



## 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

May 12, 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 that has 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. COCCHIARELLA  
SEN. KEN HANSEN

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

### **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 Committee:

- approved the February 10, 2006, minutes as written;
- approved elements of a bill draft for a security freeze law, including application by regular or certified mail or email, a definition of security freeze that includes use of a security freeze beyond the purpose of extending credit, a \$10 fee per credit reporting agency for requesting a security freeze, a penalty in the \$1,000 range for violations, and allowing a security freeze to be lifted for a specific amount of time or for a specific person or purpose at the consumer's request;
- approved drafting of a bill proposal that includes the government in the requirement to notify individuals in the event of a security breach;
- accepted the Montana Heritage Commission's report to the Committee;
- approved a bill draft request to clarify the statutory definition of "new vehicle dealer" as it relates to franchises; and
- approved a bill draft request to specify that identity theft victims be allowed access to police reports and other measures to help identity theft victims.

## **PART ONE                      TAPE 1 - SIDE A**

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

00:01:01        REP. KEANE called the meeting to order at 8:31 a.m. The secretary took the roll, all members were present. SEN. HANSEN moved to approve the February 10, 2006, minutes as written. The motion passed on a unanimous voice vote.

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

#### **Remediation Proposals for Victims and Associated Parties**

Ms. Young said she was appearing before the Committee to lend insight, to offer suggestions on how to help victims navigate the system, and her personal recommendations for change. She submitted and discussed a list of problems faced by ID theft victims, related issues, and proposed remedies (EXHIBIT #1). Ms. Young requested that the Committee work on legislation to help ID theft victims.

00:20:04        **Tracie Kenyon, President/CEO, Montana Credit Union Network**, said that credit unions have worked to educate customers and citizens on the issue of identity theft. The credit unions generally support the proposed legislation but would like to see more emphasis on accountability. Ms. Kenyon discussed two accountability measures that the credit unions would like to have incorporated into future legislation (EXHIBIT #2). Ms. Kenyon said that Bob Pyfer, Senior Vice President, was available for questions via the teleconference telephone.

00:24:41        **Pat Murdo, Staff Research Analyst**, pointed out that two additional documents from the credit unions were included in the meeting packet: *Helping the Identity Theft Victim(s)* (EXHIBIT #3) and an amendment to federal legislation, *An*

*Amendment to the Amendment in the Nature of a Substitute to H.R. 3997 Offered by Mr. Pearce of New Mexico and Mr. Capuano of Massachusetts (EXHIBIT #4).*

### **Public Comment**

00:25:59 **Claudia Clifford, AARP Montana**, concurred with Ms. Young's suggestions for assisting identity theft victims and encouraged the Committee to explore Ms. Young's suggestions.

### **Committee Discussion/Questions**

00:26:58 In response to a question by SEN. COCCHIARELLA, Ms. Young said that the issue of jurisdiction has been one of the most difficult to deal with because her identity theft occurred out of state during a move to Montana. Law enforcement officers in both states refused to take a police report. Ms. Young said that eventually she was able to get a note attached to her original police report that included the theft of her truck but that the police in Montana would not accept the out of state police report. She said that additional education has occurred since her incident and that she believes that the police are now more willing to work with victims. She said that the identity theft passport program, passed in the 2005 Legislature, would not apply to her because her theft occurred in another state. Ms. Young suggested that the law be adapted to reflect that if someone is a resident of Montana, that they be eligible to apply for that program, regardless of where the theft occurred. She said that state jurisdiction has been difficult to deal with because different states are involved with her case.

00:29:45 REP. MCGILLVRAY asked, referring to the third item on the first page of EXHIBIT #1 regarding blocked information, if blocking information is different than removing information. Ms. Young said that she was not certain but said her understanding is that "blocked" means removed and that any additional reports given will not reflect the blocked information. There are two different thoughts regarding this issue: one is that the information remains in the report but clearly is marked as disputed and the other option is to block the information so that it is no longer seen. Ms. Young said that she supported blocking the information.

00:30:51 REP. MCGILLVRAY asked Ms. Young to comment on the Michigan law which prohibits denying credit to an identity theft victim (page 2, EXHIBIT #1). He said that he could envision that provision being abused by irresponsible people. Ms. Young asked that the statute be further looked into and said that she is concerned about her ability to obtain credit. She said that she would be open to having thorough processes in place to document that someone is an identity theft victim in order to prevent abuse of the law.

00:32:42 REP. MILBURN asked Ms. Kenyon to explain the second accountability recommendation in EXHIBIT #2. Ms. Kenyon said that the right of reimbursement is the ability for financial institutions to seek reimbursement from the merchant card processors. She explained that often the breach occurs outside of the financial institution and yet the cost to repair the breach is left to the financial institution. This would allow the institution to go to the source of the breach for restitution and reimbursement.

### Working Group Security/Credit Freeze Recommendations

- 00:34:36 Ms. Murdo referred the Committee to two documents relating to the working group's recommendations and discussed each:
- EXHIBIT #5 - a combination security freeze bill which incorporated the Attorney General's (AG) proposed bill draft and the Consumer Data Industry Association (CDIA) proposed bill draft, with the areas of consensus between the AG's proposal and the CDIA proposed language included, and
  - EXHIBIT #6 - a table outlining identity theft laws in other states.

### **TAPE 1 - SIDE B**

#### Public Comment

- 00:56:12 Claudia Clifford, AARP, testified as a proponent for the AG's security freeze law. She provided copies of AARP's position on the proposed bill (EXHIBIT #7) and also distributed a letter from Consumer's Union in support of creating a security freeze law (EXHIBIT #8). She reminded the Committee of a January 2006 AARP poll that indicated overwhelming support by Montanans for a security freeze law and said that a security freeze is one of the best ways to help consumers proactively protect themselves from identity theft. Ms. Clifford discussed the AARP points of agreement:
- convenience in placing the security freeze;
  - victims or potential victims being able to get a security freeze within 24-hours of their request;
  - reasonable costs for placing and lifting a security freeze as in the AG's draft bill; and
  - application of a security freeze for more than just an extension of credit.
- 01:07:05 Kelsen Young commented on the text of the bill (EXHIBIT #5):
- page 2 , number 7 -- different states use different definitions of "proper identification" and the concern is that an identity theft victim may not have access to certain forms of identification and asked that this requirement be kept as reasonable as possible because of this;
  - page 2, New Section 2 - regarding use of written or certified mail to place a security freeze - Ms. Young requested that the requirement be "transparent" and simple;
  - page 2, New Section 3(3) - Ms. Young said she was concerned that if language requires an identity theft passport, it would be too burdensome for some victims; and
  - page 9 New Section 10 - Ms. Young suggested that this section be more inclusive to include other kinds of documentation beyond a police report.
- 01:11:14 **Galen Hollenbaugh, Deputy Chief of Staff, Department of Justice (DOJ)**, stated that he was available to answer questions from the Committee.
- 01:11:50 **Eric Ellman, Consumer Data Industry Association (CDIA)**, discussed the points of disagreement his association has with the proposed security freeze bill:

- the AG bill deviates significantly in many key respects from 18 of the 20 states with security freeze laws and deviates from the two states that differ from the other 18;
  - ▶ every state with a security freeze law currently requires certified mail to place a credit freeze - the AG draft does not;
  - ▶ it is too easy for someone to place a freeze on another individual's account without a certified letter requirement;
  - ▶ placing a freeze by fax or email does not provide for verification;
  - ▶ the requirement that a credit bureau that receives a request for a freeze must notify other credit bureaus is not done by any other state and the CDIA discourages this requirement;
  - ▶ the CDIA recommends allowing up to 10 business days to send confirmation of a freeze being placed and allowing up to 3 business days to lift or remove a freeze;
  - ▶ an administrative fee is necessary for credit bureaus to recoup the costs of building the necessary system to support credit freezes; the median fee across other states is about \$10 to place, lift, or remove a freeze, and is free to identity theft victims;
  - ▶ notification of attempted access of a frozen file is not law in any other state and is not necessary;
  - ▶ the penalties proposed by the CDIA are consistent with the other states and the penalties proposed in the AG bill draft are outrageous; **TAPE 2 - SIDE A**

Mr. Ellman concluded his comments by urging that any Montana law be consistent with not only federal law but with the laws of the states with a security freeze. He said that the CDIA is not opposed to a security freeze but urged Montana to use other states' legislation as a template for designing its security freeze law.

01:21:42

**Brad Griffin, Montana Retail Association**, said that his association is not opposed to a security freeze law and discussed several relevant points:

- the Association would like the fees to be similar to those of other states;
- the Association supports the certified letter requirement; and
- it is important to follow the other 18 states that have passed legislation.

01:24:02

**Bruce Spencer, Montana Auto Dealers**, presented several areas of concern regarding the proposed bill draft, both as an attorney in private practice and as a representative of the Montana Auto Dealers, a user of credit bureau information:

- the Auto Dealers would like the effective date to be several years in the future;
- the Auto Dealers would like the bill to be limited to victims of identity theft;
- as a private practice attorney, Mr. Spencer recommended requiring use of certified mail to place, lift, or discontinue a credit freeze because it establishes proof of communication;
- fees are necessary and if not charged to the consumer, associations who use the information will have to pay and will, in turn, pass the cost on to the consumer; and
- Exhibit #5, page 6, New Section 6(2) -- third party requests and access to consumer information -- Mr. Spencer suggested adding language after

"sole purpose of account review" saying "or any exemption contained in Section 9" because there are legitimate reasons to access credit reports in Section 9 that may create an inconsistency if prohibited in Section 6.

- 01:29:01 REP. GALLIK referred to EXHIBIT #5, page 4, New Section 3. He stated that identification is not required for sending a certified letter and that both versions of the bill require that the credit reporting agency provide written confirmation that the freeze request has been received. He asked why that requirement would not be sufficient notification and evidence that the agency received the request if the consumer used email to request the freeze. Mr. Spencer that the problem is that if the consumer doesn't follow up and make sure that he gets a written confirmation and the freeze isn't put on, then the agency is subject to litigation. The issue becomes whether or not the agency knew of the credit freeze request. If there is a certified mail confirmation, it will be easier for the consumer to prove in court that the request was made.
- 01:33:12 REP. MCGILLVRAY **moved** to approve drafting a Committee bill for a security freeze law. The motion **passed** on a voice vote, with SEN. COCCHIARELLA voting yes by proxy (REP. KEANE). SEN. BRUEGGEMAN was out of the room and did not vote. REP. KEANE said that there would be a final vote on the bill at the July meeting. He asked for Committee input on the fee issue.
- 01:35:02 REP. GALLIK **moved** to use the AG version in New Section 2 (EXHIBIT #5), allowing regular, certified, or email to request that a security freeze be put in place. REP. MILBURN said that there are legitimate reasons for requiring certified mail and asked, if the credit reporting agencies are not comfortable with email, why would the Committee include this requirement. REP. KEANE said that allowing email would allow flexibility. The **motion failed 4-4** on a voice vote, with no votes from SEN. STEINBEISSER, REP. MILBURN, REP. MCGILLVRAY, and SEN. BRUEGGEMAN (voted by Rep. Milburn by proxy).
- 01:38:09 With regard to the definition of a security freeze, REP. GALLIK **moved** to use the AG language (EXHIBIT #5, page 2, New Section 1(5)) that would permit a freeze not just for an extension of credit but for other purposes. The **motion passed 6-1** on a voice vote. REP. MILBURN voted no. SEN. BRUEGGEMAN abstained.
- 01:40:17 Regarding fees, REP. KEANE moved for \$5 fees then withdrew the motion. REP. MCGILLVRAY said that he would strongly object to the State having the authority to mandate that a business provide services free of charge. He said that a business owner should be able to charge a fee that would cover the cost of the service. He **moved** that there be a \$10 fee and no charge for identity theft victims. The **motion passed 7-1** on a voice vote with SEN. BRUEGGEMAN voting yes by proxy (Milburn) and SEN. COCCHIARELLA voting yes by proxy (Keane). REP. GALLIK voted no.
- 01:42:36 REP. GALLIK **moved** to adopt the AG language regarding penalties (EXHIBIT #5, page 10, New Section 11). REP. MILBURN asked if the working group had a recommendation for penalty fees. Ms. Murdo said that working group did not

make a recommendation on this issue but that EXHIBIT #5 lists the CDIA recommendation.

- 01:44:35 The **motion failed** 2-5, with REP. GALLIK and SEN. HANSEN in favor, and REP. KEANE, REP. MILBURN, REP. MCGILLVRAY and SEN. STEINBEISSER voting no. Rep. Milburn voted SEN. BRUEGGEMAN's proxy as no. SEN. COCCHIARELLA's proxy was not voted.
- 01:45:08 REP. MILBURN **moved** to establish a \$1,000 penalty as provided in the CDIA version (EXHIBIT #5, page 10, Section 18 right column). The **motion passed 5-2** with SEN. BRUEGGEMAN voting yes by proxy (Milburn). REP. GALLIK and SEN. HANSEN voted no, and SEN. COCCHIARELLA's proxy was not voted.
- 01:46:18 REP. GALLIK **moved** to allow a security freeze to be lifted for a short period of time, along with the provision for lifting of the security freeze by the consumer for a specific event or creditor. The **motion passed 6-1** on a voice vote with SEN. COCCHIARELLA voting yes by proxy (Keane). SEN. BRUEGGEMAN's proxy was not voted.
- 01:56:23 SEN. BRUEGGEMAN (he returned to the meeting after the break) **moved** for reconsideration of the Committee vote regarding the provisions of how a security freeze may be requested. He stated that the argument for paper is archaic and that the day will soon be here that almost all business is conducted electronically. He predicted that because of the increasing risk of identity theft, consumer use of security freezes will drastically increase and that consumers will feel that the protection is worth the effort. REP. KEANE said that the vote would be reconsidered.
- 01:59:00 SEN. BRUEGGEMAN's motion to reconsider **passed on a voice vote**. SEN. BRUEGGEMAN **moved** for a re-vote on REP. GALLIK's original motion to include email as a means of requesting a security freeze. The motion **passed 6-2** on a voice vote. SEN. COCCHIARELLA voted yes by proxy (Keane). SEN. STEINBEISSER and REP. MILBURN voted no.
- 02:01:36 Ms. Murdo said that the work group recommended that government be included in the breach notification law because the group thought that the government shouldn't be exempt from requirements for notification of a computer security breach. REP. KEANE **moved** to include the government in the requirement to notify individuals of a security breach affecting personal identifying information.
- 02:03:46 The **motion passed** on a unanimous voice vote, with SEN. COCCHIARELLA and REP. GALLIK voting yes by proxy (Keane).

## TAPE 2 - SIDE B

Bruce Spencer strongly encouraged the Committee to expand the provisions of HB 732 (2005), to include state government.

## **Recommendations on Social Security Legislation**

- 02:06:30 Bruce Spencer said that he opposes a proposal to prohibit state agencies from giving out any record containing a social security number, with the exception of law enforcement agencies, because as an attorney, he uses public records to access social security information to satisfy court judgments, to run searches for estate survivors, and to make sure that payments are routed to the proper people. To limit public access to public documents is a big problem. Mr. Spencer said that he would not object to restrictions being placed on the ability to access the documents and that there are already safeguards in place to protect consumers. He submitted EXHIBIT #9, which included examples of restricted information regulated by federal law, and EXHIBIT #10, a Uniform Commercial Code Financing Statement with the Montana Effective Financing Statement Form filed with the Secretary of State. The latter form requests a social security number or tax ID number.
- 02:15:10 Mr. Spencer said that another concern is that there is no agreement on whether legislation is needed that would affect access to social security numbers beyond what already exists. Part of the issue is that no one knows what state government has and how it is using the social security numbers it has. Mr. Spencer said that he is aware that the EAIC sent out a survey to state agencies. He said there is no evidence yet that there is a problem; legislation shouldn't be passed until and unless there is a problem. More information is needed on how state agencies handle and protect social security numbers before determining if legislation is needed
- 02:18:35 REP. KEANE said that the Committee received a good response from state agencies on the use of social security numbers by state agencies survey.
- 02:19:44 Ms. Murdo referred the Committee to two documents in the meeting material packet, saying that Detective Brian Fulford emailed a bill proposal to the Committee to protect personal identity information on state, county, and city public data bases (EXHIBIT #11). Ms. Murdo also distributed copies of Gary Marbut's proposal for a bill for an act to protect the privacy of Montana Citizens by restricting the use of Social Security Numbers and providing penalties (EXHIBIT #12). REP. KEANE said the committee would wait to act on either.
- 02:23:15 **Brian Fulford, Sergeant Detective, Kalispell Police Department**, spoke to the Committee on his proposed bill draft via the teleconference phone. He said the intent of his bill proposal is to reduce the availability of personal identifying information on public data bases, specifically government data bases. He discussed a recent identity theft case, saying that after the thief was caught, he showed Detective Fulford how simple it was to get someone's identity by surfing public data bases.
- 02:30:13 **Bart Campbell, Staff Attorney, LSD**, said that there is a push to post all court records on the Internet and that by federal law, certain documents are required to include social security numbers. Information that is put out under the public's right to know is part of the issue at stake and at some point a decision will have to be made on whether this would be considered a breach of information.

02:31:23 Detective Fulford agreed that there is a move to make all public records available on the Internet. He said that the local Clerks of Court would post a list on the Internet of all the documents available but not have the actual document posted.

02:33:33 Ms. Murdo said that the Montana Supreme Court will soon release a recommendation to truncate social security numbers and that whatever happens with the Courts would provide direction to the Committee.

### **BROADBAND'S IMPACT ON ECONOMIC DEVELOPMENT**

02:48:04 REP. KEANE said that Montana needs to be aware of what is available for small businesses and that broadband has the potential to connect Montana's economy to the world economy. REP. KEANE said that there are opportunities for Montana businesses if the State stays abreast of what is going on in the world.

02:50:09 **Kaiser Mulla-Feroze, salesforce.com,** presented a Power Point presentation titled *The Future of Software - a New Business Model for a New Era*. Mr. Mulla-Feroze discussed the evolution of software and the profound effect the Internet has had on the software industry. Topics discussed included:

- traditional software model: an "on premise" model which was high risk, expensive, time consuming, complex, cumbersome and created headaches for the private and public sector;
- innovation in the technology industry - this signaled the shift from a mainframe computer of the 1970s and 1980s to a client server in 1990s;
- the year 2000 signaled another change and is when the Internet began to change the equation;
- software became available as a utility, which lowered risk and decreased costs. This resulted in a profound change in the business model because customers could "test drive" the software, the software was easy to install, customize, and upgrade; **TAPE 3 SIDE A**
- leveraging the Internet to make sophisticated applications available to all has leveled the playing field for small companies;
- the "software as a service" model is having a huge impact on small businesses and is becoming the trusted choice for large enterprises as well;
- on-demand software is becoming the de facto approach;
- the business web will be revolutionized next through application development, application delivery and deployment, application integration, and creation of a directory and marketplace for business applications;
- the web will become a market place for business software and allow businesses to create, share, browse, and install software; this could drastically impact the economy because niche products would be inexpensive to market and easily available;
- salesforce.com is a public company and is currently the number-one on-demand service provider to 20,500 customers with 399,000 subscribers;
- salesforce.com can create custom applications for any business for expenses, budgets, project management, asset management, schedules, time tracking, etc.;

- salesforce.com works with the public sector on issues such as licenses and permits, social services, grants, economic development, tourist services, criminal tracking, resource management, or complaints; and
- salesforce.com can develop software for use in political campaigns, with the point being that it can be used for any application or need.

03:26:38 REP. GALLIK asked if a program could be developed to track uninsured drivers in Montana to see if they have obtained liability insurance. Mr. Mulla-Feroze said such a program could be designed either as a stand alone data base or as an interface program with the Department of Motor Vehicles. He explained how each design would function within state government.

03:28:36 REP. MILBURN asked for an example of a business that is currently using salesforce.com software and how that business and its customers are using that software. Mr. Mulla-Feroze discussed an example of an equipment business with 500 business representatives nationwide who have the capability to log on to the network at any time to update their sales data or to document customer interaction, and that the customers have 24-hour a day access to a customer service website.

03:32:51 REP. KEANE said that he is interested in exploring REP. GALLIK's question about tracking uninsured drivers, saying that this type of software could be used to solve a problem without requiring a significant investment in infrastructure.

03:33:21 SEN. BRUEGEMAN said that the new system being created at the Department of Justice will have much of the same capacity that Mr. Mulla-Feroze discussed to address the uninsured motorist issue. He asked if salesforce.com has applied to be on the MIS long term contract with the Department of Administration with ITSD. Mr. Mulla-Feroze said that he did not think that salesforce.com had applied.

## **PART TWO            TAPE 3 - SIDE B**

### **UNINSURED MOTORISTS PRESENTATION**

- 00:00:42 **Kent Wilcox, Legislative Audit Division (LAD)**, discussed a report prepared by the Legislative Audit Division summarizing data on uninsured motorists (EXHIBIT #13). The report addressed:
  - liability insurance requirements;
  - liability insurance premiums variables;
  - estimated non-compliance rates;
  - three types of controls to address non-compliance - detection, prevention, and corrective - and their effectiveness;
  - alternatives for improving detection - sampling programs, reporting systems, and verification systems;
  - strategies for improving control measures;
  - an overall conclusion: Montana can improve compliance, noncompliance can potentially be reduced but costs and benefits cannot be readily determined, and legislators must balance costs and public benefits of improved compliance with the law.

- 00:06:39 SEN. HANSEN asked why fines don't seem to be an effective means of improving compliance. Mr. Wilcox said that a first-offense fine can range from \$350 to \$500, the second offense fine is \$350. Another factor is that the fines are often less costly than the insurance premium, causing some drivers to be willing to take the risk of no insurance.
- 00:07:47 SEN. STEINBEISSER asked what other states are doing to combat this issue. Mr. Wilcox said about half of the states are using reporting systems to compare information from insurance companies with information from the Department of Motor Vehicles. A few states have started verification systems but there is not much information available because they are so new.
- 00:10:32 **Scott Lakin, National Coordinator, Insured Vehicle Identification Network (IVIN)**, explained the IVIN system (EXHIBIT #14 and EXHIBIT #15), covering the following:
- the premise of the IVIN system;
  - the components and process of the IVIN system;
  - components of the IVIN solution; and
  - how to budget for and implement IVIN.
- Mr. Lakin also distributed copies of a report from the National Association of Insurance Commissioners on uninsured motorists (EXHIBIT #16).
- 00:19:49 REP. KEANE said that Texas has implemented an aggressive program to deal with uninsured drivers. Mr. Lakin provided copies of *HB 3588 FEASIBILITY STUDY OF AN INTERFACE MOTOR VEHICLE FINANCIAL RESPONSIBILITY VERIFICATION SYSTEM*, EXHIBIT #17, and said that Texas has been a leader in addressing this issue.
- 00:21:22 REP. GALLIK asked Mr. Lakin if, in his time as a state legislator in Missouri, he sponsored legislation to address uninsured motorists. Mr. Lakin said that he had cosponsored legislation.
- 00:22:11 REP. GALLIK asked if insurance companies are interested in the IVIN system. Mr. Lakin said that he has presented IVIN to the American Insurance Association (AIA) and with the Property Casualty Insurers. Although neither will fully endorse IVIN, he said, both groups like the IVIN system.
- 00:24:04 **Dean Roberts, Administrator, Motor Vehicle Division**, said that the LAD report was very thorough but that his Division is of the opinion that the uninsured motorist rate is slightly higher than that reported by LAD. He agreed that the reporting systems don't work as well as once thought and that the biggest problem is old data by the time the Motor Vehicle Division receives it.
- Mr. Roberts said that there are several systems available in addition to IVIN and discussed several. He agreed with earlier discussion that penalties generally don't work and if they are used, they should be much higher than they currently are. Mr. Roberts reported that uninsured drivers:
- are generally between the ages of 18 - 26;

- are generally low income; and
- are less educated. **TAPE 4 - SIDE A**

Mr. Roberts said the people that the Division is after are people that can afford insurance but use the money for something else and don't prioritize carrying insurance. It becomes a policy decision to determine how to get this group of people to purchase insurance. Mr. Roberts said that in his experience, if an individual knows that law enforcement is aware that they don't carry insurance, they are more motivated to purchase it. Mr. Roberts said there needs to be a way to review if a driver is insured or not by a means other than a traffic stop and that penalties must also be stronger.

00:33:37 REP. GALLIK suggested implementing a very low tech approach of simply requiring a driver to show proof of insurance when licensing his or her car. Mr. Roberts said that approach had been used but was eliminated because it was proven to be ineffective. He said the Internet will soon be the method of choice for registering vehicles, eliminating the need for people to go to their courthouse to register and license vehicles.

00:36:47 SEN. COCCHIARELLA pointed out that it is really vehicles that are uninsured vehicles and not motorists. Mr. Roberts agreed that liability insurance is on a vehicle and not on an individual. SEN. COCCHIARELLA asked why previous legislation to require individuals to carry liability insurance had failed. Mr. Roberts said that requiring individuals to carry liability insurance would be complicated because every individual would be required to be insured for every car he or she may operate. Mr. Roberts commented about SR22 insurance, which is insurance that is required if a driver's license is revoked. To get the license back, if the license was revoked because of a DUI, the driver has to obtain SR 22 coverage. The insurance companies report directly to the division of motor vehicles that the insurance was purchased and when it was cancelled. It is a combination insurance that covers both the vehicle and the driver.

00:40:59 **Laren McGlade, AIG**, said he was addressing the Committee as a representative of the insurance industry and of the Insurance Committee on Motor Vehicle Administration. Mr. McGlade discussed a web services verification program and said that he supports this online web service verification over all other programs. Regarding data base programs, Mr. McGlade said it is correct that about 25% of the data is mismatched and that the industry is very opposed to a data base program because of the erroneous information. Mr. McGlade asked for the opportunity to present a web service program to the Committee at its July meeting. He noted that the state of Florida is using a web service verification pilot program because it intends to sunset its data base program. Colorado also intends to sunset its data base program, and other states are also considering transitioning from a data base format to the web services verification program. Mr. McGlade said that the insurance industry, which is concerned about uninsured drivers, generally supports getting them off the road but does not support the possibility of each state having 24 different systems, as is the case now. This makes it very costly and time consuming to the insurance companies.

- 00:46:34 REP. MCGILLVRAY said that hospitals are quite aggressive in making sure that uninsured patients pay for their healthcare provided by the hospital and that there are procedures in place which allow them to do that. REP. MCGILLVRAY asked if any state has a process in place for collecting from uninsured drivers. Mr. McGlade said that he is not aware of such a program. Regarding proof of coverage required by hospitals, he is aware of a web based program that allows physicians and hospitals to confirm coverage; that is very similar to one of the automobile insurance verification programs.
- 00:49:16 REP. KEANE asked Mr. Wilcox to respond to REP, MCGILLVRAY's question. Mr. Wilcox said that he didn't know of any state with that type of a system in place. He said that in Montana, the Court only stipulates that the person must pay but the victim is responsible for collecting. He explained that an order allowing wages to be garnished is good for six months, so it can be a very time consuming process for an individual to collect damages.
- 00:50:18 REP. GALLIK agreed that it is the victims or society in general that picks up the costs of uninsured motorists. He asked if the insurance industry has a position on making uninsured motorist coverage mandatory, as opposed to just having to offer it to a driver. Mr. McGlade said that the insurance industry likes to sell coverage. He explained that some states require that it is mandatory unless rejected by the consumer, which requires written documentation that it has been rejected. He said that he is not aware if any state mandates uninsured motorist coverage. Mr. McGlade said it must be remembered that insurance is an economic issue and that there are people who have to choose between food for their family and insurance. The group that must be the focus of this type of insurance requirement should be those who have the money but choose not to use it for insurance coverage. How to address those who truly cannot afford insurance must also be addressed. Each state must decide what the acceptable level of uninsured motorists will be and how to compensate for that.
- 00:52:47 REP. GALLIK asked if Mr. McGlade would oppose mandatory uninsured coverage. Mr. McGlade said that the industry would not oppose mandatory uninsured coverage.
- 00:53:05 REP. KEANE asked if the industry would be opposed to impounding the cars of uninsured motorists. Mr. McGlade said no, providing it could be thoroughly proven that the motorist is uninsured. Mr. McGlade distributed two documents relating to his discussion (EXHIBIT #18 - *Online Insurance Verification* and EXHIBIT #19 - *Model User Guide for Implementing Online Insurance Verification*).
- 00:54:51 REP. KEANE asked Mr. McGlade to return at the July meeting to present his web based verification program. REP. KEANE said that he is confident that there will be uninsured motorist legislation because of the need for it.

**SENATOR JEFF MANGAN, MONTANA INVESTMENT ENVIRONMENT**

- 00:56:25 Sen. Mangan spoke on behalf of the quasi-working group formed early in 2006 of entrepreneurs and other investors from around the State. He said the group's

purpose is to improve the investment and entrepreneurial environment in the State of Montana. He said the group discusses what is needed, what kind of policy changes might be needed, what can be done through public policy and through private investments, to promote legislation such as SB 133, and any other action it can take to promote investment in Montana. He said that a formal meeting had been held that morning to discuss the issues of SB 133 and angel networks. Regarding SB 133, Sen. Mangan said:

- SB 133, a venture capital bill passed in the 2005 Legislature but has not been implemented to date. The Department of Commerce (DOC) has said it is including funds in its budget request for the next biennium for implementation. Sen. Mangan asked that the Economic Affairs Committee join in strong support and advocate that the budget request is passed so that SB 133 may finally be implemented.
- The work group also discussed the importance of timing in the investment process. He requested that the EAIC sponsor a separate appropriation bill for SB 133 with an immediate implementation date. He said that the budget request also includes the cost of a test lawsuit to determine constitutionality.

Sen. Mangan asked Larry Mikkola of Bozeman to address the Committee on the need for venture capital in Montana.

01:01:52

**Larry Mikkola, Finance Officer, Lygocyte Corporation, Bozeman,** said that Lygocyte Corporation is a biotech research and development firm founded in 1998, and that it has grown to a \$3 million dollar payroll for 50 people. Mr. Mikkola said that Lygocyte's research stage is almost complete and that plans are being made for development. This involves big dollars and will likely be available only from venture capital sources. Lygocyte has been looking for several years for venture capital and has not been as successful as hoped because venture firms don't typically look at Montana as a good place to invest. There are a variety of reasons for this, one of which is Montana's geography. Venture capitalists are reluctant to come to Montana due to traveling difficulties, which highlights the need for Montana to build its own venture capital program. Mr. Mikkola said that without a venture capital investment in his company, Lygocyte will "move into the land of the living dead", which would be very unfortunate considering what it has accomplished to this point. Another option is to move to an area that does have venture capitalists, such as Seattle. He said that the company founders are very committed to Montana and will do everything possible to stay in Montana, but without a significant investment, the company will probably not survive.

01:04:47

REP. MCGILLVRAY asked how much amount of capital is needed by Lygocyte. Mr. Mikkola said that initially, a \$10-15 million investment would be needed. REP. MCGILLVRAY asked if it is possible that investors just don't like what Lygocyte has to offer. Mr. Mikkola said that Lygocyte has received favorable peer reviews. He acknowledged that biotech is a risky business but that most venture capitalists who have looked at Lygocyte expressed interest; they also clearly stated that it would be a hassle to manage an investment in Montana.

- 01:06:28 REP. KEANE referred to the earlier presentation by salesforce.com and suggested that it could be a possible solution to some of the issues facing Lygocyte. He said that he would provide contact information to Mr. Mikkola.
- 01:07:27 Sen. Mangan also discussed angel networks, saying that currently there are two groups in the state and that there is a need for more. He said that other states have been very successful in bringing angel investors together and the work group is looking at ways to promote that. The work group will update the Committee at its July meeting on the status of an angel network in Montana. To date, discussion has centered around private investments but a public-private collaboration has worked very well in other states and should also be considered. Sen. Mangan said issues such as entrepreneurial education and technical assistance issues will be addressed at future meetings.

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

- 01:23:03 **Jeff Tiberi, Director, Montana Heritage Preservation and Development Commission**, said that the Commission and the Department of Commerce (DOC) are statutorily required to negotiate a specific indirect administrative rate annually with biennial review by a designated appropriate legislative interim committee. Mr. Tiberi said that the EAIC is the committee designated to perform the review. He distributed copies of the Commission's report (EXHIBIT #20). He discussed the services the Commission receives in return for the administration fee paid to the DOC. He said that recent negotiations resulted in an agreement on an indirect rate of 13.65%.
- 01:24:22 REP. KEANE asked if a motion is needed to accept the negotiated rate. Mr. Tiberi said it is not clear if a motion is needed, only that a biennial review of the Commission's report by a legislative committee is required.
- 01:24:54 SEN. COCCHIARELLA said that the SJR 35 Subcommittee has learned much about the issue of fees through its study of licensing of boards and said that she is leery of approving without knowing if there may be unintended consequences. She suggested that the EAIC make a motion to accept the biennial report and have the fee request move through the budget request process. Mr. Tiberi said that the 13.65% fee is actually a decrease from the previous fee.
- 01:27:00 REP. KEANE said that he doesn't like percentages and asked for a dollar amount. Mr. Tiberi said that the actual dollar amount is about \$70,000-\$80,000, but may be subject to change. REP. KEANE asked for an explanation of what "subject to change" means. Mr. Tiberi explained that a federal grant for building preservation is ending and that the building preservationists employed though that grant may have to be laid off if another source of funding is not found, thus reducing the overhead rate.
- 01:28:41 SEN. COCCHIARELLA **moved** to accept the report. The motion passed 7-1 on a voice vote, with REP. MCGILLVRAY voting no. Proxy votes were by REP. KEANE for REP. GALLIK and SEN. HANSEN and by REP. MILBURN for SEN. BRUEGGEMAN.

- 01:30:47 Mr. Tiberi invited the committee members to Virginia City for a "behind the scenes" tour to see first hand what has been accomplished and that assets are currently valued at \$30 million. REP. KEANE noted that Virginia City is where Montana's first Legislature met and urged the members to visit Virginia City.
- 01:31:49 REP. MCGILLVRAY asked about maintenance and budgeting. Mr. Tiberi said that funding remains an issue and that the Commission is focusing on historically significant buildings first.

### **SJR 35 SUBCOMMITTEE UPDATE**

- 01:35:17 SEN. COCCHIARELLA said that at the previous day's meeting there was no opposition to going back to some form of a Sunrise Statute. She directed the members to a summary of the Sunrise law and a list of repealed Sunrise Statutes (EXHIBIT #21) and said that there is significant support for bringing this back. SEN COCCHIARELLA said that the working group reviewed the reasons for licensure and agreed that there needs to be a way for the Legislature to have information in advance and for groups to be informed of what licensing regulation entails before bringing a bill before the Legislature. There should be a public health, welfare, and safety reason for a board to exist. SEN. COCCHIARELLA reviewed the requirements of a sunrise statute as listed in EXHIBIT #21 and said that the subcommittee/work group also wishes to implement a procedure for review of existing boards and programs to make sure that they meet criteria. SEN. COCCHIARELLA said that she proposed that legislation be drafted to put this issue back into the hands of the Legislature and that through cooperation with the Department of Labor and Industry (DOLI), a group would be able to be informed up front of what it means to be licensed and to be a board or a program.
- 01:40:11 REP. MILBURN said that there was a recommendation to require that a fee be paid upfront to help ensure that only the groups that absolutely need to be licensed will apply and be approved.
- 01:40:46 SEN. COCCHIARELLA reported that:
- the Subcommittee has discussed how to determine if a board should be a stand alone board or combined with another board;
  - a good solution will help reduce the turf battles and other problems that have occurred in the past;
  - one individual requested that the public should be able to bring to the Legislature a group of people whom it feels should be licensed in order to protect the public health, welfare, and safety. This individual was concerned mainly about general contractors;
  - complaints included how board meeting minutes are prepared and that reorganization resulted in increased fees, so that now fees are higher for some staff that might be unfamiliar with an occupation or profession's terms yet required to prepare board meeting minutes; formerly a more knowledgeable person might have prepared the minutes; and
  - the Subcommittee hopes to have a bill draft by July.

**John Andrew, acting Administrator of the Business Standards Division,** updated the Subcommittee on what is being done to get that Division on track,

saying that he has been impressed by the staff and the sheer volume of work being done. He said that work groups have been organized to study the structure of the Division to determine what changes need to be made.

01:53:34 REP. KEANE thanked the Subcommittee and Mr. Andrew for the work done on the licensing issue. He agreed with the premise that the need for a board must be determined before allowing a new board to be created.

SEN. COCCHIARELLA thanked Pat Murdo, LSD, and Shane Sierer, Legislative Fiscal Division, for their work on SJR 35.

01:56:35 **Evan Barrett, Governor's Office of Economic Development**, presented a report from the Governor's Office summarizing the ongoing activities of the Governor's Office of Economic Development (EXHIBIT #22).

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

Mr. Barrett asked to comment on the upcoming Board of Environmental Review (BOR) discussion on mercury emissions. He discussed the rule, which he said as written contain restrictions that would be an impediment to energy development in eastern Montana. He said that the Governor is very hopeful that the BOR will adopt a rule that will allow proper mercury control while allowing some flexibility to ensure there will not be impediments to development in eastern Montana.

02:02:03 Regarding SB 133, Mr. Barrett thanked Sen. Mangan for all of his work and that he is hopeful that it will be fully funded and implemented through legislation in the 2007 session. He suggested that perhaps the EAIC may wish to draft a bill for an appropriation for SB 133 and said that the administration would work with the Committee on this issue.

02:03:02 REP. MILBURN asked if the issue of whether or not SB 133 is unconstitutional has been resolved. Mr. Barrett said it is still an issue and said that an appropriation should contain funding for a test case to determine constitutionality

02:04:00 SEN. STEINBEISSER said that he appreciated the work done on the proposed mercury emission rules because a small Montana Dakota Utilities plant in his Senate district might have to shut down under the proposed rules. Mr. Barrett said the biggest challenge is not in new plants but in retrofitting existing plants.

02:05:15 REP. KEANE said that the Committee would be happy to work with the Governor's Office on a draft bill for funding for SB 133. He said that he didn't think the bill should include funding for a test case because he feared that would set a precedent for future bills. He said it is the job of the Attorney General to defend the law.

REP. KEANE said, regarding mercury emissions, that he has spent a good deal of time negotiating new energy contracts in eastern Montana and appreciates that the Governor recognizes the ramifications of the proposed mercury emission

rules. He said reliable data is needed to make an informed decision and that there is much misinformation being circulated on this issue.

02:07:42 Mr. Barrett said that in the case of mercury emissions, the BOR is required to deal with what is put in front of them and that the Governor's Office is working with the BOR to see that it responds in an appropriate manner. This is a national issue and Montana doesn't have total discretion to do whatever it wants.

02:10:10 REP. KEANE referred to a letter from the Energy and Telecommunications Interim Committee to the Economic Affairs Committee regarding the proposed mercury emission rules (EXHIBIT #23). REP. KEANE asked that the EAIC be provided with materials he received in a mercury education session that he had recently attended.

02:11:48 Ms. Murdo announced that final comments on the proposed mercury emission rules are due May 18, 2006.

#### **RULE REVIEW**

02:12:30 **Bart Campbell, Staff Attorney, Legislative Services Division (LSD)**, briefly discussed proposed rules (EXHIBIT #24).

Mr. Campbell also discussed the Bombardier franchise decision by the Montana Supreme Court and noted the possible need for committee legislation to clarify the statutory definition of a "new vehicle dealer".

02:21:13 SEN. BRUEGGEMAN **moved** to request a committee bill. The motion **passed** on a unanimous voice vote.

It was noted that a letter was received from the Montana Nurses' Association regarding the decision by the Board of Medical Examiners (BOME) to adopt rules related to medical assistants (EXHIBIT #25).

02:22:13 REP. KEANE asked to act on draft bill proposals in order to have a draft copy available for consideration at the July meeting needed (EXHIBIT #26). Ms. Murdo explained the different options for the Committee to choose from.

REP. KEANE **moved** to draft a bill to expand HB 732 requirements to include government notification of computer data breaches. The motion **passed** on a unanimous voice vote.

02:24:28 REP. GALLIK **moved** to specify that victims be allowed access to a police report. REP. MCGILLVRAY made a substitute motion to include all of the victim concerns in EXHIBIT #26. The motion **passed** on a unanimous voice vote.

02:26:02 SEN. BRUEGGEMAN **moved** to draft a bill to require that social security numbers be redacted or truncated. Mr. Campbell explained that there could be federal requirements that would have to be dealt with. Ms Murdo distributed a social security number briefing paper (EXHIBIT #27). The Committee discussed the need to get more information at its July meeting.

02:37:27 REP. KEANE asked SEN. BRUEGGEMAN if he would consider withdrawing his motion. SEN. BRUEGGEMAN withdrew his motion. Staff was instructed to do further research on this issue.

02:39:18 Ms. Murdo noted that the Governor's Office did prepare a report on how the Executive Branch agencies are using social security numbers.

**ADJOURNMENT**

02:39:29 With no further business before the Economic Affairs Interim Committee, REP. KEANE adjourned the meeting a 4:13 p.m. The next meeting will be July 14, 2006, at the State Capitol in Helena.

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