

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 23, 1999 at 8:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
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: HB 337, 3/10/1999
HB 421, 3/10/1999
HB 504, 3/10/1999
HB 523, 3/10/1999
Executive Action: HB 421; HB 523
HB 506; HB 607

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON HB 506

Motion: SEN. THOMAS moved that HB 506 BE CONCURRED IN.

Motion: SEN. ROUSH moved that HB 506 BE AMENDED.

Discussion:

Bart Campbell explained **EXHIBIT (bus65a01)** Legal Analysis of **HB 506**, after it was distributed by Gary L. Spaeth, Deputy State Auditor.

{Tape : 1; Side : A; Approx. Time Counter : 7.5}

Greg Van Horssen, State Farm Insurance, said some language in the South Dakota v. Allstate case closely paralleled **HB 506**. Basically, Allstate had an agreement with a glass network. It was formed by a glass manufacturer, and the network contracts were glass repair shops for glass replacement. Allstate referred its policy holders to USA glass, which in turn referred them to glass shops. He said the court observed Allstate, because of the arrangement, was able to save transactional costs through electronic billing. This was because the network charged Allstate less than independent shops charged, and Allstate negotiated a price cap with the network. Independent glass repair facilities in South Dakota brought the suit because of loss of revenues. Allstate said this was an unconstitutional restriction on free speech, while South Dakota argued it had a substantial interest in creating the statute. The court agreed with Allstate.

Networks were corporate citizens who were involved in interstate commerce, and any statute which would infringe on a network's ability to do business in South Dakota would be an unconstitutional violation of the commerce clause. The South Dakota federal court also found there already were other things which could be done to enforce this requirement. He believed the court said it was not necessary to create an additional burden, if they could effect the same purpose with an existing law.

Frank Crowley, Attorney, said the State Auditor's office was the agency responsible for enforcing the bill. He had talked with both the auto repair and glass facilities and advised them the commercial free speech rights of the insurance companies must be respected. This bill had painstakingly been structured to recognize those commercial free speech rights. The case of Allstate v. South Dakota case was never appealed to the Circuit Court of Appeals; in fact, it remained as a district court opinion in the district of South Dakota and was not binding in any jurisdiction outside that. Also, the regulations which were overturned were different and distinguishable from the regulations before the Committee today. That legislation prevented the insurance companies from advising them there was a

network; however, this bill did not do that. It addressed the relationship between the insurance company and the networking entity.

The relationship between the consumer and the provider of services was the relationship which needed the focus. The sole duty of the insurance company was to reimburse for the services, i.e. stand by to indemnify for the loss. Here, the insurance company was intruding itself into the relationship between the customer and the shop. In other words, it was dictating the terms and conditions of that relationship. Legislation, such as **HB 506**, protected the sanctity of the relationship between the customer and the service provider. Unless that was the starting point, it was easy to lose sight of the fact the insurer's only responsibility and duty was to indemnify, rather than to control the relationship.

The goal of the South Dakota law was different from **HB 506**, which was simply designed to preserve consumer choice, not to prevent the carriers from advising their insureds about the existence of a network. The focal point of **HB 506** was how they used the network in relation to the insured, not protect the body shops which were there. The information given at the hearing reflected this bill was not simply to protect the economic interest of the independent shops, but focused on what happened to the consumer. Nothing in the bill kept the networks from operating in the state. It was a question of "going the extra step", which was happening in Montana. The bill said there were commercial free speech rights and networks, but it was not lawful to venture beyond that, so the the relationship would not be abused by impinging on the right of the consumer. He was confident this bill would withstand any Constitutional test.

{Tape : 1; Side : A; Approx. Time Counter : 18.9}

SEN. FRED THOMAS asked if, according to the bill, he called his insurance company for a windshield replacement, could the carrier discuss the potential lowest prevailing price. **Frank Crowley** said currently, the provisions regarding inducements and incentives applied only to auto repair facilities. If the discussed information was characterized as an inducement, in respect to glass, the law which would not prohibit it.

SEN. THOMAS said he was referring to glass, and if the insurance company wanted to talk cost, they could. **Mr. Crowley** said current law apparently did not have the inducements and incentives language.

SEN. JOHN HERTEL asked the same question of **Greg Van Horssen**, who said incentives and inducements was not part of the language, but it was State Farm's belief any discussion of price between shops would be viewed by the Commissioner as coercion. That was a real concern under the statute.

SEN. DALE BERRY asked if centers in Montana assessed the claims. **Mr. Van Horssen** said State Farm had a program called "Service First". In that program, a consumer called a company which asked the consumer where he wished to get the work done, i.e. the choice was left up to the consumer. If the customer chose to use a shop which was part of "Service First", the consumer would go directly there. Therefore, there was no need to get separate estimates; in fact, the consumer would go to that shop, get the work done and State Farm would pay the claim to the facility.

SEN. GLENN ROUSH asked if the "Service First" cost the consumers an additional fee. **Greg Van Horssen** said there was no separate, or additional fee, for this service. It came as part of the policy.

SEN. ROUSH asked if "Service First" dictated the customer must use that vehicle in case of a claim. **Mr. Van Horssen** said it did not.

{Tape : 1; Side : A; Approx. Time Counter : 26.2}

EXECUTIVE ACTION ON HB 506

Motion: **SEN. THOMAS** moved that HB 506 BE CONCURRED IN.

Motion: **SEN. ROUSH** moved that AMENDMENTS HB050601.ABC **EXHIBIT** (bus65a02) BE CONCURRED IN.

Discussion:

Frank Crowley explained Amendments HB050601.abc.

SEN. BEA MCCARTHY asked **Greg Van Horssen** to explain the amendments in **EXHIBIT** (bus65a03).

{Tape : 1; Side : A; Approx. Time Counter : 40.8}

SEN. HERTEL asked why there were two distinctions on amendments #2 and #6, between independent and captive insurers. **SEN. THOMAS**

said if a person worked for an insurance company as a captive agent, he or she did what the company asked; however, an independent agent could work with his or her clients. He suggested that went to the heart of the bill, because it was not desirable to have the company dictate where the client should go.

SEN. HERTEL asked if the agent did not have the ability to direct the client to a specific body shop. **SEN. THOMAS** said it allowed the agent to work with the clients to give them the ability to make the choice. The issue at hand was when you did not work for the company, you were able to give choices. The broad base of the old law was still in effect; however, **HB 506** had stricter language with the amendments.

SEN. VICKI COCCHIARELLA interpreted **SEN. HERTEL's** question as being why was a distinction being made, just because a person did or did not work for a company. In other words, if all consumers were to be protected, why should one have to comply while the other was "let off the hook." **SEN. THOMAS** said the difference was simple, in that if a person worked for an insurance company, this strictly applied; however, if you did not work for a company, the agent would be able to work with the client in making the decision.

SEN. COCCHIARELLA said she understood the difference, but did not understand why they would be separated out. **SEN. THOMAS** said it was because one was not under the control of the insurance company, while the other was.

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SEN. DALE BERRY said it was his understanding that independent agents representing different companies meant the consumer did not have to go to a certain entity. In other words, there was not only one company which would have control.

SEN. COCCHIARELLA asked if an independent agent represented several insurance companies, was it true none of those companies had a network? **SEN. THOMAS** said only the agent was involved in the amendment, because the companies had to comply strictly with the law. The agent at the local level could give the options to the client. If the agent worked for one company, the structure was vertical, i.e. he or she was controlled by the corporate structure. An independent agent was not under one company; therefore, he or she did not have to do what it said. He said he supported the bill because he was afraid the small glass shops would be gone before too long. He gave an example of how when the client dialed the 800 number, he or she would most likely get Safelite Auto for a glass claim. They would control the claim,

which meant the small shops would not get the business. The amendment would allow the small shops to compete.

SEN. BERRY said it was a narrow line between the service by local providers, but it was a wide line between a local agent helping a client and SafeLite Glass Corporation (the 800 number). He said the worry a new person in town would not be able to find a glass shop unless someone told him, made it seem the consumer had no responsibility. It seemed a list should be kept of poor providers, based on customer complaints. The system was losing something between not being able to help the clientele and dominating. There was a difference between the customer asking if the company could give the name of someone, and a provider giving the 800 number. Also, it was one thing when the billing company was an accounting firm, but quite another when it was a wholesaling glass firm which fixed windshields.

SEN. ROUSH said he did not think **HB 506** would erode using the 800 number for information, and he felt that should be left. He said he did not have a problem with the insurance company talking to the customer about a provider of service. But he did have a problem with the company directing the customer that he or she had to go there. He referred to small Montana towns which had one or two glass repair shops. If one of the shops was where the insurance company would direct the customer, it would not be long before the other was out of business. This bill would enhance closing up local businesses.

{Tape : 1; Side : B; Approx. Time Counter : 7.3}

Vote: Motion that **AMENDMENTS BE CONCURRED IN** carried 6-1 with **SEN. HERTEL** voting no.

SEN. COCCHIARELLA asked why body shops were included in the bill, because she had talked to some body shop owners who said the system was working fine. **SEN. MIKE SPRAGUE** said it was working for preferred body shops, but not necessarily for the others. Leveling the playing field was why body shops were included in the bill.

SEN. THOMAS said it was his understanding body shops were included to put "teeth" into the old law.

Motion/Vote: **SEN. ROUSH** moved that **HB 506 BE CONCURRED IN AS AMENDED**. Motion carried 6-1 with **SEN. COCCHIARELLA** voting no. **SEN. TOM BECK** will carry **HB 506** on the Senate Floor.

{Tape : 1; Side : B; Approx. Time Counter : 10.8}

HEARING ON HB 504

Sponsor: REP. KARL OHS, HD 33, HARRISON

Proponents: Ed Grogan, MT Medical Benefit Plan
Scott Smith, Bozeman
Page Dringman, Health Insurers Assoc. of America
Kelly King, Citizen
Dean Randash, Napa Auto Parts, Helena

Riley Johnson, National Federation of Independent
Business
Frank Cote, Deputy Insurance Commissioner

Opponents: None

Opening Statement by Sponsor:

REP. KARL OHS, HD 33, HARRISON. This bill allows an employer to contribute to an insurance premium for his employees, without being a small group. Up until now, this has not been allowed because before the employer could contribute, he had to form a small group. What happened was many employers did not offer health insurance because of what it would take to form a small group. I have amendments **EXHIBIT (bus65a04)** which I will distribute, and I think they will solve some of the problems. The first two amendments are self-explanatory, but the third shows the compromise. If an employer had been involved in a small group plan, he could not drop the small group plan and start to contribute. He would have to stay with the small group plan before dropping out.

Proponents' Testimony:

Ed Grogan, Montana Medical Benefit Plan. We rise in favor of the bill and strongly believe an employee should be allowed to accept a contribution from his employer for his individual health plan. The Insurance Commissioner's office was concerned with this bill because they thought it would cause people to drop their small group plan and go to an individual plan. That was why we agreed to the third amendment. Claudia Clifford testified 74% of the employers with nine or fewer employees offered no health insurance. We believe this bill will help.

{Tape : 1; Side : B; Approx. Time Counter : 10.8}

Scott Smith, Small Business Owner. My partner and I started a small business, and for some time it was just him and me. As time went by, we hired employees and when able, we provided benefit packages for them. We value our employees, and even in years when the bottom line is not so good, the benefits we pay are still worth it. Before small group reform, a number of our employees had insurance with us, while others had insurance through their spouse. Those people used their medical plan money to pay for deductibles or other doctor bills not covered by insurance. After small group reform came in, any employer with less than 50 employees could no longer contribute to their employees' insurance, if the insurance was individual. They could do it only as a group. At that time, we had to ask everyone to join the group. The end result was people diverted the money from unreimbursed medical expenses, day care, etc., into a group plan. That group plan, in many cases, offered less insurance for more money. I have heard people say **HB 504** levels the playing field, as it pertains to the premiums. I would like to speak in support of the bill, because employers with under 50 employees should get the same insurance choices as the larger employers.

Page Dringman, Health Insurance Association of America. We would like to go on record as supporting this bill.

{Tape : 1; Side : B; Approx. Time Counter : 19.7}

Kelly King, Small Business Employee. When I started with my employer, he was not able to provide insurance, though now he can. I had some bad health experiences which cost us quite a bit of money, and I am just now getting out of that hardship. If this bill had been in place, I could have had better insurance for my family. If this bill passes, more employers would be able to help their employees through better benefits.

Dean Randash, NAPA Auto Parts. I have two stores and 14 employees. For 24 years, my company provided health insurance coverage for our employees. Small group reform legislation reversed small group insurance priority. Instead of it providing an affordable security blanket for employees who became ill, it now pays the medical bills for uninsured people after they are sick. My group health insurance jumped by 45%, and we had no choice but to drop our group coverage. Since the House hearing, I have received calls from several people who experienced the same thing. I want to commend **REP. OHS** for the bill, because it allows small business employees to once again have the personal freedom to shop for an individual health insurance policy which satisfies the needs. This bill should be passed without the amendment, because if employers drop health coverage, why should

they be forced to pay those high premiums for a year, while everyone was being satisfied games were not being played. They should have the freedom to shop for individual health insurance when their employer cancels out. I urge a DO PASS for the bill.

Riley Johnson, National Federation of Independent Business (NFIB). The merits of the bill have already been explained. My only addition is we see it as being a big help for our small companies, because we could get more people insured.

Frank Cote, Deputy Insurance Commissioner. I want to make sure this Committee understands when **HB 504** was introduced in the House, our office vehemently opposed the bill. I appreciate the sponsor's and proponents' willingness to work with us to do the amendments. With these amendments, we are comfortable with the bill as it now stands.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. OHS closed. The amendments are important to go on the bill. This bill would allow the small employer to contribute to employees' existing health care plans, which would benefit everyone. I would encourage you to pass **HB 504** with the amendments. **SEN. FRED THOMAS** will carry the bill on the Senate Floor.

{Tape : 1; Side : B; Approx. Time Counter : 28.6}

HEARING ON HB 337

Sponsor: REP. ERNEST BERGSAGEL, HD 95, MALTA

Proponents: Deb Martin-Young
Debbie Smith,
Gary Wiens, MT Electric Cooperatives
John Alke, Montana-Dakota Utilities
Ed Bartlett, Montana Power Co.
Gregg Groepper, Energy Share

Opponents: None

Opening Statement by Sponsor:

REP. ERNEST BERGSAGEL, HD 95, MALTA. During the last session, we passed SB 390, which had a provision of 2.4% set aside for universal system benefits strategists. A portion was set aside for low income usage and the rest for energy conservation measures. I was part of an interim committee to work on how we were going to allocate and determine what the guidelines for universal systems benefits charges.

Proponents' Testimony:

Deb Martin-Young, Montana Power Company (MPC). This was a collaborative effort of the investor-owned utilities, cooperatives, low income advocates, environmental groups and large customers. They all have an interest in how these public purpose dollars would effectively be directed to bring benefits to our customers. MPC supports this bill and encourages your support also. It clarifies the universal systems benefits charge further for implementation, which started January 1, 1999.

Debbie Smith, Natural Resources Defense Council (NRDC). This bill is the result of hundreds of hours of negotiating. All parties have negotiated some pretty tough compromises in order to implement a pretty significant portion of SB 390, i.e. how the universal benefit charge will be implemented and administered. One of the things allows the size of the Universal System Benefits Charges (USBC) to fluctuate with the amount of load. Another thing this bill does is set up a public accountability process for how these public purpose funds are expended, i.e. funds which are dedicated toward purposes and invested during the regulated environment, should continue to be invested in the deregulated environment. This is a good bill and I urge your strong support.

{Tape : 1; Side : B; Approx. Time Counter : 37.1}

Gary Wiens, Montana Electric Coops. We are in support of this legislation and participated in the collaborative process. We believe it is a fair and reasonable bill which allows utilities local control over providing low income energy assistance and administrating conservation programs. That is important, because from the perspective of co-ops, we believe we know our customers best. It also allows for the accountability process, in the event someone felt local control was being abused.

John Alke, Montana Dakota Utilities (MDU). We support the bill. I have a potential amendment, but it is not worth sending the bill back to the House; however, if any amendments are made, this

one should also be made. Section 5, Lines 24-26, say the rules should be adopted on or before January 1, 2000, but I feel the rules should come out no later than September 1, 1999.

Ed Bartlett, Montana Power Company (MPC). We are a proponent of the bill, but I want to suggest an amendment. Section 3 eliminates the second paragraph of the reciprocity provision, but MPC suggests it would be much better to leave the second paragraph intact. The reason is, in 1997, we worked hard to adopt the paragraphs involving reciprocity and they have nothing to do with the universal system benefits program. At this time, I think it would be a mistake to delete paragraph 2, but leave paragraph 1. Reciprocity is still enforceable within the boundaries of Montana, and that is why MPC feels the paragraph should remain intact.

Gregg Groepper, Energy Share of Montana. Our interest in **HB 337** is for low income folks. The bill from last session, **SB 390**, required 17% of universal system benefits be spent on low income energy assistance programs. We think the bill is a necessary addition to the law, which will clear up definitional issues and get some rules into place.

{Tape : 2; Side : A; Approx. Time Counter : 0}

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked for comment on the two proposed amendments. **Debbie Smith** said she agreed with **John Alke's** concerns that utilities had to implement USBC programs this year; however, rules would not be in place until January 1, 2000. She also agreed with his statement if this was the only amendment to be considered, it was not worth it to add it, because there was a less preferable option available. As for **Ed Bartlett's** amendment, NRDC took no position.

SEN. MCCARTHY asked if the reciprocity issue was discussed in the House. **REP. ERNEST BERGSAGEL** said he did not recall a House discussion about reciprocity; however, he remembered talking with MPC about it. He then took it to the Business and Labor Committee, but they chose not to adopt it.

SEN. MCCARTHY asked if it was offered by the Public Service Commission and **REP. BERGSAGEL** said he did not know.

SEN. MIKE SPRAGUE asked for background why it was taken out. **REP. BERGSAGEL** said he could not remember, but was trying to

determine the validity of the opposition to the language. The testimony of MPC indicated they believed the second provision enabled them to enter into that. He said he did not read that into the language.

Bart Campbell said if it were not for the deletion of subsection 2, this section would not be in the bill. He had not heard any testimony about why the section was put in or why the amendment was made. He did not feel the Committee was getting the answer to its question.

John Alke said if you read the provision in its entirety, it said out-of-state utilities would have to give access to all its out-of-state facilities, as a condition of participating in open access market in Montana. This is unconstitutional, because Montana cannot project its regulatory environment outside the state.

Ed Bartlett said this provision was added in 1997, to address both intrastate and interstate. He said he agreed the interstate agreement was unconstitutional, but MPC's position was intrastate was Constitutional. That was the only thing during the past two years which caused concern with the Transitional Advisory Committee.

SEN. MCCARTHY commented if that was true, perhaps all of Section 3 should be deleted. **Mr. Bartlett** said in his opinion, the section still had viability because it talked about openness and non-discriminatory access. Section 2 was important because it showed you could get there, with Section 1.

SEN. SPRAGUE asked if the amendments were added, would it cause consternation in the House. **REP. BERGSAGEL** said he could not answer that because MDU had generation facilities in North Dakota, which made it interstate. He thought it a fair statement that if someone opened himself up for competition, the inside access should be open and free. However, would it get us into trouble on the interstate level.

SEN. SPRAGUE asked if anyone present would be an opponent if the amendment was made. **John Alke** said MDU did not take a position on this provision, either in the enactment of SB 390 or the proposed appeal.

SEN. SPRAGUE asked for recommendation on what to do in order to make this bill the best piece of legislation possible. **Mr. Alke** said if the Committee wanted to adopt MPC's amendment, it should make the reciprocity provision intrastate only in character. He

recommended crafting an entirely different amendment, which would say reciprocity in Montana and no more.

SEN. SPRAGUE asked if that would enable adopting the September 1, 1999, recommendation and **Mr. Alke** affirmed.

{Tape : 2; Side : A; Approx. Time Counter : 9.2}

REP. BERGSAGEL commented there was more interest for the out-of-state people to see the language deleted, than the interstate. However, he saw a problem because neither Washington nor Oregon had a free market access system.

SEN. SPRAGUE asked what his recommendation was and the sponsor said to leave it alone.

SEN. SPRAGUE contended the sponsor had not been convinced, and the rest were teeter-tottering. **Ed Bartlett** said he agreed it should be intrastate only, and his recommendation would be to leave all the deleted language in the bill and add "within the state of Montana" on Page 9, Line 7. That would make it an intrastate provision only. **REP. BERGSAGEL** said he could not disagree with that language and leaving subsection 2 in the bill.

Bill Rosequist, Public Service Commission, said he was at the hearing to monitor the bill and was not authorized by the Commission to speak on it or its amendments. However, when the reciprocity issue was discussed in the Transition Advisory Committee, the Commissioner opposed any reciprocity in the law.

Closing by Sponsor:

REP. BERGSAGEL closed. The date 2003, was when the universal system benefits charge was done, and future legislators would have to deal with the issue. As for the January 1, 2000, date, the Committee has already developed guidelines for the rules to be adopted by the Department of Revenue. The provision is for large industrials be grandfathered in, so I do not think the amendments are an important issue. **SEN. FRED THOMAS** will carry HB 337 on the Senate Floor.

{Tape : 2; Side : A; Approx. Time Counter : 13.3}

HEARING ON HB 421

Sponsor: **REP. CINDY YOUNKIN, HD 28, BOZEMAN**

Proponents: **Rod Sundsted, Montana University System**

Thomas Schneider, MPEA
Inga Nelson, MEA/MFT
Don Judge, AFL/CIO

Opponents: None

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, BOZEMAN. She read her written testimony **EXHIBIT (bus65a05)**.

Proponents' Testimony:

Rod Sundsted, Montana University System. I want to go on record as supporting **HB 421**. Both we and the unions participated in the negotiations. It is a good bill for our system and its employees.

Thomas Schneider, Montana Public Employees Association (MPEA) and Coalition of Unions. This bill mirrors the process which is used for the state plan, which is in the law. It has worked well; in fact, I have been a member of the advisory committee since 1976, and we have dealt with a lot of problems in a very good way. The problem in the university system is there are 18 unions, and there is no way to negotiate benefits on a single health insurance plan. The bill says neither group benefits nor employee premium levels will be subject to negotiations. However, do not misconstrue that with employer contributions, because they will still be negotiable. In reality, that is all that is negotiable on the state plan, i.e. the union cannot negotiate the premium level because that is predicated on the cost and experience of the plan. Therefore, nothing was taken away which was not there before. It is a good bill and we support it.

Inga Nelson, Montana Education Association/Montana Federation of Teachers (MEA/MFT). We represent the faculty at the University of Montana-Missoula, Western, MSU-Eastern, Northern and employees of the Vocational/Technical colleges. We support **HB 421** because our members have struggled with the impact of increasing health care costs, including higher deductibles, increased co-payments and increased family costs. I have a chart **EXHIBIT (bus65a06)** which shows those increases. We believe this bill represents a fair way to address these concerns and we hope you support it.

Don Judge, AFL/CIO. I am pleased to offer support for the bill.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. YOUNKIN closed. I would appreciate your support of the bill because I am a great fan of keeping the university system working in an efficient manner. **SEN. BEA MCCARTHY** will carry **HB 421** on the Senate Floor.

{Tape : 2; Side : A; Approx. Time Counter : 21.3}

EXECUTIVE ACTION ON HB 421

Motion/Vote: **SEN. MCCARTHY** moved that **HB 421 BE CONCURRED IN.**
Motion carried. 5-0

SEN. MCCARTHY will carry the bill on the Senate Floor.

HEARING ON HB 523

Sponsor: **REP. JOE MCKENNEY, HD 49, GREAT FALLS**

Proponents: **Deb Kottel, D.A. Davidson**
Beth O'Halloran, State Auditor's Office

Opponents: **None**

Opening Statement by Sponsor:

REP. JOE MCKENNEY, HD 49, GREAT FALLS. This bill concerns consumer protection, and relates directly to security firms, i.e. stockbrokers. No one has to provide a reference for former employees, except for dates of employment and position held. Any further comment on the employee's work habits, conduct or aptitudes can result in a costly lawsuit over defamation of character. Brokerage firms do not have the luxury in choosing the information they disclose; in fact, they have mandatory reporting requirements they must be honest in their disclosures of departing brokers. This bill clarifies the limited immunity of brokers concerning mandatory reporting, and the standards provide a balance between encouraging accurate disclosure, protecting the investment public and protecting the rights of stockbrokers.

Proponents' Testimony:

Deb Kottel, D.A. Davidson. Both the Federal and State Governments require the security houses to file whenever someone terminates employment as a stockbroker. This bill simply fine-tunes and reflects current practices taking place in Montana and clarifies language. Subsection 2 in the bill requires stockbrokers to make the same sort of mandatory reporting requirements to the State Government, as they do to the Federal. There is no additional paperwork because this information is put into the central registry depository, which the State Auditor's office currently has access to. Subsection 3 shows the removal of "the absence of malice". We think of "malice" as being ill-will; however, the legal definition is someone who knowingly publishes a false statement, or recklessly publishes it with disregard for the truth. Therefore, subsection 3 legally defines the word.

There are four parties involved: (1) Accurate information for the investor; (2) Protects needs of government for clear and accurate information; (3) Protects rights of stockbrokers from bad faith dissemination of information; (4) Reasonable protection for security houses who must comply with mandatory reporting requirements.

I want to stress **HB 523** does not duplicate another bill recently heard, which dealt with prospective employers and the permissive disclosure of information. This bill involves mandatory, obligatory disclosure of information required by Federal and State Governments, whether or not someone is a prospective employer. This is an important bill and I would urge a DO PASS.

Beth O'Halloran, State Auditor's Office. We regulate securities brokers dealers through the registration and examination authority. We rely on the central registration depository, which provides information about the broker dealer salespersons who leave firms for disciplinary reasons. In order to encourage the most accurate and forthcoming information, this bill is very important. I would encourage support for this bill.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. MCKENNEY closed. I would urge a DO PASS. **SEN. FRED THOMAS** will carry **HB 523** on the Senate Floor.

{Tape : 2; Side : A; Approx. Time Counter : 31.2}

EXECUTIVE ACTION ON HB 523

Motion/Vote: SEN. SPRAGUE moved that HB 523 BE CONCURRED IN.
Motion carried. 5-0

SEN. THOMAS will carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HB 607

Bart Campbell said Amendments HB060702.abc **EXHIBIT (bus65a07)** blended the Blue Cross and **REP. LOREN SOFT** amendments, and #1, #2, #13, #15 and #16 were his. If the Committee did not adopt those, and the bill was passed with the amendments from yesterday, he would delete those five sections when he transmitted them to the Amendments Coordinator.

SEN. BEA MCCARTHY said she requested it because the Children's Health Insurance Program (CHIP) situation seemed to generate a lot of discussion. She was trying to ensure CHIPS was protected, and that was the reason for her request to blend the amendments, if possible.

Motion: SEN. MCCARTHY moved that HB 607 BE CONCURRED IN.

Motion: SEN. MCCARTHY moved that HB 607 BE AMENDED HB060702.abc.

Discussion:

SEN. MCCARTHY explained these were the amendments which were adopted to the bill yesterday, as well as those which exempted the state from individual review and private, not state, contracts.

SEN. MIKE SPRAGUE asked if peer review had value, and if it had value for one, why would it not have value for all. **SEN. MCCARTHY** said she understood the exemption would go away in a possibility of three years. **Bart Campbell** said his recollection of the testimony was there was an indemnity clause which the state wanted for the CHIPS program, which was the reason for #13.

SEN. SPRAGUE asked for comment on the peer review. **Susan Witte, Blue Cross/Blue Shield (BC/BS)**, said it was her understanding the Medicaid system had its own peer review in place. The last amendment **SEN. MCCARTHY** talked about would exempt CHIP and the state Medicaid programs from the indemnification language and the

contract. Providers could terminate the contracts with health care entities.

SEN. SPRAGUE asked if this would be a duplication and **Ms. Witte** affirmed.

SEN. FRED THOMAS asked if it was just the state which was exempt. If the contract was with a private entity, it was not exempt. **Beda Lovett, Montana Medical Association (MMA)**, said the reason for removing the state programs from peer review was in both Montana and federal law, those programs had extensive procedures for fair hearing and peer review. The Department of Public Health and Human Services (DPHHS) saw that as duplicative, which was why they wanted that out. The language in amendment #13 took the state programs out if they ran the program; however, if they contracted with a private entity, the private entity was subject to the provisions of this bill.

SEN. THOMAS asked why we would want to say the state could do the peer review if it wanted to; however, if the program was private, it would follow the law as dictated. **Ms. Lovett** said there was great concern about those state programs and strong feeling about adequate protections for consumers. They did not want to do anything to jeopardize that.

SEN. THOMAS asked for other input.

{Tape : 2; Side : B; Approx. Time Counter : 0}

SEN. MCCARTHY said she did not want to jeopardize CHIP, and she was very concerned. If they could ensure keeping the CHIP money, it was worth it.

SEN. SPRAGUE asked about the two peer reviews. **SEN. MCCARTHY** said she did not argue one was better or more complete than the other. Her prime aim was to protect CHIP, and testimony seemed to say this had to be done in order to protect it.

SEN. SPRAGUE commented he did not think anyone in the room saw duplication of effort as a problem. **SEN. MCCARTHY** reiterated everyone she talked to thought CHIP needed to be protected, and that was why she did what she did.

SEN. HERTEL said the vote would be on amendments #1, #5, #13, #15 and #16, because the rest had been voted on.

Substitute Motion/Vote: **SEN. MCCARTHY** made a substitute motion that **AMENDMENTS #1, #5, #13, #15 AND #16 BE CONCURRED IN**. Substitute motion carried 5-1 with **SEN. THOMAS** voting no.

Motion/Vote: SEN. MCCARTHY moved that HB 607 BE CONCURRED IN AS AMENDED. Motion carried 6-0.

SEN. AL BISHOP will carry the bill on the Senate Floor.

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus65aad)