

## **MINUTES**

### **MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS & INDUSTRY**

**Call to Order:** By **CHAIRMAN JOHN HERTEL**, on January 15, 1997, at  
10:03 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 69; SB 74; SB 65;  
Posted 1/8/97  
Executive Action: None

#### **HEARING ON SB 69**

**Sponsor:** SENATOR MIGNON WATERMAN, SD 26, Helena

**Proponents:** Mike Hanshew, Senior & Long Term Care Division  
Dept. of Public Health & Human  
Services  
Clyde Dailey, State Auditor Office  
Ron Iverson, MT Agents Services  
Charles Briggs, MT Long Term Care Council  
Duane Lutke, Northwestern MT Area VI, Agency on  
Aging  
Rose Hughes, MT Health Care Assoc.  
Mary Martin, HRDC, Bozeman  
Verner Bertelsen, MT Senior Citizens Assoc.

**Opponents:** None

Opening Statement by Sponsor:

**SEN. MIGNON WATERMAN, SD 26, Helena.** I am bringing SB 69 to you on behalf of the Department of Health and Human Services and the Long Term Care and Reform Advisory Committee. The purpose of long term care insurance partnerships is to encourage individuals to purchase long term care insurance policies or certificates that will provide for their potential long term care needs, thereby reducing the amount of money spent by the state of Montana for long term care under the Montana Medicaid program. The purpose is also to provide an incentive for the purchase of the policies or certificates by providing individuals some protection from the requirement that they spend down their resources in order to qualify for medical assistance benefits in the form of payment for long term care. This bill provides a carrot, if you will, for people to purchase long term care insurance. Four states formed what is known as partnerships: California, Indiana, New York and Connecticut. They set up these programs and Congress stepped in and made it extremely difficult to continue this in other states. There are a number of states that want to do this. This bill authorizes the Department to set up a partnership if indeed there is a change at Congressional level requirements. Our Advisory Council and Governor Racicot have written letters urging our Congressional delegation to seek change in the over 93 standards to allow us to set up partnerships. This is a bill for middle income folks. It would let them pass on to their heirs some part of their income. For every dollar of long term care insurance that someone buys that they eventually spend on their care, they can shelter that amount and pass it on. Using **SENATOR SHEA** as an example and say that 40 years from now she needed nursing home care but she had been thoughtful enough now to buy a \$50,000 long term care insurance policy and 40 years from now when she needed care the only asset she really had was her \$80,000 home. If she went into a nursing home and it cost \$30,000 and she qualified for Medicaid because she didn't have other assets, Medicaid would pay the \$30,000. As the law now stands we would recover that full \$30,000 from her estate and she would be able to pass the \$50,000 on to her heirs. If she had bought a long term care insurance policy for \$60,000 and it paid that \$30,000, then she would be able to shelter the entire value of her home because she would not have gone on Medicaid in the first place. What I am speaking to you about is a dollar-for-dollar model. This is what we are proposing: for every dollar that the State does not have to expend because you have an insurance policy, you can shelter that much of your income.

In the bill, there is language on what is called a total assets model. If you will look at the fiscal note for this bill, it would be totally crazy for us to approve a total assets model. A total assets model would essentially let you shelter everything you have. I propose the amendment (**EXHIBIT 1**) strike the total assets model and only authorize the Department to set up a

dollar-for-dollar model or any other model that is cost neutral. The Advisory Council simply recommended that we set up a partnership program and the total assets model would fall within that but I think they would agree that this is not good for the State. Thank you.

**{Tape: 1; Side: A; Approx. Time Count: 10:11 am; Comments: N/A.}**

**Proponents' Testimony:**

**Mike Hanshew, Administrator, Senior and Long-Term Care Division of the Department of Public Health and Human Services.** We operate the Medicaid nursing home program in this State and spend approximately \$100 million a year on nursing home care from state and federal taxpayers' money. We stand strongly in support of SB 69. We believe it does a couple of things. One it provides people a viable alternative to transferring their assets, as some people do now, to become eligible for Medicaid and have the State pay for any long term care they might need. It also provides some incentive and support for people who are assuming responsibility to meet their own long term care needs.

**Clyde Dailey, State Auditor Office.** This is a forward looking piece of legislation. We are preparing ourselves in case we get the opportunity to get a waiver. I think it is a good program and shows great promise as an incentive to have the private sector deal with these kinds of cost rather than Medicaid.

**Ron Iverson, MT Agents Service.** I am a managing general agent and have approximately 500 agents appointed through my organization. I brought some information (**EXHIBIT 2**) that we taught in insurance continuing education which might help. The first and second pages are probably the most important and relative to this discussion. I do encourage your support of this bill.

**Charles Briggs, MT Long Term Care and Reform Advisory Council.** We endorse the concept of continuing the reforms that the Legislature put forth in 1995 and I understand and accept the amendment that the dollar-for-dollar language seems entirely appropriate.

**Duane Lutke, Director, Northwestern Montana Area VI Agency on Aging; also representing Montana Area Agencies on Aging Assoc.** I would like to go on record as supporting this bill as amended. It gives more independence for Montanans to assist in financing their own long term care.

**Rose Hughes, Executive Director, Montana Health Care Assoc. representing nursing homes throughout the State.** Our interest in this piece of legislation is that it brings to the forefront the need for people to purchase long term care insurance. Right now 2/3 of the people in nursing facilities are on Medicaid. That is

not good for the facilities and that is not good for the private paying patients who also pay for the cost shift because Medicaid does not pay the full cost. This bill will help in many of these aspects.

**Mary Martin, Human Resource Development Council in Bozeman.** I try to keep people in the community. I want to state my support for this bill.

**Verner Bertelsen, representing MT Senior Citizens Assoc.** We want to go on record as strongly supporting this piece of legislation. We feel that it would be wise to invest in this manner.

*{Tape: 1; Side: A; Approx. Time Count: 10:22 am; Comments: N/A.}*

Opponents' Testimony: None

Questions From Committee Members and Responses:

**SEN. STEVE BENEDICT** asked **SEN. WATERMAN** that if on the dollar-for-dollar model he purchased a policy with a total value of \$100,000 and that his nursing home cost was \$130,000, would the only thing being sheltered be the \$100,000 and would the other \$30,000 have to come out of his assets? **SEN. WATERMAN** replied, yes, that is correct. But if that \$130,000 was all in your house, then Medicaid would pay the additional \$30,000 after your long term care insurance ran out and there would be a lien placed on your home and the State would recover the \$30,000 in that manner.

Additional Proponent's Testimony:

**Susan Good. MT Assoc. of Life Underwriters and HEAL Montana** would both like to appear in strong support of this bill. It has been Heal Montana's main goal for the last several years to encourage people to participate in making decisions about their own health care. Thank you for letting me speak (**EXHIBIT 2A**).

Additional Questions:

**SEN. BENEDICT** asked anyone if he was correct in the assumption that the premiums that are paid over the life time of the policy would be deductible. **SEN. WATERMAN** answered that if the policy were for herself, yes, it would be deductible. But if it were for her mother, at the present time and under present law, no. She further stated that there may be a change to that law during this Legislative session.

**SEN. CASEY EMERSON** asked **SEN. WATERMAN** if anyone had come to her committee meetings and talked about savings and investments instead of insurance because they will do the same things in different ways. **SEN. WATERMAN** answered yes. What happens with your insurance is that you would then spend that money ahead of

time. If you put money into a savings account for your long term care and going back to **SEN. BENEDICT'S** question, you would probably not be eligible for Medicaid until you spend that but then that is what you had saved the money for. It doesn't get into the sheltering of assets if done that way.

Closing by Sponsor:

**SEN. WATERMAN** closed saying: Thanks for the good hearing. This is in combination with the bill that **REPRESENTATIVE BETTY LOU KASTEN** is carrying. We can argue philosophically that we should all do the right thing, etc.; but as in other things we simply don't do them and so if we can provide incentives to people, it will not only help the State but will help individuals and make them feel better about their own responsibilities. We all will get old and 2/3 of the folks in nursing homes are on Medicaid. In reality we need to accept the fact that 40% of us are going to end up in a nursing home. The average length of stay will be something like 18 to 24 months. Hopefully this bill will encourage all of us to think about the future and plan for this so taxpayers' money won't have to pay for this long term care. I urge you Do Pass.

{Tape: 1; Side: A; Approx. Time Count: 10:32 am; Comments: N/A.}

HEARING ON SB 74

Sponsor: SENATOR DEBBIE SHEA, SD 18, BUTTE

Proponents: Frank Cote, Deputy Insurance Commissioner

Opponents: Larry Akey, National Assoc. of Independent Insurers  
Ward Shanahan, Farmers Insurance Group

Opening Statement by Sponsor:

**SENATOR DEBBIE SHEA, SD 18, Butte.** I am here at the request of the State Auditor. SB 74 is a consumer bill and specifically addresses a fairness issue. Consumers feel pressured into buying multiple policies in order to obtain insurance. As you can see on the bill, Page 3, Line 24, we are asking that an insurer may not make or commit unfair discrimination between risks of the same class and hazards by refusing to renew, or cancelling a contract of insurance or by limiting the amount of coverage in a contract because the insured cancels, does not renew, or refuses to purchase another contract of insurance from that insurer. If I should go in and buy an automobile policy and find a good rate, but I am told that I cannot purchase that policy unless I

buy my homeowners insurance policy from them as well. This is not a good policy for consumers. We would like to make very clear here that we are not trying to eliminate what is referred to as a multi-policy discount. If an insurance company wants to offer a multi-policy discount, that is fine for the Montana consumer. These multi-policy discount policies should be filed with the Insurance Commissioner's office. That being said, if there is not a multi-policy discount, an insurance agent or company shouldn't force consumers to purchase more than one policy with their company. **Frank Cote** is here from the Auditor's Office to answer any questions. I urge your consideration and support for this bill.

**Proponents' Testimony:**

**Frank Cote, Deputy Insurance Commissioner.** We rise in support of SB 74. We think this is a very good bill. One of our concerns is people being pressured and we do get complaints regularly. If **SEN. STEVE BENEDICT** were to purchase an automobile insurance policy from an insurance agent and that agent or company declines him that policy because he didn't purchase the multi-policy discount, **SEN. BENEDICT** now has a situation where the next time he applies for an auto insurance policy he must declare that he has been declined an auto insurance policy. And that will, in some cases, give him a difficult time in obtaining insurance at a later date from another insurance company. Just recently I was informed that there are some concerns about this bill and we are willing to work on these concerns and see if we can come up with appropriate language to alleviate these concerns.

{Tape: 1; Side: A; Approx. Time Count: 10:37 am; Comments: N/A}

**Opponents' Testimony:**

**Larry Akey, representing the National Assoc. of Independent Insurers.** We are a trade association and we represent about 560 property and casualty companies around the country. I am also speaking today on behalf of the American Insurance Assoc. I am also speaking on behalf of the Independent Insurance Agents Assoc. We rise in opposition to SB 74 as it is currently drafted. As the sponsor indicated to you, this bill is intended to eliminate unfair discrimination in the tying of certain types of insurance policies together. But in its effort to achieve that goal, we believe it reaches far beyond eliminating unfair discrimination. The sponsor mentioned multiple policy discounts. That is a fairly common practice in the insurance industry where a company will offer a discount if you purchase more than one type of coverage from them. The sponsor said they don't intend to encompass that type of policy making, and if the companies would just file that practice with the Insurance Commissioner's office, they would allow it. That is not what the language of the bill says. The difficulty with that approach is that companies shift in and out of that type of a marketing strategy depending on the strength of the market. If we should have to

file documents each time we move in and out of that marketing strategy, the commissioner's office becomes even more inundated with forms than they are currently. But that is not all that is reached by this bill. Let me give you another example. Insurance companies sell what is called an umbrella liability policy where there may be coverage limits on my auto policy, coverage limits on my homeowners policy but I have assets beyond what is protected by each of those and I want to cover those independently. So I go to my insurance agent and say that I want a million dollar umbrella policy. Traditionally those are sold only to people who have the underlying coverages with the carrier. The Commissioner's office says we don't really want to get at that as long as they are not discriminating. If everyone has to have their auto and homeowners coverage in order to get the umbrella policy, that is not unfair discrimination. Apparently that is fair discrimination. The problem with this bill as it sits right now is that they have attempted to address a problem that is out there. But this language reaches far beyond that particular type of situation to eliminate all types of coordination and for that reason we ask that you give this bill a do not pass recommendation.

**Ward Shanahan, Farmers Insurance Group.** I concur with **Mr. Akey's** comments.

Questions From Committee Members and Responses:

**SEN. CASEY EMERSON** asked **Larry Akey** how often is pressure put on the consumer to purchase all policies from one company? **Mr. Akey** responded that it would be more appropriate to ask **Mr. Cote**. I would say that it does happen but probably not frequently. In my experience in dealing with agents I don't find that it is a common occurrence.

**SEN. EMERSON** then asked **Mr. Cote** the same question. **Mr. Cote** replied that this is a situation that does happen and we receive complaints. I don't intend to stand up here and say it happens thousands of times a day or week, but we, on a regular basis, receive complaints about this type of activity.

*{Tape: 1; Side: A; Approx. Time Count: 10:44 am; Comments: N/A.}*

Closing by Sponsor:

**SEN. SHEA** closed. What we are about here is that we are servants of the state. Obviously there is a problem. If someone is being discriminated against and feeling pressure from insurance companies, I feel that it is our obligation to do something about it. I am hoping the **Mr. Akey** and **Mr. Cote** could come to some kind of agreement here and work to help this bill so that it is acceptable.

{Tape: 1; Side: B; Approx. Time Count: 10:53 am; Comments: N/A.}

HEARING ON SB 65

Sponsor: SENATOR GERRY DEVLIN, SD 2, TERRY

Proponents: Andy Poole, Deputy Director, Dept. of Commerce  
Sam Murfitt, Executive Secretary, MT Board of  
Horse Racing  
Lou Wojciechowski, Member, Board of Horse Racing  
Joe Erickson, Member, Board of Horse Racing and  
Horse Racing Task Force  
Tom Tucker, Manager, Montana Simulcast Partners  
Ed O'Haire, Great Falls  
Penny Haynes, Secretary/Treasurer for the  
Yellowstone Horse Racing Alliance  
Topper Tracy, Member, Horse Racing Task Force  
Bill Brown, MT Horse Racing Breeders Assoc.  
Bill Nooney, Western Montana Fair, Missoula  
Tom Snyder, Citizen

Opponents:

Opening Statement by Sponsor:

SENATOR GERRY DEVLIN, SD 2, TERRY. I bring a bill before you today with the great hope that we will save the horse racing industry in the state. The industry in this state has been having its woes in the last several years. Some of the reasons came forth in the Task Force that they established themselves. They got together in May of 1996 and said that they had to do something to save this industry in the State of Montana. They have come up with a proposal that all have given up something in order to rectify the system and of course increase the amount in purses throughout the state thereby creating a greater interest in horse racing which is needed. There are many here that wish to testify and I would prefer that they now come forward to explain their situation.

Proponents' Testimony:

Andy Poole, Deputy Director, Department of Commerce. The Board of Horse Racing is administratively attached to the Dept. of Commerce and the Horse Racing Bureau is part of the Dept. The Dept. of Commerce supports this legislation and hopes that you will support this also.

Sam Murfitt, Executive Secretary, MT Board of Horse Racing. Mr. Murfitt handed his testimony (EXHIBIT 3) to the committee.

Lou Wojciechowski, Member of Board of Horse Racing, Billings. Ms. Wojciechowski handed her testimony (EXHIBIT 4) to the committee.



**Joe Erickson, Member of Board of Horse Racing, Cascade.** Mr. Erickson handed his testimony (EXHIBIT 5) to the committee.

**Tom Tucker, Manager, Montana Simulcast Partners, Billings.** Mr. Tucker handed his testimony (EXHIBIT 6) to the committee.

**Ed O'Haire, Great Falls.** I helped to privatize the Great Falls race track. With the cooperation of the Task Force, the city and the Board of Horse Racing we felt we could take it over and make it successful. We feel that to be really successful we need the increase in the amount of the purse that is contained in this bill.

**Penny Haynes, Secretary/Treasurer, Yellowstone Horse Racing Alliance.** Ms. Haynes handed her testimony (EXHIBIT 7) to the committee.

*{Tape: 1; Side: B; Approx. Time Count: 11:16 am; Comments: N/A.}*

**Topper Tracy, Active in all phases of horse racing.** I am in full support of doing whatever it takes to bring the horse racing industry back into full swing here in Montana. I have looked at all the western states horse racing programs. The program that is in existence right now was developed at a time when there was enough money to develop the breeding program and to promote the expansion of horse racing. Unfortunately, this has not been an effective program. The statistics show in the last 5-6 years that the numbers have decreased instead of increased. Racing is going downhill. But we now are at a point where we have to actively pursue horses to come into the State of Montana. I encourage you to support SB 65.

**Bill Brown, Butte.** I am an owner, breeder and trainer. I am President of the Montana Horse Breeders Association. We agree that we need to increase our purses. For the future of horse racing, Topper and I have boys who train horses and we would like to have our children have the opportunity to remain in Montana and earn their livelihood here. I strongly urge the committee to support SB 65.

**Bill Nooney, Fairboard Member-Western Montana Fair, Missoula.** Mr. Nooney is representing the fairs in the state. Mr. Nooney handed his testimony (EXHIBIT 8) to the committee.

*{Tape: 2; Side: A; Approx. Time Count: 11:33 am; Comments: N/A.}*

**Tom Snyder, Citizen.** I would like to say that what you are hearing is the absolute truth. This industry is in serious trouble. These people have come before you today to save this industry and are willing to do whatever it takes. I would urge you to listen to these people and pass this bill.

**Opponents' Testimony: None**

Questions From Committee Members and Responses:

**SEN. BEA MCCARTHY** asked **SEN. GERRY DEVLIN** if the money was being taken from the exotic betting, that would be the quinellas and exactas, and it is not being taken from the win, place and show betting? **SEN. DEVLIN** with help from another answered that is correct.

**SEN. CASEY EMERSON** asked **Mr. Nooney** if he felt that the state should just cut the horse racing business loose and then they could solve their own problems? **Mr. Nooney** replied that racing has to be governed by someone. There have to be rules and regulations. What we need, other than the regulatory procedures which are necessary so that the Board of Horse Racing will be responsible to the citizens and to the betters, is to allow money that we now have to be redistributed into the purses and other places that this money would be needed to increase the industry.

**SEN. MCCARTHY** stated to **Sam Murfitt** that she understood that Hamilton was closing this year in Ravalli County and would like to know if there is anything in this bill that would be helpful in situations such as this, or is this bill just to maintain the six that are listed on (EXHIBIT 3). **Mr. Murfitt** answered that when this legislation was developed, Hamilton was still in business at that time. But through the closing of the Hamilton race track, this bill should be an encouragement for a track that has gone out of business, and possibly they could get some operating money through the passage of this bill.

**SEN. MCCARTHY** continued her question with the thought that distribution would be at the discretion of the Horse Racing Board. **Mr. Murfitt** replied yes, and to clarify that a bit, there will be several levels here. It will not just be the Board of Horse Racing that will be making these decisions. Rules will be adopted to address the formula for distribution to the various tracks. What I foresee is the Task Force would maintain a leadership role, and if not, the Task Force could request an advisory council to be formed to act as a first line of screening for any requests that came other than for purses.

**CHAIRMAN JOHN HERTEL** asked **Mr. Murfitt** about the \$400,000 figure has come up repeatedly and that comes to the Board of Horse Racing due to licensing, etc. **Mr. Murfitt** replied not exactly. The \$400,000 shown on the fiscal note of this bill lists a number of percentages. The 2% simulcast exotic shows that the \$93,000 previously was the 2% owner's bonus. What happens is that 2% of the exotics that were being collected or bet at each race track, was sent into the Board of Horse Racing. We kept them in a separately ear-marked account for disbursement at a later time. This is the same with the 2% breeder's bonus, the same with the county facilities. All these components on this fiscal note add up to that \$400,000.

**CHAIRMAN HERTEL** stated that now seeing those percentages, the Board of Horse Racing must be the body who wants to do some changing. Is that what you are asking us, **Mr. Murfitt**? He answered that the Dept. of Commerce and the Board of Horse Racing and the industry want to reallocate these funds and be allowed to redistribute them in a more effective manner.

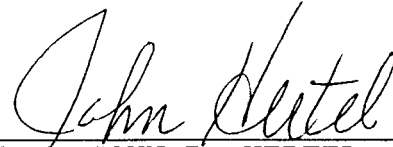
*{Tape: 2; Side: A; Approx. Time Count: 11:47 am; Comments: N/A.}*

**Closing by Sponsor:**

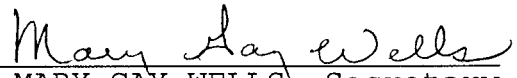
**SEN. DEVLIN** closed by saying: One of the reasons I am carrying this bill is that in the past we have had horse racing in Miles City in conjunction with the world famous Bucking Horse Sale. This is a big affair down there. This year there was no horse racing and the horse sale fell right in the creek. Now this is an attempt, I would hope, that this bill will allow the industry to make the necessary changes and give the boost needed to help not only Miles City but the whole state. If the horses come, the take gets up, then you have more money--it is a snowball effect. I would appreciate this committee giving a do pass to the bill.

ADJOURNMENT

Adjournment: 11:49 A.M.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW