

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 10, 1997, at 10:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: NONE

Members Absent: NONE

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

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 17 and SB 39, Posted 1/7/97

Executive Action: SB 9, Posted 1/6/97

{Tape 1; Side A; Approx. 10:00 a.m.; Comments: None}

Introductory Meeting and Procedures Discussion:

CHAIRMAN HERTEL opened the meeting, welcomed everyone and explained that due to some conflicts the first bill to be heard would be SB 39.

HEARING ON SB 39

Sponsor: SENATOR LINDA NELSON, SD 49, Medicine Lake

Proponents: FRANK COTE, Deputy Insurance Commissioner
BOB STEPHENS, MT Grain Growers Association

Opponents: NONE

Opening Statement by Sponsor:

SEN. LINDA NELSON, SD 49, Medicine Lake, presented SB 39. She informed the Committee that she was carrying the bill for the State Auditor. This bill addresses several things; the most important of which is to protect farmers who purchase their insurance through a farm mutual insurance company. This bill strengthens the financial requirements for farm mutual insurers writing crop insurance. Crop insurance is a volatile line of business and can face extremely high losses. This bill says that a farm mutual insurer, writing crop insurance, must obtain reinsurance insurance in the amount of between 85 and 100% of that risk depending upon the amount of surplus of the farm mutual insurance company. Reinsurance coverage substantially lessens the farm mutual insurer's risk. Ultimately this bill will provide improved protection for the consumer. No guaranteed funding exists for farm mutual insurers' policy holders. That is why enhanced financial protection for the insurer is critical to their policy holders. The bill also says that certain farm mutual agents would be subject to the managing general agent law. Unregulated managing general agents in the past have contributed to the failure of large national insurance companies such as the transit insurance companies. If the agent writes business in an amount greater than 5% of the farm mutual insurer's surplus, then the agent must have an agreement with the insurer that includes certain requirements protecting the farm mutual insurer. Section 3 is going to be amended out of the bill.

{Tape 1, Side: A; Approx. 10:03 a.m.; Comments: None.}

Proponents' Testimony:

Frank Cote, Deputy Insurance Commissioner. The bill has been explained very well and I would be happy to answer any questions. I would like to point out that the reason we decided to take out Section 3, Subsection 2 (a) and (b) is that we received a complaint this morning from the farm mutual insurance companies. They were concerned about having to have their people licensed as insurance agents. We agreed to withdraw this part of the bill. We urge a Do Pass.

Bob Stephens, MT Grain Growers Association. We believe this is a good bill and good protection for the farmers and insurance programs. Thank you.

Opponents' Testimony: None

{Tape 1; Side A; Approx. 10:06 a.m.; Comments: None.}

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked either **SEN. NELSON** or **Mr. Cote** to explain some of the problems that they have had with the insurance companies not paying. **Mr. Cote** replied that it is not a matter of the insurance companies not paying. Crop insurance is an extremely volatile line of business. Our concern is: if an insurance company or a farm mutual insurance company that sells crop insurance doesn't have adequate surplus and there is a large loss in an area, and the company only has \$200,000 surplus, and their claims far exceed that, what would then happen is the company would go broke and unlike other insurance companies, there is no guarantee association. The farmer would then have no ability to recoup payments for his loss. This bill would have these companies take their surplus (on a sliding scale) and reinsure that. This means that the company would take up to 85% of that surplus and farm that out to a different insurance company who would be licensed and they would accept the loss and the farm mutual insurance company would be on the hook for 15% of the loss. Does that answer your question?

SEN. EMERSON There must have been some loss that was not paid because there has been crop insurance around for 60-70 years. If there had been failures they must have been taken care of in some manner. How big a problem have these kind of failures been and how many have been hurt by this? **Mr. Cote** responded that he did not know of any specific cases. He was aware of an incident not too long ago where a farm mutual insurance company came very, very close to a failure because of a big crop loss.

SEN. STEVE BENEDICT asked **Mr. Cote** to expand a bit on why he wants to take Sec. 3 back to the present law. **Mr. Cote** responded that he has a letter that he would give to the committee which was faxed to him this morning from Alan Fossen of the Westland Farm Mutual (**EXHIBIT 1**). Their concern was having to license the farm mutual agents. Currently they are not required to be licensed. Under the liability portion they are to be licensed. It was agreed to take this out and have a clean bill.

{Tape 1, Side A; Approx. 10:10 a.m.; Comments: None}

Closing by Sponsor:

SEN. NELSON stated that she feels this is a good business bill. An ounce of prevention is what we need before any catastrophes. I hope you will agree with the bill. Thank you.

HEARING ON SB 17

{Tape 1, Side A; Approx. 10:15 a.m.; Comments: None}

Sponsor: SENATOR MIGNON WATERMAN, SD 26, Helena

Proponents: CLYDE DAILEY, State Auditor's Office
BILL OLSON, AARP
DICK PATTISON, MT Senior Citizens Association
VERNER BERTELSEN, MT Senior Citizens Assoc. &
Legacy Legislature
CHARLES BRIGGS, Rocky Mountain Agency on Aging
CHARLES REHBEIN, Public Health & Human Services

Opponents: TOM HOPGOOD, Health Insurance Association
JACQUELINE LENMARK, American Insurance Association
TANYA ASK, Blue Cross, Blue Shield of Montana
WARD SHANAHAN, Farmers Insurance Group
SUSAN GOOD, MT Association of Life Underwriters
GREG VAN HORSSSEN, State Farm Insurance Co.

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, Helena presented SB 17 on behalf of the many senior citizens who have been to the State Auditor's office. SB 17 will do several things: establish as a felony, insurance and security fraud committed on seniors; would allow the Commissioner of Insurance and Securities to impose penalties as well as require full restitution to the victims; would require those working in the securities and insurance industry to report suspected senior fraud to the Insurance and Securities Commissioner within 60 days of discovery; would allow the I & S Commissioner to create an education program to enable senior citizens to recognize insurance and securities fraud and establish a method of reporting such fraud. About 80% of insurance fraud cases that are investigated by the Montana Insurance Dept. involve senior citizens. Older Montanans stand a greater risk of being victims of securities fraud than any other groups. A fact sheet (EXHIBIT 2) was handed out.

{Tape 1; Side A; Approx. 10:17 a.m.; Comments: None}

Proponents' Testimony:

Clyde Dailey, Compliance Specialist, State Auditor's Office, Insurance Department. I would like to address a couple of things. In some discussions with the industry folks I believe there have been concerns raised about whether the legislation that is before you is necessary because it is already in law. The key to this bill is that it makes senior fraud a felony from the practical standpoint of an enforcement viewpoint. If the case is substantial it will end up in front of a judge, but it can take years for this to happen. In the meantime there is no

basis for restitution for the individual until it goes through the court. In the case of the older citizens, the loss may represent all they have to live on.

In current law there is no provision for restitution and there is no specific provisions for interest on restitution. Quite often these people live off the interest from their savings.

Misrepresentation which, in the bill is 33-18-202, 33-18-203 or 33-18-204 referenced in Sec. 2, is not already law as some have suggested. It clearly makes a difference here. When we negotiate with a bad act or agent, producer or broker, it would be helpful to say this is now a felony, a more serious offense and we want you out of the industry. This will speed the process up and help the senior citizen more quickly. Two examples were related. These examples show that these acts are a felony and a strong law needs to be implemented.

{Tape 1; Side A; Approx. 10:19 a.m.; Comments: None}

Bill Olson, volunteer for AARP. We are very interested in all these types of fraud. We feel that this piece of legislation would certainly be helpful to hold down the growth of fraud and scams on our senior citizens. We support this bill.

Dick Pattison, Lincoln, President of the MT Senior Citizens Assoc. We are in favor of this legislation. We have worked with AARP to create a network in Montana to alert seniors to fraud possibilities. We try to also help them in reporting these frauds. We feel that this bill is the next step and key to making fraud a felony. We urge the bill's adoption.

Verner Bertelsen representing the MT Senior Citizens Assoc. and Legacy Legislature. I received a call this week from a senior citizen woman who related that a man sold her a telephone deal. She was to buy telephones and put them out and it was all a scam. She is now out \$5,000. Another man in Dillon had lost \$21,000 on the same scam. We feel the seniors need to be protected. We appreciate whatever you can do. Thank you.

Charles Briggs, Director, Rocky Mountain Agency on Aging, Helena. The aging network that is operated through the Department of Public Health & Human Services is in their fourth year of Insurance Counselling and Assistance Program. People are certified to provide counselling in terms of how to access Medicare and Medicaid and to screen Medigap and Medicare Supplemental Insurance as well as looking at long-term care insurance products. We believe this legislation would enhance the insurance business and give additional teeth to existing law. It is important that we have the best insurance products available. Thank you.

Charles Rehbein, Bureau Chief, Dept. of Public Health and Human Services, representing the Governor's Advisory Council on Aging. There is fraud against seniors. The Advisory Council would like to go on record as supporting SB 17. Thank you.

{Tape 1; Side A; Approx. 10:24 a.m.; Comments: None}

Opponents' Testimony:

Tom Hopgood, Representing the Health Insurance Association of America, a trade association composed of most of the commercial health insurance companies selling insurance policies in the State of Montana. This bill does not do anything new. The bill states that fraud involving senior citizens account for 80% of all insurance investigation cases and we heard testimony to that affect this morning. The Insurance Commissioner should be congratulated for his enforcement efforts under the laws that already exist and for investigating insurance fraud that involves seniors. For several months, I, along with other industry representatives, have been inquiring of the Commissioner's office why do we need this legislation. What does this legislation do that is not already provided for by law? I have not received a satisfactory answer to that question. I would submit to you that this bill in its totality repeats provisions that already exist under law. I am testifying only on the insurance side of this bill--not on the securities side of the bill. I would like to present some statutes that already exist and would be extremely helpful to the Committee. Last session in front of this Committee we had hearings on a bill called **The Insurance Fraud Protection Act** which was passed in 1995. That bill was passed and supported by the industry. I would refer the Committee to the **Unfair Trade Practices Act** under both the insurance code and the code sections which exist under **Title 30, General Commerce Section**. I would refer the Committee to the **Criminal Statute on Theft** as well as to the **Commissioner's General Rule Making Authority**. Last night I went through this piece of legislation and cross referenced it, line by line, to other statutes which already exist. **Mr. Hopgood** then presented his findings to the Committee. This is found in **EXHIBIT 3**. Also noted was the **Consumer Protection Act** which exists and gives the Attorney General some fairly broad investigation powers.

{Tape 1; Side A; Approx. 10:36 a.m.; Comments: None}

The terms used in this bill are incredibly broad, vague and ambiguous. When imposing criminal sanctions, the offense must be defined with a great deal of specificity and if it is not, you cannot punish someone for breaching it. The terms "intimidation" and "coercion" are completely undefined and would be unenforceable.

There was a situation explained earlier where an agent will approach an elderly person and sell them too much insurance. There is no one that will say this is a good practice. We

certainly do not want that in the health insurance industry. We feel that is already an unfair and deceptive act which is already covered under the **Unfair Trade Practices Act**. I would like to refer you to a code section: 33-18-1003. This shows that it is already an unfair and deceptive act which is subject to regulation by the Insurance Commissioner. Look at Subsection 2 of Section 2, we find a provision allowing the Commissioner to impose penalties pursuant to 33-1-317 which is a section in itself that allows the Commissioner to impose penalties. We don't need another law stating the same thing. Subsection 3 we have a provision allowing the Commissioner to require restitution. That remedy already exists under the Independent Action Statute and also under the Insurance Fraud Statute that was passed in 1995, Ref. 33-1-1211. I have made many inquiries to the Commissioner's office of why do we need this bill. They say that it makes senior fraud a felony. This is where I believe they make it a felony in this bill. Look closely at the language in Sec. 2; Subsection 4. It says: A person who purposely or knowingly commits senior insurance fraud involving a misappropriation or theft of insurance premiums commits the offense of theft..... If you commit theft; you commit theft. It defies logic how that adds anything to the law. Mr. Dailey gave the example of the elderly person who lost money through a North Dakota agent. And if that is not an instance of theft which would be subject to prosecution under the criminal statutes, I don't know what would be.

Everything in this bill is covered by other statutes which are on the books. We suggest that this bill should be killed in committee. Thank you.

{Tape 2; Side A; Approx. 10:45 a.m.; Comments: None}

Jacqueline Lenmark, Lawyer, American Insurance Association. This is a serious problem. In my law practice here in Helena, I have had the occasion of working on allegations of deceptive practices or fraudulent practices against senior citizens. It is a serious and tragic problem. We, the American Insurance Assoc., still oppose the bill, for some of the reasons Mr. Hopgood has set out for you. As a lawyer, my concerns here are that the drafting of this particular bill may make prosecution of a very serious offense more difficult because definitions are clouded. Some of the statutory references gave you are reproduced in some form in this bill. My understanding is that seniors need a bill that makes fraud a felony. The criminal code already defines what a felony is and it already defines where that cutoff is between a misdemeanor and a felony for the offense of theft. The cutoff is a dollar amount. If my memory serves me correctly, that cutoff is at \$1,000. Periodically that amount is raised here at the Legislature. So, it appears that this fraud against seniors is already a felony and to cloud the provisions of the criminal code

will make the prosecutors job more difficult. Addressing the matter of restitution--I do not believe this bill will speed recovery. Another thing that happens with a criminal prosecution is due process must be afforded to the defendant. That means that all of these cases will still have to go through the court system. Restitution is a penalty that is available to victims of crime under Montana Criminal Codes.

The intention of this bill is very appropriate. It would be better to kill this bill and make efforts in strengthening funding to the insurance commissioner so that they can strengthen the investigatory powers they already have. They can package the cases and deliver them to the county attorney so that there can be some successful prosecution. The AIA asks that you give this bill a Do Not Pass recommendation.

{Tape 2; Side A; Approx. 10:50 a.m.; Comments: None}

Tanya Ask, Representing Blue Cross/Blue Shield of Montana. We are also concerned about the potential duplication of this particular bill. The insurance industry strongly supports insurance fraud protection for **ALL** citizen. I would like to reiterate one important point that Mr. Hopgood made because it is an important one. In Section 2 on line 8 (procuring the sale of insurance through intimidation or coercion): the fact that you have two very broad terms without any definition is a concern and deserves attention. We do not support this bill.

Ward Shanahan, Attorney in Helena, representing the Farmers Insurance Group. In the Legislative Session of 1995, we supported the **Insurance Fraud Bill**. I agree with both Mr. Hopgood and Jacqueline Lenmark. I am still waiting to see the regulations on the 1995 bill completed. We have been involved in some discussions in respect to these regulations. It seems to me that we have not implemented what was passed in 1995 and this bill would start a new set of rule making. We oppose the bill for these reasons.

Susan Good, representing Montana Association of Life Underwriters. I would like to, from a common sense standpoint, say that fraud is fraud is fraud, etc. It does not matter whether it is perpetrated on someone who is 18, 35 or 75. It is still an egregious crime. In our state, **ALL** citizens deserve equal protection. Fraud is already reportable and prosecutable and because Montana has equal protection for all of us, I would urge a Do Not Pass on this piece of legislation.

Greg Van Horssen, Attorney, representing State Farm Insurance Co. State Farm goes on record opposing SB 17. State Farm was asked for and offered input into the 1995 Insurance Fraud Protection Act and supported that bill. SB 17 is redundant with respect to the insurance industry. We ask for a Do Not Pass recommendation.

{Tape 2; Side A; Approx. 10:54 a.m.; Comments: None}

Closing by Sponsor:

SEN. WATERMAN closed with a recapture of the bill. She stated that we have a classic situation here of senior citizens believing that they are not adequately protected by the law. That is why I brought this bill forward. They believe this bill defines senior fraud and consolidates it into one section. I would point out that two years ago, as you have heard, we clarified that it was a felony for a consumer to commit fraud against an insurance company and the industry came in and supported that. This bill makes it very clear that it is also fraud to defraud senior citizens of their life savings. These senior citizens ask that you give this bill a Do Pass. Thank you.

EXECUTIVE ACTION ON SB 9

{Tape 2; Side A; Approx. 11:00 a.m.; Comments: None}

Motion:

SEN. BENEDICT moved a Do Pass on SB 9.

AMENDMENT:

Mr. Bart Campbell presented two versions of an amendment coordinated by SEN. RIC HOLDEN for the 1st version EXHIBIT 4 and coordinated by Mr. Frank Cote for the 2nd version EXHIBIT 5. Copies were passed to the committee members.

Discussion on Amendment:

Mr. Campbell explained the difference between the two versions. SEN. BEA MCCARTHY said that this second version addressed her concerns that insurance companies would not be permitted to add a clause in the policy forcing the insured to accept book value. SEN. BENEDICT addressed a question to Mr. Cote asking that had these amendments been approved by the bill's sponsor. Mr. Cote replied that to his knowledge, Sen. Holden had not seen the 2nd version. But SENATOR CRISMORE, SENATOR HERTEL and Mr. Cote had a brief conversation with SENATOR HOLDEN two days ago and Mr. Cote felt that SEN. HOLDEN was trying to get at what this second version of the amendment does.

Amendment Motion:

SEN. BENEDICT moved that the second set of the amendment EXHIBIT 5 be approved.

Vote on Amendment:

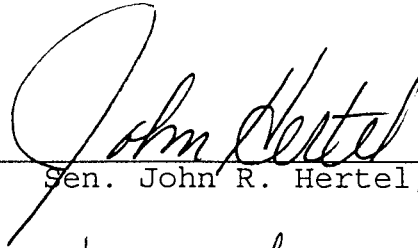
The motion to accept the second set of the amendment **CARRIED UNANIMOUSLY.**

Vote:

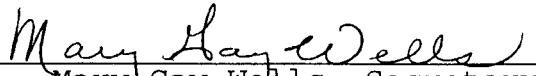
A vote was called for on the motion of **DO PASS SB 9 AS AMENDED.**
The vote received a unanimous **DO PASS AS AMENDED.**

ADJOURNMENT

Adjournment: 11:15 A.M.



Sen. John R. Hertel, Chairman



Mary Gay Wells, Secretary

JH/MGW