

SENATE BILL 500

IN THE SENATE

February 13, 1979	Introduced and referred to Committee on Business and Industry.
February 19, 1979	Committee recommend bill, as amended.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, pass consideration.
February 22, 1979	Second reading, indefinitely postponed.
February 23, 1979	On motion, Senate reconsider its action taken on Second reading the previous Legislative Day. Motion adopted.
	Second reading, as amended.
	Considered correctly engrossed.
	On motion, rules suspended, Bill placed on Calendar for third reading this day.
	Third reading, passed.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Business and Industry.
March 7, 1979	Committee recommend bill, as amended.
March 8, 1979	Second reading, pass consideration.
March 9, 1979	Second reading, concurred.
March 13, 1979	Third reading, as amended.

IN THE SENATE

March 14, 1979	Returned from House, concurred, as amended.
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March 15, 1979	Second reading, pass consideration.
March 16, 1979	Second reading amendments adopted.
March 17, 1979	Third reading amendments adopted.
	Sent to enrolling.
March 27, 1979	Correctly enrolled
	Signed by President.

GOVERNOR

March 28, 1979	Delivered to Governor
April 3, 1979	Veto.

IN THE SENATE

April 5, 1979	Sustained veto (25A - 23N)
April 9, 1979	On motion, request of House granted for return of Senate Bill 500 for further consideration. Motion adopted.

IN THE HOUSE

April 10, 1979	On motion of April 7, 1979, bill requested from Senate and referred to Committee on Rules.
April 20, 1979	Died in Committee.

1 *Senate* BILL NO. 500
2 INTRODUCED BY *Ernest D. Johnson*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE
5 CREATION OF HEALTH CARE FACILITIES LIABILITY PROTECTION
6 TRUSTS."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Health care facilities trust authorized --

10 terms. (1) Any group or association of health care

11 facilities, as defined in 50-5-101, that are licensed under

12 Title 50, chapter 5, part 2, may by an appropriate written

13 trust agreement create, maintain, administer, and operate a

14 health care facilities liability protection trust with such

15 group or association as grantors and with such health care

16 facilities as beneficiaries for the purpose of protecting

17 against loss from payment of general public liability claims

18 based upon acts or omissions of such health care facilities,

19 including but not limited to claims for malpractice.

20 (2) Such group or association shall operate as a
21 nonprofit domestic corporation. The agreement shall specify
22 the trustee and the terms and conditions of the trust.

23 Section 2. Title to property -- powers of trustees.
24 (1) The trustee of a trust created pursuant to [section 1]
25 has legal title to all property belonging to the trust.

1 (2) The trustee shall control and manage such property
2 and the business and affairs of the trust. He may, in
3 accordance with the trust agreement, invest the trust
4 assets. Any restrictions imposed on investments by trustees
5 under Title 72 or any other Montana statutes do not apply to
6 a trust created under [section 1].

13 Section 3. Trustee not liable to third persons. A
14 trustee of a trust created under [section 1] is not
15 personally liable to third persons for acts or omissions or
16 obligations incurred when acting in such capacity.
17 Liability to third persons for such acts or omissions or
18 under such obligations extends to the whole of the trust
19 estate or so much thereof as is necessary to discharge the
20 liability.

21 Section 4. Limited liability of participating health
22 care facility. No health care facility that participates in
23 a health care facilities liability protection trust is
24 liable to the trust or any person by virtue of that
25 participation beyond the full amount of its agreed

1 contribution as set forth in the trust agreement.

2 Section 5. Examination by state auditor. The state
3 auditor shall examine the provisions of a trust agreement
4 drawn for the purpose of creating a trust pursuant to
5 [section 1] and shall advise the participants regarding the
6 adequacy of reserves and collateral insurance provided to
7 cover the estimated risk involved.

-End-

1 SENATE BILL NO. 500

2 INTRODUCED BY ETCHART, DOVER, GRAHAM

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE
5 CREATION OF HEALTH CARE FACILITIES LIABILITY PROTECTION
6 TRUSTS."7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:9 Section 1. Health care facilities trust authorized --
10 terms. (1) Any group or association of health care
11 facilities, as defined in 50-5-101, that are licensed under
12 Title 50, chapter 5, part 2, may by an appropriate written
13 trust agreement create, maintain, administer, and operate a
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16 facilities as beneficiaries for the purpose of protecting
17 against loss from payment of general public liability claims
18 based upon acts or omissions of such health care facilities,
19 including but not limited to claims for malpractice.20 (2) Such group or association shall operate as a
21 nonprofit domestic corporation. The agreement shall specify
22 the trustee and the terms and conditions of the trust.23 Section 2. Title to property -- powers of trustees.
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25 has legal title to all property belonging to the trust.1 (2) The trustee shall control and manage such property
2 and the business and affairs of the trust. He may, in
3 accordance with the trust agreement, invest the trust
4 assets. Any restrictions imposed on investments by trustees
5 under Title 72 or any other Montana statutes do not apply to
6 a trust created under [section 1].7 (3) The trustee may, in accordance with powers
8 conferred by the trust agreement or otherwise, perform all
9 acts necessary or desirable for the conduct of the business
10 of a public liability insurer THE TRUST. The provisions of
11 Title 33 do not apply to a person acting in the capacity of
12 a trustee of a trust created under [section 1] A TRUST
13 CREATED UNDER [SECTION 1] IS SUBJECT TO THE PROVISIONS OF
14 TITLE 33, EXCEPT THAT THE REQUIREMENTS OF 33-2-109 AND
15 33-2-110 MAY BE MET BY:16 1A1 SUBMISSION OF SUCH DOCUMENTS OUTLINING OPERATIONS
17 AS ARE REQUESTED BY THE COMMISSIONER OF INSURANCE; AND
18 1B1 SUBMISSION OF EVIDENCE TO THE COMMISSIONER OF SUCH
19 EXCESS INSURANCE COVERAGE AS MAY BE REQUIRED BY THE
20 COMMISSIONER.21 1A1 THE TRUSTEE MUST BE BONDED FOR THE FULL AMOUNT OF
22 THE TRUST ASSETS BY A SURETY COMPANY AUTHORIZED TO DO
23 BUSINESS IN MONTANA.24 Section 3. Trustee not liable to third persons. A
25 trustee of a trust created under [section 1] is not

1 personally liable to third persons for acts or omissions or
2 obligations incurred when acting in such capacity.
3 Liability to third persons for such acts or omissions or
4 under such obligations extends to the whole of the trust
5 estate or so much thereof as is necessary to discharge the
6 liability.

7 Section 4. Limited liability of participating health
8 care facility. No health care facility that participates in
9 a health care facilities liability protection trust is
10 liable to the trust or any person by virtue of that
11 participation beyond the full amount of its agreed
12 contribution as set forth in the trust agreement.

13 Section 5. Examination by state auditor. The state
14 auditor shall examine the provisions of a trust agreement
15 drawn for the purpose of creating a trust pursuant to
16 [section 1] and shall advise the participants regarding the
17 adequacy of reserves and collateral insurance provided to
18 cover the estimated risk involved.

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11 facilities, as defined in 50-5-101, that are licensed under

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16 facilities as beneficiaries for the purpose of protecting

17 against loss from payment of general public liability claims

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19 including but not limited to claims for malpractice.

20 (2) Such group or association shall operate as a
21 nonprofit domestic corporation. The agreement shall specify
22 the trustee and the terms and conditions of the trust.

23 Section 2. Title to property -- powers of trustees.
24 (1) The trustee of a trust created pursuant to [section 1]
25 has legal title to all property belonging to the trust.

1 MONTANA STATUTE. A trustee of a trust created under [section
 2 1] is not personally liable to third persons for acts or
 3 omissions or obligations incurred when acting in such
 4 capacity. Liability to third persons for such acts or
 5 omissions or under such obligations extends to the whole of
 6 the trust estate or so much thereof as is necessary to
 7 discharge the liability.

8 Section-4---liability--of-participating-health
 9 care-facility---No-health-care-facility-that-participates-in
 10 a-health--care--facilities--liability--protection--trust--is
 11 liable--to--the--trust--or--any--person--by--virtue--of--that
 12 participation--beyond--the--full--amount--of--its--agreed
 13 contribution-as-set-forth-in-the-trust-agreement.

14 SECTION 4a. THERE IS A NEW MCA SECTION THAT READS:

15 Limits of liability. Nothing herein shall limit the
 16 liability incurred by any health care facility because of
 17 activities not related to their participation in the trust
 18 agreement.

19 Section-5a--Examination-by-state--auditors---The--state
 20 auditor--shall--examine--the-provisions-of-a-trust-agreement
 21 drawn-for-the-purpose--of--creating--a--trust--pursuant--to
 22 [section--1] and shall advise the participants regarding the
 23 adequacy-of-reserves-and-collateral--insurance--provided--to
 24 cover-the-estimated-risk-involved.

25 SECTION 5a. THERE IS A NEW MCA SECTION THAT READS:

1 Limit of coverage. At no time shall the reinsurance or
 2 excess insurance coverage of the trust be less than \$1
 3 million above the reserves of the trust.

-End-

SENATE BILL NO. 500

INTRODUCED BY ETCHEART, DOVER, GRAHAM

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5 CREATION OF HEALTH CARE FACILITIES LIABILITY PROTECTION
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25 has legal title to all property belonging to the trust.

1 {2} The trustee shall control and manage such property
2 and the business and affairs of the trust. He may, in
3 accordance with the trust agreement, invest the trust
4 assets. Any-restrictions-imposed-on-investments-by-trustees
5 under-title-72-or-any-other-Montana-statutes-do-not-apply-to
6 a-trust-created-under-section-17.

7 (3) The trustee may, in accordance with powers
8 conferred by the trust agreement or otherwise, perform all
9 acts necessary or desirable for the conduct of the business
10 of a-public-liability-insurer THE_IBUSI. The provisions of
11 Title 33 do not apply to a person acting in the capacity of
12 a trustee of a trust created under [section 1] A_IBUSI
13 CREATED UNDER [SECTION 1] IS SUBJECT TO THE PROVISIONS OF
14 TITLE 33, EXCEPT THAT THE REQUIREMENTS OF 33-2-109 AND
15 33-2-110 MAY BE MET BY OBTAINING REINSURANCE OR EXCESS
16 INSURANCE IN SUCH AMOUNTS AND TYPE AS SHALL BE DETERMINED TO
17 BE ACTUARILY SOUND BY THE COMMISSIONER OF INSURANCE BASED
18 UPON AN INDEPENDENT ACTUARIAL STUDY PROVIDED AT THE EXPENSE
19 OF THE IBUSI, except that the requirements of 33-2-109 and
20 33-2-110 may be met by:

21 the submission of such documents outlining operations
22 as are requested by the Commissioner of Insurance and
23 the submission of evidence to the Commissioner of such
24 excess insurance coverage as may be required by the
25 Commissioner.

1 151. THE TRUSTEE MUST BE BONDED FOR THE FULL AMOUNT OF
 2 THE TRUST ASSETS BY A SUBEY COMPANIE AUTHORIZED TO DO
 3 BUSINESS IN MONTANA.

4 Section 3. Trustee not liable to third persons. *
 5 EXCEPT AS PROVIDED UNDER CHAPTERS 20 AND 21 OF TITLE 72.
 6 MCA: AND ANY OTHER MONTANA STATUTE, A trustee of a trust
 7 created under [section 1] is not personally liable to third
 8 persons for acts or omissions or obligations incurred when
 9 acting in such capacity. Liability to third persons for
 10 such acts or omissions or under such obligations extends to
 11 the whole of the trust estate or so much thereof as is
 12 necessary to discharge the liability.

13 Section 4. Limited liability of participating health
 14 care facilities. No health care facility that participates in
 15 a health care facilities liability protection trust is
 16 liable to the trust or any person by virtue of that
 17 participation beyond the full amount of its agreed
 18 contribution as set forth in the trust agreement.

19 SECTION 4a. THERE IS A NEW MCA SECTION THAT READS:
 20 Limits of liability. Nothing herein shall limit the
 21 liability incurred by any health care facility because of
 22 activities not related to their participation in the trust
 23 agreement. ~~OR LIABILITY OF ANY HEALTH CARE FACILITY.~~

24 Section 5. Examination by state auditor. The state
 25 auditor shall examine the provisions of a trust agreement

1 drawn for the purpose of creating a trust pursuant to
 2 [section 1] and shall advise the participants regarding the
 3 adequacy of reserves and collateral insurance provided to
 4 cover the estimated risk involved.
 5 SECTION 5a. THERE IS A NEW MCA SECTION THAT READS:
 6 limit of coverage. At no time shall the reinsurance or
 7 excess insurance coverage of the trust be less than the
 8 amount above the reserves of the trust.

-End-

HOUSE OF REPRESENTATIVES
MARCH 7, 1979

BUSINESS & INDUSTRY COMMITTEE OF THE HOUSE, AMENDMENTS FOR SENATE
BILL 500, THIRD READING COPY, SECOND PRINTING, AS FOLLOWS:

1. Page 2, line 14.

Following: "TITLE 33"

Insert: ", except that the requirements of 33-2-109 and 33-2-110
may be met by obtaining reinsurance or excess insurance in such
amounts and type as shall be determined to be actuarially sound
by the commissioner of insurance based upon an independent
actuarial study provided at the expense of the trust"

2. Page 2, line 25.

Following: "UNDER"

Insert: "chapters 20 and 21 of"

3. Page 2, line 25 through line 1 on page 3.

Following: "MCA"

Strike: ", AND ANY OTHER MONTANA STATUTE"

4. Page 3.

Following: line 15

Strike: lines 16 thru 18 in their entirety

Insert: "tort liability of any health care facility."

5. Page 3, line 25 through line 3 on page 4.

Following: line 24

Strike: section 5 in its entirety.

AND AS AMENDED
BE CONCURRED IN

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JAN 2 1980

OF MONTANA

April 2, 1979

The Honorable William Mathers
President of the Senate
State Capitol
Helena, Montana 59601

The Honorable Harold Gerke
Speaker of the House of Representatives
State Capitol
Helena, Montana 59601

Dear President Mathers and Speaker Gerke:

In accordance with the power vested in me as Governor by the Constitution and laws of Montana, I hereby veto Senate Bill No. 500, "AN ACT TO AUTHORIZE THE CREATION OF HEALTH CARE FACILITIES LIABILITY PROTECTION TRUSTS."

As introduced, Senate Bill No. 500 authorized the formation of trusts by health care providers for the purpose of performing "all acts necessary or desirable for the conduct of the business of a public liability insurer", but exempting them from any of the provisions of the Montana Insurance Code or any restrictions imposed on investments to be made by the trustees under any Montana statute.

Certain amendments were made in the legislative process, mainly by placing the trusts under the provisions of Title 33. However, Title 33 is extremely broad in scope and since the amendments do not identify the specific code provisions to be applied, it is not clear how the trusts are to be regulated or taxed.

The Commissioner of Insurance, E.V. "Sonny" Omholt, has said that the bill would be extremely difficult, if not impossible, to administer. In a letter to me dated March 29, 1979, Commissioner Omholt stated: "The flagrant disregard for the insurance laws of the State of Montana, enacted for the sole purpose of protecting the general public from inadequately funded and improperly managed insurers,...make it imperative that I again express my objections to this legislation and strongly recommend a veto."

Under existing Montana law, enacted for the benefit of health care providers in 1977, such providers may organize themselves as a domestic insurance company for the purpose of transacting insurance. In this way the providers could gain the benefit of premium rates based on Montana's experience, without sacrificing the capital, reserve, and other regulatory requirements that the public interest requires.

The Honorable William Mathers
The Honorable Harold Gerke
March 30, 1979
Page Two

While I am sympathetic to the financial plight and high insurance premiums many health care providers face, I do not feel that a poorly conceived trust arrangement without assurances of protection for the public is an acceptable solution to the problem.

For these reasons, I hereby veto Senate Bill No. 500.

Sincerely,

THOMAS L. JUDGE
Governor

cc: The Honorable Frank Murray