

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON BUSINESS & INDUSTRY

**Call to Order:** By **CHAIRMAN JOHN HERTEL**, on January 21, 1997, at 9:07 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. Bea McCarthy (D)

**Members Excused:** Sen. C.A. Casey Emerson (R)

**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 80, 1/15/97  
SB 111, SB 112, 1/13/97  
Executive Action: None

#### HEARING ON SB 111

{Tape: 1; Side: A; Approx. Time Count: 9:07 am; Comments: N/A.}

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

**Proponents:** Clyde Dailey, State Auditor  
Tom Hopgood, Health Insurance Assoc. of America  
Susan Good, MT Assoc. of Life Underwriters  
Alve Thomas, AARP  
Tanya Ask, Blue Cross and Blue Shield of Montana  
Don Allen, MT Medical Benefit Plan

**Opponents:** None

**Opening Statement by Sponsor:**

**SENATOR MIGNON WATERMAN, SD 26, HELENA.** I bring to you today a long term care bill, SB 111. This bill implements the health care legislation that we know as Kennedy-Kassebaum (K-K). The bill tells what qualifies for long term care insurance plans. The bill would establish uniform benefit figures that define when the claim should be paid. This has been a concern of senior citizens and has been a gray area in a number of policies. The triggers will be based on the ability of the individual to perform what are known as ADL's, activities of daily living such as bathing, dressing, eating, etc. The bill helps eliminate the confusion in the market place on when long term care policies need to begin paying and make it easier for consumers to compare policies. The legislation would change long term insurance laws to allow for Federal tax deductibility which is part of "K-K". It provides the policies must be delivered within 90 days of issue. If a claim is denied, the insurer must tell the policy holder in writing within 60 days why the claim was denied. There are amendments to the bill. The amendments (**EXHIBIT 1**) were handed out to the committee.

**Proponents' Testimony:**

**Clyde Dailey, State Auditor's Officer and the Insurance Department.** SEN. WATERMAN touched on the key high points of this legislation. It does enact the "K-K" Federal side of it. The bill also creates the ability of the individual to more easily understand when their payment for claims are going to begin. There are many different long term care insurance policies and I believe this will help to make the market more uniform in that fashion. The most important aspect is that there are good consumer protections in this bill. You will notice there are extensive amendments as the result of the negotiation process with industry. Briefly, we adopted language that would be similar on a national level.

**Tom Hopgood, Health Insurance Assoc. of America.** We do support this bill with the amendments. I am happy to be here to support this bill and feel the bill is now well drafted.

**Susan Good, MT Assoc. of Life Underwriters.** We give strong support to this bill in its amended form and believe that any uniformity and consistency we can offer to our insured clients makes it a better world for all concerned.

**Alve Thomas, AARP.** We think this is an excellent piece of legislation.

**Tanya Ask, Blue Cross and Blue Shield of MT.** This area is a rapidly growing market here in Montana and nationwide. We think this is a timely piece of legislation and support it.

Don Allen, MT Medical Benefit Plan. I would echo those who are in support of this bill as amended.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. BEA MCCARTHY asked Mr. Dailey how this bill would tie in with the long term bill that SEN. WATERMAN carried last week? Mr. Dailey recalled that piece of legislation dealt with the partnership program and I believe they will dovetail nicely. There is a bit of distinction but this bill will not affect that. SEN. MCCARTHY continued with the question that is this bill the prior piece of legislation that you need? Mr. Dailey answered that he felt that this legislation is all a part of a package.

SEN. STEVE BENEDICT asked Mr. Dailey if this bill was redundant, was it already a part of the "K-K" legislation? Mr. Dailey answered no, and said that they had made the decision earlier on to separate this portion of "K-K" out of the rest of the "K-K" legislation simply because this product was so unique, had its own sets of problems, its own vernacular, etc. What was driving this was more tax related issues.

Closing by Sponsor:

SEN. WATERMAN closed. This bill does implement the long term care portion of the "K-K" in Montana and it is important to separate it out. One of the parts of "K-K" I like is the tax deductibility for long term care insurance. This along with the partnership bill last week will encourage people again to plan for their own long term care. This should be good for Montana also. I ask for a Do Pass for SB 111.

{Tape: 1; Side: A; Approx. Time Count: 9:19 am; Comments: N/A}

HEARING ON SB 112

Sponsor: SENATOR FRED VAN VALKENBURG, SD 32, MISSOULA

Proponents: Frank Cote, Deputy Insurance Commissioner  
Susan Good, MT Assoc. of Life Underwriters  
Tom Hopgood, American Council of Life Insurance  
Dick Pattison, MT Senior Citizens Assoc.  
Roger McGlenn, Independent Insurance Agents Assoc.  
of Montana

Opponents: None

Opening Statement by Sponsor:

SENATOR FRED VAN VALKENBURG, SD 32, MISSOULA. SB 112 is a bill that I have introduced at the request of the Insurance

Commissioner, State Auditor. It is a bill that would essentially regulate the sales of viatical settlement contracts in the State of Montana. If you are like I am, you want to know what a viatical settlement contract is. Even though I had Latin in high school, I had never heard of the term viatical. I was informed by **Mr. Cote** that it is a derivative of the Latin term, viaticum. Viaticum is a term that early Christians used to describe the providing of spiritual well-being to individuals who were about to engage in their journey into the next world. This seems to explain how the sellers of viatical settlement contracts have decided to use this term to talk about providing provisions to people of this world who are about to pass onto the next world. In other words, people who have life insurance contracts who have found out that they are terminally ill with a year or two to live are able to sell those life insurance contracts to a third party (a viatical settlement company). This company will generally provide them with a cash settlement in exchange for their right to collect the life insurance proceeds that would otherwise go to the individual's beneficiary upon their death. This is a relatively new development. It has accelerated substantially with the emergence of AIDS. The Insurance Commissioner has recommended that we adopt some kind of regulatory scheme to make sure that individuals in this situation would be protected because they may not be in a good state of mind that would enable them to use good judgment in these matters.

The bill that is being proposed is one that has largely been drafted from a model legislation proposed by the National Association of Insurance Commissioners. It also is drafted in compliance with provisions of the Kennedy-Kassebaum bill that passed through Congress and provides some favorable tax treatment to those who receive the proceeds from viatical settlement agreements if the requirements of the "K-K" Act are satisfied. The essential provisions of this particular bill are to provide a third party that would engage in these transactions, and they are generally not insurance companies and are unregulated business entities, would have to file a standard form with the Insurance Commissioner's office indicating they would provide the individual involved in a settlement agreement the ability to rescind that agreement either within 30 days of the time they entered into the contract or 15 days after they received the proceeds of the agreement whichever came later. There would have to be certain disclosures to the policy holder before the contract could be valid. The recommendation by the Insurance Commissioner and the National Assoc. of Insurance Commissioners would be full disclosure and the right to rescind with respect to these contracts. There are other technical provisions. **Frank Cote**, from the Insurance Commissioner's office, is here to provide testimony and answer questions.

**Proponents' Testimony:**

**Frank Cote, Deputy Insurance Commissioner. SEN. VAN VALKENBURG** has explained the bill very well. I would like to preempt **SEN.**

**STEVE BENEDICT** on his question from the last bill, SB 111. This bill was separated out as this is a very thick piece of legislation. I will be available for other questions.

**Susan Good, MT Assoc. of Life Underwriters.** While we do not for a moment believe this is a life insurance issue, it is a very important issue, nonetheless. It does require regulation because the people involved in getting these benefits are fragile and vulnerable. MT Assoc. of Life Underwriters has for many years been highly skeptical of any type of legislation that tells a person what they may or may not make in the form of a commission. We would ask that your committee look at Section 8. We would ask you to think about what kind of problem that may or may not be. We understand the gravity of this issue and this is our only concern that we would bring before you.

**Tom Hopgood, American Council of Life Insurance.** This is an issue that is not directly related to life insurance, but it is however that is collaterally related since life insurance policies are the basis of viatical settlements. It is the announced policy of the ACLI that we do support well-founded legislation based upon the recommendations of the NAIC. We are in support of SB 112.

**Dick Pattison, MT Senior Citizens Assoc.** We believe this legislation is not only important for the senior citizen but for all Montanans. We urge a Do Pass.

**Roger McGlenn, Executive Director, Independent Insurance Agents Assoc. of MT.** For the reasons you have heard, we also stand in strong support of this bill.

Opponents' Testimony: None

{Tape: 1; Side: A; Approx. Time Count: 9:30 am; Comments: N/A.}

Questions From Committee Members and Responses:

**SEN. STEVE BENEDICT** asked **Mr. Cote** if he felt this bill could be rolled into some of the "K-K" legislation that is currently going through the process so that we don't have two or three bills moving through the legislative process that costs us money to have hearings, etc. and develop one nice package. **Mr. Cote** answered there is no reason why that couldn't be done. **SEN. BENEDICT** then asked if this model had been fully adopted by the NAIC? **Mr. Cote** responded that all the insurance commissioners have not formally adopted this simply because they have not had an opportunity to vote on it. **Mr. Cote** told the committee and the **SENATOR** that approximately 19 states have at this point regulated viatical settlements and most if not all of them are based upon this model.

**SEN. DEBBIE SHEA** asked **SEN. VAN VALKENBURG** to set up a scenario. The **SEN.** complied.

**SEN. BEA MCCARTHY** asked **Mr. Cote** where the necessary medical validations were in the bill? **Mr. Cote** pointed out that there are requirements that the person who is terminally ill or the policy owner must validate that the person is terminally ill. It would be either the personal physician of the insured or the personal physician of the policy owner. **SEN. MCCARTHY** followed up with the question that would the settlement that the individual receive be subject to a lien concept such as first right to pay medical bills, second right to pay the mortgage? **Mr. Cote** replied that mostly likely, yes; and that is one of the disclosures that would be required. The person receiving the proceeds must understand that the money could be subject to the lien process.

**SEN. BENEDICT** asked **Mr. Cote** why they are setting broker commissions in statute? **Mr. Cote** responded with a hypothetical situation of someone with a terminal illness and a \$100,000 life insurance policy. If this person were dealing with a not-so-reputable insurance agent or producer and the agent knew his client had a terminal illness, the agent could get close to \$2,000 if the agent could convince that person to get the viatical settlement. **SEN. BENEDICT** stated that he was not comfortable with setting commissions in law. He feels that this should be negotiable with the involved persons. **Mr. Cote** answered that there are others places where commissions are set by law. **SEN. BENEDICT** wanted to know if this was a "go to the wall" issue with the Insurance Commissioner's office? **Mr. Cote** responded that the answer is not a "go to the wall" provision, but he was not sure whether "K-K" legislation requires that. He did strongly encourage this provision remain in the bill.

**CHAIRMAN JOHN HERTEL** asked **SEN. VAN VALKENBURG** about Section 12 where it explains some of the different things as far as the policy holders are concerned and would a power-of-attorney have the ability to make these judgments? **SEN. VAN VALKENBURG** responded that he didn't think there was any specific reference in the bill that a power-of-attorney was needed. The general rules of using a power-of-attorney would apply here as to any other contract. However, in Section 13 there are conditions precedent to entering into these agreements that require the person be of sound mind and is under no undue influence. There might be instances that a power-of-attorney would be needed such as in the case of a person unable to sign a document or unable to communicate.

*{Tape: 1; Side: A; Approx. Time Count: 9:43 am; Comments:N/A.}*

Closing by Sponsor:

**SEN. VAN VALKENBURG** closed. With respect to **SEN. MCCARTHY'S** question, I believe that in Section 13 of the bill there is a requirement in Subsection B,2 that a person acknowledges the illness or condition is terminal and then further there is a provision for release of medical records under Subsection B,5.

As far as **SEN. BENEDICT'S** concerns about this bill being part of another bill, I would remind the committee of the Constitutional provision in Montana that requires each bill have only one subject and that basically insures we are not forced into voting for something we want because it has been put into another bill that we don't want. This bill I am proposing is not required to be passed to conform to anything. This is a discretionary act on the part of the Montana Legislature whether it wants to regulate viatical settlement contracts. I would appreciate a Do Pass.

*{Tape: 1; Side: A; Approx. Time Count: 9:57 am; Comments: N/A.}*

HEARING ON SB 80

Sponsor: SENATOR JOHN HERTEL, SD 47, MOORE

Proponents: Frank Cote, Deputy Insurance Commissioner  
Susan Good, MT Life of Underwriters  
Tanya Ask, Blue Cross and Blue Shield of Montana  
Tom Hopgood, Health Insurance Assoc. of America

Opponents: None

Opening Statement by Sponsor:

**SEN. JOHN HERTEL, SD 47, MOORE.** I bring to you this morning SB 80. This bill is a consumer protection bill that would prohibit health insurance companies from underwriting a risk after a policy has been issued unless fraudulent statements or misrepresentations were made on the application. Underwriting is a process done by the insurer in collecting all the facts about a risk. Then the insurer will decide if he will accept the risk or decline the risk or place a rider on that risk. A rider is simply an attachment on the policy that specifically adds or deletes coverage. A small example of this might be: A health insurance policy is issued without the insurer reviewing the applicant's medical record or the application fails to specifically request information about an applicant's condition. After a policy holder claim is submitted, the insurer then requests medical records in an attempt to deny coverage or cancel the insured's policy. Sometimes information on the policy holder's condition or information related to the condition was discussed on the application but the underwriting was not done properly. This bill would protect the policy holder from the insurer going back and doing what is called "post-claim" underwriting. Again, the policy holder is protected by this bill. However, the policy holder must give corrected information on the application.

Proponents' Testimony:

**Frank Cote, Deputy Insurance Commissioner.** This is a consumer protection bill. It is a simple bill. SB 80 is designed to stop the following examples from happening. One example is a person

who had cerebral palsy. That person went to an insurer, applied for coverage and made known the fact that they had cerebral palsy. The policy was issued and approximately one year later, a claim was submitted. The insurer went back and looked at the medical history and decided because the person had cerebral palsy, they were going to deny coverage on all the coverages and cancel the insurance. This is not fair, because if the illness was disclosed in the application, the insurer had the opportunity to decline or place a rider on the policy and they could have done that at the time of application. The second example is someone who had a heart condition. Again, the heart condition was listed at the time of application. The insurer did not review the extent of the heart condition and again on a claim submitted on a totally unrelated illness, the insurer tried to not pay the claim by cancelling the policy from inception day. I would like to clarify that this deals only with health insurance. The second clarification is that this bill does not do anything with pre-existing conditions. An insurer can still not pay coverage in the first 12 months because of a pre-existing condition. It also does not change the ability of the insurer under current law to be able to deny coverage or to place an elimination rider on at the time of application.

*{Tape: 1; Side: B; Approx. Time Count: 10:04 am; Comments: Missed hearing Susan Good's name on the beginning of the tape.}*

**Susan Good, MT Assoc. of Life Underwriters.** This is about the third consumer protection bill with similarities. The people I represent are people who purchase these insurances and these are one of the most important purchases they make. When things go wrong with these policies, the first person to get a call are my guys, the agents. That is why we appear on these bills that try to get everyone to improve communications. These issues can be complex and so we stand in support of this bill.

**Dick Pattison, MT Senior Citizens Assoc.** Our members and other Montanans from time to time may be affected and this bill would certainly help to correct a problem along these lines.

**Tanya Ask, Blue Cross and Blue Shield of Montana.** At the time the application is accepted by the company, we have the opportunity to study that application. Based on the information given, we do enter into a contract with the insured and at that point assume the obligation, barring any kind of misinformation, of honoring the contract.

**Tom Hopgood, Health Insurance Assoc. of America.** We ask the committee to endorse this bill with a Do Pass recommendation.

**Don Allen, MT Medical Benefit Plan.** We also support the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

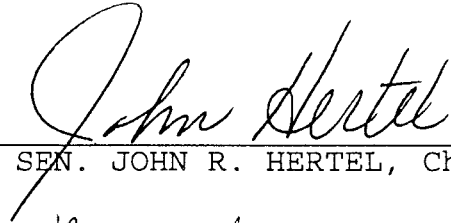


Closing by Sponsor:

SEN. HERTEL closed. What is disclosed on the application is final. It must be honored. It is a good bill for insurance protection. Thank you for the hearing and encourage a Do Pass.

ADJOURNMENT

Adjournment: 11:08 A.M.



SEN. JOHN R. HERTEL, Chairman



MARY GAY WELLS, Secretary

JH/MGW