

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
54th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON BUSINESS & LABOR**

**Call to Order:** By **CHAIRMAN BRUCE T. SIMON**, on March 8, 1995, at 8:00 A.M.

**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: SB 335, SB 224, SB 329, SB 233, SB 374  
Executive Action: SB 151, HB 554, SB 335, SB 233, SB 329

**HEARING ON SB 335**

**Opening Statement by Sponsor:**

**SEN. KEN MILLER, SD 11, Yellowstone County**, said this bill was an act revising the Montana Retail Installment Sales Act and

changing the delinquency fee and the computation of finance charges.

**Proponents' Testimony:**

**Brad Griffin, Montana Retail Association,** said Montana is now one of only two states which require that a notification of a change in the terms of a credit account which will apply only to future purchases on the account must be given to the cardholder during two billing cycles before its effective date. Since such notices must be given to all cardholders, whether or not they have outstanding balances or not, they would otherwise be receiving a bill during the billing cycle. The costs incurred by a creditor in sending change of terms notices are not inconsiderable. Doubling those costs by requiring that the notice be sent twice to each of the retailer's cardholders in the state should not be necessary, especially when the changes will be applied only in the future. This bill states that for some reason residents require more protection by the state than those of almost all other states. This bill would amend the law by providing that the credit grantor shall give notice of the change of terms during the billing cycle prior to the effective date of the change. A customer who objects to a change in the terms of the credit account would have the simple expedient way of paying off the account under its existing terms. **EXHIBIT 1**

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

**REP. NORM MILLS** said the new charges of the day are calculated into the finances of the day. If an item is purchased one day and there was a credit balance the previous day, when the bill is paid next week or month, there would be a finance charge from the day of the newest purchase. **Mr. Griffin** said if there was a balance at the beginning of month the answer is yes. **REP. MILLS** then said if people do not pay their accounts in full at the end of the month have no grace period. **Mr. Griffin** said yes.

**REP. DAVID EWER** asked if this bill puts proprietary credit cards on the same footing as Visa and MasterCard. **Mr. Griffin** said yes. **REP. EWER** asked if the rules which regulated these cards were national. **Mr. Griffin** said the companies use National Credit Card Bank which is located in a state which has very liberal terms. **REP. EWER** asked if it were fair to describe this bill as one which will put proprietary cards on an equal footing as national credit cards which will then cost the consumer more money for credit. **Mr. Griffin** said that was correct.

**Closing by Sponsor:**

The sponsor closed.

**HEARING ON SB 224****Opening Statement by Sponsor:**

**SEN. B.F. CHRISTIAENS, SD 23, Cascade County**, said this bill was an act defining the relationships available between real estate brokers or salespersons and buyers or sellers in real estate transactions; establishing the obligations owed by real estate brokers or salespersons to buyers or sellers in real estate transactions and requiring real estate brokers and salespersons to provide buyers and sellers with agency disclosure statements regarding agency relationships between real estate brokers or salespersons and buyers or sellers in a real estate transaction. He also supplied testimony on the talking points and business relationships in real estate transactions. **EXHIBIT 2**

**Proponents' Testimony:**

**Colin Bangs, Chairman, Montana Association of Realtors Legislative Committee**, said one of the things he enjoyed about selling real estate was that he could converse with a buyer and find out exactly what the buyer really wanted in real estate. The whole marketplace was available to pick from through multiple listing services, through cooperation between agents. Anything that was for sale was a part of the inventory. Sometimes months are spent with a buyer before he decides on a purchase. One of the fallacies of this is the law of agency recognized only a seller's agent. The person listing the property was the seller's agent. The broker who sold the property was considered to be a sub-agent of the seller, therefore, by law, was representing the seller. That was not real. It is impossible to represent a seller that the sub-agent had never met before. New laws are being established to recognize the fact that in a lot of cases there are two agents, one representing the buyer and the other representing the seller. This bill makes legal what has been happening for years before.

**Al Littler, Broker-Owner, Prudential Corporate Realtors, Billings**, discussed the Tag Report. Realtors have worked together in the best interest of the principles. There was a multiple listing system. In the 1970s the Federal Trade Commission tried to declare that multiple listing systems was a restrained trade. It was indicated there was a monopoly on the market. Realtors are expert in the process so they are consulted for various advice and services. In the past a realtor was considered an agent for the seller or sub-agent for the seller. There developed a controversy among the national associations as to whether a realtor should be the seller's agent or a buyer's agent. Agencies were limited. A Presidential Advisory Committee was developed which reported that realtors must be an agent for the buyer, an agent for the seller or a dual agent. There was no other business relationship that was allowed. That did not fit the practice of real estate. Many states began to pass legislation that allowed realtors to develop business

relationships and get compensation for those relationships as per contract or agreement. The National Association of Realtors appointed a second committee to study the issues. Technology has become so advanced. Buyers and sellers expect something different from their realtors. The business climate has begun to change and the old system does not fit today with business relationships changing.

**Zane Sullivan, Attorney, Montana Association of Realtors,** said they were involved in drafting the bill and that it adds clarity and equality to the existing real estate practice. He then explained the changes in the bill.

**Vicky Hammond, President, Montana Association of Realtors, Missoula,** said she supported this bill.

**Howard Sumner, President, Montana Association of Realtors, Billings,** said he spoke in favor of the bill.

**P.C. Musgrove, President, Montana Association of Realtors, Kalispell,** said he supported the bill.

**Charles Hamway,** said he supported this bill.

**Carl Cunzing, President, Legislative Committee,** said he supported this bill.

**Judy Walberg, Past President, County Association of Realtors of Missoula,** supported the bill.

**Marilyn Hoblet, County Association of Realtors of Missoula and Legislative Committee,** supported the bill.

**Dixie Dalton, President, Missoula County Association of Realtors** supported the bill.

**Robert Leech, Vice Chairman, Legislative Committee,** supported the bill and it is essential in the way they do business in real estate.

**Tim Evans, State Director, Montana Association of Realtors,** encouraged support of this legislation.

**John Schontz, Montana Association of Realtors** said this bill requires a coordinating bill. They would support both bills. He then discussed amendments.

**Opponents' Testimony:**

**Russell Hill, Montana Trail Lawyers Association,** said it was difficult to stand as an opponent after standing as a conditional proponent in the Senate. This is a good faith effort to clarify a fairly confusing area of the law. This bill contains errors of co-omission and errors of omission. That is important in this

bill. He then discussed the written disclosure statement and the dramatic area of common law.

**Don Snavely, Attorney**, said part of his practice is devoted to representing consumers and real estate brokers involving professional negligence claims. He also supplied copies of the MCA sections regarding licensees. **EXHIBIT 3**

**Questions From Committee Members and Responses:**

**REP. DON LARSON** asked why there was so much representation from realtors from Missoula. **Mr. Litler** said they were here for a dual purpose and happened to be in Helena. **REP. LARSON** asked how many other states had adopted this model legislation. **Mr. Litler** said many states developed this legislation and they were Utah, Colorado, Georgia, Florida and Maine and others were in the process of doing the same.

**TAPE 1, SIDE B**

**REP. LARSON** said there were allegations in the testimony on the change in the common law. **Mr. Hill** said section 3 contained in the provisions are intended to replace the common law as applied to common relationships. When a bill is in effect it works in conjunction with the common law. If there is an inconsistency, the statute takes precedence. The committee should consider this will be the only law concerning that. It is an honest attempt to clarify what the duties should be.

**REP. LARSON** said he was interested in the new relationship that has been established by this bill which creates a statutory broker relationship where the broker is acting as a contract agent between the buyer and seller. He asked if that will be established by a written document which will specify the obligations and duties of the broker. **Mr. Sullivan** said he hoped it would be established by a written document. There is not a mandate that it be established. It is intended to be a relationship where the parties agree on what is to be done by the licensee in that particular instance.

**REP. EWER** said the problems were not where the current industry is regarding the relationships to change. **Mr. Sullivan** said a person should be able to buy property with some degree of assurance that it is what they expected it to be. That is what a buyer's representative is supposed to do. Since the early 1950s there have been seller representatives and sub-agents of sellers and nobody represented the buyer. This type of potential existed. Buyer representation has come to the state. **REP. EWER** questioned the responsibility for disclosure to the buyers. **Mr. Sullivan** said this bill does not change that agents direct responsibility to the buyer as it currently exists. The liability section changes the passing of information. **REP. EWER** asked if the presidential study will parallel the recommendations. He then requested a copy of that document for

the committee for review. **Mr. Sullivan** said these items were contained in the new bill and a copy will be provided for the committee.

**REP. KARL OHS** asked if a financial statement would be required. **Mr. Sullivan** said there was not a duty to investigate the buyer, but if the buyer's representative knows of some information such as a pending bankruptcy or previous bankruptcy it would require that information be disclosed to the seller.

**REP. ALVIN ELLIS** asked how much responsibility by the realtor is required. **Mr. Sullivan** said he was not sure the person should be responsible for any accurate information unless they have knowledge of false information.

**REP. JON ELLINGSON** asked if the purchaser has entered into an agreement with a buyer's agent and the buyer makes an inquiry of certain conditions on the sale of a property, does the buyer's agent have a duty to do anything other than inquire of the seller's agent. **Mr. Sullivan** said there is no liability for the buyer's agent passing along information but he did not agree that this bill alleviates the need for the buyer's agent to do their own homework within the parameters of their licensing capability. It does not report to make them obligated to conduct soil analysis, etc.

**REP. CARLEY TUSS** asked if it were a fair characterization if an investigation regarding basic information be done. **Mr. Snavely** said that was not a fair characterization. The cases indicated were buyer's raising issues. The law does not suggest the broker must inspect anything. When the buyer raises an issue and the agent passes on information regarding verification, that is then the duty to investigate because it is important to the buyer because that buyer has raised the question. There are also situations where it is so basic to the property.

**CHAIRMAN SIMON** questioned the term AIDS in the bill. **Mr. Sullivan** said this is an item the agent is not obligated to disclose as being a material condition to acknowledge the former occupant had AIDS or is HIV-positive. **CHAIRMAN SIMON** said AIDS is a disease which is known as the Acquired Immune Deficiency Syndrome. In the bill it is referred to as "AIDS" and in the context of the real law it is undetermined what AIDS is. **Mr. Sullivan** said that is a repetition of the existing language. **CHAIRMAN SIMON** said this was the law. It is unusual to single out a particular disease in real estate law. **Mr. Sullivan** said he may be correct but the Board of Realty Regulation was responding to what was understood to be a non-discrimination requirement. The licensees were not to discriminate against people who had that disease.

**Closing by Sponsor:**

The sponsor closed.

**HEARING ON SB 329**

**Opening Statement by Sponsor:**

**SEN. MIGNON WATERMAN, SD 26, Lewis and Clark County,** said this bill was an act revising certain provisions of long-term health care insurance; prohibiting the issuance of a refund to a person who is not the owner of the policy; increasing from ten to thirty days the period during which a dissatisfied consumer may return a long-term care insurance policy and receive a refund of the premium; requiring that policies with nonforfeiture benefits be offered; requiring appropriate sale criteria to accompany each application for a long-term care policy and allowing the insurance commissioner to adopt rules pertaining to nonforfeiture benefits and appropriate sale criteria.

**CHAIRMAN SIMON** relinquished the chair to **VICE CHAIRMAN PAVLOVICH.**

**Proponents' Testimony:**

**Frank Coty, Deputy Insurance Commissioner,** said they supported this bill. Years ago there was trouble in the medical supplement market.

**Bill Olson, American Association of Retired People,** said long-term care insurance is beginning to play a more and more important part in the insurance field. All of the amendments are good and they supported this bill.

**Edmund Caplis, Executive Director, Montana Senior Citizens Association,** said they support this bill and believe that this bill tightens up the market and allows older Montanans to become better consumers of long-term care insurance.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

None.

**Closing by Sponsor:**

The sponsor closed.

HEARING ON SB 233Opening Statement by Sponsor:

**SEN. JOHN G. HARP, SD 42, Flathead County,** said this bill was an act requiring the return of attorney fees and costs paid by an insurer to an attorney for a workers' compensation claimant convicted of obtaining benefits through fraud or deception and allowing benefits to be modified when they were obtained by fraud or deception.

Proponents' Testimony:

**Carl Swanson, President, State Fund,** said the State Fund had a claim against Mr. Chapman who incurred a permanent partial disability and the Workers' Compensation Court ordered benefits paid to Mr. Chapman as well as attorneys fees. After this occurred fraud was detected through investigation, the State Fund immediately proceeded to dis-report through a criminal conviction. It also went to the Workers' Compensation Court to have the original order vacated and the fees for the attorney as well as the benefits, pay restitution to the State Fund. The Workers' Compensation Court did order this and the decision was later overturned by the Supreme Court. In final analysis the attorney kept the \$17,000 in attorney costs and the Supreme Court indicated the Workers' Compensation Court did not have the authority to set aside this prior judgment which was an emergency ruling. This is the original judgment which is a short time in order to detect fraud if fraud is determined. Essentially, the decision reduced the Workers' Compensation Court ability to exercise effective decision-making powers and narrowly restricted this to a sixty-day period. It is because of this the State Fund supports passage of this bill.

**Stan Kaleczyc, Montana Municipal Insurance Authority and Montana School's Group Insurance Authority,** said this is an important bill because it clarifies the continuing jurisdiction of the Workers' Compensation Court in cases of fraud. Cases of fraud take a long time to develop and prosecute. Once fraud is determined, the two years which is provided in this bill is adequate.

**Jerry Driscoll, Montana Building Construction Trades,** said last session bills were supported to stop fraud. If the work is fraudulent everybody should pay.

**Jacqueline Lenmark, American Insurance Association,** said they supported the bill.

**Chris Racicot, Executive Director, Montana Building Industry Association,** said they supported this bill.

**Harlee Thompson, Coalition For Workers' Compensation Improvement,** said they supported the bill.



Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 374

Opening Statement by Sponsor:

**SEN. JOHN G. HARP, SD 42, Flathead County,** said this bill was an act revising certain State Fund insurance laws; authorizing the State Fund to refuse workers' Compensation coverage to an employer or an employer's principals who have defaulted on a State Fund obligation; authorizing the State Fund to provide employers' liability insurance as part of the required coverage; authorizing the State Fund to contract with public entities to sell services at not less than cost; the State Fund to belong to a licensed rating organization; prohibiting the sale or distribution of information provided to a workers' compensation rating organization and reducing to 20 days the time required for notifying an employer of the cancellation of coverage. He also offered amendments. **EXHIBIT 4**

**TAPE 2, SIDE A**

Proponents' Testimony:

**Rick Hill, Board of Directors, State Fund,** said the State Fund is required to insure an employer in Montana, and may also cancel coverage for failure to pay premiums. **EXHIBIT 5**

**Stan Kaleczyc, National Council On Compensation Insurance,** said they did not take any position with respect to the first half of the bill which deals with internal operating issues relating to the State Fund. The Advisory Council and the modification factor are supported with the technical amendment. With that amendment those portions of the bill will be coordinated.

**Harlee Thompson, Manager, Intermountain Truss,** supplied written testimony. **EXHIBIT 6**

**Jerry Driscoll, Montana State Building Construction Trades,** stated the history of this legislation. The minimum policy charge is a charge for the paperwork. Those people who are paying more than \$5,000 to \$6,000 are subsidizing the smaller employers.

**Chris Racicot, Montana Building Industry Association,** said they supported this bill.

**Opponents' Testimony:**

**Riley Johnson, National Federation of Independent Business** provided written testimony. **EXHIBITS 7 and 8**

**John Bandy, Manager, Montana Claims Service of Helena,** said they opposed this bill. The only area in the bill they object to is the allowance of the State Fund to compete directly for or with profit companies in providing services.

**Jacqueline Lenmark, American Insurance Association,** said they were both a proponent and opponent to this bill.

**Jim Tutweiler, Montana Chamber of Commerce,** said they opposed this bill. The matter of policy charge and minimum premium can best be considered and addressed by the State Fund itself.

**W. James Kembel, Liberty Northwest Insurance Corporation,** said this legislation expands the powers and authority of the State Fund. They are concerned that the bill will negatively affect the establishment and maintenance of a healthy, competitive insurance market for Montana. If the State Fund is subsidized and given greater powers, the result is the creation of more government control which is contrary to the desire for less government. **EXHIBIT 9**

**Russell Hill, Montana Trial Lawyers Association,** said they opposed the bill in the expanding of authority or the influence of the State Fund.

**Questions From Committee Members and Responses:**

**REP. LARSON** asked how much the State Fund could generate from offering its services to other public agencies and what portion of the budget would that represent. **Mr. Hill** said there has been no estimate and the only discussion in this area is with discussions with the Department of Labor which are just general discussions. The interest in having this flexibility is to allow this organization to be able to maintain its posture in this marketplace insofar as the market is going. There is a love/hate relationship with the State Fund. **REP. LARSON** questioned the lumping of small employers. **Mr. Hill** said there are small employers who have good safety records and pay their premiums on time and, in turn, qualify for a discounted insurance program. This provision of a policy fee would not change that. If the Board was left with the only option of using a surcharge to deal with this, they would be the victims. That is one of the Fund's objections to this bill.

**REP. MILLS** questioned the total premium. **Mr. Hill** said that is dependent on what the payroll classification is.

**REP. ELLIS** said the people who incur these costs should pay for them. The bookkeeping of these clerical people is the very cost Workers' Compensation is trying to recover. **Mr. Johnson** said no, because the cost now is being covered by the \$194 minimum premium. That is paying for the paperwork and cost of the administration.

**CHAIRMAN SIMON** said if an employer does not pay the premium and they are cancelled and then an accident occurs, isn't that employer first liable to pay. **Chuck Hunter, Department of Labor and Industry** said the injured worker can file a claim with the Department of Labor with the Uninsured Employers Fund and the Department would pay the benefits directly from the UEF fund. They would then seek to recover what has been paid out from that employer but also have an independent cause of action. They could take that employer to court under the tort liability as well. **Mr. Hill** said there is no question about the fact that the State Fund still has a log jam. There have been a number of people added to address that and are in the process of implementing new systems to try to address the issue. There is no plan for the sale of services if this bill passes. The management of the State Fund believes the ability to make dramatic changes is a very short horizon and this provision will give them flexibility to be able to address what the future of Workers' Compensation is.

**REP. PAVLOVICH** asked for the opinion of the small business insurers. **Mr. Driscoll** said the premium payers of less than \$1000 lost \$2 million in the last year. In the last fiscal year, the State Fund increased their reserves to \$31 million. If the State Fund would stop losing money on the small payers, then maybe they would make money and get to their goal.

#### **TAPE 2, SIDE B**

**CHAIRMAN SIMON** said it had been suggested that clear legislation is in the area for the State Fund. The advice to strike some language from this bill on line 22, page 2 through line 27. That would then give the Board of Directors the authority to establish a policy which would be in the best interest of the Fund and the businesses of Montana. **Nancy Butler, State Fund** said **SEN. HART'S** concerns were in conflict with the policy charge of a minimum premium and there is no conflict anywhere else. **CHAIRMAN SIMON** said in reading this section, in order to grant the Board of Directors the authority to either use a minimum premium charge or a policy fee, whichever might be in the best interest of the State Fund, and of the interest of the business people of Montana, all the language must be struck starting on line 2 through line 27. **Ms. Butler** agreed.

#### **Closing by Sponsor:**

The sponsor closed.

EXECUTIVE ACTION ON SB 151Discussion:

REP. SIMON said a letter from the Department of Labor and Industry was received regarding the question of a sole owner who has no employees is a workforce of one. The sole owner would therefore be able to obtain the temporary workers from the temporary service contractor to meet seasonal workloads or temporary needs. The analysis from the State Fund would be the only worker from the majority of a year may hire temporary workers for a finite period. EXHIBIT 10

Motion/Vote: REP. ELLIS MOVED SB 151 BE CONCURRED IN. Motion carried 18-0.

EXECUTIVE ACTION ON HB 554

Motion: REP. OHS MOVED SB 554 DO PASS. REP. OHS MOVED THE OHS AMENDMENTS.

Vote: Motion carried to adopt the Ohs amendment 14-4 with REPS. LARSON, PAVLOVICH, FORBES and KEENAN voting no.

Motion: REP. ELLIS MOVED THE #1 ELLIS AMENDMENTS.

Motion: REP. PAVLOVICH MOVED THE SUBSTITUTE PAVLOVICH AMENDMENT.

Discussion:

REP. MILLS said he opposed the amendment.

REP. ELLIS said he opposed the amendment.

REP. OHS said he opposed the amendment.

REP. COCCHIARELLA said she was supportive of this bill in concept because these breweries should have a way to have people taste their product and then go out in the market and buy it.

CHAIRMAN SIMON said it appears if this type of restriction is put on the bill the bill should be killed.

Vote: A roll call vote was taken which failed 7-11 with REPS. PAVLOVICH, COCCHIARELLA, FORBES, HERRON, KEENAN, LARSON and TUSS voting yes.

Vote: A roll call vote was taken to adopt the original Ellis amendments which carried 11-7 with REPS. SIMON, PAVLOVICH, EWER, KEENAN, LARSON, MARSHALL and TUSS voting no.

Motion: REP. ELLIS MOVED HB 554 DO PASS AS AMENDED.

Motion/Vote: REP. COCCHIARELLA MOVED THE COCCHIARELLA AMENDMENT. Motion to adopt the Cocchiarella amendment failed 7-11 with REPS. PAVLOVICH, COCCHIARELLA, FORBES, KEENAN, LARSON, SLITER and TUSS voting yes.

Motion/Vote: REP. PAVLOVICH MOVED THE #2 PAVLOVICH AMENDMENT. Motion to adopt the #2 Pavlovich amendment passed 12-6 with REPS. ELLIS, OHS, BARNETT, ELLINGSON, SIMON and MARSHALL voting no.

Motion/Vote: REP. KEENAN MOVED HB 554 BE TABLED. A roll call vote was taken which failed 8-10 with REPS. MILLS, PAVLOVICH, COCCHIARELLA, FORBES, HERRON, KEENAN, LARSON and TUSS voting yes.

Vote: A roll call vote was taken TO BE CONCURRED IN AS AMENDED which carried 10-8 with REPS. MILLS, PAVLOVICH, FORBES, HERRON, KEENAN, LARSON, SLITER and TUSS voting no.

EXECUTIVE ACTION ON SB 335

Motion/Vote: REP. FORBES MOVED SB 335 BE CONCURRED IN. Motion carried 13-5 with REPS. TUSS, ELLINGSON, PAVLOVICH, LARSON and KEENAN voting no.

EXECUTIVE ACTION ON SB 233

Motion/Vote: REP. ELLIS MOVED SB 233 BE CONCURRED IN. Motion carried 18-0.

EXECUTIVE ACTION ON SB 329


Motion/Vote: REP. MCKEE MOVED SB 329 BE CONCURRED IN. Motion carried 18-0.

ADJOURNMENT

Adjournment: 11:45 A.M.



BRUCE T. SIMON, Chairman



ALBERTA STRACHAN, Secretary

BTS/ajs

# HOUSE OF REPRESENTATIVES

## Business and Labor

ROLL CALL

DATE 3-8-95

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

March 8, 1995

Page 1 of 2

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 554** (first reading copy -- white) **do pass as amended.**

Signed:   
Bruce Simon, Chair

### And, that such amendments read:

1. Page 1, line 18.

Following: "who"

Strike: "manufactures"

Insert: "has the capacity to manufacture"

Following: "but"

Insert: "does"

Following: "not",

Insert: "manufacture"

2. Page 1, line 20.

Following: "sales of"

Insert: "that brewer's"

3. Page 1, line 23.

Following: "code;"

Strike: "or"

4. Page 1, line 24.

Following: "brewer"

Insert: "; or (d) the licensee does not, within the third year subsequent to obtaining a license, manufacture at least 300 barrels of beer in that year"

Committee Vote:

Yes 10, No 8.

541338SC.Hbk



5. Page 1, line 27.

Following: "(3)"

Insert: "(a)"

6. Page 1, line 28.

Following: "16-4-209."

Insert: "(b) A licensee who is also licensed under the provisions of 16-4-105, 16-4-201, 16-4-202, 16-4-208, or 16-4-209 is exempt from the provision of subsection (1) that requires an applicant for a brewer's license to have the capacity to produce at least 300 barrels of beer a year and from the provision of subsection (1)(d), except that the licensee is required to manufacture at least 50 barrels of beer within the first year of obtaining a brewer's license. (c)"

7. Page 2, line 6.

Strike: "11"

Insert: "9"

8. Page 2, line 7.

Following: "consumption"

Insert: "only if the beverages were manufactured in the brewery licensed under this section"

9. Page 2, line 8.

Following: "consumption"

Insert: "on or"

10. Page 2, line 14.

Following: "subsection"

Strike: "(3)"

Insert: "(4)"

11. Page 3, line 7.

Strike: "16-6-301 or"

-END-

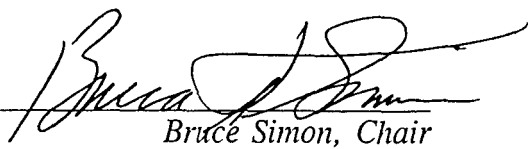


## HOUSE STANDING COMMITTEE REPORT

March 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 335** (third reading copy -- blue) be concurred in.

Signed:   
Bruce Simon, Chair

Carried by: Rep. Forbes

Committee Vote:  
Yes 13, No 5

541334SC.Hbk

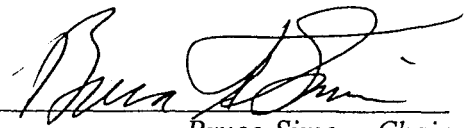


## HOUSE STANDING COMMITTEE REPORT

March 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 233** (third reading copy -- blue) be concurred in.

Signed:   
Bruce Simon, Chair

Carried by: Rep. Mercer

Committee Vote:  
Yes 18, No 0.

541337SC.Hbk




## HOUSE STANDING COMMITTEE REPORT

March 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 329** (third reading copy -- blue) be concurred in.

Signed:   
Bruce Simon, Chair

Carried by: Rep. Larson

Committee Vote:  
Yes B, No Q.

541336SC.Hbk

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 3-8-94 BILL NO. HB 554 NUMBER \_\_\_\_\_

MOTION: \_\_\_\_\_

*To pass as amend*

*Motion carries*

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		✓

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE \_\_\_\_\_ BILL NO. AB554 NUMBER \_\_\_\_\_

MOTION: TABLE

FAILED

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	✓	

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 3-8-95 BILL NO. HB554 NUMBER \_\_\_\_\_

MOTION: \_\_\_\_\_

*Motion fails*  
*Pavlovich amendment*

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	✓	

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 3-8-95 BILL NO. HB554 NUMBER \_\_\_\_\_

MOTION: Cocchiarella amendment

Motion fails

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	✓	



HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 3-8-95 BILL NO. HB 554 NUMBER \_\_\_\_\_

MOTION: \_\_\_\_\_

Ellis amendment  
Motion carries

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		✓

*The voice of retailing  
in Montana!*



EXHIBIT 1  
DATE 3-8-95  
HB SB 335

---

318 N. Last Chance Gulch ♦ Suite 2A ♦ Helena, MT 59601 ♦ 406-442-3388 ♦ Fax (406) 442-2633 ♦ 1-800-388-0236

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## MONTANA SENATE BILL NO. 335

### DUPLICATE NOTICES? WHY?

Section 2 of Senate Bill No. 335 would amend the section of the Montana Retail Installment Sales Act (RISA) which deals with the notices which a retail credit grantor must send to its cardholders when it changes the terms of its retail charge account agreements. (Such notices may be required when the retailer changes minimum payment requirements, adjusts fees for late payments or returned checks, etc.).

Montana is now one of only two states which require that a notification of a change in the terms of a credit account which will apply only to future purchases on the account must be given to the cardholder (described as "the buyer" in the RISA) during two billing cycles before its effective date. Since such notices must be given to all cardholders - whether or not they have outstanding balances and would otherwise be receiving a bill during the billing cycle - the costs incurred by a creditor in sending change of terms notices are not inconsiderable. Doubling those costs by requiring that the notice be sent twice to each of the retailer's cardholders in the state should not be necessary - especially when the change will be applied only in the future - unless the Legislature believes that for some reason Montana residents require more protection by the state than those of almost all other states.

Senate Bill No. 335 would amend the law by providing that the credit grantor shall give notice of the change of terms during the billing cycle prior to the effective date of the change. Under Senate Bill No. 335 a customer who objects to a change in the terms of the credit account would have the simple expedient of paying off the account under its existing terms.

## Talking Points

# Business Relationships in Real Estate Transactions

The current law governing real estate licensee relationships with buyers and sellers of property is antiquated. Furthermore, the current law is the result of a scattering of many small amendments to the status over a period of many years. For example, Montana law does not clearly allow a licensee to represent a buyer in a real estate transaction; the licensee working with the buyer technically represents the seller unless a licensee/buyer written agreement is actually signed.

The real estate industry proposes legislation that will:

EXHIBIT 2  
DATE 3-8-95  
HB SB224

- (1) Modernize the law to meet many of the current practices.
- (2) Clarify for consumers what a licensee can and cannot do on behalf of a buyer or seller.
- (3) Require that a licensee fully disclose to each consumer the kinds of representation that can be offered to a consumer and fully disclose to the consumer what each representation entails.
- (4) Places obligations on a licensee even if the consumer chooses not to sign a written agreement.

The legislation clarifies in the law the types of business relationship that consumers generally ask of licensee. **IMPORTANTLY**, the bill will require that the licensee fully disclose to the consumer the possible relationships to the extent that the consumer understands the relationships and makes an enlightened choice.

- (1) The classic licensee/seller agreement is, of course, where the licensee works for the seller. The licensee will have to disclose the relationship to prospective buyers.
- (2) Many buyers want licensees to represent them in a transaction. The bill clearly established the perimeters in which licensee can represent a buyer in a transaction. The licensee will have to disclose the relationship to prospective sellers.
- (3) At times a real estate office will contract to sell a property and represent the buyer (rather than one office listing the property on behalf of the seller and a second office showing the property to buyers). The bill will permit the office to appoint a licensee to represent the interests of the buyer and a licensee to represent the interests of the seller, thus assuring that both buyers and sellers have a professional assist them with their concerns in the transaction. This dual business relationship must be disclosed and agreed to by the buyer or seller.
- (4) The bill assures that an unsuspecting consumer/seller is not liable for false statements made by a licensee and visa-versa.
- (5) Many consumers do not want a formal or written business relationship with a licensee. The bill allows for such a relationship and clearly holds the licensee responsible to treat all parties to the transaction in an honest manner.

8.58.416

COMMERCE

8.58.416 LOAN OF THE BOARD'S LIBRARY MATERIALS is hereby repealed. (History: Sec. 37-51-203, MCA; IMP, Sec. 37-51-203, MCA, Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., C. 274, L. 1981, Eff. 7/1/81; REP, 1981 MAR P. 1613, Eff. 11/26/81.)

8.58.417 FRANCHISING REQUIREMENTS is hereby repealed. (History: Sec. 37-51-203, MCA; IMP, Sec. 76-4-1201, MCA; NEW, 1978 MAR P. 1632, Eff. 7/1/78; AMD, 1979 MAR P. 848, Eff. 8/17/79; TRANS, from Dept. of Prof. & Occup. Lic., C. 274, L. 1981, Eff. 7/1/81; AMD, 1981 MAR P. 1613, Eff. 11/26/81; REP, 1990 MAR P. 1156, Eff. 6/15/90.)

8.58.418 INVESTIGATIONS COMMITTEE (1) For the purposes of investigating the actions of a licensee or license applicant, the board may appoint a fact finding committee to assist in determining whether there is probable cause to believe that a statute or rule has been violated by a licensee, or that an application should be denied.

(2) The function of this committee is to analyze licensee's actions even when no complaint has been filed and further to assist the public in determining the validity of a complaint. The committee shall make recommendations to the board relative to cause for a formal hearing. (History: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-322, MCA, Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., C. 274, L. 1981, Eff. 7/1/81; AMD, 1990 MAR P. 1156, Eff. 6/15/90.)

8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL

PROVISIONS - UNPROFESSIONAL CONDUCT (1) In any transaction in which a licensee is involved as a licensee or as a party, has held himself or herself out as a licensee, or in which any party has reasonably relied on a licensee's status as a licensee, violation of any statute or rule administered by the board may be considered by the board in determining whether or not the licensee:

(a) has violated section 37-51-321 (19), MCA, by "demonstrating his unworthiness or incompetency to act as a broker or salesman"; and/or  
(b) has violated section 37-51-321(7), MCA, by "intentionally violating a rule adopted by the board in the interest of the public and in conformity with this act".

(2) If the board determines that a licensee has committed an act in such fashion that a statute or rules administered by the board has been violated, such act shall be deemed an act against the interest of the public for which the board may reprimand, suspend, or revoke the license held by the licensee or take any other action permitted by law.

(3) In addition to all other provisions contained in the statutes and rules administered by the board, particularly

8-1610

6/30/89

ADMINISTRATIVE RULES OF MONTANA

REALTY REGULATION

8.58.419

section 37-51-321, MCA, (statutory grounds for license discipline) failure to comply with any of the following shall constitute an act against the interest of the public:

(a) Licensees may act as the agent of more than one principal in the same transaction if the licensee reasonably believes that the duties owed to one principal will not directly conflict with the duties owed to the other in such fashion that adverse consequences are likely to result, and unless such principal consents after full disclosure by the licensee.

(b) Licensees shall disclose in writing to parties to the transaction the existence and nature of the existing agency relationship no later than when an offer is prepared in a transaction.

(c) Licensees shall maintain a level of knowledge customary for licensees of this state, including laws and rules administered by the board, and shall not violate laws and rules affecting any transaction in which he or she acts.

(d) Licensees shall not engage in activities that constitute the practice of law.

(e) Licensees shall recommend that legal counsel be obtained when the interests of any party require it.

(f) Licensees shall recommend that the merchantability of title to property be determined when the interests of any party reasonably require it.

(g) Licensees, prior to engaging the services of any attorney, title company, appraiser, escrow agent, insurance agent, or other like person or entity, on behalf of a principal, third party, or other person, shall inform the person obligated to pay for the services and obtain consent from that person;

(h) Licensees, in engaging or recommending the services of an attorney, title company, appraiser, escrow agent, or other like person or entity, on behalf of a principal third party, or other person, shall disclose any family relationship, financial relationship and/or financial interest that the licensee or real estate agency with which the licensee is associated may have in that person or entity being engaged or recommended.

(i) Licensees shall endeavor to ascertain all pertinent facts concerning every property in any transaction in which the licensee acts, so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.

(j) Licensees who have listed property shall make a prompt, reasonable, visual inspection of any property listed.  
(k) Licensees, when entering into a listing agreement shall make a prompt effort to verify that the principal listing the property is the owner or is authorized by the owner to list the property. The licensee may, but is not required to, conduct a title search or obtain a title report at the initial listing.

ADMINISTRATIVE RULES OF MONTANA

9/30/93

8-1611

EXHIBIT

DATE 3-8-95

BB SB 224

## COMMERCE

8.58.419

- (l) Licensees shall disclose to principals and third parties all material facts concerning the property of which the licensee has actual knowledge regarding the property, provided that the fact that an occupant of the property has had AIDS or other communicable disease, or that the property was the site of a suicide, homicide, or other felony shall not be considered a material fact.
- (m) The licensee or agency in advertising shall be especially careful to present a true picture and shall not advertise without disclosing his or her name and identity as a real estate licensee or real estate agency. Such disclosure shall be required whenever the licensee or agency negotiates or attempts to negotiate the listing, sale, purchase or exchange of real estate which belongs to the licensee, the agency, or the principal.
- (n) The licensee or agency in advertising, when under a franchise agreement, shall incorporate his or her own name or agency name, other than that of the franchise, and state that the business is independently owned and operated.
- (o) Licensees shall act to preserve and maintain that good repute, honesty, trustworthiness, and competency to transact business in a manner to safeguard the interests of the public as is required to obtain a license.
- (p) Licensees shall not falsify documents, place signatures on documents without authority, or commit any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft or any other like act.
- (q) Licensees shall not knowingly enter, or willfully continue in, any transaction, either as a principal or agent, wherein a purpose or objective of the licensee or his principal is to commit any of the following acts: Use, or conspire with others to obtain, inflated property appraisals; influence others to purchase property for another person in order to circumvent credit and down payment requirements or other limitations imposed by lenders, the department of housing and urban development or the veterans administration; file an application to refinance a loan for the purpose of drawing out the equity, when prohibited by lenders, the department of HUD or VA regulations; or acquire as an investor, or personally, properties subject to a loan guaranteed or insured by the department of HUD, collect rents thereon, while purposely failing to make mortgage payments on the property.
- (r) Licensees shall not enter a transaction or agreement with the intent not to perform.
- (s) Licensees shall make reasonable efforts to perform all obligations arising from any agreement entered into.
- (t) Licensees shall not represent to any lender, guaranteeing agency or other interested party, either orally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

8-1612

6/30/90

ADMINISTRATIVE RULES OF MONTANA

(u) Licensees shall make a reasonable attempt to get all agreements, financial obligations and recommendations regarding all real estate transactions in writing.

(v) Licensees shall not undertake to make formal real estate appraisals that are outside the scope of the licensee's experience.

(w) Licensees cooperating with the exclusive listing licensee shall not obtain the cooperation of a subsequent licensee without the written consent of the listing licensee.

(x) Licensees shall not refuse, because of sex, race, creed, religion, color, age, familial status, physical or mental handicap, or national origin, to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers, except when a distinction is based on reasonable grounds.

(y) Licensee shall submit all written offers to a principal when such offers are received prior to the listing agreement having been terminated or the transaction based on that listing having been closed, whichever occurs first. However, continuing to present offers after an offer has been accepted shall not be deemed to be a violation of 37-51-321(10), MCA.

(z) Licensees shall not disclose the name of a person making an offer or the amount or terms of an offer to other persons interested in making offers, except that this shall not prohibit disclosing the existence of an offer.

(aa) The licensee shall inform any seller at the time an offer is presented that he will be expected to pay certain closing costs such as discount points and the approximate amount of said costs.

(ab) Licensees shall not lend a broker's license to a salesman, or permit a salesman to operate as a broker.

(ac) Salespersons shall not act as brokers.

(ad) Licensees shall disclose to the broker-owner, responsible broker, business partner or any other responsible business associate any and all additional wages, tips, bonuses or gifts which have been or are to be recovered by the licensee which are not considered to be real estate commission(s).

(ae) A broker shall not sign the application of a salesperson unless the broker and salesperson shall be in lawful association, through employment contract or otherwise, and the broker will supervise the salesperson.

(af) A broker shall supervise salespersons and be responsible for their conduct.

(4) Licensees shall not knowingly submit false information to the board.

(5) The revocation or suspension or other disciplinary treatment of any other professional or occupational license or privilege held by the licensee in this state or another state, whether as an attorney, salesperson, broker, appraiser, or

ADMINISTRATIVE RULES OF MONTANA

6/30/90

8-1613

8.58.420

COMMERCE

similar occupation or profession, shall be grounds for license discipline in this state, if the board, after appropriate notice and hearing, determines that the substantive grounds for that disciplinary treatment demonstrates the licensee's unworthiness or incompetency to act as a broker or salesman. (History: Sec. 37-1-131, 37-1-136, 37-51-203, 37-51-321, MCA; IMP, Sec. 37-51-201, 37-51-202, 37-51-321, MCA, Eff. 12/31/72; NEW, 1978 MAR p. 203, Eff. 2/24/78; AMD, 1979 MAR p. 1548, Eff. 12/14/79; TRANS, from Dept. of Prof. & Occup. Lic., C. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 105, Eff. 1/31/86; AMD, 1987 MAR p. 588, Eff. 5/15/87; AMD, 1990 MAR p. 1156, Eff. 6/15/90; AMD, 1993 MAR p. 1909, Eff. 8/13/93.)

8.58.420 REINSTATEMENT (1) Unless a specific period of suspension or revocation is set out in any final order of the board, a suspension shall be for one year and a revocation shall be permanent.

(2) As a condition to the reinstatement of a revoked or suspended license, in addition to any other conditions allowed by law, the board may require the applicant to take and pass a qualifying examination, or course, or both as determined by the board. (History: Sec. 37-1-131, 37-1-136, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-203, 37-51-321, MCA, Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., C. 274, L. 1981, Eff. 7/1/81; AMD, 1990 MAR p. 1156, Eff. 6/15/90.)

8.58.421 SEVERABILITY (1) If any section, subsection, sentence, clause, or phrase of these rules be for any reason held to be invalid, such holding shall not affect the validity of the remaining portion of said rules. The Montana board of realty regulation hereby declares that it would have passed and adopted these rules in each section, subsection, sentence, clause, or phrase thereof, separately and irrespective of the fact that any one or more of them be held invalid. (History: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-203, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., C. 274, L. 1981, Eff. 7/1/81; AMD, 1990 MAR p. 1156, Eff. 6/15/90.)

8.58.422 RECIPROCITY (1) Subject to section 37-51-306(2), MCA, the board may enter into an agreement with any other state establishing the conditions through which residents of the other state may obtain a non-resident license in this state, and establishing terms of non-resident practice in this state, if the other state grants Montana resident licensees the same privileges. (History: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-302, 37-51-306, MCA; NEW, 1990 MAR p. 1156, Eff. 6/15/90.)

8.58.423 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) At any time that an associate's association with a broker is terminated, the license and pocket card of the

Amendments to Senate Bill No. 374

TECHNICAL AMENDMENTS TO CORRECT ENGROSSING ERROR

Third Reading Copy

Requested by Senator Harp  
For the House Committee on Business and Labor

Prepared by Eddy McClure  
March 2, 1995

1. Page 3, lines 17 and 18.

Following: "organization" on line 17

Strike: remainder of line 17 through "PART 4," on line 18

Insert: ", as provided in Title 33, chapter 16, part 10,"

## Senate Bill 374

EXHIBIT 5  
DATE 3-8-95  
#B SB374

### *Section 1 & 2*

- The State Fund is required to insure any employer in Montana, and may also cancel coverage for failure to pay premiums. This amendment clarifies that if default of payment remains outstanding, the State Fund may refuse coverage.

### *Section 3*

- **Employers Liability Insurance** is also known as Plan B of a standard workers' compensation insurance policy and the amendment gives the State Fund authority to write this coverage. Employers Liability belongs together with standard coverage offered by State Fund. Coverage is generally for legal defense for employers when sued by an employee for an injury in the course and scope of the employment, yet not covered under the Workers' Compensation Act. This is a common policy option provided by workers' compensation insurers and is important for the State Fund to offer in order to furnish good customer service. State Fund had the authority to provide Plan B coverage until 1993. This option is not general liability, auto, health, disability or any other form of insurance that is unrelated to workers' compensation insurance.
- **Selling Services-** Senate Bill 374 as passed by the Senate was amended to limit the State Fund to providing services to public entities only. The amendment would allow the State Fund to utilize its investment and development of key services such as fraud investigation, safety and loss prevention, managed care networks, and benefit information system and claims management expertise. Given authority to provide these services upon request, allows the State Fund to provide a level of customer service that is comparable to other insurers and has the potential to fill a need for these services.
  - An example would be the State Fund assuming responsibility for managing the Uninsured employers fund, including claims and penalties.
  - Experimenting with comprehensive coverage. Forming a partnership with a provider wishing to provide 24 hour coverage.
- **Rating Organization change** allows the State Fund the option of belonging to a licensed advisory or a rating organization, yet still be required to provide data to Montana's designated advisory organization. Currently, only one rating organization, NCCI, exists for all insurers. The State Fund is still required to belong to either an advisory or rating organization.
- **Limit the distribution of employers modification factor and other confidential information unless** permission is obtained from the employer, or the use is for insurance purposes.

### *Section 4*

- **Cancellation of coverage** changed to 20 days rather than 30 days. This amendment is consistent with private insurers and allows the State Fund to reduce its risk exposure.



## Policy Fee

A policy charge is in lieu of a minimum premium (currently \$194). A policy charge assessed annually to all policyholders will absorb a portion of the loss experience of small policyholders. The State Fund Board of Directors has approved, contingent upon passage of SB 374, for FY96 a policy charge of \$80 and FY97 a policy charge of \$90.

**Policy Charge is an attempt to close the gap between revenues and costs for our policyholders who pay less than \$1000.00 in annual premium.**

**This groups represents about 48% of our customers and 2.9% of our premiums.**

### Last 5 Years Experience (Customers with \$1000.00 or less in annual premium)

<u>5yr Premium</u>	<u>5yr Claims Costs</u>	<u>5yr Admin.Costs</u>	<u>5yr Net Loss</u>	<u>Annual Loss</u>
\$26,471,080	\$34,548,573	\$2,076,045	\$10,153,538	\$2,030,708

### Four Year Projected Impact on Group

	<u>FY96</u>	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>
Policy fee	\$1,162,720	\$1,308,062	\$1,453,400	\$1,598,740
Rate Reduction	<70,589>	<70,598>	<70,589>	<70,598>
Minimum Premium	<230,394>	<230,394>	<230,394>	<230,394>
<b>IMPACT</b>	<b>\$861,737</b>	<b>\$1,006,884</b>	<b>\$1,152,417</b>	<b>\$1,297,750</b>

### ALTERNATIVES:

- ▶ **Do Nothing-** Allow larger employers to continue subsidizing this group.
- ▶ **Increase Minimum Premium-** Currently \$194 to approximately \$570.00
- ▶ **Surcharge premium rates on this small employer group about 38.4%.** The effect of which is basically an assigned risk pool.
- ▶ **Institute a policy charge**

**This measure does not close the gap in one shot. Rather, efforts would be made to spread it over a long period of time. Increased efforts include:**

- Piloting increased audits on key industries**
- Fraud detection**
- Improving Loss Experience and Safety Consultations**

EXHIBIT 5  
DATE 3-8-95  
SB 374

NCCI private Insurance Companies

States Average Annual Salary divided by 100

Minimum premium equals:

Expense Constant (\$160.00) Plus \$18,500 divided by 100 = \$185 times rate for class code

NCCI determines minimum premium :

Expense constant (160.00) plus risk premium-

Risk premium is 18,500 (average wage)

divided by 100 times rate for class code - subject to a maximum of \$590.00

Example:

Agriculture:

Expense constant	160.00
Risk Premium Factor	
185 x 17.43 = 3225 > exceeds therefore	<u>\$590.00</u>
	\$790.00 premium

Idaho State Fund uses this formula.



EXHIBIT 6  
DATE 3-8-95  
~~#B~~ SB 374

Truss Division  
406/449-5553

## **SB 374**

### **REVISE CERTAIN LAWS RELATING TO THE STATE FUND**

Recommend:

### **Pass With Amendment**

Mr. Chairman, Members of the Committee:

I am Harlee Thompson manager of Intermountain Truss. I serve on the State and local board of directors for the Montana Building Industry Association (MBIA) and the Coalition for Work Comp System Improvement (CWCSI).

I appear today as a proponent of SB 374 with the exception of the part allowing the State Fund to contract with public entities to sell services. This portion of the bill will allow the State Fund to sell its services to public entities. In my dealings with the State Fund the one comment that repeatedly came up was "We only have "X" amount of people to service 27,000 policy holders. We are over worked and understaffed to handle this many accounts." In my personal association with the State Fund in the past I have had claims that were not handled properly due to this condition.

There are private companies that provide this type of service and there is no reason for the State Fund to be going into competition with them. While I have to commend the Board of Directors and the management of the State Fund for the bold steps they have taken to improve the conditions to allow their people to better service their policy holders I do not feel it is time to start heaping more work on the already over worked employees by going out and soliciting more work than the current policy holders require.

If you can amend this bill to eliminate this area of concern then MBIA and CWCSI can fully support SB 374.

Thank you



EXHIBIT 7  
DATE 3-8-95  
# SB374

# MONTANA

February 1995

TO: NFIB/Montana Members  
FROM: Riley Johnson, State Director  
RE: Special State Ballot

State lawmakers are considering two issues of importance to small business and we do not have a voted position on them. Please take a moment to vote your preference on these two issues. When finished please fax or mail your response to NFIB/Montana's legislative office. The fax number is 406-449-4218. The address is 491 South Park Avenue, Helena 59601.

### Workers' Compensation

1. Should lawmakers pass legislation that replaces the minimum annual premium for workers' compensation insurance with a policy fee?

Yes 24%      No 66%      Undecided 10%

Background: The state's Workers' Compensation Fund is proposing to drop the minimum annual premium of \$194. A policy fee paid by all 26,000 businesses covered under workers' compensation will take its place. The fee is in addition to the regular annual premium.

Statistics show that smaller businesses have the highest loss ratio (claims paid out verses premium paid) among policyholders of the state fund. Last year, about 4,000 policyholders paid less than \$1,000 in annual premium that accounted for \$1.2 million in premiums to the fund. The fund paid out more than \$3.5 million in claims filed by these policyholders. The difference was subsidized by the remainder of the Fund's policyholders.

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Estimates are that nearly half of those businesses who pay the minimum premium of \$194 would end up paying more than the current \$194. For example, if a business had a workers' compensation annual premium of less than \$100, the premium plus fee would be less than \$194. However, if a business had an annual workers' compensation premium higher than \$100, it would pay more than it now pays.

Proponents of the policy fee say the state Fund is going to address this deficit one way or another. The cost to small employers could be much higher. The fund has the power to raise the minimum premium to any level it chooses. The average minimum premium in surrounding states, whether it is state or private insurance, is between \$600 and \$750. Proponents believe that without the policy fee, the Fund will increase the minimum annual premium to at least \$500 over the next three years. Proponents argue that it will be harder for the State Fund to raise the fee on all 26,000 policyholders than to raise the minimum premium on a much smaller number of businesses. Smaller businesses would have leverage to keep the policy fee reasonable.

Opponents believe the fee is unfair. Why should all the larger policyholders have to pay an additional \$95 a year to subsidize the high losses of smaller businesses in Montana? They say the minimum premium, by law, covers only the administrative costs of a workers' compensation policy and does nothing to cover the risk. Opponents argue that those businesses causing the deficit should pay their own way and the minimum premium should be raised to cover the deficit. That's what other states have done. It's only sound business to do so, they say.

**TESTIMONY**

before

**BUSINESS & INDUSTRY COMMITTEE  
MONTANA HOUSE OF REPRESENTATIVES**

by

J. Riley Johnson  
National Federation of Independent Business

March 8, 1995

Mr. Chairman and members of the Committee:

My name is Riley Johnson. I rise before you this morning on behalf of the National Federation of Independent Business (NFIB), Montana Office. NFIB/Montana is the largest small business advocacy organization in Montana with over 8,900 certified members. Our average member has 3 to 4 employees and grosses just over \$150,000 annually. Most certainly, it is the members of NFIB/Montana who most represent the small employers with whom you are dealing on SB 374 because a major portion of this bill centers on eliminating the current minimum premium for workers' compensation and substituting a policy fee. The policy holders at which this is directed are those paying less than \$1,000 annually in workers' compensation premium. That's the typical NFIB/Montana member.

As most of you know, NFIB sets its policy positions by balloting its members. We do not set policy by an select board or legislative committee. This "ballot position" policy is written right into our charter.

This issue of a policy fee verses minimum premium was put to our membership during the past two weeks in a special ballot. It was mailed to every other member in Montana. That means we sent out over 4,400 ballots. The results you have in your hands:

While the policy fee idea of the State Fund appears fair to the smaller employers by spreading the small-policy holders losses over 26,000 policy holders, my members say "no" by better than a two-thirds vote. These, ladies and gentlemen of the committee, are the very people who are going to pay this new policy fee. They say "no" because they believe that those who are creating the deficit should pay more, and they should not be subsidized by those paying higher premiums. Here are four actual comments from the NFIB/Montana special ballot.

(Read Letters)

The State Fund says it will make the new policy fee revenue neutral. But neutral to whom? If, as it says, the rates are lowered by 1 1/2 percent across the board it would take a \$5,000 annual premium base to even begin to break even with an \$80 policy fee. Most of small businesses in Montana don't have this much premium. \$200, \$500, \$1,000, \$3,000 are more like the policy premiums paid by my members and 1 1/2 percent off these premium doesn't begin to be revenue neutral. In fact, an \$80 policy fee will be a major increase in workers' compensation costs to most of these small employers. So much for revenue neutral!

What then do the NFIB-Montana members want? They say let the folks not paying their way.....pay their way. They are saying that if the minimum premium needs to be raised to stop the subsidizing by the larger policy holders, then so be it. Raise the minimum premium.

The other alternative submitted by the State Fund, a surcharge on small policy owners, would be terrible. This could be as high as 40 percent and it would be devastating.

Understand that the small employers who are going to be hit the hardest by this small-policy holder deficit are saying raise the minimum premium like all but one state in the nation is doing, along with all private insurers, and put the burden on the folks that have created the largest share of this deficit....the minimum premium payers. Do what the small employers in your communities are asking you to do, don't tack on a policy fee that within two years will unquestionably be over \$100. Allow the State Fund to raise the minimum premium and cover the deficit. Retain the original language in the law and strike lines 26 and 27 on page 2.

A second problem with SB 374 that NFIB/Montana has is on page 3, line 1 where it asks that the State Fund be allowed to enter into third-party arrangements and sell services that today are being very adequately handled by tax-paying, private businesses. It doesn't matter that the bill has been amended to public agencies only. Who supplies services to public agencies? Private businesses do!

NFIB Montana asks that you vote a "do not pass" on SB 374.

# MONTANA ARCH & TRUSS

A Division of MQC, Inc.

304 Antelope Trail • Whitefish, Montana 59937



(406) 862-TRUS

FAX 862-8788

PLANT IS LOCATED AT  
"HAPPY VALLEY HOMESITES"  
BETWEEN WHITEFISH & KALISPELL  
ON U.S. 93

EXHIBIT 8  
DATE 3-8-95  
SB 374

2/27/95

Here's my feelings on these two issues:

Work Comp:

I agree with the opposition that those causing the deficit should pay their share. My Comp runs about \$15,000 per year and will oppose any measure that increases it.

[REDACTED]

James L. Moor

President

MAT Const. Inc.

## MANUFACTURERS OF:

Roof Trusses • Gothic Arch Buildings • Warehouses • Hay and Grain Storage  
Associate Member of Flathead Home Builders Association





**MONTANA**

February 1995

TO: NFIB/Montana Members  
FROM: Riley Johnson, State Director  
RE: Special State Ballot

State lawmakers are considering two issues of importance to small business and we do not have a voted position on them. Please take a moment to vote your preference on these two issues. When finished please fax or mail your response to NFIB/Montana's legislative office. The fax number is 406-449-4218. The address is 491 South Park Avenue, Helena 59601.

**Workers' Compensation**

1. Should lawmakers pass legislation that replaces the minimum annual premium for workers' compensation insurance with a policy fee?

Yes

No

Undecided

*RAISE The small employers prem. ch.*

Background: The state's Workers' Compensation Fund is proposing to drop the minimum annual premium of \$194. A policy fee paid by all 26,000 businesses covered under workers' compensation will take its place. The fee is in addition to the regular annual premium.

Statistics show that smaller businesses have the highest loss ratio (claims paid out verses premium paid) among policyholders of the state fund. Last year, about 4,000 policyholders paid less than \$1,000 in annual premium that accounted for \$1.2 million in premiums to the fund. The fund paid out more than \$3.5 million in claims filed by these policyholders. The difference was subsidized by the remainder of the Fund's policyholders.

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EXHIBIT 8

DATE 3-8-95

SB 374

February 28, 1995

NFIB  
491 South Park Avenue  
Helena, Montana 59601


Dear Sir:

Workers' Compensation

We feel that some Montana concerns should not be forced to subsidize other Montana concerns. In effect, this fee would do just that.

In such a system, conceivably, one company may be defraying legitimate cost of its competitor. Each company should pay its own way.

Sincerely,

  
W. E. Nyman  
President

WENdb

P.S. Our annual fee to Workman's Comp is \$100,000. In the last 18 month period, we have not experienced a claim. We have an excellent experience factor.



9550 DERBY DRIVE P.O. BOX 8328  
 MISSOULA, MONTANA 59807  
 PHONE (406) 728-5231  
 FAX (406) 728-1935

FACSIMILE TRANSMITTAL

TO: NFIB Montana  
 ATTENTION: Riley Johnson  
 FROM: Dick Crow  
 DATE: 2 Mar 95 Pages sent including cover: \_\_\_\_\_  
 RE: Feb 95 Special State Ballot

COMMENTS: I would vote no on the work comp policy fee. The minimum premium should be raised to cover the risk. I'm tired of paying my competitors work comp.

[REDACTED]  
[REDACTED]  
[REDACTED]

FIRE SPRINKLERS SAVE LIVES

DESIGN

INSTALLATION

SERVICE

TESTING



EXHIBIT 8  
DATE 3-8-95  
SB 374

# MONTANA

February 1995

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FROM: Riley Johnson, State Director  
RE: Special State Ballot

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## Workers' Compensation

1. Should lawmakers pass legislation that replaces the minimum annual premium for workers' compensation insurance with a policy fee?

Yes 24%      No 66%      Undecided 10%

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EXHIBIT 9  
DATE 3-8-95  
#B SB 374

**SENATE BILL 374  
TESTIMONY OF LIBERTY NORTHWEST INSURANCE  
CORPORATION**

**PRESENTED BY W. JAMES KEMBEL**

The proposed legislation expands the powers and authority of the State Fund. Liberty Northwest is concerned that the bill will negatively effect the establishment and maintenance of a healthy, competitive insurance market for Montana.

Great strides have been made to bring insurers into the state. Liberty Northwest believes this increased level of competition between these insurers in the private sector will improve the services provided Montana business and this will in turn lower claim costs for Montana employers and eliminate unnecessary disability for the workers of Montana. The expansion of powers of the State Fund could endanger these positive developments. In addition to the healthy benefits derived from increased competition, these private companies create jobs for the state and pay taxes.

If the State Fund is subsidized and given greater powers, the results is the creation of more government contrary to desires for less government.



STATE COMPENSATION INSURANCE FUND

5 SOUTH LAST CHANCE GULCH

P.O. BOX 4759

HELENA, MONTANA 59604-4759

Carl W. Swanson, President

Executive (406) 444-6518

General Information (406) 444-6500

March 7, 1995

Representative Bruce Simon  
Chairman, House Business and Labor  
Committee  
State Capitol  
Helena, MT 59620

EXHIBIT 10  
DATE 3-8-95  
HB SB 151

RE: SB 151

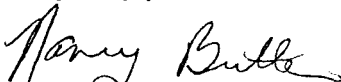
Dear Chairman Simon:

This letter is in response to a question posed the committee in the hearing on SB 151 regarding the definition of temporary service contractors and temporary workers. Specifically, the question was whether a sole proprietor such as a farmer/rancher could hire temporary employees during a two week period to move cattle and treat them for workers' compensation purposes as "temporary workers" under the language of SB 151 regarding "supplementing" the employers work force.

Of course, each case must be viewed by its individual facts. However, we believe that in the above scenario, the farmer/rancher who is otherwise the only worker for a majority of the year may hire temporary workers' for a finite (in this case two weeks) period to meet a short-term work demand caused by employee absences, skill shortages, seasonal workloads, and special assignments and projects. This analysis would be consistent with case law that compares the minimum number of employees the business would generally require to operate (baseline) to the additional employees sought to be treated as "temporary workers". We believe the most significant element of SB 151 is the requirement of time definiteness in the employment of a temporary worker.

We trust this answers your questions, but if you require anything further please let me know.

Very truly yours,

  
Nancy Butler  
General Counsel

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Business & Labor

DATE 3-8-95

BILL NO. SB 224 SPONSOR(S) \_\_\_\_\_

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
ZANE SULLIVAN 430 RYMAN MISSOULA	MT. ASSOC of Realtors	✓	
Ucky Hammond 1020 S. JOE W. Missoula	MT. ASSOC of Realtors	✓	
Charles Hamer 1010 GRAND AVE (B.7/1/95)	IL C L	✓	
Al Litter Billings	The Prudential (F. J. B. Co.) Real Estate	✓	
COLLIN BAKER	N. A. R.	✓	
Robert Leach Billings	Reynolds Billings	✓	
Maie Gaspman Missoula	Missoula Realtors	✓	
Howard Sumner 463 Carver	Billings Assoc. Realtors	✓	
Jixie Dalton Missoula	Missoula Co. Assoc. of Realtors	✓	
P. C. MUSGROVE Kalispell	FLATHEAD BOARD OF REALTORS	✓	
Judy Wahlberg, Missoula	Missoula County Assoc. of Realtors	✓	
MARILYN Y. HUBLITT	Missoula County Assoc of Realtors	✓	
Carl Prinzling 241 W Main St Msla	Missoula County Assoc of Realtors	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.



HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Business & Labor

DATE 3-8-95

BILL NO. SB 374 SPONSOR(S) \_\_\_\_\_

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
W. James Kambel	Liberty Northwest Ins. Corp.		✓
HAR Lee Thompson Helena	MBIA + CWCSI	✓	
Kent Kleinkopf	BCRC		✓
Rich Zuel	State Fund	✓	
Carl Swanson	State Fund	✓	
John R. BANDY	MT Claims Service		✓
Magulene Denmark	Am. Ins. Ass'n		✓
Riley Johnson	NFIB		✓
Don Allen	CWCSI	✓	
Russell B Hill	MT Trial lawyers		✓
Jerry Orscoli	mt State Building Trade Council	amand	
Jim Tutwiler	MT CHAMBER		✓ NEW AME
STAN KALEBYC	NCCF	✓	

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HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Business & Labor

DATE 3-8-95

BILL NO. SB 233 SPONSOR(S) \_\_\_\_\_

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Russell B Hill	MT Trial Lawyers		✓
Carl Swanson	State Funds		
<del>Tim Evans</del> Missoula	1		
Jacqueline Benmark	Am. Ins. Ass'n	✓	
Riley Johnson	NFIB	✓	
Jerry Ormell	mt State Building trades	✓	
HARLee Thompson Helena	CWCS I	✓	
Don Allen	CWCS II	✓	
STAN KALCZYC	MT MUNICIPAL INSURANCE MT SCHOOL GROUP INSURANCE	✓	

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HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Business & Labor

DATE 3-8-95

BILL NO. SB 329 SPONSOR(S) \_\_\_\_\_

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Bill Olson	AARP	✓	
FRANK COTE	St. Auditor	✓	
Ed Casalis	MSCA	✓	
LARRY AXEY	MT ASSOC OF LIFE UNDERWRITERS	✓	

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