



PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

# 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

February 10, 2006

Room 102, State Capitol  
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

### COMMITTEE MEMBERS PRESENT

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

SEN. VICKI COCCHIARELLA  
SEN. KEN HANSEN

REP. DAVE GALLIK  
REP. MIKE MILBURN

### COMMITTEE MEMBERS EXCUSED

SEN. JOHN BRUEGGEMAN  
REP. TOM MCGILLVRAY

### STAFF PRESENT

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

### AGENDA & VISITOR'S LIST

Agenda, [Attachment #1](#).  
Visitors' list, [Attachment #2](#).

## **COMMITTEE ACTION**

The Economic Affairs Interim Committee:

- approved sending letters to elected officials, local governments, and the university system, requesting that they comply with the Privacy Act of 1974 and also to review what types of requests they make for social security numbers and under what authority;
- approved sending a letter to the Department of Public Health and Human Services requesting it to apply for an exemption to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 regarding the use of social security numbers for hunting, fishing, and conservation licenses issued in Montana;
- approved sending a letter to the Board of Medical Examiners requesting that it not implement proposed rules for medical assistants unless proponents and opponents agree on language for the rules;
- approved sending a letter to the Department of Administration asking for speedy removal of social security numbers from state employee health insurance cards; and
- approved the October 28, 2005, minutes, as written.

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

REP. KEANE called the meeting to order at 8:35 a.m. The secretary noted the roll. SEN. BRUEGGEMAN and REP. MCGILLVRAY were excused. ([ATTACHMENT #3](#)).

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

**Attorney General Mike McGrath**, presented a bill draft to create a security freeze on credit reports ([EXHIBIT #1](#)) and explained the key considerations for drafting the bill:

- identity theft is the fastest growing crime in America;
- the cost must be reasonable in order to allow consumers to take advantage;
- consumers can do little to prevent identity theft and a security freeze on a credit report is the most effective tool available; and
- the Attorney General worked with the Consumers Union and the American Association of Retired Persons (AARP) in drafting the bill.

**Eric Ellman, Vice President and Counsel, Consumer Data Industry Association (CDIA)**, said that the CDIA, which represents the three major credit reporting agencies, considers that:

- identity theft is a problem but that the CDIA is not convinced that a security freeze is an effective tool for prevention;
- California enacted a security freeze and only 10,000 people (amounting to only 5/100 of 1 percent of the state's population) had taken advantage of it;
- if Montana chooses to enact a security freeze, he would recommend using an existing model to base the legislation on, in order to make Montana's law consistent nationally with other laws; and
- factors such as cost, ease of use for the consumer, and time allowances for lifting and replacing the freeze must be important considerations;
- if a freeze is enacted, the cost should be capped at \$10 per request for lifting the freeze.

**Gail Hillebrand, Senior Attorney, Consumers Union**, thanked the Committee for addressing this important issue, saying that millions of Americans are affected by identity theft every year and that it is a devastating experience for a consumer to go through. Ms. Hillebrand related

statistics on identity theft and said a security freeze acts as a "lock on the door" to one's credit file. She also pointed out that identity theft is a remote crime and can occur from any part of the world.

Ms. Hillebrand discussed specific features of Attorney General McGrath's proposed identity theft bill ([EXHIBIT #1](#)):

- she agreed that certified mail is not necessary for requesting a freeze or thaw;
- she said that there should be a specific time line in place to build and implement a security freeze process;
- she supported the one-fee-per-person proposal so consumers will not have to pay a separate fee to lift or remove the freeze;
- she supported the requirement that the freeze be placed in one day, instead of the five business days used in some other states ;
- she supported the additional "thaw" options for identity theft victims, such as being able to lift the freeze by fax, email, or telephone;
- she commented on other states' use of security freezes and said that the Montana bill draft is good because the fee is up-front and requires no further expense to the consumer.

SEN. HANSEN commented that he didn't think the penalty fees for violation of the security freeze were large enough. Mr. Ellman said that credit reporting agencies are regulated heavily at the federal level by the Fair Credit Reporting Act (FCRA) and that the penalty fees in the CDIA proposed bill draft are standard with other states' penalty fees. He said the fee will also vary, depending on whether the violation is a negligent or willful violation. SEN. HANSEN asked the other panelists to comment.

Ms. Hillebrand said that a \$100 penalty, as suggested by Mr. Ellman, would not be enough of a deterrent. She supported higher penalties. She said penalty amounts in other states vary greatly and usually are based on what it takes to get an entity to comply with security freeze requirements in that particular state.

Mr. Ellman explained the CDIA's concerns regarding the use of a certified letter to institute a file freeze. He said that with the exception of New Jersey, the remaining states with a credit freeze system require that a consumer submit a certified letter to place a freeze. Ms. Hillebrand suggested that the bill draft require the credit reporting agency to develop a system within a year to enable consumers to lift or place a freeze by email, fax, or telephone. Mr. Ellman made the following comments: The problem with this approach is that there is no paper trail and no avenue available through which to verify that the person requesting the freeze is, in fact, that person. The certified letter gives a modicum of assurance to the credit reporting agency and the ability to trace the origin of the request. It is important to understand that this is the most draconian action to take place in the 200-plus year history of credit reporting. The CDIA is willing to work with states but asks that new laws be consistent with other states' laws. It is essential to create a national standard that works for consumers and not a haven for creating more fraud.

Ms. Hillebrand said that the credit reporting agencies are complying with the state laws that already are in effect and that she is confident that they will comply with new laws as they are implemented. The first law, passed in 2003, provided an additional option to credit reporting agencies of using electronic media to receive and process requests to temporarily lift the freeze.

Agencies have not chosen to take up that option and the AG's proposal would require that they do so.

SEN. COCCHIARELLA asked if the problem of identity theft would better be solved at the federal level, in order to avoid confusion between states. AG McGrath said that the federal government is not doing enough to protect consumers. He pointed out that three credit reporting agencies already maintain massive data bases on personal information, that he has no doubt that they are already capable of electronic transmittal of information, and that it would not be too much to ask of them to develop a system to electronically manage a consumer's credit file.

SEN. COCCHIARELLA said that Mr. Ellman's comment that it is fair for charge a fee to the consumer to maintain his record didn't make sense because a consumer's record has to be maintained regardless. Mr. Ellman said that consumers don't pay to have their files maintained but that it is fair for a credit reporting agency to charge a fee to freeze and unfreeze credit files because of the costs associated with building and maintaining a credit freeze system.

SEN. COCCHIARELLA asked if a consumer requests that his credit file be frozen, if the insurance company can still access that consumer's credit score. She commented that this would be a wonderful way to rid consumers of credit scoring.

Ms. Hillebrand said that anyone for whom the file is unlocked can get access, so placing a freeze will not stop the use of credit scoring in insurance, but a freeze would ensure that the consumer would know about it because he would have to unfreeze the file for that purpose. She commented on the point made by Mr. Ellman regarding the convenience to consumers to shop for insurance and loans online which, under a file freeze, the customer would no longer be able to do, and said that such a service also allows identity thieves greater access to the consumer's personal information. Regarding the low percentage of use of the file freeze law in California, Ms. Hillebrand said that she is confident that once consumers are fully educated on how to properly use a file freeze, its use will increase.

REP. GALLIK asked, regarding Mr. Ellman's comments on the lack of use of the security freeze in California and the importance of modeling a law on another state's law, why Montana would want to emulate a law that no one uses. **TAPE 1 - SIDE B** Mr. Ellman said that the percentage of use is low in Texas also. He said that the credit reporting agencies can build a system but that consumers cannot be forced to use it. Mr. Ellman discussed some of the unintended consequences associated with a file freeze.

REP. GALLIK asked to discuss New Section 2, subsection (2) ([EXHIBIT #1](#)) regarding the \$3 fee for requesting a file freeze and asked how the credit reporting agencies will recoup their costs. Ms. Hillebrand said that the idea is that the consumer will pay only one fee to one agency and that the agency will have the responsibility of passing the request on to the other agencies. The verification of the request would be done by the first agency.

REP. KEANE asked if there is a cost for clearing up credit of an individual who has been an identity theft victim. Mr. Ellman said there is a cost to the individual but noted that in a recent study, the percentage of victims paying out of pocket costs for identity theft has dropped. He said identity theft also costs businesses and retailers.

REP. KEANE asked if a file freeze would cut down on credit card offers mailed to the consumer. Mr. Ellman said that it would not and provided the toll free number to call to stop credit card offers (1-888-5-OPT-OUT). Mr. Ellman said that there will always be criminals and that there is no way to completely protect oneself.

REP. KEANE said that he recently completed reviewing his credit reports. He said that while it was easy to do and there is no charge for the first report from each agency, all three agencies charged for providing his credit score. He said that a significant amount of money is being made on people having to pay to receive their credit scores. Mr. Ellman said that there is no law requiring that a credit score must be provided for free. He said that the three credit reporting agencies are businesses and like any other business, must make money to stay in business. He pointed out that the credit reporting agencies operate the credit reporting system without charge to the consumer and that it is a convenience to consumers. REP. KEANE argued that the agencies are making a great deal of money from consumer information and that if a citizen wants to opt out of the system, he should be allowed to.

SEN. COCCHIARELLA said that it is a misconception that credit bureaus are for the consumers' benefit and that they are more for the benefit of merchants because the bureaus provide a wealth of information about the consumer. She asked AG McGrath to consider amending the bill draft to say that any entity causing a breach of information that results in a consumer request for a freeze should pay the freeze fee for the affected consumer. This would place the burden on the entity that causes a breach of information and would take the burden and cost off of the consumer. AG McGrath said he would work with the Committee to make the bill draft as effective as possible. He reiterated that the key issues are convenience and low cost to consumers, and that the Attorney General's office will do consumer education through public service announcements and workshops in order to get consumers to use the system.

### **PUBLIC COMMENT**

**Kelsen Young of Helena, Montana**, related a personal story of how her identity was stolen in September of 2003 and how she is still struggling to recover. She thanked the Committee for studying the issue and urged quick action because identity theft victims in Montana are in need of immediate help. Ms. Young's specific recommendations for the file freeze included no or minimal fees, minimum requirements, an easy application process, and easy access, once the freeze is implemented. She also reminded the Committee that victim restitution and criminal justice issues are a part of SJR 38 and asked that those issues be studied as well.

**Brian Fulford, Detective, Kalispell Police Department, and Organizer of Montana Economic and Cybercrime Task Force**, said he has been working with Representative Jon Sonju on identity theft draft bills that would reduce the amount of identifying information on public data bases throughout the state with local and state governments and establish a minimum mandatory two-year sentence for identity theft, including mandatory restitution to the victim.

### **TAPE 2 - SIDE A**

Mr. Fulford also said that:

- there is a correlation between property crimes and crimes of violence and that property crimes cannot be ignored simply because of the overcrowding situation at the Montana State Prison;
- he conducted an unscientific poll regarding the toll-free opt out number for credit card offers and found that it is not as effective as it should be; and
- he is confident that the security freeze law would be widely used by the public, once people are aware that it is available to them.

**Claudia Clifford, American Association of Retired Persons (AARP)**, said that AARP is an active proponent of a security freeze and is active on a number of identity theft issues. Ms. Clifford reported on the activities provided by AARP to educate Montanans on the issue of identity theft. She said that despite all efforts, there are some things that a citizen simply can't protect him or herself from, such as a theft of a large data base.

Ms. Clifford reported that AARP conducted a public opinion poll of 800 Montanans regarding identity theft ([EXHIBIT #2](#)) and discussed the results:

- Fifty percent of those polled either have been an identity theft victim, know an identity theft victim, or are very concerned about becoming a victim of identity theft.
- After receiving an explanation of what protection a security freeze would provide, 78% of those polled supported the concept of having a security freeze.
- Respondents clearly indicated that fees should be kept at a minimum, both to the consumer and to businesses who need access to a consumer's information.

Ms. Clifford distributed a press release from the AARP regarding the poll results ([EXHIBIT #3](#)).

**Matt Leow, Montana Public Interest Research Group (MONTPIRG)**, said that MONTPIRG supports the draft legislation and recommends that the system:

- be free of charge or very low cost to consumers because fees can act as a deterrent to use;
- be easy to use, both for freezing and thawing;
- allow for rapid thawing so that a consumer may take advantage of credit offers; and
- notify and educate consumers on the availability of the security freeze.

**Larry Kibbee, Property Casualty Insurance Association of America**, commented that from the insurance industry's standpoint, the availability of credit scores is important because they are necessary for underwriting policies. In at least six of the 12 states with credit freeze laws, there is specific language addressing the insurance companies' needs and the Association would like to work with the Committee to add similar language to the proposed legislation.

## **WORK GROUP RECOMMENDATIONS ON SOCIAL SECURITY NUMBERS**

**Rep. Diane Rice, HD 71**, said that identity theft is easy to commit, that it often occurs while business is being conducted, and that it has a devastating effect on the individual. She said that the working group has considered a vast array of information, including a briefing paper prepared by Ms. Murdo, which summarizes state and federal laws on social security numbers ([EXHIBIT #4](#)). Rep. Rice reviewed the options for action regarding social security numbers (page 3, [EXHIBIT #4](#)) and recommended that the Committee send letters to:

- elected officials, local governments, and the university system requesting that they comply with the Privacy Act of 1974;

- the Department of Public Health and Human Services (DPHHS) to apply for an exemption from requiring that a social security number used to obtain fishing, hunting, trapping, and conservation licenses; and
- the Department of Administration requesting removal of state employees' social security numbers from their health insurance cards.

Rep. Rice concluded by saying that federal funding is frequently tied to the use of social security numbers and that funding may be jeopardized if state legislation is passed that restricts the use of social security numbers. She said that sooner or later, Montana legislators may have to decide how far they are willing to go to solve this problem.

**Lonnie Olson, Administrator, Child Support Enforcement Division, DPHHS,** reviewed:

- the history of the Child Support Enforcement Act and the importance of having the necessary information, such as a social security number, in order to track down parents who are delinquent in their child support obligations;
- how other state and federal agencies use social security numbers; and
- how federal funding in Montana is tied to social security numbers, certain requirements that affect the funding, the importance of complying with federal law, and the possible consequences if Montana chooses not to comply; and
- the requirements and exceptions outlined in the federal Privacy Act of 1974.

**Greg Noose, Motor Vehicle Division, Department of Justice,** explained how the Department of Justice uses social security numbers to ensure safe driving on the roads and highways of Montana, that offenders are often tracked by their social security numbers, and that the numbers are an important tool with many different uses within the Division.

## **TAPE 2 - SIDE B**

Mr. Noose explained that as of October 1, 2005, social security numbers on drivers' licenses were replaced with a 13-digit number but that it will take a full eight years before all Montanans have licenses with the new numbers. In the meantime, the Department has taken precautions to protect Montana drivers.

REP. MILBURN asked Mr. Noose if Montana drivers with current licenses displaying a social security number can request a license with a new number. Mr. Noose said that for a fee of \$10, a licensed driver may request a new license with the 13 digit number.

REP. KEANE asked if it is possible to get a commercial driver's license that does not display a social security number. Mr. Noose said that it is possible, explained how the information on the license is linked to the person's social security number without revealing the number, and that only law enforcement officers would have access to the number.

SEN. HANSEN asked how the bar code on licenses works. Mr. Noose said that the bar code displays only the information on the front of the license, that there are different levels of security contained in the bar codes on the licenses, and that there are restrictions in place at each level on who has access to the information. Because there are no national standards for drivers' licenses, there is no consistency between state statutes, which allows offenders to manipulate the system when moving from state to state. This is a systems issue and creates coordination problems because the different systems are unable to communicate with one another. Mr.

Noose said it is his job to investigate suspicious numbers and that in 2005, he referred more than 30 cases of fraudulent licenses to the Division of Criminal Investigation.

REP. KEANE asked for a motion to approve sending the letters, as recommended by the working group ([EXHIBIT #4](#)). He said the purpose of the letters is to gather information on different agencies' requirements and would provide a map for the Committee to use in deciding on how best to proceed. **Pat Murdo, Staff Researcher, Legislative Services Division (LSD)**, pointed out that the Committee members have in their meeting materials a packet containing examples of Privacy Act of 1974 Implementation ([EXHIBIT #5](#)). She discussed the examples and how each has been used. Ms. Murdo said the last option, a letter to the Department of Administration would be discussed by Tanya Ask and Connie Welsh and recommended that the Committee act in this vote on only the letters to the elected officials, local governments, university system, and to DPHHS.

REP. KEANE **moved** that the Committee send a letter to the DPHHS and to elected officials requesting an inventory of how social security numbers are used and to provide the information to the identity theft working group, so that it may continue its efforts. The **motion passed** on a unanimous voice vote.

REP. KEANE asked Ms. Welch to relay her personal experience with identity theft. Ms. Welch explained how her husband's wallet had been stolen from a local health club and that within 58 minutes, the thief began using his information to commit identity theft. She said that she and her husband took very quick action to notify the Helena police and the credit card companies and that the thief was captured while still in Helena.

**Tanya Ask, Blue Cross Blue Shield, (BCBS) Montana**, discussed what constitutes a breach of information, the different types of protected information, and federal and state penalties for breach of information. She also discussed three different provisions of the federal Health Insurance Portability and Accountability Act (HIPAA) and explained the electronic transaction, privacy, and security safeguards that are in place to protect the personal health information of consumers. She said these federal requirements apply to insurance companies, doctors, hospitals, pharmacies, and anyone who uses healthcare information ([EXHIBIT #6](#)).

Ms. Ask said that even if social security numbers are removed from insurance cards, there will still be a need for social security numbers to be maintained by the insurance company because Medicare transactions and tax preferred benefits, such as a flex account or a HIFA (Health Insurance Flexibility and Accountability) option, are required to have access to social security information.

Ms. Ask said that health information technology is a major focus in Congress, such as electronic personal health records and electronic medical records. Ms. Ask said that Congress is also considering the coordination between a person's personal health record and electronic medical record.

Ms. Ask also provided copies of a Notice of Privacy Practices brochure prepared by BCBS ([EXHIBIT #7](#)).

**Connie Welsh, Chief, Employee Benefits Bureau, Department of Administration**, reviewed how a social security number is used on health identifiers and what the DOA would like to do

regarding that issue. **TAPE 3 - SIDE A** Ms. Welsh discussed a table of state employee benefits showing the funding method, administrative method, the vendor used for each plan, current processing structure and considerations of the system, health care system identifier handling, Medicare processing, and how social security numbers interface with the programs and systems ([EXHIBIT #8](#)).

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

Ms. Welsh provided a memo from the Department of Administration to the Committee regarding the use of social security numbers on health insurance cards ([EXHIBIT #8](#)).

REP. MILBURN **moved**, through a thumbs up response to the Chair's request for a motion, to send a letter to the Department of Administration regarding use of social security numbers. The motion **passed** on a unanimous voice vote.

SEN. COCCHIARELLA requested that Third Party Administrators (TPAs) that the State contracts with be included in the letter. REP. KEANE agreed.

### **COMMITTEE DIRECTIONS - SJR 38**

REP. KEANE said that as far as the Committee is concerned, the working group is in charge and will continue to work with the AG on any proposed legislation.

REP. GALLIK said that he is aware that some members of the working group are dissatisfied with how the AG is working with the working group and encouraged everyone to continue to work together and share information. This bill will be a major piece of legislation in the 2007 session and there must be a united front to ensure its passage. REP. KEANE agreed, saying he has heard similar concerns and encouraged everyone involved to work toward consensus.

### **SJR 35 - STUDY OF LICENSING BOARDS**

SEN. COCCHIARELLA reported on the SJR 35 Subcommittee meeting on the licensing board study. She said that there was good participation at the January 19, 2006, meeting, despite the complex and confusing subject matter.

SEN. COCCHIARELLA reviewed what was discussed at the SJR 35 Subcommittee meeting:

- how boards are funded, including a discussion of fees, recharges, and direct services provided to licensing boards;
- issues with the Department of Labor and Industry (DOLI);
- research presented by Shane Sierer, Legislative Fiscal Division (LFD);
- spending authority and the transfer of spending authority between boards;
- FTEs and staffing issues;
- issues related to the Board of Landscape Architects;
- significant licensing fee increases being experienced by certain boards;
- criteria to determine the difference between a board and a program; and
- testimony that the licensing process is cumbersome and that more autonomy is needed for more efficient operation of boards.

SEN. COCCHIARELLA said that this is a very complicated issue to understand but that the Subcommittee and working group will continue to work together. She said it is important to remember that no tax dollars or general fund dollars are used to fund boards because they are statutorily required to be self-sustaining; that legislators have control over appropriations to the DOLI but that the DOLI controls how it is used within the Department; and that autonomy and the complaint process appear to be the most pressing issues to be resolved.

**Shane Sierer, Legislative Fiscal Division (LFD)**, gave a presentation on how boards are funded ([EXHIBIT #9](#)). Topics discussed by Mr. Sierer included:

- the use of state special revenue accounts for individual boards;
- funding descriptions of state special revenue and proprietary funding;
- expenditures of boards: personal services and operating expenses; and
- recharges.

Mr. Sierer also provided information from the Health Care Licensing and the Business and Occupational Licensing Bureaus budgets ([EXHIBIT #10](#)) and discussed:

- recharges;
- board wages for FTEs;
- the total personal services costs for the Health Care Licensing Bureau (HCLB) and Business and Occupational Licensing (BOLB) Bureau; and
- the HCLB and BOLB budgets less recharges.

SEN. COCCHIARELLA asked for an explanation of why there has been such an increase in wages being paid. Mr. Sierer said that the events responsible for the increase in wages were the move from one pay plan to another, job reclassifications when the reorganization occurred, and the employee pay raises authorized by Legislature.

Ms. Murdo said that she worked with Mr. Sierer to design working assumptions regarding the budget and a list of perceived goals ([EXHIBIT #11](#)). SEN. COCCHIARELLA said that the next step would be for the Subcommittee to decide why boards and programs exist, that more information is needed, and that Mr. Sierer would continue his work. REP. KEANE agreed and said the Committee must know why there has been a 33% increase in recharges.

Ms. Murdo reviewed the SJR 35 materials provided to Committee members:

- an organizational chart for the Business and Occupational Licensing Bureau ([EXHIBIT #12](#));
- an organizational chart for the Health Care Licensing Bureau ([EXHIBIT #13](#));
- an explanation of pay grade salaries and pay band salaries for the Health Care Licensing Bureau ([EXHIBIT #14](#));
- an explanation of pay grade salaries and pay band salaries for the Business and Occupation Licensing Bureau ([EXHIBIT #15](#)); and
- a letter from the Montana Dietetics Association encouraging retaining the licensure of nutritionists ([EXHIBIT #16](#));
- a letter from Barbara Prescott in support of retaining the Montana Board of Nursing as an independent regulatory board ([EXHIBIT #17](#));
- a letter from Gretchen McNeely in support of retaining the Montana Board of Nursing as an independent regulatory board ([EXHIBIT #18](#)); and
- a letter from Jeff Ruffner, P.E., Montana Society of Engineers, in support of retaining the Board of Engineers and Land Surveyors ([EXHIBIT #19](#)).

SEN. COCCHIARELLA asked for comment from the Department of Labor and Industry.

### **TAPE 3 - SIDE B**

**Lisa Addington, Bureau Chief, Health Care Licensing, DOLI**, said that at the January Subcommittee meeting, questions arose regarding the complaint process for licensees. Ms. Addington distributed and discussed complaint information compiled by DOLI:

- Professional Occupational Licensing Bureaus' complaint data from fiscal year 2001 through fiscal year 2005 ([EXHIBIT #20](#));
- a Complaint Process policy pamphlet ([EXHIBIT #21](#));
- a complaint form for the Business and Occupational Licensing Bureau ([EXHIBIT #22](#));
- a complaint form for the Health Care Licensing Bureau ([EXHIBIT #23](#));
- category codes for complaint data base - allegations ([EXHIBIT #24](#));
- category codes for complaint data base - decisions ([EXHIBIT #25](#)); and
- the Montana Department of Labor & Industry Business and Occupational and Health Care Licensing Report, prepared by the Business Standards Division ([EXHIBIT #26](#)).

SEN. COCCHIARELLA said she is aware that not all complaints are resolved in a timely manner and asked for an explanation. **Gene Allison, Lead Attorney, Business Standards Division, DOLI**, said that there are several factors that affect the length of time it takes to resolve a complaint, such as the complexity of the case, if an investigation is ordered, how often a board or program meets, and if a hearing is requested. The entire process may take over two years, from the time the complaint is filed until a final order is issued. SEN. COCCHIARELLA said the issue of timeliness may need to be addressed by the Committee.

**Bob LeCour, President, Club Boxing**, said that licensing fees have increased sharply over the last five years and that the Board of Athletics is now considering doubling or even tripling fees. One Board of Athletics member, one staff member, and one medical advisor recently attended a professional boxing convention in Las Vegas at a cost of over \$3,000 to the Board and, considering there has been only one professional boxing match in the state in the last five years, Mr. LeCour said that he is bewildered as to what the reasoning was for this trip and that he does not think that the Board is being held accountable for its actions.

SEN. COCCHIARELLA asked Mr. LeCour to join the working group and to give Ms. Murdo his contact information.

**Jill Caldwell, Bureau Chief for Business and Occupational Licensing, DOLI**, asked to clarify the record regarding Mr. LeCour's testimony and said that the Board of Athletics has scheduled a February 17, 2006, hearing for the proposed fee increase. Ms. Caldwell said that in 2001, the fees for club boxing were \$35 and Mr. LeCour asked for the fees to be decreased to \$20. Ms. Caldwell said the fees were decreased, which caused the cash reserves of the Board to be drawn down, which is why the fee increase is being proposed.

### **STATE AUDITOR'S OFFICE UPDATE**

**John Morrison, State Auditor**, thanked the Committee for its work and updated the Committee on recent activities of the State Auditor's Office. Mr. Morrison reported that:

- in 2005, over 1,700 insurance and securities consumer complaints were processed, which resulted in the recovery of over \$5 million for Montana citizens (EXHIBIT #27);
- the number of business licenses issued to insurance agents increased in 2005 and over 400 continuing education opportunities were provided for insurance agents;
- the Rates and Forms Bureau reviewed over 15,000 insurance policies in the last year, with an average turn-around time of about 10 days;
- the *InvestSmart Montana* program has been launched, which informs consumers of the types of risks and steps to take if a consumer becomes a victim of fraud (EXHIBIT #28);
- the *Insure Montana* program has been successfully implemented and full details are available at [www.insuremontana.org](http://www.insuremontana.org); (EXHIBIT #29);
- the Medicare Part D prescription drug plan deadline is rapidly approaching and most Montana senior citizens have yet to enroll;
- Montana's Congressional delegation has been contacted by the Auditor with a request for more trained counselors to assist senior citizens and for an extension of the filing deadline for the prescription drug program plan; and
- he still strongly supports SB 133 - the Montana Capital Investment Act.

## TAPE 4 - SIDE A

### WORKERS' COMPENSATION COURT UPDATE

**Jim Shea, Workers' Compensation Court Judge**, said that the biggest issue facing the Court are the nine common fund cases, which are in various stages of being resolved. He said that one of the issues he tackled as the Workers' Compensation Court Judge was to implement a standardized procedure for allowing insurance carriers to be dismissed from cases. Judge Shea explained the rationale for allowing this action and how the process was created. He said that several cases are reaching the enforcement stage and that a Special Master will be appointed to ensure that the details are handled correctly.

REP. GALLIK asked Judge Shea if he had procedural or logistical suggestions to improve the efficiency of the court process. Judge Shea said there is a question of what subject matter jurisdiction exists with the Worker's Compensation Court. This issue could create somewhat of a black hole for the Court if it doesn't have jurisdiction to issue declaratory rulings on Workers' Compensation statutes, whether it be constitutional issues or otherwise. The only other options are to hear the case before a District Court judge with limited or no experience with workers' compensation cases, or before the Supreme Court. This may be a procedural matter that has to be addressed legislatively.

SEN. COCCHIARELLA said the subject of overlapping subject matter jurisdictional issues, such as how workers' compensation, unemployment, or wrongful discharge may intertwine was studied by a previous interim committee and Judge McCarter. She asked Judge Shea if he was aware of that study. Judge Shea said he was aware of the work but that he has not had the opportunity to review it.

SEN. COCCHIARELLA asked what the current case load is for the Workers' Compensation Court and how far into the future cases are being heard. Judge Shea said that he could provide specific figures to the Committee but that in general, the case load seems to be holding steady.

Several factors, such as himself being a new judge and the loss of the settlement master, Jay Dufrechou, has influenced the case flow.

## **MONTANA STATE FUND OVERVIEW**

**Laurence Hubbard, State Fund CEO**, provided written copies of his testimony ([EXHIBIT #30](#)), which included a discussion on:

- the appointment of REP. KEANE and REP. MILBURN as liaisons to the State Fund;
- statistics relating to medical and wage loss claims;
- the status of the Old Fund;
- operational challenges;
- general health care costs;
- Workers' Compensation medical costs and challenges; and
- case management issues.

Mr. Hubbard also provided detailed national and regional survey data on workers' compensation, including 2004 national premium rates, indemnity permanent partial disability average costs, medical permanent partial disability average costs, average frequency of permanent partial disability claims, total permanent partial disability costs, and a pie chart illustrating medical payments by expense code ([EXHIBIT #31](#)).

SEN. COCCHIARELLA asked Mr. Hubbard to explain monopolistic funds. Mr. Hubbard explained that Montana has a competitive system that offers three plans and that some states only allow insurance to be purchased through a single state-run program, which is called a monopolistic state for workers' compensation.

## **TAPE 4 - SIDE B**

REP. MILBURN asked Mr. Hubbard to explain why Montana's costs are higher, despite the fact that it is a competitive state. Mr. Hubbard said if the entire survey done by Oregon is examined, there is no indication that monopolistic states actually have lower overall costs. REP. MILBURN noted that by law, the State Fund has to take cases rejected by private companies. Mr. Hubbard agreed that as a guaranteed insurance market, the State Fund cannot refuse coverage. This means that risks that private insurance companies might choose not to insure, the State Fund must. Although Oregon's survey uses only its top 100 class codes with the most payroll and compares those members with other states' same codes and their rates, this is not a full review of all the class codes that are insured. However, State Fund's review of the survey indicates that comparisons are appropriate. He summarized that State Fund's costs account for insuring all kinds of businesses but other jurisdictions and other funds have the same responsibilities.

SEN. STEINBEISSER asked what measures are being taken to detect fraud. Mr. Hubbard said that the Montana State Fund has an aggressive fraud program and that all fraud cases are prosecuted by a dedicated fraud prosecutor in the Attorney General's office.

SEN. COCCHIARELLA referred to page 8 of [EXHIBIT 31](#) and asked if the State Fund costs are similar to the costs of health care for the general population of Montana. Mr. Hubbard said that the State Fund numbers do closely reflect the costs of general healthcare.

SEN. COCCHIARELLA asked REP. KEANE what the highest amount of unemployment per week is that can be collected. REP. KEANE said approximately \$322 per week. SEN. COCCHIARELLA said that unemployment payments have not increased commensurately with wages and said that the Committee may want to consider this. The fact that more and more people are uninsured and that unemployment rates have not increased may make workers' compensation a more attractive solution. Mr. Hubbard said that he has similar concerns and that it can be a challenge to determine if a worker's medical condition is related to a work injury or to an aging process.

REP. KEANE pointed out that unemployment is only offered for 28 weeks, which may act as a deterrent to filing for unemployment insurance, versus workers' compensation coverage. Conversely, options are very narrow for an aging worker who may be uninsured with a poor pension plan, and those circumstances may make workers' compensation look very attractive.

REP. GALLIK asked why Montana is shown to be eighth in premium rates among surrounding states (page 1 of [EXHIBIT #31](#)). Mr. Hubbard said that although this issue has been studied, the reason isn't clear but may be attributed to Montana's unique demographic profile.

REP. GALLIK said that the competitors of the State Fund are concerned that the State Fund is not regulated like the private carriers and is not tied to the same "loss cost" factors that the private sector is. He said the private carriers are pushing for legislation that would require regulation of the State Fund. Mr. Hubbard said that Montana State Fund does use National Council on Compensation Insurance (NCCI) "loss cost" as a basis for setting its rate structure, which is the same information that private industry uses. They are suffering the same experiences as Montana State Fund, in terms of cost drivers and rate pressures. It is "loss costs" that have gone up - the pure losses in the state, regardless of who the carrier is. Montana State Fund does have a large market share but would welcome competitors. This shows that the rates are adequate, not excessive and that is an important point. Mr. Hubbard said the State Fund's obligation, by law, is to establish adequate rates. "We would be violating the law if we were artificially suppressing rates or charging rates that cannot be justified by the 'loss costs' experience", he said. He said that the State Fund's expense ratio, estimated to be approximately 22%, is less than that of many private carriers, which have expense ratios of 29%. On that front, State Fund is competitive.

REP. GALLIK asked Mr. Hubbard to comment further on the fact that the Montana State Fund is not regulated and is not subject to scrutiny by the Insurance Commissioner. Mr. Hubbard said that legislative liaisons, an independent actuary, the Legislative Audit Division, an independent accounting firm, and competitors all review the activities of the State Fund. The Montana State Fund has a statutory obligation to charge rates that are adequate and not excessive and not unfairly discriminatory.

REP. GALLIK asked if Mr. Hubbard would object to the Insurance Commissioner regulating the State Fund. Mr. Hubbard said he would object because the State Fund is a guaranteed market and as long as it has the responsibility of serving those that the private companies will not, that is justification for it to have a different set of regulations.

REP. KEANE raised the issue of the unfunded liability of the Old Fund, which he said he thought would be a problem but that no money would have to be put into the Old Fund, if Montana would just be patient. Mr. Hubbard said that he didn't share REP. KEANE's optimism

and related several factors that may be problematic. He noted that \$22 million had been taken from Old Fund reserves by the Legislature in 2003 and moved to the general fund. The loss of reserves could result in a large amount of money needed to make the Old Fund whole.

## **RULE ON MEDICAL ASSISTANTS**

**Bart Campbell, Staff Attorney, LSD,** said the crux of the controversy is over what the scope of practice of a medical assistant should be. Mr. Campbell provided some history of the issue:

- HB 321 was passed in the 2003 legislature.
- The Board of Medical Examiners (BOME) proposed rules for implementation of HB 321 in 2003. At that time, Mr. Campbell testified that the proposed rules did not meet requirements of the Montana Administrative Procedure Act (MAPA) and objections were also heard from the Montana Nurses Association (MNA).
- The rule was withdrawn at that time and no further action was taken.
- The BOME recently renoticed proposed rules.
- Mr. Campbell has reviewed the proposed rules and has determined that they are compliant with MAPA requirements.
- The MNA has voiced strenuous objections to the proposed rules.
- Mr. Campbell has held discussions with Eve Franklin, Executive Director, MNA, regarding the MNA's concerns.
- The BOME has postponed the hearing in order to address all concerns.
- The Committee has the option of doing nothing, submitting comments to the BOME, or drafting another bill to address this issue legislatively in 2007.

REP. KEANE asked what the role of the Committee would be if the BOME adopts the rules before the 2007 Legislature. Mr. Campbell said that MAPA allows for a rule to be challenged if it does not meet legislative intent or was adopted improperly. He said it is his opinion that these proposed rules do meet MAPA requirements and that there are not solid grounds for a challenge because of that. Mr. Campbell said his recommendation would be to address this issue in the 2007 legislature.

SEN. COCCHIARELLA related a past situation in which the Revenue and Transportation Interim Committee unanimously objected to a proposed rule by the Department of Transportation and that as a result, the Department withdrew the rule. She suggested that the Economic Affairs Committee take the same action.

REP. KEANE asked what record of legislative intent exists. Mr. Campbell said that the minutes of the hearing are the record and in this case, not a lot was said regarding intent.

**Anne O'Leary, Counsel, BOME,** pointed out that MAPA requirements have a precise time limit set for public comment and that the public comment period regarding these proposed rules closed on November 25, 2005.

**Eve Franklin, Executive Director, Montana Nurses Association,** stated that she is appearing before the Committee as the Executive Director of MNA and not as a legislator. She discussed a packet of documents regarding the MNA's objections to the BOME's proposed rules for implementation of HB 321, including the minutes from the legislative committee hearings ([EXHIBIT #32](#)). It is MNA's contention that legislative intent has been breached and that the legislators who voted for HB 321 believed that a medical assistant would perform only basic

types of tasks. The BOME proposed rules contain substantive changes in the interpretation of the language of HB 321. MNA's concern is that the tasks allowed by the proposed rules are not clinical tasks, but significant medical procedures and the proposal presents a public health issue. Ms. Franklin asked the Committee to indicate to BOME that the Committee agrees that legislative intent has been expanded. Ms. Franklin said that the MNA will ask the Committee to draft legislation addressing their concerns if the BOME ignores MNA's concerns.

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

Ms. O'Leary, BME Counsel, made a statement regarding HB 321. She said it is her understanding that when it was first introduced by the Montana Medical Association (MMA) in the 2003 Legislature, there was no "laundry list" attached to the bill draft. The purpose of the bill was to allow doctors in rural Montana towns to train and supervise trusted employees to perform various tasks in the capacity of a medical assistant. The threat of malpractice is a very real concern to physicians and could be a determining factor in how a doctor would choose and train a medical assistant for his practice.

Ms. O'Leary said that when the rules were noticed in 2003, there were over 174 letters submitted, most of which objected to the proposed rules; and that the BOME withdrew the rules at that time to address the concerns. There were only 58 comments submitted this time, with 21 of them supporting the adoption of the rules.

**Pat Melby, General Counsel, Montana Medical Association (MMA)**, explained that the request for HB 321 came as a result of action taken by the Board of Nursing (BON), which had issued cease and desist orders to medical assistants performing tasks delegated to them by their employing physician. The intent of the MMA was to acknowledge that this type of work was going on in physicians' offices and to stop the BON from interfering with the daily operations of a physician's office by telling medical assistants what they could and couldn't do. This bill was not intended to be a limitation on what a medical assistant could do, but rather to provide guidelines for physicians in the supervision and the delegation of tasks to medical assistants. The MMA would strongly resist any attempt to turn this bill into a limitation on what a medical assistant can and can't do under the guidance of their employing physician.

**Dr. Kurt Kubicka, Montana Board of Medical Examiners, Montana Medical Association**, agreed with the points made by Mr. Melby regarding HB 321 and said that it is a critical tool for rural physicians. The rule has been carefully scrutinized. He said that the ultimate responsibility lies with the physician. This rule would allow for delegation of duties by a physician, when appropriate. BOME feels that it can do no more to revise the rules and stay consistent with what it feels the legislative intent of HB 321 was.

SEN. COCCHIARELLA asked if BOME has identified limits as to what a medical assistant will or will not be allowed to do. Dr. Kubicka said any physician who employs a medical assistant must be responsible and reasonable in assigning tasks to the assistants and that the proposed rules will not give carte blanche permission for medical assistants to perform tasks they are not qualified to do.

SEN. COCCHIARELLA said that public safety must be the top priority of the Committee and that she is concerned that patients will make the assumption that anyone who assists with their medical care is a trained or certified nurse or physician. Dr. Kubicka said that in most cases, a

nurse is the person providing the services but that there are instances where a degree in nursing is not necessary, such as the recording of a patient's vital signs or weight.

SEN. COCCHIARELLA said Ms. O'Leary's comments about the proposed rules concerned her because it made it appear as if she were lobbying the Committee for a certain position on this issue. She asked Ms. O'Leary to justify her position, as an attorney for the Department of Labor, and explain why she is advocating for these rules when the BOME has not yet made its final position. Ms. O'Leary said she wasn't lobbying but simply reporting the facts surrounding the last hearing. She also pointed out that in the new proposed rules, new language requires that the supervising physician or podiatrist "shall inform patients" when a medical assistant is seeing them and "shall ensure that assigned tasks are provided in the context of an appropriate physician-patient relationship". Ms. O'Leary also discussed the types of tasks that would be permissible under the new rules.

REP. KEANE stated that as a member of the Business and Labor Committee that heard the bill during the 2005 session, he does know the legislative intent of HB 321. He said that the House Committee had asked for assurance from stakeholders that this issue would not create a turf war, that the assurance was given, and the bill was passed out of the Committee with an 18-0 vote. He expressed his frustration that a turf battle appears to be occurring in spite of the efforts of the House Committee. He **moved** that the Economic Affairs Committee send a letter to the Board of Medical Examiners requesting that the Board not implement any proposed rules unless both parties - BOME and MNA - are satisfied with the language, and if the Board chooses to adopt the rules without consensus, that the Economic Affairs Committee will likely consider legislative action in 2007.

REP. MILBURN asked to clarify the motion to say "all parties" instead of both parties and said he was uncertain if it was possible for all parties to agree. REP. KEANE said it can happen, if the parties choose to work together. He said he would sponsor the bill himself if there was no cooperation.

REP. KEANE said before BOME implements the proposed rules, both the proponents and opponents must agree on the language. The **motion passed** on a 8 - 0 voice vote, with REP. KEANE voting "aye" with REP. GALLIK's proxy and REP. MILBURN voting "aye" with SEN. STEINBEISSER's and REP. MCGILLVRAY's proxy. SEN. HANSEN noted that his daughter is a medical assistant and that he has some concerns about this issue. He hopes that the problems can be resolved.

#### **RULE REVIEW - BART CAMPBELL**

Mr. Campbell said that he sent out a summary of the proposed rules and that with the exception of the issue just discussed, none of the proposed rules are problematic. He said he is monitoring a proposed rule regarding elevator mechanics and an issue relating to the Electrical Board and would update the Committee if needed.

#### **SB 133 UPDATE**

Mr. Campbell updated the Committee regarding the status of SB 133. He reviewed a letter from Evan Barrett, Governor's Office of Economic Development ([EXHIBIT #33](#)), and said that he does not agree with the Governor's opinion regarding SB 133. Mr. Campbell said the bill was

adopted into law and must be implemented. He discussed the Governor's question regarding the constitutionality of SB 133 and said that all laws are considered constitutional until ruled unconstitutional.

**Sen. Jeff Mangan, SB 133 sponsor,** said that he is very disappointed that SB 133 has not been implemented and that he also disagrees with the opinion stated in Mr. Barrett's memorandum.

Sen. Mangan said every attempt was made by REP. KEANE and himself during the December 2005 Special Session to obtain funding for SB 133 but that their efforts were not successful. Sen. Mangan said that he has asked colleagues and other business professionals to assist him in forming an investment capital action group, which will concentrate its efforts on building venture capital and angel networks in order to improve investment opportunities in Montana, including looking at SB 133 to see if revisions can be made. Sen. Mangan said that while he still doesn't understand what the problem with SB 133 is, he is willing to continue to work on implementation of the bill. Sen. Mangan also discussed a capital gains exemption and said that he is investigating successful models in other states.

Sen. Mangan requested that the Committee include the investment capital action group on its future agendas and that the group may need assistance from the Committee on certain issues, such as possible legislation.

**Jon Marchi, Glacier Venture Fund, Big Sky Airlines,** said his is the only active venture capital fund in Montana and invests only in Montana companies. Mr. Marchi provided information on his investment activities and the types of businesses his company has invested in. Mr. Marchi said he was also speaking on behalf of Brian O'Keefe, of AA Capital Partners, Inc., regarding a significant investment opportunity available in Culbertson, Montana. He said that there is a very significant need for investment capital in Montana and he encouraged the Committee to continue its economic development efforts.

**Liz Marchi, President, Montana West Economic Development,** discussed information regarding expansion data in the United States. She said that there has been a downward movement in the United States because of the movement toward offshore opportunities and that it is imperative that Montana work to grow businesses in the state. She strongly urged the Committee to continue its efforts to have SB 133 implemented.

#### **TAPE 5 - SIDE B**

REP. KEANE said there is no reason for Montana not to have a venture capital investment program and that the Committee will continue to work to implement SB 133. He said that this program has worked in other states and will work in Montana also. He said that the efforts of the investment capital working group are appreciated and asked Sen. Mangan to keep the Committee informed of its efforts at future Committee meetings.

REP. MILBURN **moved** to approve the October 28, 2005, meeting minutes, as written. The **motion passed** on a unanimous voice vote.

Ms. Murdo said the next meeting date is set for May 12, 2006, and that an SJR 35 Subcommittee meeting would be held in advance of that date. She said that there will be a presentation on uninsured motorists, as requested by REP. MCGILLVRAY.

Ms. Murdo asked if the Committee wished to schedule a two-day meeting. REP. KEANE asked to have the Subcommittee report at the May meeting and the Committee would decide at that time if more meetings are needed to complete Committee business.

REP. KEANE asked to have a presentation on health insurance on the May agenda. Ms. Murdo said that she will contact the person from the National Coalition on Health Care, recommended by REP. KEANE and ask him to present at the May meeting.

### **ADJOURNMENT**

REP. KEANE adjourned the meeting at 4:48 p.m. The next meeting of the Economic Affairs Committee is scheduled for May 12, 2006, in Helena.

CI0429 6080dfxa.