

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 044

Call to Order: By CHAIRMAN RIC HOLDEN, on April 15, 1997, at
5:25 P.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. Ric Holden (R)
Sen. Bruce D. Crippen (R)
Sen. Mike Halligan (D)
Rep. Shiell Anderson (R)
Rep. Daniel W. McGee (R)
Rep. Jon Ellingson (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

{Tape: 1; Side: A; Approx. Time Count: 5:26 PM; Comments: N/A.}

HEARING ON SB 44

Discussion and Questions From Committee Members and Responses:

CHAIRMAN RIC HOLDEN opened the meeting. The Secretary noted the roll and was informed that SEN. CRIPPEN would arrive a bit late.

CHAIRMAN HOLDEN said the committee has before them today SB 44. The committee will deal with House amendments to SB 44 that were introduced by REP. JON ELLINGSON. The CHAIRMAN asked REP. ELLINGSON to clarify the intent of his amendments. He felt that there might be some misunderstanding concerning the language.

REP. ELLINGSON said the amendment tries to parallel the language on page 1, starting at line 27 of current law. It provides that a motor vehicle liability policy may also provide for other reasonable limitations, exclusions, or reductions of coverage that are designed to prevent duplicate payments for the same element of loss. What the amendment provides is simply to provide that a company may not charge duplicate premiums for coverage of the same element of loss. It seems only logical that if there are not going to be duplicate payments for the same element of loss then there should not be duplicate premiums for coverage of the same element of loss. As an example, in his own

automobile coverage, he has two automobiles and has two policies, same company, two uninsured motorists provisions, one on each policy, and in reading the policy and confirmed by his agent, he is covered by one policy regardless of which vehicle he is driving and that he is paying two premiums. Consequently, he has two policies under his interpretation of the policy. Now if the position of the insurance industry is that he should not be able to recover under each one of those policies, the purpose of the amendment is to state that he should not have to pay for two policies. To go to the specific language or wording of the amendment is that the company may not charge a duplicate premium for coverage of the same element of loss which he is now paying. He is paying two premiums on two policies. If he doesn't have two separate policies he shouldn't have to pay two premiums. That is the purpose of the House amendment.

REP. SHEILL ANDERSON asked REP. ELLINGSON what he would pay if he had two or three cars? REP. ELLINGSON replied that is the way his policy reads. REP. ANDERSON said so if REP. ELLINGSON has all three vehicles out on the road at one time, each one could be covered under his paying one time. REP. ELLINGSON said if they are all in accidents under his coverage. . . . and his agent asks him how many vehicles he has and how many people are drivers. . . . (the thought was not finished). He has three drivers in his family and two cars. So conceivably two vehicles could be out on the road at the same time. REP. ANDERSON said that he is paying the same as the person who has one vehicle. REP. ELLINGSON said he didn't know how the insurance companies assess the policies. He presumes the insurance companies find out how many vehicles and drivers and goes from there. He didn't know their rate structure. He felt it reasonable to include those factors in establishing the rate. But his policy as written right now shows that he only needs one policy. And if he is paying two premiums for two policies, he feels that he should get the benefit of it. REP. ANDERSON said that what insurers insured is risk. So if there are two vehicles there are two elements of risk. And the way he views it is that if a person has three cars and, under the amendment, you have insurance on each one of those cars and each is in an accident, and if you pay for all three of those, you actually would get nine recoveries rather than one on each car. He believes that is unfair and unfair to the person who owns one car because he will be paying for that additional risk imposed by the person with three vehicles. He believes that the amendment basically defeats the purpose of the bill which is to prevent the stacking of these policies. The only way to fix it is to clarify the language of the amendments which can't be done in committee or to strike it entirely. He proposed that the committee simply remove the amendment that REP. ELLINGSON put on in the House. He submitted his amendment (EXHIBIT 1) to the committee.

{Tape: 1; Side: A; Approx. Time Count: 5:32 PM; Comments: N/A.}

REP. SHIELL ANDERSON MOVED HIS AMENDMENTS THAT WOULD REMOVE THE HOUSE AMENDMENTS. He felt the House amendments were confusing in the way it reads and it is subject to interpretation. On one hand you will have trial lawyers saying that with this language you could stack the policies or else the insurers are simply not going to insure you if you have three cars and you expect to cover each one of them with only one policy.

REP. ELLINGSON responded. We are saying a company may not charge duplicate premiums for the same element of loss. Why should a company be able to charge duplicate premiums for the same element of loss. If a person has one car and he wants the uninsured motorist coverage on one car, that individual is going to be quoted a rate on uninsured motorists that is going to be based on one car. If a person has three cars and he wants the uninsured motorist coverage to cover him and if the company knows that the person has three cars they will base the premium in part on the fact there are three vehicles. There is nothing in this bill that says they can't do that because there is an additional element of risk. If they are saying the person has two separate policies and both of them have only one coverage under both policies, what this amendment says is that they can't charge the person for the second one. The person has bought number one and the policy under the automobile insurance covers the person on both of the vehicles. So why should the person pay a duplicate premium if the coverage is already there. There is only one reason. It is a second policy and the person should be able to stack it.

REP. ANDERSON asked if **REP. ELLINGSON** was suggesting that if a person owns three cars, you would pay some factor of one car times three and maybe two-thirds of three cars because you have fewer people in your family, so the insurance company would have to take all this into consideration. **REP. ELLINGSON** said they do this already.

CHAIRMAN HOLDEN interjected that what **REP. ELLINGSON** wants to do is to stack these insurance policies. There is no doubt about that. You want these policy limits to stack, so when someone is in an accident they can have multiple limits of coverage. **REP. ELLINGSON** said he wanted them stacked if he is buying more than one policy. **CHAIRMAN HOLDEN** said there are many young people in the state that are trying to get started as well as the elderly. Currently, the insurance industry does not charge premiums in this state to allow them to stack for all of these limits. What is happening is that the elderly and the young people getting started that have one car or even two may want to buy policy limits just to cover that one car up to maybe \$25,000. But what you are saying is they are going to be forced as a consumer to actually purchase \$50,000 if they have two cars. The insurance carrier is going to have to jack the rates up to take in the possibility that when they are in an accident these two policies are going to be stacked. The Legislature can set policy in this state to stack the limits on the cars, but the consumer is going

to have to pay for it. That is what the crux of the whole argument comes down to. What are we willing to shove on the consumer in the state? **CHAIRMAN HOLDEN** then submitted to the committee that if you have two vehicles and one sits in the garage most of the time, you are going to want a lower limit of \$25,000 but on the one you drive most of the time, you would probably want a higher limit. So the insurance industry currently provides the consumer a discount. They allow the consumer to say he would only purchase \$25,000 on this one and \$50,000 on the second one and he doesn't want to be penalized by having the premium increase because the company is not going to be stacking them on the consumer if he has an accident. If this is not the problem that the committee is looking at, the bill would not be here. With all the stacking that is going on, the rates are going through the roof. And unless the Legislature gets a handle on it, and if they don't stop letting the trial attorneys continue to drag this through the courts and to the Supreme Court on this stacking issue, the premiums are going to continue to go up, up and up.

REP. ELLINGSON said he didn't think this has anything to do with the trial attorneys. He thinks it has to do with consumer protection and getting what you pay for. Why has he been paying for two premiums on his vehicles for uninsured motorists and they need to be sure that they are talking only about uninsured not about the basic liability coverage. **CHAIRMAN HOLDEN** said that is where **REP. ELLINGSON** is incorrect. In this bill, on page 1, it takes away all that distinction. What is being talked about is liability, underinsured motorist coverage, uninsured motorist coverage and medical payment coverage. It is important to note that the focus should not be just on underinsured motorist coverage anymore. That is why he, **CHAIRMAN HOLDEN**, has stood in opposition to the House amendment because the amendment goes to all the coverages that are on an automobile policy. If all coverages are going to be stacked, premiums will be unbearable. **REP. ELLINGSON** disagreed and felt the amendment was a consumer friendly amendment when it says the companies cannot charge twice for the same element of loss. Why should anyone have to pay twice for the same element of coverage.

REP. ANDERSON said that it seemed to him that what it insured is risk--not loss. Each vehicle you have out there exposes the rest of the policy holders to risk. **REP. ELLINGSON** says it exposes the insurance companies to risk. **REP. ANDERSON** said that it is the insurance companies that covers the policy holders. If there are four elements of risk out there, each one needs to be covered. **REP. ELLINGSON** had no qualms with that. **REP. ANDERSON** said whether there is three, four or five, a person could have 25 elements of recovery.

REP. ELLINGSON said that what this boils down to is a matter of confusion on what has been sold by insurance companies and what the consumer has bought. He looks at his insurance policy and his agent tells him that he is correct. But he has two policies

and he is paying two premiums on it. And the reason he is paying two premiums is because he has two policies and he feels that he should be able to put them together. Now if the insurance companies want to be real clear about this, all they would have to do is take this bill and in their procedures define exactly what it is the consumer is purchasing. And one thing that he didn't want the companies be allowed to do, and he felt that the amendment addresses this, is charge twice if the consumer doesn't get the benefit of the two policies.

REP. ANDERSON said the consumer can; all they have to do is have two wrecks.

{Tape: 1; Side: A; Approx. Time Count: 5:43 PM; Comments: N/A.}

SEN. MIKE HALLIGAN requested that one committee member and then another committee member make a one or two minute statement for the benefit of the committee but keep it limited to one shot each and continue that way.

CHAIRMAN HOLDEN at this point asked for comments from two visitors to the hearing.

Russell Hill, MT Trial Lawyers. I haven't seen the amendments but it seems that what they are doing is stripping out that subsection 3. I don't know where REP. ANDERSON. . . .

(CHAIRMAN HOLDEN interjected and said that there was another part of that amendment on page 1 of the bill, line 15 where "or the number of separate premiums paid" was stricken. Mr. Bart Campbell said technically what REP. ANDERSON'S amendments are is a motion to reject the House amendments and if this committee votes to reject the House amendments, he, Mr. Campbell, would come up with something like this. Rather than moving the amendments, technically it is a motion to reject the House amendments.)

Mr. Hill continued. Two points I would make is with the amendment with subsection 3 in the bill. The only time a policy holder or consumer would ever stack benefits is when a company charged duplicate premiums for the same element of loss or if you want to call it risk or exposure. There is nothing holy about the language. That is up to the insurance company. If they want to sell two policies that don't double the coverage, then yes you can stack. This says if you don't do that, or if you sell that second underinsured policy, but you don't charge full premium, you only charge for the additional risk, there is no stacking. It doesn't create stacking. So I don't know where if you had three policies and get nine recoveries or five policies and you get 25 recoveries, you are coming from. I am completely at a loss as to where that comes from. I do know that this amendment still doesn't invite stacking unless the insurance company charges twice for the same coverage.

Jacqueline Lenmark, American Insurance Association. I would respectfully disagree with the statement that there is nothing holy about the language. The insurance representatives that are here today opposing the House amendment are doing so on the basis of the language that was chosen. I think that there is an important distinction between element of loss and element of risk. If you think about the types of coverages and (mike was moved and lost one sentence). The subsection now contemplates and addresses all types of coverages: medical payment, liability, underinsured coverage and uninsured coverage, all four of those. You can conceivably, and you all have the ability to so, think up scenarios where various ones of those coverages will be called into play if there is an accident and a bodily injury. You may exhaust your med pay and you may exhaust your underinsured or uninsured coverage, but they are all going to the same loss--your bodily injury. So I think it is an important distinction and **REP. ANDERSON** well explained the problem when you have a number of vehicles that are insured and out on the road, you are multiplying the risk that the company is insuring especially when you have the ability to loan a vehicle to another driver. This is especially true when you have multiple vehicles and multiple drivers in a family, then you are multiplying the risk that is being insured. It is quite correct that insurance companies could charge more taking into consideration the fact that those policies might be stacked or those limits might be stacked. But then as **SEN. HOLDEN** pointed out, the premium for that exposure would be something, I feel, much of our population would not want to pay. I think that the other thing that the committee needs to consider is you may jeopardize the availability of underinsured motorist coverage because there is no mandate to sell that in Montana and I believe that is a valuable coverage for Montanans to be able to buy. We are mandated to purchase \$25,000 as a minimum but accidents frequently involve damages in excess of that. I believe that policy holders want the ability to protect themselves in that way. If you make the underinsured so expensive that they can't afford it or that it is not reasonable to offer it, I think you are taking away a valuable opportunity from Montana consumers.

REP. DAN MCGEE asked **REP. ELLINGSON** to look on page 1, lines 27 through line 30 and see if this language is approximately what you have done on page 2? **REP. MCGEE** reads "A motor vehicle liability policy may also provide for other reasonable limitations, exclusions or reductions of coverage that are designed to prevent duplicate payments for the same element of loss" and asked if that phrase tends to capture what it is that **REP. ELLINGSON** is trying to do on page 2? **REP. ELLINGSON** said yes it does. And what is on page 2 tries to parallel that exactly. If there aren't going to be duplicate payments there certainly shouldn't be duplicate premiums. **REP. MCGEE** said that lines 29 and 30 point to the stacking issue, correct? **REP. ELLINGSON** said yes. **REP. MCGEE** said that he was led to believe earlier that the phrase "same element of loss" was not in the code and it certainly is.

REP. ELLINGSON reemphasized the point that **Mr. Hill** made. There is not going to be any stacking here unless a company charges twice for the same element of loss. He doesn't know what the problem is with the term because it does reflect what is on page 1. It is a company's choice under this amendment and under the bill as it is drafted right now if there is going to be stacking. If they don't want to stack it, they don't have to charge a duplicate premium. A lot is being made of how this is somehow going to allow stacking. Well, it is not going to allow stacking unless the company wants it. The point has been raised that this would raise the premiums. Worse case scenario, a person has three vehicles and there is one policy, one underinsured or one uninsured policy covering all three vehicles, it would cost three times or some portion of that you are already paying on your three separate vehicles. It is going to pull the premiums from those other vehicles and put it into one. He didn't see where that is any different than our current scenario in terms of the price.

CHAIRMAN HOLDEN requested **Greg Van Horssen** to respond. **CHAIRMAN HOLDEN** said **REP. ELLINGSON** is drawing a parallel between part 2 and part 3 and he wanted to know what **Mr. Van Horssen's** take is on this parallel?

Greg Van Horssen, State Farm Insurance. I think that what is critical here is the distinction between the language, duplicate payments for the same element of loss, as they exist in subsection 2, which was originally drafted to prevent, at least as intended, stacking and duplicate premiums for the same element of loss. This is a critical distinction. The language that exists in subsection 2 I believe was originally drafted in an effort to prevent stacking of policies, but our Supreme Court has, as everyone here in this committee knows, indicated that this type of language was not sufficient to prevent stacking at least of some coverages as we now know. The difference between what is in subsection 2 and the amendment that exists at the top of page 2 of the bill is that while in subsection 2 it allows companies to include language that would have prevented duplicate payments for certain elements of loss, subsection 3 prohibits a company from charging duplicate premiums for the same element of loss and I think as **REP. ELLINGSON** has already said, under certain circumstances that raises the concern that we would be able to stack all over again in spite of the language that exists previously in the bill.

CHAIRMAN HOLDEN said that what was basically stated is that the law on page 1 would prevent you from making duplicate payments and then on page 2 as the law was amended would read that you could . . . do what?

Mr. Van Horssen replied that the law on page 1 of the document was the Legislative authority, if you will, to insurance companies, to allow clauses in various other types of language in the policy that was designed to prevent duplicate payments. I

represent to the committee and I hope that I am correct and will ask for concurrence from others here in the room that have been around the business longer than I have, that this was an attempt by the Legislature to allow companies to insert language that would have prohibited stacking in the first instance. The language on page 2 is completely different from my perspective. It says that an insurance company cannot charge duplicate premiums for the same element of loss and I submit that that is a standard; those are types of issues, same element of loss, duplicate premiums that have not yet been defined, if you will.

CHAIRMAN HOLDEN stated that when you, **Mr. Van Horssen**, say not yet defined, **REP. MCGEE** thought that element of loss was defined. **Mr. Van Horssen** said he would defer to his colleagues on this. The phrase, element of loss, as he understands it especially when it is tied to duplicate premiums, is yet to be defined in this state. **CHAIRMAN HOLDEN** said that what was meant was the state does not have Supreme Court ruling on it. **Mr. Van Horssen** said that he was not aware of a ruling.

REP. ANDERSON said that he would like to go back to a previous statement of **REP. ELLINGSON** when he was talking about three cars and the insurance company could charge three times one car. The way **REP. ANDERSON** figured, a person could not just do that and then recover on each one. The insurance companies could not do that because if a person has three cars and a charge of \$100 for \$25,000 policy on each car and two of these cars are in an accident and without your amendment he sees \$200 and a person would recover \$50,000. If you pay \$300 and each gets \$25,000 coverage you would then get to stack and recover on each one. With two accidents you pay \$300 but recover \$150,000. So it starts to skewer. **REP. ELLINGSON** said you have to look at how many policies you have. If you have one policy that covers you as an uninsured motorist and in assessing the premium on that, and you have three cars, they will assess that. Maybe it will be three times what you would have in three separate policies. But if you have one policy, you don't have any stacking. You go to your insurance agent and you say I want to be covered in these three vehicles and I want a policy that provides me for uninsured motorists for these three vehicles. They will write you a policy. In a worst case scenario, it would be three times what you are paying now for three separate policies but you are not paying a duplicate premium. It is the same element of loss but you have additional risks so it is going to be an additional premium. **REP. ANDERSON** concluded that they must agree to disagree. His example shows that if a person does it **REP. ELLINGSON'S** way, the person will end up having to pay more than what one would have to pay on each one of those vehicles.

REP. MCGEE said that when he first asked his question about the language on lines 27, 28, 29 and 30, he read that "duplicate payment" as what he is paying the insurance company, not what the insurance company is paying him because no place else in this text before you get to that word; therefore when he read it, he

thought it was already saying what **REP. ELLINGSON'S** statement is saying on the reverse side. So it wasn't until you folks continued your discussion that he realized that no, that has to do with what the insurance companies are going to pay out. And the language in lines 23-26, in the current law, states very clearly that these may not be added together to determine the limits of insurance. So he is at a loss as to why the Supreme Court has even ruled that you can stack, because it states very clearly here that that is not the intent. Now with what has been done to the bill, because the Supreme Court has ruled the way they have ruled, the bill before us tries to further define this issue of stacking and in so doing, we have tweaked all the words all over the place and made it a more cumbersome bill. On lines 29 and 30 it has been added "or to prevent the adding together, etc" which is already being said in lines 24 and 25; so we are reiterating what we are reiterating. All that he sees in **REP. ELLINGSON'S** language is saying: insurance company if you charge for a premium for something you will pay for that something. If you charge for multiple somethings, fine, you will pay for multiple somethings. And if you don't want to charge for multiple somethings, charge one premium. So he guesses that unless someone has another issue, he doesn't understand what the problem is.

{Tape: 1; Side: A; Approx. Time Count: 6:00 PM; Comments: N/A.}

SEN. BRUCE CRIPPEN said that two years ago there was a bill which you, **REP. MCGEE**, were also involved with, that had been made quite clear to the whole world the intent of the Legislature. But the courts looked at it and said, no, there is another provision in there. So they made a decision that was different from the intent of the Legislature. So the Legislature had to go back in and tweak it around. Sometimes the courts do those things. He feels that is somewhat the case in this instance.

REP. MCGEE agreed. Having said what he just said, he still fails to have a major heartburn over the language in the amendment. He has received many phone calls from his district telling him to strike the amendment. He still does not understand. He has many vehicles, pays high premiums and usually the vehicles are all out and about. So if his vehicles all had accidents at one time, and the underinsured or uninsured motorist policies would all kick in up to the limit, that would be fine. But if he is driving to Helena and there are no accidents and he has an accident, why can't he collect on that one accident from all his policies that he has been paying on? He feels that the insurance companies don't want to pay for that for which they have been taking the premiums for.

REP. ANDERSON said that when he had discussed this with you, **REP. MCGEE**, it seems that you had agreed that with four vehicles, you have \$25,000 for underinsured on each one. And you thought it was fair if you were in an accident in one vehicle, you shouldn't be allowed to stack them and get \$100,000. **REP. MCGEE** said that

is right if the damage to him is less than \$25,000. What we have here is people taking advantage of the system. That is what the insurance companies are arguing against. They don't want an attorney coming in a saying, hey, you have \$100,000 available to you. That is what the insurance companies don't want said, so that is what we don't want to say, say it!! His concern here is that let us assume the damage to him is \$100,000, but he is paying insurance premiums for \$25,000 on each rig. Why in the world isn't that available to him. He has been paying the premiums dutifully for years and never had the accident and now he does. Now why can't he recoup on that if he has been paying the premium for it. He asked insurance people today if a person is paying the premiums for the element of loss, would they object to his stacking. They said, no. So he is assuming that the premiums that the insurance companies are charging him cover them for that element of loss. They do not operate in a vacuum and he doesn't believe that they operate at a loss. They operate at a profit; therefore, he is assuming that the insurance premiums that he is currently paying for cover that element of loss. If you talk to them, they say, no, that is not the case. But somehow they are doing the same thing as the electrical companies have been doing. They are robbing from Peter to pay Paul to keep the insurance rates down. Maybe that is the case.

REP. ANDERSON said that in using **REP. MCGEE'S** example he would like to know with 4 vehicles and two are in accidents, should you be able to recover \$50,00 on each accident because you have \$25,000 on each one? **REP. MCGEE** said that whatever it takes to take care of the person or issue. If it costs \$50,000, and the person has been paying premiums on that element of loss, why aren't those elements of loss available to him. **REP. ANDERSON** said that is where the element of loss is different than the element of risk.

SEN. CRIPPEN said that if the committee followed **REP. MCGEE'S** logic, then there will always be a loss and in the example, that would be \$400,000. Whether you have one vehicle or you have four--it will be \$400,000 because you are allowing them, the consumer, to stack. So even though you have \$100,000 policy on vehicle A, vehicle B, vehicle C and vehicle D, and you have an accident, because of the stacking in these coverages, you should have an exposure of \$400,000. And you are going to have \$400,000 if you have all four. If all four are involved in an accident, how much would be a risk? **REP. MCGEE** asked how much is the premium? If he is paying the premium, he only wants to pay for what he gets coverage for. He sees what **SEN. CRIPPEN** is saying. That is, the insurance company says you have four vehicles, you need to pay a higher premium to cover the potential element of risk of \$400,000 for each occurrence. Then what he is saying is the insurance policies are being written incorrectly or that they are not clear to the extent that all you are entitled to is \$100,000. **SEN. CRIPPEN** says that is what this bill does.

SEN. HALLIGAN said again that the public doesn't understand that it is not getting that coverage. Probably 99% of the people think that they pay separate premiums and they get separate underinsured and uninsured, etc.

SEN. CRIPPEN says that is another matter. This committee is talking about what should be done as a matter of law because the insurance company is stepping in and they have to be treated as a matter of law. The Legislature's responsibility is to set the parameters as to liability and as to amounts of liability. It is contracted. That is the way it is done. The Legislature is dealing in liability.

CHAIRMAN HOLDEN said that in 1981 when the Legislature set the law, they said they did not want to stack liability and uninsured motorist coverage. Page 1, line 13 shows that. The Legislature specifically said: let us not stack liability coverage on uninsured motorist coverage. This committee is talking about underinsured motorist coverage. What happened was the Supreme Court had to make a ruling: do we or do we not stack underinsured motorist coverage? That was the question. The Supreme Court said: well, you haven't actually addressed it in the law so we are going to allow plaintiff attorneys that file actions under underinsured motorist coverage to stack. This happened last summer and before that time the insurance industry never had rates charged to policy holders to take into account this \$400,000 liability limit that has just been discussed. But if this Legislature does not address that and we allow that to go unanswered, then we are sending a signal out that you, insurance carriers, now must raise your premiums to take into account this \$400,000 exposure that your client now has. That is why he brought the bill to the Legislature this time. He does not think Montanans can afford these rates as they continually go up. When a person has been paying for years for a premium on a limit and they want to be able to collect if they are in an accident. But what they have been paying a dollar amount on is \$100,000 in the example. They have been paying over the years a premium commensurate with \$100,000 worth of coverage. But if we adjourn without addressing this here in the next couple of weeks, they will now start paying a premium commensurate with \$400,000.

{Tape: 1; Side: B; Approx. Time Count: 6:13 PM; Comments: LOST ONE SENTENCE OF CHAIRMAN HOLDEN'S COMMENTS.}

REP. MCGEE said that to make things clear, it is not his intent to provide for stacking where there has not been the proper amount of remuneration for that. If he has been paying the premiums on insurance policies, he then assumes that when he pays \$25 a month for uninsured motorist coverage he has \$100,000 sitting out there if he ever needs it. The fact that he has paid four of those, it indicates to him that he is paying for four \$100,000 policies should he need it. If they haven't assigned the proper value for the element of loss or risk or whatever, he

doesn't know why he should be so concerned about their loss. It wasn't a negotiated settlement, it was their calculations.

CHAIRMAN HOLDEN stated that the companies do take into account the laws on the books and the payments that are necessary. What he is saying is last summer this all came to a head. The insurance carriers are going to now start taking that into consideration unless the Legislature addresses it.

SEN. CRIPPEN set up an example. There are four cars on the same policy. Each has underinsured motorist coverage on each one and there is a premium charged for each one. Compare it to a life insurance policy. There is a family that buys a policy that insures the man, wife, and four children. The man, wife and all four children each have a \$100,000 policy. In determining the premium, the company will break down the cost because there are different determining factors: a life expectancy for one will be different for another. Assume child A dies; will the family receive \$100,000 or \$500,000? **REP. MCGEE** answered \$100,000.

SEN. CRIPPEN asked why? **REP. MCGEE** said that was the limit on that one individual. **SEN. CRIPPEN** replied exactly, and that is what he is saying concerning the vehicles--it is the limit on the car. A person pays the premium for that limit on that particular car.

REP. MCGEE asked: he has four cars and only one underinsured motorist coverage and it is on the Ford. He is out driving the Chevy and he has an accident. So the underinsured kicks in. Is he going to get paid or not? The more appropriate life insurance correlation would be if you had four different life insurance policies that one would pay premiums on and then child A dies, one would get four policy settlements.

SEN. CRIPPEN said you mean four insurance policies on the same child. **REP. MCGEE** said yes. That is what it is like. **SEN. CRIPPEN** said yes and no. Because on one hand you have four premiums and the other example you have only one policy. You can have one premium for the entire policy and not break it down. Most companies don't do that.

REP. MCGEE understands what is being said, but here is his thought about this. There are two things that need to be done. One is we need to say that if a person is only making one premium payment for underinsured or uninsured motorist coverage, there is only one object that is subject to suit or whatever. The liability is limited to one instance in this case. And whatever they have to charge to do that is okay. If on the other hand, he takes the risk and he has employees, teenagers, etc., he'd better have this on all the vehicles, and he pays for all that, he should be able to collect on all four policies. But the problem here is that what is thrown out with the bath water here is the baby. And the baby in this case needs to be that there is an ethical standard. It only costs me \$12,000 to get it fixed, why charge \$400,000. And of course, the Legislature can't correct

all that because someone is going to be out there trying to do that.

{Tape: 1; Side: B; Approx. Time Count: 6:18 PM; Comments: N/A.}

CHAIRMAN HOLDEN states that if the committee sticks with the **ELLINGSON** amendment, on page 2, they don't have a Supreme Court ruling on this new language. All of the other part of the bill that he had submitted on page 1 was worked out in light of the Supreme Court ruling. If the committee does not stick with what they have told us to do, the state is going to be back in the courts trying to determine what the **ELLINGSON** amendment does and what constructive trial attorneys could make that out to be.

Mr. Campbell said that for clarification, the amendments that **REP. ANDERSON** proposed are technically rejecting the House amendments. So the motion was made to accept the amendments of **REP. ANDERSON** and in so doing they would reject and replace the House amendments.

REP. MCGEE said that before the question was taken he would like to ask if there is a way to accomplish what it is that he is trying to say is possible?

CHAIRMAN HOLDEN said that with the passage of the bill, your intent is being accomplished but you are not aware of it. He says this because if you want a premium commensurate with that policy limit, you want to pass the bill out like this. But if you want a policy limit higher than what we have been basing our actuary tables on, the companies will have to go in and increase rates to take in that added risk.

SEN. CRIPPEN felt that the **CHAIRMAN** was correct but he felt that **REP. MCGEE** wants something more positive from the insurance companies. Your concern here is that the people do not understand what is going on. Insurance companies oft times, when they send out premium notices, will flag if the premiums are going up, for instance, in the State of Montana. He felt that if this bill passes in its original form without the House amendment, the insurance companies will come along and make it quite clear what one is paying for. They want to avoid this problem in the future just as much as the Legislature wants to. He couldn't actually speak for the companies, but he used to be involved with them and he knows that that is exactly what he would do as an underwriter.

REP. ELLINGSON said that is exactly the point of the House amendment. We would achieve clarity in terms of the intent of the insurance companies and clarity on the part of the consumers in knowing what they are purchasing. If the insurance companies want the consumers to be able to stack, they will sell or charge them additional premiums.

CHAIRMAN HOLDEN called for a roll call vote on **REP. ANDERSON'S** motion to accept his amendments.

REP. MCGEE inserted that his intent is not in trying to create an increase in premiums on the part of insurance companies. That is not his goal. He is looking for equity.

CHAIRMAN HOLDEN said that to close on that idea, if you as a policy holder wants the \$400,000 or a higher limit, get an umbrella policy.

SEN. CRIPPEN said that damages have to be proved. Damages and coverages do not go hand in hand. They are two separate things. As the way it is now, if this bill is not passed, they will go right there together.

CHAIRMAN HOLDEN explains that a yes vote would remove the House amendments to the bill.

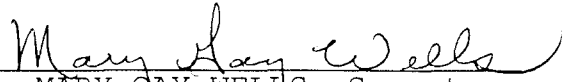
THE MOTION TO ACCEPT REP. SHEILL ANDERSON'S AMENDMENTS CARRIED
with **SENATOR HALLIGAN** and **REP. JON ELLINGSON** voting NO: 4-2

ADJOURNMENT

Adjournment: 6:26 P.M.



SEN. RIC HOLDEN, Chairman



MARY GAY WELLS, Secretary

RH/MGW