

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By **CHAIRMAN BOB BACHINI**, on January 31, 1991, at 8:00 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Stepler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

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

HEARING ON HB 362

REP. MARIAN HANSON, HD 100, Ashland, said HB 362 will allow a governing body to invest surplus money in face-amount certificates.

Proponents' Testimony:

Curt Almy, Financial Planner, Miles City, said he works with individuals, towns and schools. They try to keep the money secure, but they want to maximize interest. Non-tax issues are becoming a bigger issue. The beneficiaries are the local bodies. HB 362 does involve face amount certificates. **EXHIBIT 1**

Ron Williams, Investment Field, said he has worked with people who manage public funds. The law did not clearly state if face amount certificates could be used, so, about four years ago, he wrote to the State Attorney General for clarification. The response stated that he did not want to confine or restrict the latitude used by the public servants. Mr. Williams said HB 362 would clarify the issue so that those people in a position to invest money for public use are managed in the most prudent manner and are also able to garner the best possible return. A face amount certificate is safe and competitive. The thing that makes it more competitive is that face amount companies do not have the overhead that sometimes are associated with other types of investment vehicles.

Opponents' Testimony:

REP. ROYAL JOHNSON said he had been in the banking business for a long time and that HB 362 should not be passed. He thinks absolutely safe means something that has little variance, either on the interest rate market and certainly, no variance on the equity market. Funds in public hands are usually short-term funds. It is not good to be locked into a situation when there will be a penalty for early withdrawal. He has no quarrel with the investment for the right kind of investors. REP. JOHNSON referred to a face amount certificate prospectus. Under "Government Regulation" an IDS cash reserve certificate is a security. Its offer and sale is subject to regulation under federal and state security laws. It is not a bank product. The asset summary of the portfolio includes 31% government agency bonds. These are quasi-government bonds and are not guaranteed by the full faith and credit of the United States government. 21% are corporate and other bonds. These are not guaranteed by anyone. 18% are preferred stocks - if they are owned at any lower interest rate than the current rate - these are a loss. 13% are municipal bonds, 8% cash, 4% miscellaneous, 3% certificate loans and 3% mortgages. Proponents talked about not leveraging the money. On page 10 of their prospectus it states: "We may lend some of the securities through broker-dealers and receive cash equal to the market value of the securities as collateral. This cash is invested in short-term securities. If the market value of the securities goes up the borrower pays additional cash." This company is a subsidiary of American Express who also own Shearson Lehman Hutton. If a person buys a base amount certificate and it is purchased for a specific maturity, but they need to sell before the maturity date, then there is a penalty. At the back of the prospectus it states IDS financial services is not a bank and the securities offered by it are not backed or guaranteed by any bank, nor are they insured by the FDIC.

The differences in the earnings on the face amount certificate is so small, particularly in the short term, that it would be difficult to prove there would be more money in the community. They are not guaranteed by interest and principal. One year ago,

IDS borrowed from their parent company, American Express, a large amount of money to cover the losses that they had in previous years. The funds of this state should not be subjected to this type of investment. The investments should have the full faith and credit of the United States Government.

Gordon Morris, Director, Montana Association of Counties (MACO), said they have had the issue discussed in other sessions, usually in the Local Government Committee. Commissioners who direct county investments are most interested in security. They have interest in 106% deposit security requirements already in the codes. He thinks even if this bill is passed, it would never be used.

John Cadby, Montana Bankers Association, said for reasons already stated, they are opposed to this bill.

Robyn Young, Montana Securities Department, said they are in opposition to the bill. Face amount securities are not absolutely safe. A large portion of their portfolio is valued in the future value of the maturity value of the bond. The act, as it reads, does clearly state what investments companies can invest funds in. It clearly would prohibit face amount certificates. Section 2, lines 18, 19 and 20 state certain types of mutual funds and other investment companies may qualify for the act because in some cases those funds do hold only U.S. government obligations. By changing it to face amount certificates the risk has been broadened. Since this is regulated by the SCC or because it is a security, it does not mean anything. SCC only makes sure there is full disclosure. She said Rep. Johnson took them through the prospectus for the certificate. She thinks these could be a risky investment.

Questions from the Committee:

REP. CROMLEY asked if counties can presently purchase face amount securities. **Mr. Williams** said the face amount certificate is not named specifically in the Code. The 106% the bank uses is also regulated similarly to a face amount certificate. Face amount certificates have not shown a loss in the past 100 years. **REP. CROMLEY** asked if the state would give an ambiguous answer. **Mr. Williams** said he wrote the letter for the County Commissioners in Yellowstone County. The letter was written to former Attorney General Mike Greely to find out if face amount certificates were in violation of the codes. The people investing could also held accountable for investing in something that does not meet the code. Greely's reply was that face amount certificates were not allowed by the law. He did not think he should clarify but that the Code should be amended to state that.

REP. ELLIS asked about the statement that no loss had occurred. **Mr. Williams** said no principle money, nor any interest that was guaranteed to be paid, was paid. He said this company did weather the depression and did pay all of its debts. American

Express does stand behind everything they do. If the federal government were as secure, there wouldn't be this discussion.

REP. STELLA JEAN HANSEN asked what was the rate of interest. Mr. Williams said it was .5%. She then asked if securities were included in the list would the rule then apply to that. Ms. Young said they had contended that wasn't clear in the act. If a person studies fact amount securities, it is highly unlikely a portfolio would ever be put together that was based on U.S. direct obligations. If they did, it would meet that definition. However, that is not reality. The firms are managing a portfolio of investments so they can make a return on those investments. The guarantee is the backing of that company. It is similar to an insurance company guarantee.

REP. ELLIS asked if the companies she spoke about had long track records as did the companies discussed by Mr. Williams. Ms. Young said face amount certificates are a rare investment. There are few companies that offer these investments. IDS is one of the oldest and best companies offering them. However, this change in the bill could not be restricted to only IDS products. It is conceivable that much weaker, much less reliable companies than IDS could also meet this investment criteria.

Closing by the Sponsor:

REP. MARIAN HANSON said there had been good discussion by both proponents and opponents.

HEARING ON HB 348

REP. BOB GERVAIS, HD 9, Browning, said this bill would require that imitation arts and crafts articles would be displayed near a sign prominently and legibly designating the articles as imitation. With unemployment on the reservation up to 85% there is a need to identify Indian-made materials. There is a domination of foreign-made products in curio shops. Native people are being forced out of the market. He is concerned that historical and cultural identity will be lost. The object of the bill is not to stop the products from coming into the state. It is only to identify the imitations.

Proponents' Testimony:

Jackie Parsens, Northern Plains Indian Crafts Association, Browning, said she has been employed by the association for nineteen years. Through the years she has seen the competition and the stolen designs. In her store there is a label on each item denoting the tribe or craftsperson who made the product. Most tribes are isolated and do not enjoy the economic stability the way people do off the reservation. People fail to recognize that most Indians are artists. They have a high artistic ability that is being overlooked. Families depend on their craft work to subsidize income. At this time Indian people are being

compensated approximately 35 cents per hour for their crafts and this includes the materials. Products are not marked saying they are imported products.

Gloria Hermanson, Montana Cultural Advocacy, said highly visible designation of the imitation is appropriate and she urged support.

Nicholas Brohman, State Folklorist, Montana Arts Council, said this bill protects and encourages the traditional culture of Montana. The Montana Arts Council and the Governor's Indian Affairs Coordinator and other organizations and individuals are in the midst of developing the Northern Plains Indian Art Market. Throughout the world the image of an Indian is a Northern Plains Indian. This recognition has not been used for economic development in the state nor on the Indian reservation. This bill is a simple bill, but it has profound ramifications. In the Southwest Indian Art Market, there were major conflicts over what is and what is not Indian art. They determined that authenticity is the only saving grace that they have for both sides of the market, supply and demand. The value of all arts and crafts are in the authenticity.

George HorseCapture, Fort Belknap, said he had been a curator for eleven and a half years at the Buffalo Bill Historical Center in Cody. He is familiar with artistic experiences. The arts and crafts are essential to the community and are one of the main stays of their tradition. Many Indian people have no economic opportunity to work in a meaningful area of employment and to earn wages that will provide them with some economic independence. Indian items demonstrate artistic expression. The West is an honest and proud country and the best products should be identified.

Opponents' Testimony: None

Questions from the Committee:

REP. BENEDICT asked if the definition of "imitation" could be strengthened. **REP. GERVAIS** said he would talk that over with supporters of the bill. **REP. BENEDICT** asked about the amendments he proposed. **CHAIRMAN BACHINI** said that in Section 34-14-6012, MCA, "Imitation Indian Arts or Crafts Articles" means "those made by machine or made wholly out of synthetic or artificial materials or articles which are not made by Indian labor or workmanship".

REP. BARNETT asked if a non-Indian moves onto the reservation and they develop his art, is the art considered Indian art.

CHAIRMAN BACHINI said the definition included "... made by Indian labor" and in that example it would not be considered Indian art.

REP. LARSON asked if other states have this legislation. REP. GERVAIS said yes, North Dakota does. REP. LARSON asked how would a store be organized. Would each item need to be marked. REP. GERVAIS said no. The Native American arts and crafts would be in one area. They would need to be separated with a sign designating imitation.

REP. CROMLEY asked if labels are used presently. REP. GERVAIS passed on the question. Ms. Parsen said no. She uses her own label, a red buffalo that states "Certified by the Interior Department". There are only two other reservations in the United States that are certified by the Interior Department.

REP. LARSON asked if imported trinkets aren't required to have a manufacturer's label. Ms. Parsen said yes, and they do. The labels are put on with a small amount of glue. They are made to fall off. REP. LARSON asked if reservations had gift shops with imitations. Mr. Bromann said trading posts run by white people had those items.

Closing by the Sponsor:

REP. GERVAIS said there is federal legislation that may be coming out. This is a good bill. The school is the biggest employer. During the summer, school employees do arts and crafts for extra income.

HEARING ON HB 331

REP. TOM KILPATRICK, HD 85, Laurel, said it is not difficult to find out who owns luxury cars. One of his constituents wanted her name removed from the files in Deer Lodge. When Rep. Kilpatrick called for her, they said it couldn't be done.

This bill states "The Department may not provide any information on an owner, or the owner's vehicle to any person, other than a person having a legal interest in the vehicle, requesting the information for commercial purposes if the owner has requested in writing that the department not disclose the information." This is a voluntary thing.

REP. KILPATRICK discussed the proposed amendments. EXHIBIT 2 He is concerned about the individual's right to privacy.

Proponents' Testimony: None

Opponents' Testimony:

Patrick Driscoll, R. L. Polk and Company, said the company is a statistician for the automobile industry. Their company relies on motor vehicle registration information. The motor vehicle information is key and critical to the service they provide the public and the industry. An amendment may make this more acceptable. Polk has provided 264 million recall notices since

1968 to owners of vehicles in the United States. In Montana, in 1989, about 42,000 notices went out. Those notices primarily deal with defects in automobiles and in many cases they are important in terms of safety. Most people assume that the automobile manufacturer gets that information from the purchaser, but that is not possible because cars change hands. Registration is important for that purpose. Additionally, R.L. Polk is interested in the whole area of automobile marketing. The efficiency of the consumer market is largely based on the ability of the business manager to know what the consumer will want. They would like the ability to amend the bill.

Dean Roberts, Administrator, Motor Vehicle Division, said they have an extensive information policy. It is based on the fact that the law says they can provide that to the public. They do screen who gets that information. They do not give out a record without the name of the requester. They have to use a series of forms. They do not give out information over the telephone. If the caller is known, there is a charge for that information. In the past six months they stopped Treasurers from giving out that information. They believe that information legally belongs to the Department of Justice. There has to be some central focus to giving out that public information.

They are concerned with the fact that the Department will have the obligation to determine commercial purposes or legal interests. They have no definitions or guidelines. They have no rule-making authority for registration statute. On the driver license side, they are not so concerned about that because they have rule-making authority to be able to define who they could give it to. Multiple ownership is a problem. They do not know how to resolve that problem. Most cars are owned by husbands and wives, as co-owners. If a husband sends a letter, can they still give information out? There isn't rule-making authority to decide that question. Cars are also owned by banks, as co-owners. They can flag the record. The federal legislation has now required them to keep the odometer record. The reason they keep that is that it is a consumer protection issue. This bill seems to not answer these questions.

CHAIRMAN BACHINI said it was not his intention to take Executive Action on the bill today. This would give the Representatives time to work on amendments.

Steve Turkiewicz, Montana Automobile Dealers Association, said a lien is public information. They are interested in protecting an individual's privacy.

Steve Browning, State Farm Insurance Company, said they are opposed to the bill. State Farm is trying to protect the policy holders. These records are helpful to determine ownership, to work with uninsured motorists, to determine who rebuilt the totals and what responsibility they had. These records are helpful for recalls. There are legitimate reasons why insurance

companies want to access this information.

Questions from the Committee:

REP. PAVLOVICH asked how many calls are received from people in the state who don't want their information released. Mr. Roberts said only one call had been made during the whole year. There had not been requests for selective automobiles during the past two years. They don't give out their whole files.

CHAIRMAN BACHINI asked if there had been requests for people in Montana who have motorhomes or trailers. Mr. Roberts said yes. They had an RV dealer request motorhome files many times this past year. CHAIRMAN BACHINI said he had many complaints from those people owning motorhomes and trailers. Mr. Roberts said someone did buy that list during this past year. CHAIRMAN BACHINI asked if they were charged for that list. Mr. Roberts said yes. CHAIRMAN BACHINI said that party who requested that list also sold that list. Mr. Roberts said no, they have to sign that they did not sell that list. There is a program to stop mailing lists through a computer program.

REP. BENEDICT asked if the data base put together by the Polk Co. is used to broker other lists to any one. Mr. Driscoll said he did not know. Mr. Majerus said they would do marketing for some clients along those lines. He said there are controls. REP. BENEDICT asked if someone came to him and said they were a client, would R.L. Polk then sell them a list of Mustang owners. Mr. Majerus said it would depend upon what they wanted to do. If they wanted to do a legitimate marketing campaign, they would do that for them. They would not release it to them for their purposes. Those standards are prevalent throughout the industry.

REP. WALLIN asked if any county treasurer's office wouldn't allow a person to make a list of transactions that go through the county. Their credit bureau publishes car transactions and mortgages that happen every week. Mr. Roberts said yes, it is county public knowledge.

REP. ELLIS asked if he thought there had been sufficient changes to meet the "legitimate requirement". Mr. Roberts said no, because the statute is quite clear that the motor vehicle registration can be used. With some rule-making authority, they could set the parameters.

REP. SCOTT asked if the bill were amended so that a person could have his/her name red flagged would that be a solution. REP. KILPATRICK said that was an excellent idea.

CHAIRMAN BACHINI said they would not take Executive Action at this time to allow time to work on the amendments to the bill.

REP. CROMLEY asked about the language on p. 3, line 22. He thought it might be better to change the words "having a

legitimate interest in the information" to a "legitimate interest in the vehicle". REP. KILPATRICK said people want to know about the vehicles.

REP. WALLIN asked that since there was just one request for information statewide last year, is it correct to assume that these people got the information from another source. REP. KILPATRICK said the question had been "how many people asked not to have their name put on the list?" He thought if people knew they could take their name off, more would do so.

REP. LARSON referred to the requests for information for Driver's License information. There were 25,000 requests per year. He asked if it would be appropriate for Rep. Kilpatrick to talk to the sponsor of HB 59. CHAIRMAN BACHINI said he thought this would be getting into two parts of the law. He didn't know how HB 331 could be incorporated with HB 59. REP. LARSON said he didn't mean to incorporate the bills. He meant they were similar. REP. KILPATRICK said that was where "legitimate" came from HB 59. They did state that it was a different situation.

Closing by the Sponsor:

REP. KILPATRICK said the one issue that must be brought out is voluntary. If a person doesn't want information on his car released, he just states so. It will be left up to the Department of Justice to determine what is legitimate.

PROPOSED RESOLUTION

Discussion:

CHAIRMAN BACHINI asked Mr. Verdon to prepare a final draft of a resolution at the request of the Committee expressing their desire that no unnecessary restrictions be imposed that would impede passage between the United States and Canada. (This became House Joint Resolution 27. The hearing and executive action can be found in the minutes dated February 19, 1991.)

ADJOURNMENT

Adjournment: 10:55 a.m.



Bob Bachini, Chair



Jo Lahti, Secretary

HB 362

What is a Face Amount Certificate?

Objectives

- To clarify an option available to local governments to maximize non-tax revenue while maintaining the absolute safety that is required.

History

- First certificate issued in 1894 as a way for people to save money and keep their assets safe.
- In the depression of the 1930s when 5500 banks failed, the face amount certificate met every obligation - on time and in full.
- It became a regulated security in 1940 (Investment Company Act of 1940).
- Now regulated by the Securities and Exchange Commission
- From 1894 until today, there has never been a single dollar lost that was invested in a face amount certificate

How does it work?

- Similar to a CD (certificate of deposit) in several ways:
 - interest and principal are guaranteed for a given period of time (1 month, 6 months, 12 months.....)
 - interest can be compounded or paid out
 - surrender penalty for early withdrawal.
- Dis-similar to a CD in several important ways.
 - CDs are backed by bank reserves and FDIC (to \$100,000)
 - face amount certificate is "self insured" by dollar for dollar backing with cash and qualified investments. (15 USCS 30a-28(a)(2)(G).
 - a face amount certificate company must have a minimum cushion of \$250,000 over and above the dollar for dollar backing (15 USCS 30a-28(a)(1).
 - face amount certificate company cannot leverage its assets.

EXHIBIT 2.

1-31-91

HB 331

House Business and Economic Development Committee
[Proposed, Alternative] Amendment to House Bill 331

January 31, 1991

Mr. Chairman: I move to amend House Bill No. 331 (first reading copy -- white) as follows:

Page 1

"Statement of Intent

A statement of intent is required for this bill to provide a guideline for adoption of administrative rules to implement ⁶¹⁻³⁻¹⁰¹⁽⁸⁾ ~~section 1~~. The Department of Justice is granted authority to reasonably restrict by rule the dissemination of vehicle registration information where such restriction is requested in writing by the vehicle owner and the department determines that the demands of individual privacy clearly outweigh the merits of public disclosure."

2. Page 3, line 20.

Following: "requested."

Strike: "Remainder of line 20 through "information." on line 25.

Insert: "However, the department may, by rule, reasonably restrict disclosure of information on an owner or the owner's vehicle if the owner has requested in writing that the department not disclose the information."

House Business and Economic Development Committee
[Proposed] Amendment to House Bill 331

January 31, 1991

Mr. Chairman: I move to amend House Bill No. 331 (first reading copy -- white) as follows:

1. Page 1, line 1.

Insert: "Statement of Intent

A statement of intent is required for this bill to provide a guideline for adoption of administrative rules to implement section 1. The Department of Justice is granted authority to reasonably restrict by rule the dissemination of vehicle registration information where such restriction is requested in writing by the vehicle owner and the department determines that the demands of individual privacy clearly outweigh the merits of public disclosure."

2. Page 3, line 20.

Following: "the department may"

Strike: "not provide any"

Insert: "by rule restrict disclosure of"

3. Page 3, line 22.

Following: "person having a"

Strike: "legal

Following: "interest in the"

Strike: "vehicle"

Insert: "information"

Now it will read:

Ex. 2
1-31-91
4B 331

However, the department may ~~not provide any~~ by rule restrict disclosure of information on an owner or the owner's vehicle to any person, other than a person having a ~~legal~~ legitimate interest in the ~~vehicle~~ information, requesting the information for commercial purposes if the owner has requested in writing that the department not disclose the information.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Econ Dev.

COMMITTEE

BILL NO. HB 362

DATE Jan. 31, 1991

SPONSOR(S) Rep. Marion Hanson

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ron Williams	Self	X	
Curtis Almy Miles City MT.	Self	X	
John Caddy	MT BANKERS ASSN		X
Karee Johnson	Self		X
Robyn Young	Securities Dept		X
Gordon Morris	MA Co.		X
Cheri Judd	Self	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Bus & Econ Rev

COMMITTEE

BILL NO. H B 331

DATE Jan. 31, 1991 SPONSOR(S) Rep. Kilpatrick

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Chad Bell	MVA	Amend	
Dew Roberts	Dept of Justice		X
Riley Johnson	MT. BROADCASTERS	Amend	
Larry Majewski	R.L. Polk & Co	Amend	
GENE PHILLIPS	N A I I A A I		X
PATRICK M. DRISCOLL	R. L. POLK & CO	Amend	X
Steve Browning	State Farm Insurance		X

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Bus & Econ Rev COMMITTEE BILL NO. H B 331
DATE Jan. 31, 1991 SPONSOR(S) Rep. Kilpatrick
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Chas Bell	MVA	Amend	
Dean Roberts	Dept of Justice		X
Riley Johnson	MT. BROADCASTERS	Amend	
Larry Majors	R.L. Polk & Co	Amend	
GENE PHILLIPS	N A I I A A I		K
PATRICK M. DRISCOLL	R. L. POLK & CO	Amend	X
Steve Browning	State Farm Insurance		X

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