MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 4, 2005 at 8:14 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary Perry
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: SB 24, 1/3/2005; SB 141, 1/3/2005; SB 37, 1/3/2005; SB 122, 1/3/2005
Executive Action: SB 24, 1/4/2005; SB 141, 1/4/2005

HEARING ON SB 24

Opening Statement by Sponsor:

SEN. BRENT CROMLEY (D), SD 25, opened the hearing on SB 24, Code Commissioner bill. **SEN. CROMLEY** informed the Committee that this bill was a traditional bill presented by the Code Commissioner to clarify, update and repeal certain codes.

SEN. CROMLEY referred to **Greg Petesch**, Code Commissioner, for explanation of SB 24. **Mr. Petesch** stated that SB 24 was presented to correct erroneous references in current sections of the Codes. **Mr. Petesch** did a preview of the various sections to be corrected or repealed in the Codes.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. O'NEIL referred to page 71, 40-6-415 and asked if it was elsewhere in the Codes. **Mr. Petesch** explained that this particular section had a termination date of 6-30-04, therefore, it was not mentioned somewhere else. He went on to say that there was a new bill before the Legislature which would address these issues should the bill pass.

Closing by Sponsor:

SEN. CROMLEY closed on SB 24 asking for a do pass vote.

HEARING ON SB 141

Opening Statement by Sponsor:

SEN. RICK LAIBLE (R), SD 44, opened the hearing on SB 141, Revise allowable wording on a "Notarial Seal". **SEN. LAIBLE** explained that SB 141 was a housekeeping bill to bring all Notaries into compliance with statute.

Proponents' Testimony:

Elaine Gravely, Secretary of State's Office, expressed support for SB 141.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. LAIBLE closed.

HEARING ON SB 37

Opening Statement by Sponsor:

SEN. TRUDI SCHMIDT (D), SD 11, opened the hearing on SB 37, Indemnification Agreement for domestic insurers. **SEN. SCHMIDT** explained that SB 37 would require that all securities companies use Indemnification Agreements. She further informed the committee that most states require Indemnification Agreements. She went on to say that some companies do have the agreements, however, there are those that do not.

Proponents' Testimony:

Alicia Pichette, Montana State Auditor's Office, spoke in support of SB 37. She stated that SB 37 had been requested by the State Auditor's Office then she discussed the accreditation standards. **Ms. Pichette** then presented the Committee with a written statement (attached as Exhibit 1) regarding SB 37 and went on to explain the same.

EXHIBIT(jus02a01)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MCGEE asked **Ms. Pichette** for a law explanation. **Ms. Pichette** replied that the major function of the financial examination of the insurers was to see that the insurers were accredited through the National Organization of Insurance Companies. She further stated that the Indemnification

Agreements were a contract between the insurer and the financial organization. **Ms. Pichette** went on to say that the use of the word "any" might make the bill too generic and that they may need to use more restrictive language.

SEN. MCGEE asked **Ms. Pichette** to explain an Indemnification Contract. **Ms. Pichette** replied that an Indemnification Contract insures that a loss would be covered by the financial institution.

SEN. MCGEE asked **Ms. Pichette** if the Auditor's Office or the insurer kept the audit records. **Ms. Pichette** responded that insurer records are kept with the insurer along with the Indemnification Agreement.

SEN. PERRY asked **Ms. Pichette** what a loss of securities meant. **Ms. Pichette** replied that the intent was to clarify the loss would be a restricted loss.

SEN. PERRY further asked **Ms. Pichette** if the indemnification would cover bank failures and losses due to poor investments. He continued by asking if it required protection of one entity's assets over another entity. He then asked if the FDIC was an insurer. **Ms. Pichette** stated that the FDIC was an insurer. She went on to say that she could not answer the rest of the question. She informed the Committee that she would gather information so that she could respond to the rest of the questions. She continued by stating that the loss of an insurer's assets would be insured to a specific level.

SEN. MANGAN asked **Ms. Pichette** if the bill were basically a "due diligence" bill. **Ms. Pichette** answered that it provided a way so that the insuring companies were not left holding the bag.

SEN. O'NEIL inquired of **Ms. Pichette** if a bank were to go broke, would the insurance company be paid before the asset holder. **Ms. Pichette** informed the Committee that she needed to gather more information in order to respond to the question.

SEN. CURTISS asked **Ms. Pichette** if the lack of an Indemnification Agreement hindered the Department. **Ms. Pichette** indicated that she did not feel that it hindered the Department, however, she could not say for sure.

CHAIRMAN WHEAT inquired of **Ms. Pichette** if the insurers were protected. He further stated that he was having trouble understanding the use of the wording "hold in custody." **CHAIRMAN**

WHEAT further asked if it was the piece of paper that was being insured, as the actual asset would not be lost. **Ms. Pichette** indicated that she did not have a response for the question.

CHAIRMAN WHEAT then asked **Ms. Pichette** about government bonds and what would happen should the insured agency be destroyed. He continued by inquiring how the Indemnification Agreement would help and explaining the need for a better understanding of what was being indemnified. **Ms. Pichette** responded that it was the actual assets which were being indemnified.

SEN. O'NEIL inquired of **Ms. Pichette** if a security could be a stock and if a stock could incur a loss. He further asked if the Indemnification Agreement would indemnify a loss by theft. **Ms. Pichette** responded that the Auditor's Office was intending to assure that an agreement was in place. She continued by stating that it was apparent that the bill was not clear.

SEN. MCGEE asked **Ms. Pichette** if she could go back to the Auditor's Office, review the bill, and come back to the Committee with clearer language. He went on to request that the bill be reworded so as to address the issue of preference of an institution's assets over an individual's assets. **Ms. Pichette** indicated that she would do as the Committee requested.

Closing by Sponsor:

SEN. SCHMIDT closed, stating that the bill needed more work with some things clarified.

CHAIRMAN WHEAT turned the Committee Meeting over to **VICE-CHAIRMAN CROMLEY** so that he could present SB 122 which he sponsored.

HEARING ON SB 122

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on SB 122, Regulate transfer of structured settlement payment rights. **SEN. WHEAT** provided the Committee with the background for the origination of SB 122. He informed the Committee that SB 122 was designed to protect those individuals entering into structured settlements along with those individuals who choose to sell their structured settlements for present day lump sum value. **SEN. WHEAT** then referred to SB 122 and pointed out those sections which were the most relevant to the protection of all parties concerned. He further explained the procedures implemented by SB

122 to provide that all parties involved have been fully informed of all aspects of the transaction prior to approval of the sale of the structured settlement by the Courts or an Authorized Administrator.

Proponents' Testimony:

Alicia Pichette, Deputy Insurance Commissioner, Montana State Auditor's Office, rose in support of SB 122. **Ms. Pichette** provided the Committee Members with written testimony which is attached hereto as Exhibit 2. **Ms. Pichette** stated that the contents of SB 122 was a consumer protection issue.

EXHIBIT(jus02a02)

Les Marsh, RMAC, Inc., rose in support of SB 122. He stated that the purpose of SB 122 was to protect the injured party from running out of money. He went on to explain the federal law relating to structured settlements and the fact that the Internal Revenue Code 130 prevented the sale of structured settlements. He further discussed the downfalls caused by the lack of regulation regarding selling of structured settlements. He continued stating that there was a need for determining what a qualified sale would be, thereby eliminating usury transactions.

Jacqueline Lenmark, representing AIA and ACLI, and **Greg Van Horssen** of Farmer's Insurance, stated that they supported the spirit and concept of SB 122. She continued by informing the Committee that not all structured settlements could be assigned. Ms. Lenmark then referred to Section 12, Page 7, Line 8, of SB 122 and the language therein, "or to imply any transfer." She then proposed the bill be amended to protect those contracts entered into at time of settlement.

Don Allen, Montana Association of Insurance Companies, stated that they supported SB 122 and asked that the Committee give the bill a do pass. He said he felt that SB 122 was a good bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MANGAN asked **SEN. WHEAT** if there were any requirements for companies buying structured settlements in any statutes in Montana. **SEN. WHEAT** replied there were not, but that there may be federal regulations.

SEN. MCGEE asked **Ms. Pichette** if the consumer protection covered the person with the claim or the person buying the settlement. **Ms. Pichette** replied that it was a protection for both.

SEN. CROMLEY inquired of **SEN. WHEAT** whether or not this type of bill was being enacted in any other states. **SEN. WHEAT** indicated that he thought so and, that he had been thinking about the situation before he had been contacted about the bill.

SEN. CROMLEY then inquired of **Ms. Pichette** if she were aware of any other states with this requirement. **Ms. Pichette** stated that there were 20 other states with a similar law and that Oklahoma's law was the strongest. She went on to say that the request for this bill was a result of all of the ads that are now seen on TV.

SEN. CROMLEY asked **SEN. WHEAT** if he had any problem with Ms. Lenmark's amendment. **SEN. WHEAT** indicated that he did not.

SEN. CURTISS referred to Page 7, Line 6, and asked if there was a definition for interested parties in the bill. **Ms. Pichette** informed **SEN. CURTISS** that the definition could be found on Page 2, Line 8.

SEN. O'NEIL asked **SEN. WHEAT** why he did not object to Ms. Lenmark's proposed amendment. **SEN. WHEAT** replied that totally disabled individuals were set up with Conservators that would be making the decisions. He continued by saying that at the time the contract is entered into the individuals responsible for entering into such contracts would be in a position to understand whatever contract they were signing. **SEN. WHEAT** went on to say that at the time of settlement, the parties would be able to negotiate whether or not the structured settlements could or could not be transferred.

Closing by Sponsor:

SEN. WHEAT closed by saying that this was a bill that was needed. He went on to say that those individuals caught in tough circumstances, wanting to sell their structured settlements, it is important that there is a structure in place for review to protect them. **SEN. WHEAT** asked for a yes vote.

CHAIRMAN WHEAT resumed the Chair for the Committee.

ORGANIZATIONAL MEETING

CHAIRMAN WHEAT explained the procedures to be followed for each Committee meeting. He then brought before the Committee the

procedures to be followed for voting by proxy. After careful debate and consideration the Committee decided that they would allow voting of the Committee Members by proxy vote. It was further discussed and decided that at the discretion of the Committee Chairman in some instances the vote would be left open for a specified period of time.

CHAIRMAN WHEAT then informed the Committee Members that they could not indefinitely postpone any bill. He continued, stating that all bills would have to be dealt with, they could be passed, not passed or tabled.

CHAIRMAN WHEAT then moved on to dealing with Amendments. To begin, with it was stated that there would be no conceptual amendments. After discussion by the Committee it was decided that in specific instances amendments could be drafted in Committee and voted on by the Committee. However, these amendments would have to be in written form. **SEN. MCGEE** suggested that a form be developed for such amendments. **CHAIRMAN WHEAT** asked the Committee Secretary to work towards putting together such an Amendment Form.

CHAIRMAN WHEAT announced that the next meeting of the Committee would be on Thursday, January 6, 2005, beginning at 9:00 o'clock a.m. It was further decided by the Committee Members that Committee Meetings scheduled for Mondays would begin at 10:00 o'clock a.m.

EXECUTIVE ACTION ON SB 24

Motion/Vote: SEN. MCGEE moved that SB 24 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON SB 141

Motion/Vote: SEN. MANGAN moved that SB 141 DO PASS. Motion carried unanimously.

ADJOURNMENT

Adjournment: 10:00 A.M.

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SEN. MIKE WHEAT, Chairman

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Mari Prewett, Secretary

MW/mp

Additional Exhibits:

EXHIBIT(jus02aad0.PDF)