of committee members have gone through on this bill. Headlines have appeared in the local papers which indicate the county attorney has ordered gas prices must increase. His constituents are angry about this. There are no major oil companies that own gas stations in Montana. They are run primarily by independent dealers and even in smaller communities there is no evidence of some big chain operator who may have come into small communities and set up a gas station and run everyone else out of town. It is not the business of the state of Montana to make sure people stay in business.

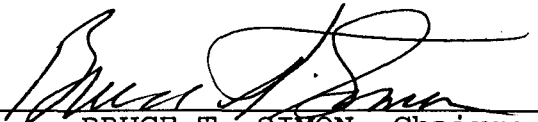
Vote: A roll call vote was taken which failed 3-15 with REPS. SIMON, MILLS and PAVLOVICH voting yes. REP. SLITER abstained from voting.

Motion/Vote: REP. COCCHIARELLA MADE A SUBSTITUTE MOTION ON HB 487 DO NOT PASS. Motion carried 14-3 with REPS. SIMON, MILLS and PAVLOVICH voting yes. REP. SLITER abstained from voting.

Motion/Vote: REP. COCCHIARELLA MOVED TO TABLE HB 487. Motion carried 14-3 with REPS. SIMON, MILLS and PAVLOVICH voting yes. REP. SLITER abstained from voting.

ADJOURNMENT

Adjournment: 10:50 AM.



BRUCE T. SIMON, Chairman



ALBERTA STRACHAN, Secretary

BTS/ajs

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 2-16-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		




HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Business and Labor report that House Bill 549 (first reading copy -- white) do pass as amended.

Signed:


Bruce Simon, Chair

And, that such amendments read:

1. Page 1, line 27.
Following: "the"
Strike: "publication"

2. Page 1, line 28.
Following: "of"
Insert: "16-4-203 and"

-END-


2/16
Committee Vote:

Yes 18, No 0.

401254SC.Hbk

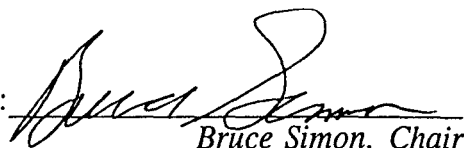


HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Business and Labor report that House Bill 559 (first reading copy -- white) do pass as amended.

Signed: 
Bruce Simon, Chair

And, that such amendments read:

1. Title, line 4.

Following: "TOURNAMENTS"

Insert: "SPONSORED BY NONPROFIT ORGANIZATIONS"

2. Page 1, lines 10 and 11.

Strike: "person or entity"

Insert: "nonprofit organization"

3. Page 1, line 10.

Strike: "\$50"

Insert: "\$25"

4. Page 1, following line 13.

Insert: "(2) The tournament may be managed and operated only by members of the nonprofit corporation that was issued the permit under subsection (1), and members may not be compensated for their services."

Renumber: subsequent subsections

2/16
mm

Committee Vote:

Yes 18, No 0.

401256SC.Hbk

5. Page 1, following line 19.

Insert: "(5) Proceeds from the tournament, after payment of reasonable administrative expenses, may be used only for a civic, charitable, or educational purpose, and administrative expenses may not exceed 50% of the proceeds."

-END-



HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 557** (first reading copy -- white) do pass as amended.

Signed: 
Bruce Simon, Chair

And, that such amendments read:

1. Page 2, line 28.
Following: "equipment,"
Insert: "and"
Following: "operation,"
Insert: "solely oriented to the protection of public health"
Following: "and"
Insert: "the"
2. Page 4, line 11.
Strike: "licensing"
Insert: "registering"
3. Page 4, line 12.
Following: "establishments,"
Insert: "adopting fees,"
Following: "and"
Insert: "also"

-END-


2/16

Committee Vote:
Yes 18, No 0.

401257SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 549** (first reading copy -- white) do pass as amended.

Signed: _____

Bruce Simon
Bruce Simon, Chair

And, that such amendments read:

1. Page 1, line 27.
Following: "the"
Strike: "publication"

2. Page 1, line 28.
Following: "of"
Insert: "16-4-203 and"

-END-

mm
2/16
Committee Vote:
Yes 18, No 2.

401254SC.Hbk



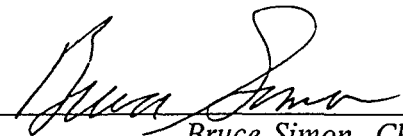
HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 556** (first reading copy -- white) do pass.

Signed: _____


Bruce Simon, Chair

Mr

2/16

Committee Vote:
Yes 16, No 0.

401259SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 3

Mr. Speaker: We, the committee on Business and Labor report that House Bill 518 (first reading copy -- white) do pass as amended.

Signed: 
Bruce Simon, Chair

And, that such amendments read:

1. Page 3, lines 9, 11, and 13.
Page 4, line 5
Page 5, lines 4, 6, and 8
Page 6, lines 8, 11, 18, and 30
Page 7, lines 4, 6, and 15
Page 8, line 18
Following: "through"
Strike: "20"
Insert: "19"

2. Page 5, line 6.
Following: "."
Insert: "Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board."

3. Page 5, line 11.
Following: "(e)"
Strike: "assign board members to a department"
Insert: "establish a"

4. Page 5, line 21 through page 6, line 4.

2/16


Committee Vote:
Yes __, No __.

401259SC.Hbk

Strike: section 8 in its entirety
Renummer: subsequent sections

5. Page 6, line 11.
Following: "department may"
Insert: ", with the concurrence of a member of the screening
panel established in [section 7],"

6. Page 6, lines 29 and 30.
Following: "agencies" on line 29
Strike: the remainder of line 29 through "Evidence" on line 30

7. Page 8, lines 7 through 10.
Strike: subsection (4) in its entirety
Renummer: subsequent subsection

8. Page 8, line 20.
Following: "section"
Strike: "13"
Insert: "12"

9. Page 10, lines 27 and 28.
Following: "title." on line 27
Strike: the remainder of line 27 and line 28 in its entirety

10. Page 11, line 2.
Following: "section"
Strike: "18"
Insert: "17"
Following: "than"
Strike: "\$25,000"
Insert: "\$5,000"

11. Page 11, line 18.
Following: "section"
Strike: "17"
Insert: "16"

12. Page 18, line 24.

Page 64, line 1
Following: "section"
Strike: "20"
Insert: "19"

13. Page 85, line 6.
Strike: "20"
Insert: "19"

14. Page 85, following line 7.
Insert: "NEW SECTION. Section 129. Coordination instruction.
(1) If Senate Bill No. 95 is passed and approved and if it includes a section that amends 37-16-202, then [section 58] of this act], amending 37-16-202, is void.
(2) If Senate Bill No. 95 is passed and approved and if it includes a section that amends 37-16-406, then the portion of [section 127] that repeals 37-16-406 is void.
(3) If Senate Bill No. 171 is passed and approved and if it includes sections that amend 37-11-307 and 37-11-309, then the portion of [section 127] that repeals 37-11-307 and 37-11-309 is void."

Renumber: subsequent sections

15. Page 85, line 23.
Strike: "20, 21"
Insert: "19, 20"

-END-

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 2-16-95 BILL NO. 487 NUMBER _____

MOTION: _____

To pass

NAME	AYE	NO
Rep. Bruce Simon, Chairman	✓	
Rep. Norm Mills, Vice Chair, Maj.	✓	
Rep. Bob Pavlovich, Vice Chair, Min.	✓	
Rep. Joe Barnett		✓
Rep. Vicki Cocchiarella		✓
Rep. Charles Devaney		✓
Rep. Jon Ellingson		✓
Rep. Alvin Ellis, Jr.		✓
Rep. David Ewer		✓
Rep. Rose Forbes		✓
Rep. Jack Herron		✓
Rep. Bob Keenan		✓
Rep. Don Larson		✓
Rep. Rod Marshall		✓
Rep. Jeanette McKee		✓
Rep. Karl Ohs		✓
Rep. Paul Sliter		
Rep. Carley Tuss		✓

Sponsor's Remarks on HB 549

Rep. Debbie Shea

Hearing Thursday February 16th

House Business & Labor

Room 104

This bill was drafted at the request of Representative Tom Zook and introduced by me at the request of Buttrey Food & Drug Company of Great Falls, Montana.

Buttrey has a problem with the issuance of its Licenses for off-premises consumption of Beer & Wine for its new stores. The problems is created because the law governing these grocery store licenses was placed in the same statute as regular liquor licenses.

Regular liquor licenses and grocery store beer and wine licenses are different kinds of licenses. But, under present law they're covered by the same statute. Let me explain how this creates the problem:

1. Regular liquor licenses are "quota" licenses and require proof of Public Convenience and Necessity, before they can be issued. This requires "public notice and an opportunity for hearing" so that people who have a competing license can object to the issuance of a new liquor license in their area.

2. Grocery store beer & wine licenses which allow sales of beer and wine for off-premises consumption are non-quota licenses. No one really has the has the right to object to their issuance and publication of notice is really not necessary. But since they're in the liquor license statute, publication of notice is still required, even though it's not necessary.

3. The result is that when a someone wants to open a new grocery store, the following things often happen:

(a) The owner has to wait for the department of Revenue to give an unnecessary notice for an unnecessary hearing. If somebody should actually object, the Department of Revenue has to hold an unnecessary hearing. This creates great uncertainty in opening a new store. No one can predict when it might actually happen.

(b) At the same time, the owner has to wait for local building-inspector's approval in order to occupy the premises. Under the liquor license rules, Department of Revenue can't issue the Grocery Store Beer & Wine License, until after the local building inspector has given approval because that's also a requirement of the liquor license statute. Local building inspection is on its own time schedule. Sometimes its difficult to get the Building Inspector and the Department of Revenue to coordinate their approvals.

4. A "Catch 22" situation develops. The store owner needs to have a "Grand Opening" for a store that's ready for occupancy with all departments in operation. The notice and hearing requirements

of the liquor law can delay this. When the Department of Revenue is also compelled to wait for the required approval by the building inspector, the owner can't make any plans to open the store. This is an unnecessary business problem.

5. There's really no good reason why the Department of Revenue can't issue the grocery store beer & wine license, without notice, subject to the condition that the local building inspector must first approve the premises for occupancy. The owner and the contractor can then plan for a definite opening date. The store will be ready to have a "Grand Opening" as soon as the building inspector says "go".

Solution: If the Grocery store Beer & Wine licenses were removed from the liquor license statute, these problems would no longer exist. That's what HB 549 does. I hope you'll agree!

I RESPECTFULLY REQUEST YOUR SUPPORT FOR HB 549, THANK YOU!

Representative Debbie Shea House District 95

STATE AUDITOR
STATE OF MONTANA

EXHIBIT 2
DATE 2-16-95
HB 556

Mark O'Keefe
STATE AUDITOR



COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

State Auditor's Officer
Department of Insurance
Insurance Code Amendments Summary
2/16/95

This summary includes explanations for substantive revisions to the Montana Insurance Code and the new acts required under accreditation standards established by the National Association of Insurance Commissioners. This summary will not address amendments merely providing for better language usage or language changes resulting from Legislative Council language rules.

Section 1.

2-6-109(5) - permits the Commissioner to send a list of those required to take continuing education to continuing education providers. This act will increase course availability and opportunity for producers and consultants.

Sections 2 & 3.

33-1-207, 208 - clarifies the definitions of disability and life insurance by including credit life and credit disability and reference to indemnification.

Section 4.

33-1-209(1) & (2) - replaces the currently inadequate definition of marine insurance with a more comprehensive definition currently used in other states.

Section 5.

33-1-311(1) & (2) - because the commissioner has duties regarding enforcement of the licensing of motor club representatives and law enforcement agency laws which are not placed in the Insurance Code, further clarification of the scope of the commissioner's duties is required.

Section 6.

33-1-501(1)(b) - permits waiver of insurance form approval requirement and prevents unnecessary duplication of form approval efforts by the Montana Department of Insurance and a department of another state with laws substantially similar to Montana's.

33-1-501(7) - clarifies that group certificate approval is contingent upon conformity with Montana law where the certificates are subject to Montana regulatory and legal jurisdiction.

Section 7.

33-2-117(1) - amends the date by which insurers must pay the certificate of authority continuation fee to conform to the date that other fees are due.

Section 8.

33-2-301(3)(d) - lines, not kinds, of insurance are sold. The definition elimination reflects industry verbiage and usage in other parts of the code.

Section 9.

33-2-302 - affords freer consumer access to lines of insurance not sold by authorized insurers in the state of Montana and prevents renewal where the line has become available through a Montana authorized insurer.

Section 10.

33-2-305(1) & (5) - operates in tandem with 33-2-302 to pull down licensing barriers to purchase of insurance lines not available through a Montana authorized insurer.

Section 11.

33-2-307(1)(b)(i)(B) - brings the capital and surplus thresholds in compliance with NAIC recommendations.

33-2-307(1)(b)(ii) - a technical change which better reflects Lloyd's structural changes and acceptance of corporate members, as well as individual unincorporated members.

Section 12.

33-2-501(11) - removes the dollar limitations of the admissibility of electronic data processing equipment and reduces the permissible useful life for EDP equipment. Given the rapid advancements in the computer field, 8 years is a more conservative and realistic period for depreciation of EDP equipment.

Page 3
February 15, 1995

Sections 13 - 18, and Section 76.

33-2-521 through 33-2-529, and New Section entitled "Reserve calculation -- indeterminate premium plan -- minimum standards for disability" - Under NAIC accreditation standards, these changes to the Standard Valuation law must be in place by 1/1/96.

Section 19.

33-2-531(1) & (2) - eliminates wasteful paperwork for insurers currently required to put policy loans on deposit.

Section 20.

33-2-701(2) - reduces paperwork and under NAIC accreditation standards, annual and quarterly diskette filings are required by 1/1/96.

Section 21.

33-2-705(6) - the interest rate on unpaid taxes mentioned in 31-1-107 suggests that it must be determined by mutual agreement between the Department and the offending insurer. This practice is problematic and the rate should be set at a more sensible rate.

Section 22.

33-2-708(1)(k) - clarifies licensing fees required of motor club representatives, over which the insurance commissioner has licensing authority pursuant to 61-12-302.

33-2-708(1)(n)(iii) - clarifies that forms submitted must relate to the same policy and prevents insurers from submitting forms together which should be considered separately from one another.

Section 23.

33-2-803(1) - operates in tandem with 33-2-820 to permit insurers to invest in non-dividend paying stocks, which would be a prohibited practice without the amendments. The prohibition is not practical.

Section 24.

33-2-806(6) - raises, upon insurer request, the permissible investment in common stock from 10% of insurer assets to 15%. The department has determined this adjustment to be fiscally

sound.

Section 25.

33-2-820 - see Section 23 comments.

Section 26.

33-2-1111(2)(c)(v) - important for NAIC accreditation standards. The deleted phrase in (2)(c)(v) exempts important registration information from filing.

Section 27.

33-2-1201(6) - the exception for sprinklered risks has no merit and should be removed.

Section 28.

33-2-1216(5)(b)(iii) - see Section 11, 33-2-307(1)(b)(ii) comments.

Section 29.

33-2-1217(3)(4) - provides a definition for the term "qualified United States financial institution" as used in the section. The definition also meets NAIC accreditation recommendations.

Section 30.

33-2-1218 - corrects a 1993 bill drafting error which effectively restricted the law to very old or already cancelled reinsurance agreements. The law should apply to agreements in effect now.

Section 31.

33-2-1510(8) & (10) - clarifies required provisions for controlling producer / controlled insurer agreements by including language which was inadvertently omitted last session.

Section 32.

33-2-1605(4) - corrects a typographical error in the 1993 law.

Section 33.

33-3-431 - eliminates the differentiation between stock and mutual insurers, each of whom require as much oversight as the

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other. Also, the amendments clarify the commissioner approval requirement for repayment of either principle or interest on borrowed surplus. Repayment of interest without oversight may jeopardize an insurer's financial condition.

Section 34.

33-4-202 - currently, the approved farm mutual's articles are filed with the Department, the Secretary of State, the insurer and the insurer's local county clerk. Filing with the county clerk is unnecessary.

Section 35.

33-4-203 - eliminates the unnecessary and superfluous review of a farm mutual's articles by the attorney general.

Section 36.

33-5-401(1)(b) - establishes an appropriate distinction between required surplus funds for domestic reciprocals transacting casualty insurance with and without authority for worker's compensation.

Section 37.

33-7-117 - extends application of new sections embodying the Disclosure of Material Transactions Act to Fraternal Benefit Societies.

Section 38.

33-10-201 - under NAIC accreditation standards, the Life and Health Insurance Guaranty Association Act must be modified in this manner by 1/1/96. The modifications clarify the application provisions of the act.

Section 39.

33-10-202(6) - clarifies the definition of "member insurer" and conforms the act to NAIC accreditation standards.

Section 40.

33-11-102(1) - provides a definition for "completed operations liability" as used in Chapter 11, in conformity with NAIC accreditation standards.

Section 41.

33-11-104(13) - provides a penalty for risk retention groups operating in violation of Montana law. The penalty provision is required by NAIC accreditation standards.

Section 42.

33-11-108(1)(g) - biographical information is needed to ensure that the interests of the membership of the purchasing groups not compromised by controlling members with contradictory interests.

Section 43.

33-14-304(2) - eliminates a reference to "brokers" which is a term not recognized in the Montana Insurance Code.

Section 44.

33-15-301 - clarifies the intended effect of standard provisions requirements as including contract language (provisions) and contract obligations (benefits) in all contracts of insurance (policies and certificates).

Section 45.

33-15-303(3) - creates uniform standards for form designating numbers and revision dates. Currently, this provision is found in the disability chapter, but should apply to insurance forms generally.

Section 46.

33-16-202(1) - eliminates rule promulgation mandate in an area where regulation by rule is not essential.

Section 47.

33-16-235(1) - similar to 33-16-202, this deregulatory amendment eliminates rule and reporting mandates where existing regulatory tools are sufficient.

Section 48.

33-17-102(1)(d) - clarifies the definition of "adjuster" to include licensed third party administrators.

33-17-102(9)(a)(ii) - creates uniformity for the "managing

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general agent" definition throughout the insurance code. This definition conflicted with the one found at 33-2-501.

Section 49.

33-17-211(1)(d) & (e) - limits the time period allowed between examination passage and license applications so that applicants may not use stale tests as basis for licensing. The amendment also clarifies that licenses issued based on Montana residency terminate upon relocation to another state.

Section 50.

33-17-405 - clarifies the commissioner's status as agent for the nonresident person for service of process purposes.

Section 51 & 52.

33-17-503 & 33-17-603 - clarifies that consultant and administrator's application fees, respectively, are to be deposited with the general fund. The amendments also eliminate the need to physically prepare a new license each year for each consultant by establishing continuing licenses.

Section 53.

33-17-1001(2) - permits revocation, suspension, refusal or denial of an insurance agency license where a partner or officer, whether or not a licensed producer, is engaged in prohibited conduct which is injurious to the public's interest.

Section 54.

This section was erroneously included in this bill. No substantive change was made.

Section 55.

33-18-301(3) - establishes policyholder protection standards for funeral insurance policy solicitation and sales.

Section 56 & 57.

33-22-131(1) & (4), 33-22-132(1) & (4) - prevents some mandated benefits from appearing in policies in which it does not make sense to include them (i.e., mammography benefits in accident only policies, phenylketonuria benefits in dental policies, etc.).

Section 58.

33-22-201(6) - eliminates erroneous reference to sections of law which do not exist and prevents inadvertent application of sections later enacted in those reserved sections.

33-22-201(7) - section is taken out of disability chapter and is placed more appropriately in contracts chapter of code (see Section 45), providing for uniformity of all insurance forms, not just disability forms.

Section 59.

33-22-202(3) - eliminates erroneous reference to sections of code which do not exist and prevents inadvertent application of sections later enacted in those reserved sections.

Section 60.

33-22-301 - allows insurers to collect a premium for a new insured (i.e., converting coverage to family coverage in the case of a first born child). The amendment also allows an insurer to require notification of a new insured on a policy.

Section 61.

33-22-303(1) - clarifies that the well-child care benefit provision applies to medical expense disability policies and not disability income policies.

Section 62.

33-22-504(1) & (2) - eliminates distinction between individuals with prior family coverage and those without, and permits newborns of both classes to obtain coverage after birth.

33-22-504(4) - prevents inclusion of newborn coverage in policies in which inclusion is erroneous.

33-22-504(5) - clarifies which policies are required to conform to this provision.

33-22-504(6) - allows insurers to collect a premium for a new insured (i.e., converting coverage to family coverage in the case of a first born child). The amendment also allows an insurer to require notification of a new insured on a policy.

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Section 63.

33-22-508(1) - applies the conversion on termination of eligibility to policies and certificates alike.

Section 64.

33-22-1120(1) - similar to Section 63, the amendment applies Montana long term care policy laws to policies or certificates issued to Montana residents.

Section 65.

33-22-1803(16)(a) - clarifies criteria for consideration of a person as a late enrollee.

33-22-1803(8) - clarifies that gender may not be considered as a case characteristic in determination of rates, pursuant to the unisex insurance law.

Section 66.

33-22-1819(13) - clarifies that monies paid to the small employer carrier reinsurance program are not general fund monies, but monies to be used for the program's obligations.

Section 67.

33-30-102(1) - eliminates erroneous reference to portions of the licensing chapter which are not relevant to health service corporations. Also, the amendments apply the Disclosure of Material Transactions Act to health service corporations.

Section 68.

33-30-107 - reduces paperwork and under NAIC accreditation standards, annual and quarterly diskette filing pursuant to these standards is required by 1/1/96.

Section 69.

33-30-108(3) - clarifies when health service corporation license fees are due.

Section 70.

33-30-202 - eliminates the unnecessary requirement of a health service corporation's annual report. Given the required annual

and quarterly statements, the requirement is redundant.

Section 71.

33-30-204(1)(a) - eliminates unnecessary provisions in light of the amendment to 33-30-311.

Section 72.

33-30-311 - subjects insurance producers for health service corporation to the part of the code regulating insurance producers.

Section 73.

allows insurers to collect a premium for a new insured (i.e., converting coverage to family coverage in the case of a first born child). The amendment also allows an insurer to require notification of a new insured on a policy.

Section 74.

33-31-311(1)(a) - eliminates reference to sections repealed in this bill.

33-31-311(5) - subjects health maintenance organizations to the Material Transactions Disclosure Act (Sections 78 - 81).

Section 75.

Right to return policy - removes section from the disability insurance portion of the bill, includes life insurance free look period, and places section in chapter covering insurance contracts in the insurance code.

Section 76.

See Section 13 comments.

Section 77.

Dating insurance applications - prevents fraudulent collection of insurance benefits for period where insured was not actually covered. Acknowledgement of the purpose of the section prevents application to life insurance contracts where backdating is an acceptable, common industry practice.

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Sections 78 - 81.

Disclosure of Material Transactions Act - under NAIC accreditation standards, this act must be in place by 1/1/97. Generally speaking, the act requires reporting by insurers of significant transactions and events concerning material acquisitions and dispositions of assets, and non-renewals, cancellations, or revisions of ceded reinsurance agreements. The reporting allows regulators to survey insurers' solvency status and is an important component of financial oversight, as well as policyholder and industry protection.

Sections 82 - 94.

Risk Based Capital for Insurers Act - under NAIC accreditation standards, this act must be in place by 1/1/97. Current regulations require a flat surplus minimum for different classes of insurers. The RBC Act tailors each insurer's required surplus to a more realistic amount according to a formula. The surplus minimum is adjusted for each insurer by application of formula factors relevant to the particular insurer. The Act also provides for administrative hearings for insurers disputing the commissioner's determinations under the Act.

Section 95.

Repeals sections 33-30-312 and 33-30-313, both of which are unnecessary after amendments to 33-30-311.

EXHIBIT 3
DATE 2-16-95
HB 556

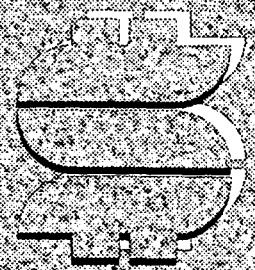
December 1994

NAIC

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The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

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