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## Economic Affairs Interim Committee

### 59th Montana Legislature

#### SENATE MEMBERS

DONALD STEINBEISSER--Vice Chair  
JOHN BRUEGGEMAN  
VICKI COCCHIARELLA  
KEN HANSEN

#### HOUSE MEMBERS

JIM KEANE--Chair  
DAVE GALLIK  
TOM MCGILLVRAY  
MIKE MILBURN

#### COMMITTEE STAFF

PATRICIA MURDO, Lead Staff  
BART CAMPBELL, Staff Attorney  
DAWN FIELD, Secretary

# MINUTES

July 14, 2006

Room 102, State Capitol  
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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#### **COMMITTEE MEMBERS PRESENT**

REP. JIM KEANE, Chair  
SEN. DONALD STEINBEISSER, Vice Chair

SEN. JOHN BRUEGGEMAN  
SEN. VICKI COCCHIARELLA

REP. DAVE GALLIK  
REP. TOM MCGILLVRAY  
REP. MIKE MILBURN

#### **COMMITTEE MEMBERS EXCUSED**

SEN. KEN HANSEN

#### **STAFF PRESENT**

PATRICIA MURDO, Lead Staff  
BART CAMPBELL, Staff Attorney  
DAWN FIELD, Secretary

## **AGENDA & VISITORS' LIST**

Agenda, Attachment #1.

Visitors' list, Attachment #2.

## **COMMITTEE ACTION**

The Economic Affairs Interim Committee:

- approved the May 12, 2006, minutes as written;
- approved language in LC8888 (in order of approval):
  - ▶ to allow five business days be allowed to a credit reporting agency to place a freeze;
  - ▶ the use of "or similar device" for all instances in LC8888;
  - ▶ Page 4 -- Section 4(1) -- Temporary lifting of security freeze -- using a point of contact designated by a credit reporting agency;
  - ▶ Page 5 - Section 4(2) -- remove language "or at the earliest time generally provided to consumers in another state, whichever is earliest [AG].";
  - ▶ Page 5 -- Section 4(3)(c) -- Temporary lifting of security freeze -- to keep the language as written;
  - ▶ Page 6 -- Section 5(2) -- Removal of a freeze -- to leave the language in with the clarification of 1(b);
  - ▶ Page 6 -- Section 6(2) -- Third party contacts -- notification of access to the credit report --to take subsection (2) out;
  - ▶ notification of rights in Section 8(4) in the first paragraph at the top of page 9 -- to take out the first paragraph on page 9 regarding advice to those actively seeking credit;
  - ▶ Page 10 -- Section 9(7) -- Exemptions -- "use of a credit report for" to leave the language in;
  - ▶ Page 11 - Section 9(14) -- Exemptions -- "a consumer reporting agency's database... -- to adopt both the language recommended by ChoicePoint and Consumers Union;
  - ▶ Page 11 -- Section 10(2) -- Fees -- "an investigative report...personal information -- to accept the language except on Page 12, put a "." after "law enforcement agency" and strike "or who has been notified of a security breach involving the consumer's own personal information";
  - ▶ Page 12 -- Section 10(3) -- to leave in all bolded language in subsection (3) page 12;
  - ▶ Page 13 -- Section 11(4) -- regarding "reasonable attorney's fees" -- to amend (4) by inserting "reasonable" in front of "attorney's fees", inserting "as determined by the court." after "attorney's fees" and deleting "that are reasonable in relation to the work expended in responding to the pleading, motion, or other paper.";
  - ▶ Pages 12 and 13 -- Section 11 -- to amend Section 11 by removing "actual" in all instances;
  - ▶ Page 11 -- Section 10 -- Fees -- change the language in LC8877 back to the original language in the AG bill draft of a \$3 initial fee and no fee for thawing or for removing;
- directed staff to remove reference to Hearing Aid Examiner in draft bill LC9831; and
- directed staff to take no further action on LC Franchise, a draft regarding motor vehicle franchising.

## **CALL TO ORDER AND ROLL CALL**

00:00:01 REP. KEANE called the meeting to order at 8:30 a.m. The secretary took roll, all SEN. HANSEN was excused. The May 12, 2006, minutes were approved as written on a unanimous voice vote.

### **UNINSURED MOTORISTS**

00:02:32 **Charles Pecchio, President, Verisol**, said that the issue of uninsured motorists is one that many states are struggling with and that each states' needs are different. Mr. Pecchio briefly explained how this issue has been approached by states in the past and noted that past efforts have not been effective. Several years ago the Insurance Industry Committee on Motor Vehicle Administration (IICMVA) developed a program that structures an online system directly connecting the states to the insurance companies in real time in order to do instant insurance verification. In 2005, IICMVA created technical standards and set up pilot programs in Florida and Wyoming. Florida will begin transactions in August, and Wyoming will launch its program in September.

Mr. Pecchio presented Verisol's software program designed for reducing the number of uninsured motorists:

- software loads directly onto state computers, which allows direct communication with insurance companies;
- the connection is secure and the data is encrypted; personal information is optional;
- also has the capability to handle cancellations and to track coverage from company to company;
- the software can be used to determine if renewals are on track and can also create reports by zip code and insurance company, among other targeted programs; and
- the computer link eliminates the need for a state database, due to the many functions the software is able to perform.

Mr. Pecchio noted that some states, such as Texas, have chosen to maintain both a state database and an online insurance verification system. He concluded his presentation by saying that more and more states are expressing interest in online systems because they are cost effective, fast, accurate, secure, and integrate easily with existing systems.

00:12:23 SEN. COCCHIARELLA asked if all insurers are part of the Verisol database. Mr. Pecchio said that compliance is legislated by each state.

00:13:01 REP. GALLIK asked how many states have implemented the Verisol software. Mr. Pecchio said that Florida and Wyoming are the only states to date that have purchased the software. REP. GALLIK asked if the insurance companies operating in Florida and Wyoming were supportive of the program. Mr. Pecchio said that the insurance companies were in support and that the major companies voluntarily agreed to participate in the pilot project. REP. GALLIK asked when participation would become mandatory in those states. Mr. Pecchio said that participation would become mandatory in Florida in 2007 and mandatory in Wyoming in 2008.

00:13:48 REP. MILBURN asked if there is a cost to insurance companies. Mr. Pecchio said that there is no cost to insurance companies and that the only additional work required is to set up web service.

00:14:26 REP. KEANE asked how Verisol is paid. Mr. Pecchio said each state pays a software license fee to Verisol. REP. KEANE asked what the cost is. Mr. Pecchio said that for example, the cost to Wyoming is one penny per vehicle per month and includes ongoing support and updates.

00:15:31 **Scott Lakin, National Coordinator, Insured Vehicle Identification Network (IVIN)**, introduced Greg DeLong, Chief Operating Officer, IVIN, and said that Mr. DeLong would be available to answer technical questions, if needed. Noting he is a former state legislator and now a vendor, Mr. Lakin discussed several recommendations for creating a successful system for dealing with uninsured motorists:

- instead of trying to choose a vendor, each state should carefully set the standards it wishes to have and then have the vendors work to meet those standards;
- ask questions of what kind of services the vendor has available and the characteristics of that vendor's system. For example:
  - ▶ will it reduce the number of accidents with uninsured drivers?;
  - ▶ will the system purify data in order to prevent false positive or false negative reports; and
- each state must determine if it wants mandatory or voluntary participation from insurance carriers.

Mr. Lakin said states must coordinate with one another before this problem can be solved and that another stumbling block is getting all of the facets of state government and local government working together on the problem. He said that he realizes that this is not an easy process but that in his opinion, it is very necessary and the only way to create a long-term and reliable system.

00:22:08 **Donald Michael Coy, Business Analyst, State Farm Corporate Systems, and Chairman of the Insurance Industry Committee on Motor Vehicle Administration (IICMVA)**, explained that the purpose of the IICMVA is to act as a liaison with the Department of Motor Vehicles established in each state. He distributed copies of a flow chart depicting a model reporting system created by IICMVA (EXHIBIT #1).

Mr. Coy said that there are significant problems with the reporting programs operating around the country. There are 24 programs that do basic insurance data reporting, five additional states have monthly load types of programs, and several other states operate random sampling programs. As an industry group, IICMVA struggles with reporting programs, mainly due to data integrity issues. Mr. Coy discussed four common weaknesses in the current reporting systems:

- Inconsistency and inaccurate data, particularly involving a vehicle identification number (VIN), resulting in an insured driver being identified as uninsured, for example.

- Maintaining reporting systems is costly to insurance companies, consumers, and jurisdictions.
- The reporting systems do not conform to the needs of commercial insurers and their customers because many commercial programs do not require VIN, making it difficult to comply with a reporting program.
- No correlation exists between the reporting programs and how the insurance industry measures the uninsured motorist rate. This is the most contentious argument between the industry and the states. The industry uses a ratio between uninsured motorist claims and bodily injury claims to estimate the uninsured motorist rate, but there is a difference in opinion on how this number should be determined.

Mr. Coy noted that Montana's uninsured motorist rate is about 10%, compared to a nationwide average of 14%.

Mr. Coy said that IICMVA is comprised of 28 major carriers and two major trade organizations and that the model IICMVA developed is based on input from all involved. Mr. Coy then explained the four elements of IICMVA's model reporting system (Page 1 - EXHIBIT #1):

- policy number and/or policy key;
- the VIN on record with the insurance company;
- the National Association of Insurance Commissioner's (NAIC) code, which is used to route a request from the DMV to the proper insurance carrier; and
- the coverage confirmation date that is being requested.

Mr. Coy also discussed client-server technology (Page 2 - EXHIBIT #1). He noted that no vulnerable data is exposed and that access to the database is protected.

Mr. Coy asked to clarify that the Florida pilot program is being conducted on a voluntary basis and that the Wyoming and Oklahoma pilot projects are mandates. He said that Florida has a regulated reporting program already in place but asked to pilot the Verisol program to determine if the new technology will work for the state. **TAPE 1 - SIDE B** Mr. Coy said that he believes the new technology holds great promise and will be a very efficient system for states to use to address the uninsured motorist issue.

00:40:21 REP. MCGILLVRAY asked if the four required pieces of information appear on a customer's insurance card. Mr. Coy said that all of the necessary information appears on the face of an insurance card. REP. MCGILLVRAY said that he didn't see how the availability of this information would help in the event of an accident or how it would increase the incidence of insured drivers. Mr. Coy said that the theory is to preemptively get to an uninsured person before an accident occurs. The best approach is enforcement, and the IICMVA would allow the state to do better enforcement.

00:45:41 SEN. COCCHIARELLA asked how far back the data would go. Mr. Coy said a state could require data from as far back as it wished.

- 00:47:41 REP. GALLIK said that the gist of the message is that Montana is doing as well as everyone else, that current systems cost a lot of money that doesn't yield good results, and that it would be more effective to invest that money into a system that prioritized enforcement. Mr. Coy said yes, that State Farm, for example, is making a huge investment in technology in order to provide systems that emphasize enforcement. He stressed that if other carriers that are already participating in the pilot project have created web services, those services are available to Montana. He suggested that the state use those services and not build its own web service.
- 00:50:22 REP. KEANE asked when data from the Florida and Wyoming pilot projects would be available. Mr. Coy said that Florida data will be available in mid-2007. REP. KEANE asked if when a person gets ticketed, he is checked for insurance also. Mr. Coy said yes.
- 00:52:38 REP. KEANE asked if the pilot projects will require that a car be impounded if the driver is found to be uninsured. Mr. Coy said the Florida program will require the driver to provide proof of insurance within 30 days. He said that the Wyoming pilot has not made that decision yet. REP. KEANE asked if the pilot projects have a penalty for uninsured drivers. Mr. Coy said that pilot projects do not contain a penalty but that they may be added if the programs are added permanently. Mr. Coy submitted a copy of his statement for the record (EXHIBIT #2).
- 01:07:22 **Pat Murdo, Committee Staff, Legislative Research Division (LSD)**, handed out a news release from the Insurance Research Council on uninsured drivers (EXHIBIT #3).

### **SJR 38 -- STUDY ON IDENTITY THEFT**

#### **Assistance Proposals for Victims -- LC8877 and LC9894**

- 01:08:22 Ms. Murdo also handed out SJR 38 victim assistance & other ID theft bill draft explanations (EXHIBIT #4) in order to assist in the discussion of LC8877 (EXHIBIT #5).
- 01:19:31 Ms. Murdo reviewed LC9894 (EXHIBIT #6), a bill draft request from the Attorney General's office requesting an appropriation to the Department of Justice (DOJ) for two public education specialists for education relating to identity theft prevention and enforcement. She said that the working group felt that education is key to identity theft prevention and urged DOJ to make the request.
- 01:22:10 REP. KEANE asked why the Department didn't include this request in the Attorney General's budget. **Galen Hollenbaugh, Deputy Chief of Staff, DOJ**, said that the budgeting process was already well underway when the working group asked the AG Office to draft this bill request. He said it could still be submitted as a new request by DOJ in the 2007 Legislature, if the Committee so desired.
- 01:23:32 REP. KEANE asked the Committee for its opinion on if LC9894 should be placed in the budget or approved as a bill draft request by the Economic Affairs

Committee. SEN. COCCHIARELLA supported keeping the LC9894 as a separate bill draft and said that the AG budget could be amended to include it, if the bill died.

- 01:24:39 SEN. BRUEGGEMAN said that the bill would create additional pressure for passage of the budgeted amount if Committee support is behind it.
- 01:25:24 REP. KEANE said that LC9894 will continue on in the drafting process and be voted on at the September meeting. Ms. Murdo asked if there were any changes needed to LC9894. REP. KEANE said no.
- Ms. Murdo reviewed the provisions of LC8877 (EXHIBIT #5).
- 01:26:00 REP. MCGILLVRAY asked if there is a time requirement in LC8877 for issuing police reports and said that if not, he would like to add one in Section 1(2) in order to make certain that access to police reports is done in a timely manner. **TAPE 2 - SIDE A** Ms. Murdo said that she would contact law enforcement agencies to see if there is a time requirement already in place but noted that the bill language gives three different options (the police report, the law enforcement investigative report, or a filed complaint) to fulfill this requirement. She said that she would insert a time frame if so desired by REP. MCGILLVRAY.
- 01:27:51 REP. GALLIK pointed out that a requirement of notification might help slow down identity theft if there is an entity that becomes aware of the fact that there has been an identity theft or of information being used wrongfully. He asked to include such a requirement in LC8877.
- 01:29:06 SEN. COCCHIARELLA said, regarding an identity theft passport, that there is not specific language to prevent abuse of a passport. She said that she was concerned that the legislation could set up an opportunity for the law to be abused by someone who could obtain an identity theft passport in order to expunge a poor credit record. REP. MILBURN agreed.
- 01:31:23 REP. GALLIK said that he thought the language in Section 4(1) requiring an application for expungement to go through the District Court would prevent this from happening. SEN. COCCHIARELLA said that the language would probably slow down an individual from obtaining a passport but not prevent abuse.
- 01:32:59 SEN. COCCHIARELLA said that the individual will already have obtained the identity theft passport by the time the application for expungement goes to the District Court. Ms. Murdo said that was correct.
- 01:33:49 REP. GALLIK suggested tying the application for expungement and an identity theft passport together.
- 01:34:19 Ms. Murdo said that would cause problems with obtaining an identity theft passport. She suggested adding a penalty for falsely applying to obtain an identity theft passport.

- 01:35:31 **Bart Campbell, Staff Attorney, LSD**, said in his opinion, the District Court is not required to approve an expungement unless the victim meets the burden of proof.
- 01:36:22 SEN. COCCHIARELLA said that she is concerned about the ability to obtain a passport in the first place, especially that a person with a bad credit history will use the passport to claim victim status in order to avoid paying debts and preventing creditors from attempting to collect on those debts.
- 01:38:27 Ms. Murdo said that Section 1 of LC8877 requires more than one form of identification so that an individual will have to prove to a law enforcement agency that they are who they say they are. There are concerns that the requirement may be too stringent but the requirement is meant to prevent abuse.
- 01:39:41 REP. GALLIK said that Section 3 language says that the Attorney General (AG) "may" issue an identity theft passport. He said that he assumed that would give the AG rulemaking authority to put in measures to prevent abuse.
- 01:40:32 SEN. COCCHIARELLA suggested adding a separate section to deal with enforcement of the law and prosecution of abuse cases.
- 01:40:55 Mr. Campbell said that is addressed in the existing law. He referred the Committee to Section 4(6) stipulating that the Department of Justice may adopt rules to implement procedures regarding law enforcement agency procedures for handling expunged records. SEN. COCCHIARELLA said that she would bring this issue up again at the September meeting and would continue to work on this issue until then.

#### **Public Comment**

- 01:42:05 **Gail Hillebrand, Consumers Union**, said that the Consumers Union is concerned about Section 1(2) because of possible conflicts with a federal statute allowing only a police report but is otherwise supportive of Section 1. Ms. Hillebrand said her association would like to work on Section 2 regarding concerns about the data broker providing a free report. Regarding an identity theft passport, Ms. Hillebrand asked that language be added to expressly state that a passport is the equivalent of a copy of a police report under state law. She said that would be of help to victims. She said that current state law does not require any law enforcement agency or creditor to accept the passport. She suggested adding language that would give an identity theft passport the same weight as a police report because that would increase acceptance.
- 01:45:17 **Eric Ellman, Consumer Data Industry Association (CDIA)**, commented on the information broker provisions in Section 2. He urged the Committee to tread carefully, saying that no state or federal government has imposed restrictions dealing with this. He said that this issue will require a great deal of time and study and if enacted, would impose costly obligations to certain groups. Mr. Ellman pointed out that Section 5, dealing with insurance brokers, is another area that may interfere with federal law.

- 01:47:14 REP. KEANE said that Section 2 is difficult to understand. Mr. Ellman agreed.
- 01:47:44 **Kelsen Young, Helena, identity theft victim**, said, regarding Section 1, that she appreciates that this issue has been addressed because it is a fundamental problem for her as an identity theft victim. While it may be problematic for the justice system, it is essential for victims because identity theft victims often experience problems that don't fall within the boundaries of a state. Ms. Young said that she appreciates the compromises that have been made regarding this issue.
- Ms. Young discussed Section 3 - identity theft passport, saying that the passport, created in the 2005 Legislature was a good start. She said that other states have requirements for making false statements in order to obtain an identity theft passport and said that she supported having protections in place. Regarding Section 4 - record expungement - Ms. Young said that she thought there should be processes in place to require the application to go through other entities. Regarding Section 5 - blocking of information on credit reports - Ms. Young said that as a consumer, she is unsure how this would work. The federal government has provisions for this and said that it is not an easy process to navigate. She said that it is very difficult to remove incorrect information once it is on a credit report. She said that she would be interested in the credit reporting agencies having a process to let consumers know if there are multiple accounts under the consumer's social security number.
- 01:52:41 **Claudia Clifford, AARP Montana**, said that AARP is generally supportive of the proposed legislation. She said that while LC8877 is a good start, she would like the committee to look at several additional issues not addressed in the bill draft. She said that AARP is supportive of LC9894 to create public information officers.
- 01:54:21 **Harold Blattie, Executive Director, Montana Association of Counties, MACo**, distributed information from Virginia's identity theft passport program (EXHIBIT #7). Mr. Blattie said that the information related to SEN. COCCHIARELLA's concerns about the potential for abuse of the law.
- 01:54:51 **Jacqueline Lenmark, American Insurance Association and the American Council of Life Insurers**, said that her clients are concerned about Section 4(4). She said that she would address the concerns to the work group because the work will be continuing on the bill draft. She said she wanted to be clearly on record regarding the codification of any sort of provision that might relate to the rating or the charging of premiums of insurance. This section is intended to be codified in the title that relates to criminal procedure, which will create a compliance problem for her clients. Any regulation regarding ratings and premiums for insurance companies should be codified in Title 33, she said. Ms. Lenmark strongly urged the Committee to take her request into consideration, both on LC8877 and in any future amendments made to the bill.
- 01:56:23 **Larry Kibbee, Property Casualty Insurance Association of America**, agreed with Ms. Lenmark regarding the codification considerations. He asked to have verification of expungement language added to Section 4(4).

01:57:14 **Sandy Hall, Helena, LPN**, commented that she is concerned about medical information and how people's medical records could be affected by identity theft. She said that she would prefer to see more preventative measures implemented, rather than waiting to fix the problem after it has occurred.

1:58:48 REP. KEANE said that the work group would continue study of LC8877. He said that Section 2 needs to be reviewed carefully.

### **Security/Credit Freeze - LC8888**

02:00:11 Ms. Murdo referred the Committee to a table outlining each section of the security freeze bill (EXHIBIT #8) and to a copy of the actual bill draft, LC8888 (EXHIBIT #9). She also noted that CDIA had provided handouts for how other states are addressing a security freeze (EXHIBIT #10). Ms. Murdo used the table (EXHIBIT #8) to guide the members through the provisions of the security freeze bill (EXHIBIT #9). **TAPE 2 - SIDE B**

### **Public Comment**

02:22:41 Gail Hillebrand asked that the Committee reconsider the \$10 fee and also consider the AG proposal of a one-time \$3 fee paid to one bureau or a one-time \$3-\$5 fee paid to each bureau. The Committee must remember that the consumer may have to pay all three bureaus and that each household probably has two adults, she said. New York and Minnesota have both chosen a \$5 fee. New Jersey also has a low fee. Twenty-five states have enacted freeze laws so the cost of building the system should decrease, eliminating the need for high fees. Regarding the remarks from the credit reporting agencies that this will decrease their revenue, they all have at least five other avenues through which they can derive income from frozen files. The choice between \$5 and \$10 is not huge on the revenue side but is a big burden on households. Ms. Hillebrand said that her association appreciates not charging victims and the three different options for obtaining a freeze. She noted that two of the three big credit reporting agencies are not charging to remove a freeze and suggested that they be asked why they support a fee to remove a freeze. The Consumers' Union also strongly supports a notice of security breach and that the consumer not be charged a fee by the credit reporting agencies.

Ms. Hillebrand said that the major issue is ease of use. She suggested adding a short timing requirement in Section 3(1), saying that one business day is sufficient. In Section 9 (14), Ms. Hillebrand requested that the bill draft include the language from Florida's freeze law. She said that the Consumers' Union is not in support of an insurance exemption.

02:29:01 **Alex Ward, Associate State Director for Outreach and Service, AARP Montana**, said that he has a background as a police officer and has dealt with many issues relating to consumer fraud. He said that he has worked with many entities on the bill draft and that overall, it is a good bill. He expressed concern that many Montanans are low-income families and that imposing fees may restrict some families' ability to use the system. Imposing fees could force the criminals who use identity theft to target this population. In order to be truly meaningful legislation, the bill must be affordable to all.

02:33:35 **Ed Bartlett, CDIA, Helena attorney**, said that the goal is to achieve a fair and balanced bill for all concerned.

02:34:07 **Eric Ellmann, CDIA**, said that his association is not opposed to a security freeze but asks that any legislation be consistent and uniform with other states' laws. Twenty-two of 25 states have uniform laws and the other laws are relatively uniform. LC8888 significantly deviates from the other states' laws and will present problems in the future, if implemented, he said. Passage of a consistent bill will provide a win-win situation for citizens, legislators, and businesses.

Mr. Ellmann discussed several concerns about how LC8888 deviates with other states' security freeze laws:

- The credit reporting agencies are concerned that the people requesting freezes and the people who request a lift of their credit freeze are, in fact, legitimate. A certified letter is the most secure method.
- The timing of the placement of the freeze (24 hours) is a practical impossibility for the credit reporting bureaus and could only be accomplished at extraordinary expense to the credit bureaus, which will impact banks, financial institutions, retailers, and eventually, the consumer.
- The standard time allowance for lifting a freeze is three business days. This allows time for the agency to verify the authenticity of the request.
- Notice of attempted access (Section 6(2)) is unique to Montana. This is an outrageous request because attempted access is not a crime.
- CDIA is supportive of Section 9 (exemption provisions) but noted that resellers, check service companies, and deposit account information service companies need to be in a separate section, as in other states' laws. These three entities need to be exempt from placing a freeze, not exempt from using the freeze.
- CDIA feels very strongly that if a consumer receives a breach notice, he should not be entitled to a free freeze because at that point, the consumer is not a victim of a crime.

02:41:57 **John Burton, ChoicePoint**, distributed copies of a ChoicePoint brief on the importance of background screening for nonprofit organizations (EXHIBIT #11). He said that ChoicePoint is not a credit reporting agency and does not maintain or house credit information but does have data and information reports that are regulated as consumer reports under the federal Fair Credit Reporting Act (FCRA). ChoicePoint has a public safety concern regarding LC8888 and that is that the bill still would capture ChoicePoint's background screening activities. This creates an unintended loophole that would allow an individual to freeze their criminal histories as related to the background reports that ChoicePoint provides to employers, residential managers, and nonprofit associations. He said that he would be happy to work with the work group or committee on language changes to rectify ChoicePoint's concerns.

### **TAPE 3 - SIDE A**

02:46:01 Kelsen Young discussed three points:

- Section 10 (fees) - the bolded language needs to be finalized. There is no contention regarding the flexibility in what can be submitted.
- Regarding the 24-hour notice for identity theft victims and comments made by Mr. Ellmann indicating that it would be impossible for credit reporting companies to comply with, Ms. Young asked what Mr. Ellmann thought would be reasonable.
- Section 6(2) -- third party contacts -- Ms. Young disagreed with Mr. Ellmann's description of this as a nonthreatening occurrence and said that it would let an identity theft victim know that someone is looking at them.

Ms. Young said that in general, she supports the security freeze and is hopeful that compromises can be reached that will allow this legislation to move forward.

02:48:08 **Brad Griffin, Montana Retail Association**, said that the association stands in full support of the bill because of the protection it will provide to consumers. He said that he is troubled by earlier requests that the fee be reduced. He said that he could not think of a single instance in which the Legislature limits fees for any other private company charging for a private service.

02:50:01 **Bruce Spencer, Montana Automobile Dealers Association**, commented on Section 4 - temporary lifting of security freeze. He said that three days will not work for his clients and encouraged the Committee to consider as short a time period as possible. He also suggested that the Committee extend the effective date of the bill in order to allow technology to be developed that would allow a shorter time period.

Mr. Spencer said he also wished to address the Committee as an attorney regarding Section 6(2) -- third party requests. He said that this section is extremely problematic because there are many legitimate purposes to access a credit report and that none of those purposes is listed in the section. This will create great costs, which will be passed along to the consumer.

02:52:52 Jacqueline Lenmark commented on Section 9(12) -- Exemptions. Ms. Lenmark said that she wanted to be certain that the Committee and other concerned individuals understand that this section does not exempt the insurance industry from regulation. She said that the purpose of Section 9(12) is to avoid any conflict between this law and the laws already in place in Title 33. She said that the groups that she represents would resist any changes in the exemption language.

She referred to correspondence given to the committee that raised the question of an insurance company engaging in a noninsurance business. She said that an insurance company that is going to set up a noninsurance business is not going to operate that business in the same company that issues insurance policies. That noninsurance business is going to be set up in a different company that will be regulated under other noninsurance laws. Montana has already addressed this issue and she urged the Committee to resist amending this section. She said that the AG agrees that there should be an exemption for insurance in LC8888.

- 02:56:40 **Webb Brown, Montana Chamber of Commerce**, urged the Committee to look at standardization with other states' laws. Keeping Montana statutes in line with other states' laws will make it easier for Montana businesses and victims to deal with this issue.
- 02:58:00 REP. KEANE said that the Committee would take action on each portion of bolded language in the bill draft separately.
- Page 4 --Section 3 -- Consumer reporting agency requirements -- **5 (AG) or 10 (CDIA)** business days to place a freeze. REP. KEANE **moved** to allow five business days be allowed to a credit reporting agency to confirm a freeze. The **motion passed** on a unanimous voice vote.
- 02:58:50 Page 4 -- Section 3(3) -- Consumer reporting agency requirements -- **or similar device (CDIA)**. REP. GALLIK **moved** to leave the language out because no one could provide a satisfactory definition of "similar device". SEN. BRUEGGEMAN disagreed, saying that more aggressive standards for securing information are being developed and that it makes sense to have this language in place. After discussion, the **motion to delete this language from the bill draft failed on a 5-2 voice vote** with REP. GALLIK and REP. MCGILLVRAY voting no. SEN. BRUEGGEMAN **moved** to approve this language for all instances in LC8888. The **motion passed 5-2** on a voice vote, with REP. GALLIK and REP. MCGILLVRAY voting no.
- 03:04:39 Page 4 -- Section 4(1) --Temporary lifting of security freeze -- **using a point of contact designated by a credit reporting agency (CDIA)**. REP. MILBURN **moved** to adopt the language. Mr. Ellmann explained that the rationale for the language is for the benefit of the consumer and will ensure that when a consumer calls an agency to place a freeze, he will be routed to the proper place to request a freeze in a timely manner. SEN. COCCHIARELLA expressed concern that customer service could be affected by this language. Mr. Ellmann assured her that credit reporting agencies are eager to provide good customer service because they have to meet the statutory time requirements. The motion **passed** on a unanimous voice vote.
- 03:10:53 Ms. Murdo referred the Committee back to Section 3, saying that the Consumers Union had noted a problem with five business days for a written request being the same as for an electronic request. She said that the Committee needed to decide if it wanted to add a new subsection to separate these. REP. KEANE said that he wanted to leave the language as is. The Committee agreed.
- 03:12:07 Page 5 -- Section 4(2) -- Temporary lifting of security freeze -- **or at the earliest time generally provided to consumers in another state, whichever is earlier (AG)**. REP. KEANE **moved** to leave the language out. After a brief discussion, the **motion passed** on a 4-3 voice vote, with SEN. COCCHIARELLA, SEN. BRUEGGEMAN, and REP. GALLIK voting no.

- 03:14:26 Page 5 -- Section 4(3)(c) -- Temporary lifting of security freeze -- Ms. Murdo said that there was a suggestion to add "to implement this section" after "develop procedures" and to remove reference to the electronic signatures in the Global and National Commerce Act. REP. GALLIK **moved** to keep the language as written. The motion **passed** on a unanimous voice vote.
- 03:15:33 Page 6 -- Section 5(2) -- Removal of a freeze -- Ms. Murdo explained that this language requires that the credit reporting agency notify the consumer in advance that the credit freeze will be lifted, as provided for in subsection (1). Subsection (2) needs to clarify that, if a credit reporting agency is taking the freeze removal action on its own (1)(b), that it notify the consumer. SEN. BRUEGGEMAN **moved** to leave the language in with the clarification of 1(b). The **motion passed** on a unanimous voice vote.
- 03:17:42 Page 6 -- Section 6(2) -- Third party contacts -- **notification of access to the credit report**. REP. KEANE said that he did not like this provision. REP. MCGILLVRAY **moved** to take subsection (2) out. REP. GALLIK supported leaving the language as is, saying that the bill is still a work in progress and that this issue could be dealt with when the bill is heard on the floor. The motion to delete subsection (2) **passed 6-1** on a voice vote, with REP. GALLIK voting no.
- 03:20:22 REP. MCGILLVRAY asked to discuss the issue of notification of rights in Section 8(4) in the first paragraph at the top of page 9. He said that the language isn't talking about rights, that it is more advisory in nature, and that he didn't think the language was appropriate for the bill. He **moved** to take out the first paragraph on page 9. The **motion passed** on a unanimous voice vote.
- 03:24:07 Page 10 -- Section 9(7) -- Exemptions -- "**use of a credit report for**" (**CDIA language**). Mr. Ellmann said that this language is the standard from other states' legislation but that he didn't think that it was significant. REP. GALLIK **moved** to leave the language in. The **motion passed** on a unanimous voice.
- 03:25:48 Page 11 - Section 9(14) -- Exemptions -- "**a consumer reporting agency's database....**". Ms. Murdo explained that this would include other databases in addition to credit reporting agencies' databases and is the concern expressed by ChoicePoint. REP. GALLIK **moved** to adopt both the language recommended by ChoicePoint and Consumers Union including the words "entirely" and "solely". The **motion passed** on a unanimous voice vote.
- 03:27:30 Page 11 -- Section 10(2) -- Fees -- "**an investigative report...personal information (AG)**". **TAPE 3 - SIDE B** REP. MCGILLVRAY **moved** to accept the language except on Page 12, put a "." after "law enforcement agency" and strike "or who has been notified of a security breach involving the consumer's own personal information (AG)." He explained that this language is unnecessary work for the credit reporting agencies for an issue that may not be a problem for the consumer. The **motion passed** on a 6-1 voice vote, with SEN. COCCHIARELLA voting no.

- 03:30:45 Page 12 -- Section 10(3) -- REP. GALLIK **moved** to leave in all bolded language in subsection (3) page 12. He said that it is important because the language allows the credit reporting agency to charge a reasonable fee only if a new PIN is requested by the consumer. The motion **passed** on a unanimous voice vote.
- 03:31:50 Page 13 -- Section 11(4) -- REP. GALLIK said, regarding "reasonable attorney's fees", that the language differs between (3)(b) and (4). He asked to amend (4) by inserting "reasonable" in front of "attorney's fees", inserting "as determined by the court." after "attorney's fees" and deleting "that are reasonable in relation to the work expended in responding to the pleading, motion, or other paper." He said that the additional language in (4) is not necessary and that there shouldn't be a difference in how attorney's fees are described.
- 03:34:33 Bart Campbell said (3)(b) only gives attorney's fees to a plaintiff. Standard attorney's fees provisions generally state that the prevailing party is entitled to attorney's fees, which would be plaintiff or defendant. He asked if this should be changed to clarify who could be awarded damages. REP. GALLIK disagreed with Mr. Campbell's interpretation of the law and said that his motion stays as stated. The motion **passed** on a unanimous voice vote.
- 03:35:54 Page 13 -- Section 11 -- REP. GALLIK **moved** to amend Section 11 by removing "actual" in all instances. In his opinion, the word "actual" could cause a debate over what "actual" damages are. The motion **passed** 5-2 with SEN. COCCHIARELLA and SEN. BRUEGGEMAN voting no.
- 03:37:35 Page 11 -- Section 10 -- Fees. SEN. COCCHIARELLA asked what fee amount was set in the AG bill draft. Ms. Murdo said that the AG bill draft set a \$3 initial fee and thawing and removing would be done for no fee. SEN. COCCHIARELLA **moved** to change the language in LC8888 back to the original language in the AG bill draft of a \$3 initial fee and no fee for thawing or for removing. REP. MILBURN said that he did not like setting a fee for a nongovernment business and if so, it should be in line with what it will cost the credit reporting agency. The person requesting the service is not being asked to pay and the agencies need to be paid for their services. REP. MILBURN said that he would oppose the motion. REP. MCGILLVRAY also opposed the motion, saying that Americans live in a free market economy and that he expects to pay for services he wants. For a government to require a fee that is submarket rate is price control and doesn't work. This would be treading on free enterprise and the credit reporting agencies should be allowed to charge what they want.
- 03:41:14 SEN. COCCHIARELLA said that she supports a free market but that isn't the issue in this case. This is to provide assistance to someone whose identity has been stolen. REP. KEANE said that the issue is that people are getting their identities stolen and one of the targeted populations is senior citizens, which should be considered. He said that as technology advances, the cost of placing, lifting, and thawing a freeze will decrease. He supported the \$3 fee.
- 03:43:52 SEN. STEINBEISSER thought that the \$10 is fair. Ms. Murdo asked for clarification if the motion would apply to identity theft victims only or to any

consumer who places a security freeze on his information. REP. KEANE said it would apply to any consumer who wants a freeze. The motion **passed** on a 5-3 roll call vote. SEN. STEINBEISSER, REP. MILBURN, and REP. MCGILLVRAY voted no, SEN. HANSEN and REP. GALLIK voted yes by proxy, held by REP. KEANE.

## **Part Two -- afternoon portion of meeting**

00:00:01 REP. KEANE said that there has been much discussion regarding LC8800, the uniformity of breach laws draft bill and the social security draft bill. He assigned the three draft bills to a working group to see if they could be combined and asked Ms. Murdo to set up the working group.

00:00:32 Ms. Murdo referenced a letter of inquiry from the Revenue and Transportation Interim Committee (RTIC) regarding the Economic Affairs Committee's action on a social security draft bill (EXHIBIT #12). Ms. Murdo said that RTIC is also planning draft legislation regarding the use of social security numbers and has requested consultation on any proposed EAIC legislation before final approval by the Economic Affairs Committee.

00:01:32 Bart Campbell said that he would work with Jeff Martin, RTIC staff. REP. KEANE suggested coordinating also with the other necessary parties. Mr. Campbell said that the basic concept is established but exemptions must be determined.

## **DRAFT LEGISLATION PROPOSALS FROM THE GOVERNOR'S OFFICE**

00:02:32 **Evan Barrett, Governor's Office of Economic Development**, said that the EAIC's September date conflicts with another obligation and at this point in time, he has legislative concepts to present but no proposed bill drafts. He said that the Governor's Office will have its bill proposals finalized in the next few weeks.

- A top priority is addressing the workforce training fund shortage and increasing the funding amount. It is too soon in the Executive Planning Process (EPP) to discuss an exact number but the goal is to increase funding.
- Legislation to remove the sunset clause for the State Tribal Economic Development Commission is being discussed, along with a small appropriation for administrative purposes. The Commission is starting to work very well and good work is being done.
- The Big Sky Big Screen Act incentives may be revamped because the incentives that were passed in 2005 were not what was needed.
- Under broad consideration are statutory appropriations for economic development programs, such as the Cooperative Development Center for Growth Through Agriculture. The 2000 Special Session approved appropriation language for several economic development programs that are due to sunset in 2010 and there has been discussion of either extending or removing the sunset because the programs have proven to be strong tools deserving of continued support.
- Senate Bill 19, which died in the 2005 Legislative session was a property tax abatement bill for new and expanding businesses. There were

problems with the definitions and there is interest in tweaking the language and trying it again.

- An appropriation for SB133 has been requested, a process to form a board has been developed, and there are plans to move forward with a test case in order to fully implement the law. This may be requested as a separate bill in order to act on it as quickly as possible.
- The Governor's Office will be discussing to what extent Montana should be proactive regarding transmission and pipeline activity with the Energy and Telecommunications Interim Committee.
- Several energy development options are being investigated but all are very general at this point.

Mr. Barrett concluded his comments by saying that he would submit a more detailed and written list of proposals to the Committee for the September meeting.

00:14:49 REP. KEANE asked why there must be a test case for SB133 and said that in his opinion, it is not good public policy to pass a law and then fund a test case. Mr. Barrett said that the reason for the test case is to ensure that money can be raised because the financial community has said it won't act until the legal issues are resolved.

#### **SJR 35 STUDY ON BOARDS -- SUBCOMMITTEE UPDATE**

00:16:56 SEN. COCCHIARELLA summarized the activities of the Subcommittee on licensing boards, saying that the main concern of the Subcommittee is the health, welfare, and safety of the public. The group has agreed that current boards, potential boards, and licensure needs to be reviewed, that boards need to be notified in advance of potential costs, and that the Legislature needs to provide guidance and advice on whether or not a particular group should be a board.

There are situations in which a group has used the process as a tool to limit competition, which the working group feels is not appropriate. Ms. Murdo has provided research on other states and found that some systems are more prescriptive than Montana. The work group agreed that upfront standards are necessary, including information on the requirements and costs of being licensed and part of a board.

00:20:29 SEN. COCCHIARELLA said that Shane Sierer, Department of Labor and Industry (DOLI) and formerly of the Legislative Fiscal Division, provided invaluable research on how the costs and fees increased and how this has been overlooked by the Legislature. The issue of overlapping regulation is also an issue, as is the need to revise definitions of scope of practice so that professions don't overlap but yet groups with like interests and needs can form umbrella boards and work together. **TAPE 4 - SIDE A**

00:23:06 SEN. COCCHIARELLA said that there is consensus that there should be a statute creating a process by which the Legislature and the Governor can institute the review process of existing boards and programs, as well as new boards and programs. The issue of dual licensure has been discussed, such as

for physical therapists and athletic trainers. SEN. COCCHIARELLA asked Ms. Murdo to explain the preliminary bill draft. She thanked DOLI for its cooperation and work done on the SJR 35 Study.

00:25:08 Ms. Murdo said that bill drafts LC9831, LC9832, and LC7799 are very preliminary and asked the Committee to use the SJR 35 Bill Draft Explanation table (EXHIBIT #13) to review the provisions of the bill drafts. Ms. Murdo reviewed Exhibit #13.

00:39:27 SEN. COCCHIARELLA reminded the Committee that the bill drafts are still in a preliminary form and that much work remains to be done. Another point of discussion yet to be decided is establishing a fee for upfront review. The Department does not have money available to do this currently so by reestablishing the sunrise provision, a group who chose to form a board or program would pay an upfront fee to establish costs and requirements. Another question discussed is whether all of the boards should be placed with DOLI. An example of one board that might be moved is the Board of Outfitters, which has much more to do with the Department of Fish, Wildlife, and Parks than it does with DOLI. No matter what course of action is taken, the Subcommittee thinks that a legislative committee that deals with a bill to create a board or programs must know that the proposal has gone through the sunrise review process. This is proof that a business plan has been created and that the proposal has gone through adequate review to establish that the new board or program is for the common good and that its purpose is to protect the public health, safety, and welfare and is not a measure to prevent competition.

SEN. COCCHIARELLA concluded her comments by saying that the main issues are fees to DOLI and where the boards should be located. She asked for public comment on any of the proposed bill drafts.

#### **Public Comment on SJR 35**

00:45:15 REP. KEANE cautioned that testimony would be taken on the bill drafts only and that testimony regarding a specific board or issue would not be allowed.

00:45:48 **Pat Fournier, President, Montana Hearing Society**, testified against the provision of LC9831 (EXHIBIT #14) that would combine the Board of Hearing Aid Dispensers with the Board of Medical Examiners. Mr. Fournier said that hearing aids are an electronic device, not a medical device, and that those who regulate the profession must have an understanding of how hearing aids work. Mr. Fournier distributed a letter containing a detailed list of reasons outlining why combining the two boards is not in the public's best interest (EXHIBIT #15).

00:47:20 **Susan Good** also testified against merging the Board of Hearing Aid Dispensers and the Board of Medical Examiners and asked that Sections 17 and 18 be deleted. She said that this issue has been a source of great controversy and asked the Subcommittee to look at other options.

- 00:49:26 **Shelley Engler, Board of Landscape Architects (BLA)**, has been meeting with the Board of Architects. She said that work on a merger is underway. This will be a valid solution for BLA's financial problems. Ms. Engler referred to LC9831, Section 15(9) clarifying what DOLI's duties are if the board is not operating in a cost effective manner. She asked what would happen if DOLI was not operating in a fiscally responsible manner. She said that budgets should be based on income, rather than fees based on what a board would like to spend.
- 00:50:48 **Don Hargrove, Montana Association of Marriage and Family Therapists**, said it is the hope of the Association to soon join the other 48 states in providing board oversight and protection to their clients. Mr. Hargrove asked, should there be a sunrise statute, if a merger would be possible in the 2007 session or would the sunrise legislation have to be passed first and then the board adjust accordingly. The national association is very concerned about this and would like to know.
- REP. KEANE said that would have to be sorted out and that he would be hesitant to approve another board until some standards are in place. The Association may have to make some adjustments as the process moves on.
- 00:53:30 SEN. COCCHIARELLA said that Mr. Hargrove raised a good point. It is not the intent to limit umbrella boards or groups wanting to join together who have like causes. She supported adding language to address this because this issue will continue to arise from time to time. Mr. Hargrove said that there is interest in merging with the professional counselors and social workers and that meetings have taken place to explore this possibility. He said that he believed the Association would be able to meet any criteria required.
- 00:55:05 REP. KEANE said that he was pleased to hear that good communication is going on between groups and that there are several benefits to taking this approach, such as financial savings and eliminating turf battles.
- 00:56:17 SEN. COCCHIARELLA asked for input from the Committee. Regarding the merging of the Board of Hearing Aid Dispensers and the Board of Medical Examiners, SEN. COCCHIARELLA noted that the merger was proposed by DOLI. Because the Board of Hearing Aid Dispensers is very small, it will have to deal with increased fees and that this provision was intended to help the small board deal with potential financial difficulties. She said the provision could easily be taken out. REP. KEANE **moved** to delete the sections dealing with merging the Board of Hearing Aid Dispensers and the Board of Medical Examiners. The **motion passed** on a unanimous voice vote. REP. KEANE noted that there may be another place for the Board of Hearing Aid Dispensers to look at for merging that would be a better fit.
- 00:58:39 **Dr. George Watson, Board of Psychologists**, said that his Board is very interested in the merger issue but faces the dilemma regarding suitable boards and whether they are interested in merging with the Board of Psychologists. REP. KEANE said that he thought the continually increasing fees would be a good motivator for change.

01:01:08 SEN. COCCHIARELLA thanked Dr. Watson for his participation and said that Dr. Watson had been involved in the entire process. She also thanked Mona Jamison and Rose Hughes for their contributions to the study. She noted that it should be remembered that not only is the sunrise a factor but board review may also be another motivator for boards to talk to each other.

01:02:04 **Paul Clark, representing private alternative adolescent residential or outdoor programs**, said that the 2005 Legislature approved HB 628, which established the Board of Private Adolescent Residential or Outdoor Programs. Since its establishment, the board has registered some of the existing programs operating in Montana. The board, through the registration process, has gathered a lot of information about the programs and is in the process of conducting site visits. The board has also established subcommittees to research industry ethics and standards nationwide and plans to create recommendations to be included in a Final Report, which will be presented to this Committee in September and to the 2007 Legislature. Mr. Clark noted that not all of the programs existing in Montana have registered and that due to the small number of programs operating in Montana and budget concerns, the board members are not taking any compensation of any sort. Mr. Clark said that the Final Report will contain the findings, conclusions, and recommendations of the board and will be presented to the Committee on September 12. He said that the Board was considered exploratory, had no quasi-judicial authority, and exists simply to register programs, to gather information, and to make recommendations on if its work is necessary and if it should continue to exist, and if creating a licensing structure should be established.

#### **TAPE 4 - SIDE B**

01:06:18 SEN. COCCHIARELLA asked if the Final Report would contain a recommendation on what administrative attachment the private alternative adolescent residential or outdoor programs should have in the event the group decided to require licensure. Mr. Clark said that it would be and that each recommendation in the Final Report would be documented with supporting language as to why the recommendation was made.

01:24:28 Ms. Murdo presented the new Interim Statewide Information Technology Policy (EXHIBIT #16).

#### **OTHER COMMITTEE LEGISLATION REVIEW**

01:26:01 **Bart Campbell, Staff Attorney**, presented LC Franchise (EXHIBIT #17), a bill draft proposing language changes in 61-4-201, MCA, regarding the definition of new motor vehicle dealer. He said that the minor changes in language clarifies the intent of the statute.

01:29:50 SEN. COCCHIARELLA recalled that this issue was a source of great contention when originally passed and asked Mr. Campbell how the issue originated. Mr. Campbell said that the issue arose through a Supreme Court decision involving a dispute between a manufacturer and a dealership selling All Terrain Vehicles

(ATV). He said that Justice Rice found the current statute confusing and that the LC FRANCHISE bill draft is an attempt to clarify the language.

01:32:39 REP. KEANE asked what types of vehicles are included under this statute. Mr. Campbell said that besides automobiles and trucks, it would also include ATVs, snowmobiles, and personal watercraft. He said that he was not certain if it would extend to boats.

01:33:02 **Brenda Nordlund, Attorney, DOJ**, said that the Power Sports Dealers brought a bill in 2003 to change the definition of motor vehicle under this particular part. Their interests includes personal watercraft, snowmobile, and the Off Highway Vehicles. LC Franchise would not extend to motorboats.

01:33:38 REP. KEANE asked where boat dealers fit in. Ms. Nordlund said that she was not an expert in franchise law but thought a boat dealer may fall under the protection of other franchise provisions in another MCA title.

#### **Public Comment**

01:34:53 **Bruce Spencer, Montana Auto Dealers**, said that he was surprised to learn of the proposed bill. He said that this is not an issue to his clients. Mr. Spencer discussed background information pertaining to the issue and said that there does not need to be a change in the statute.

01:41:01 **Mona Jamison, General Motors**, concurred with Mr. Spencer, saying that she doesn't think that there is a problem with the current language and that the Supreme Court rendered the correct interpretation of the statute. She urged the Committee not to proceed with LC FRANCHISE.

01:43:16 Ms. Nordlund concurred with Mr. Spencer and Ms. Jamison, saying that the current definition does not present a problem with the administration of the law.

#### **RULE REVIEW**

01:44:38 Mr. Campbell said that Committee members were mailed a list of proposed rules (EXHIBIT #18) and that none required Committee attention.

#### **UPDATE ON WORKFORCE INVESTMENT ACT DRAFT WAIVER REQUEST**

Mr. Campbell discussed a Work Force Investment Act update, saying that the Department of Labor and Industry has put out a draft waiver request on the Workforce Investment Act to move money to the Incumbent Worker Training Program. The comment period goes through the end of August 30, 2006. The Economic Affairs Committee has oversight responsibility for the Department of Labor and Industry so it is appropriate to bring this to the Committee's attention. Mr. Campbell explained the details of the draft waiver request.

#### **UPDATE ON RAIL SERVICES COMPETITION COUNCIL**

01:48:03 REP. MCGILLVRAY provided an update on the Railroad Services Competition Council. The Council has met four times, has taken testimony, and has no proposals or recommendations at this time. He said that the Council has another meeting planned in Shelby, Montana. A letter has been sent to United Pacific

asking them to stay in the State, which it has agreed to do. The main focus of discussion to date has been how to create competition in the state. The issues are very complicated and will take time to analyze. He said that he hoped to have additional information to share with the Committee by the next meeting.

- 01:51:25 REP. KEANE said that this issue isn't taken as seriously as it should be. It is a big money issue and as the price of gas goes up, the railroads' profitability will increase also because they will take advantage of the situation.
- 01:52:40 REP. MCGILLVRAY said the problem is that Montana has been a victim of services in the past. Milwaukee Road was the last competitor of Burlington Northern (BN) and Montana RailLink is a captive of BN, so there really is no rail competition to speak of. There is much to be learned yet and regulation is one area that may be explored.
- 01:54:00 SEN. STEINBEISSER said that the lack of competition is the root of the problem. This is a big problem to solve and it is time that it is being looked at. REP. MCGILLVRAY said that he has been frustrated by the lack of progress. He noted that he had requested that six specific issues be dealt with and that the minutes of the next meeting reflected that none of the six issues were discussed.

#### **PUBLIC COMMENT**

- 01:56:56 **Jim Boggio, independent business owner, Helena,** testified that he is experiencing problems with the State Electrical Board regarding 37-68-103, MCA, and that four complaints have been filed by the Board against him. He said that he believes that subsection (6) exempts him from the requirements and that legal opinions from four different attorneys support his claim. He provided copies of a legal opinion that he requested from John MacMaster, LSD Staff Attorney, (EXHIBIT #19).

Mr. Boggio said that he believes the Board is overreacting and that he was referred to EAIC by Mr. MacMaster. He asked if the Committee could provide guidance or advice on what he could do to deal with the situation.

#### **TAPE 5 - SIDE A**

- 02:03:35 REP. KEANE said that even though the decision of the Board was not satisfactory to Mr. Boggio, it isn't the position of EAIC to become involved in issues like this, even though the Committee does provide some oversight for boards and programs, such as finances. He said that Mr. Boggio had to follow the complaint process set out in statute to contest a decision made by a board.
- 02:05:22 Mr. Boggio asked if he could have an injunction placed on the Board's decision until the issue is resolved. Mr. Campbell said that an injunction would have to be handled by an attorney and that as Legislative staff, he could not provide legal advice to Mr. Boggio. He suggested that Mr. Boggio retain an attorney.
- 02:08:00 Mr. Campbell said that another option would be for Mr. Boggio to contact his legislator and ask him to introduce legislation to clarify the law.

02:08:51 Mr. Boggio asked if he could file a protest with DOLI. REP. KEANE said yes.

### **MEMBER CONCERNS**

02:09:10 SEN. STEINBEISSER said that he attended a National Conference on State Legislatures (NCSL) meeting in Seattle on its Food to School program in which students are able to follow a food source from production through delivery to the school for consumption. He explained some of the details of the program and said that he is interested in bringing the program to Montana. There is a conference call scheduled for next week to explore potential legislation for the 2007 session. REP. KEANE suggested that SEN. STEINBEISSER consult with Greg Petesch on what Montana law is regarding food sources for Montana schools. SEN. STEINBEISSER said that he would do that.

02:11:50 Ms. Murdo reviewed the procedure for review, request, and drafting of agency legislation (EXHIBIT #20).

02:13:31 Ms. Murdo said that REP. KEANE has requested Dr. Simmons, a speaker from the National Coalition for Health Care to address the Committee at its September meeting and that the Committee will help defray travel expenses. She said that she would like to extend an invitation to the Children and Families Committee to attend, with the Committee's approval. REP. KEANE said that he was fascinated by Dr. Simmons' presentation at another event and that he has much to say about the current state of the health care system in America.

Ms. Murdo said that the Montana Economic Developers Association will be at the September meeting to present legislation. She asked that members alert her to other agenda items of interest.

02:15:18 REP. MCGILLVRAY asked if there would be a bill to address the uninsured motorist issue. REP. KEANE said that there was not time to create a committee bill but that he was considering personally sponsoring the legislation.

02:17:56 SEN. BRUEGGEMAN said that with some modification, the new motor vehicle system coming on line could have the capability to function with a program such as IVIN and that the question is, does the State want to invest the dollars in an information system such as IVIN. He suggested that the Division of Motor Vehicles be asked for its input and that the 2007 session may be the appropriate time to discuss building in the ability to interface with a program such as IVIN.

02:19:36 SEN. COCCHIARELLA said Mr. Lakin indicated to her that this could be done for free but said that more needs to be learned before any steps could be taken. She said that enforcement would be key to the success of any measures taken. REP. KEANE agreed that enforcement is key and provided examples of how aggressive Wyoming is regarding licensing.

### **ADJOURNMENT**

02:23:59 With no further business before the Committee, REP. KEANE adjourned the meeting at 4:07 p.m. The next meeting of the Economic Affairs Interim Committee will be on September 11 and 12, 2006 in Helena.

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