MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 21, 2005 at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

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

Members Excused: Sen. Lynda Moss (D)
Sen. Gary L. Perry (R)

Members Absent: None.

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

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

Committee Business Summary:
Hearing & Date Posted: None.
Executive Action: HB 349, HB 331 & HB 747

CHAIRMAN WHEAT informed the Committee the first bill they were going to deal with was HB 349. He reminded everyone that SB 349 had been passed out of Committee, however, it had been returned to Committee as it needed an amendment. He continued saying HB 349 was the bill dealing with public intoxication and how police officers were to deal with those individuals.

SEN. ELLINGSON stepped out of the meeting.

EXECUTIVE ACTION ON HB 349

Motion: SEN. MANGAN moved that HB 349 BE CONCURRED IN.

Amendment No. HB034903.avl was distributed to the Committee and is attached as Exhibit 1.

EXHIBIT(jus62a01)

Motion: SEN. MANGAN moved that AMENDMENT NO. HB034903.AVL BE ADOPTED.

SEN. MANGAN explained these were the amendments that **Mr. Smith** and **Mr. Kembel** and others from law enforcement worked out as a compromise. He then turned the explanation over to **Valencia Lane.**

Ms. Lane explained that the amendment on Page 1, at the bottom, put Subsection 4 back to existing language, but gender-neutral. He went on to say that essentially it no longer extends the immunity to the State and political subdivisions. She further stated current law would stay as is, therefore, it would only be the officer. She continued explaining where else the same amendment would apply.

Discussion:

SEN. MCGEE asked if they should segregate item number 4 from the amendment. **Ms. Lane** replied they could because it is already covered on Page 1 in the new language in Subsection 4. She further stated it was not necessary, however, it did not hurt anything to put it in.

Vote: Motion that AMENDMENT NO. HB034903.AVL BE ADOPTED carried 9-1 with SEN. CURTISS voting no and SEN. MOSS voting aye by proxy.

Motion/Vote: SEN. MANGAN moved that HB 349 BE CONCURRED IN AS AMENDED. Motion carried 9-1 by voice vote with SEN. CURTISS voting no and SEN. MOSS voting aye by proxy.

SEN. MANGAN will carry HB 349 on the floor.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 5.2}

SEN. PERRY arrives at the Committee meeting.

EXECUTIVE ACTION ON HB 331

Three amendments to HB 331 were distributed to the Committee and are attached as Exhibit 2, Exhibit 3 and Exhibit 4.

EXHIBIT(jus62a02)
EXHIBIT(jus62a03)
EXHIBIT(jus62a04)

Ms. Lane explained that Amendment HB033101.apm had been agreed to by all of the parties. She went on to say the other two amendments were amendments that had been segregated out because all of the parties were unable to agree to the amendments. She continued saying the other two amendments, Amendment HB0331006.apm and HB033108.apm, were prepared for her by Pat Murdo because she had worked with all of the parties. **Ms. Lane** stated the parties were going to explain the amendments.

Motion: SEN. MANGAN moved that HB 331 BE CONCURRED IN.

Motion: SEN. WHEAT moved that AMENDMENT HB033101.APM BE ADOPTED.

Discussion:

CHAIRMAN WHEAT remarked that his understanding was the amendment had been worked out between **Mr. Melby, on behalf of the Montana Medical Association**, and the insurance industry. He continued by inviting **Mr. Melby** to the podium to explain the amendment.

Mr. Melby explained Amendment No. HB033101.apm had come about after many hours of discussion. He proceeded to explain the amendment section by section.

SEN. MOSS arrived at the Committee meeting.

Jacqueline Lenmark, American Insurance Association and also speaking for Frank Cote; John Metropoulos and Dwight Easton,

Farmer's Insurance Group; Gregg Van Horssen, State Farm Insurance; Roger McGlenn, Independent Insurance Agents of Montana; and, Larry Kibbee, Property Casualty Insurance Association of America, strongly encourage the Committee to adopt Amendment No. HB033101.apm regardless of their final decision. She continued saying the amendments had been agreed to by all and they all agreed the amendments made HB 331 a better bill.

SEN. ELLINGSON returned to the meeting.

Mona Jamison, The Doctors' Company, stated that she agreed the amendments improved the bill, however, she wanted them to know that the Doctors' Company had not been included in the discussions. She then reminded the Committee that she had told them if there was an exclusion for medical professional liability insurers and captives she would support the bill. She went on to say the amendment had been drafted, therefore, believing an agreement had been reached, she felt the other amendments could be worked out among the parties. **Ms. Jamison** continued saying that she had learned the day before from **Ms. Murdo,** the amendment regarding the exclusion for medical professional liability insurers and captives had been excluded from the amendments. **Ms. Jamison** continued expressing her concerns with the language of the amendments and how they will affect the bill. She further made some proposed amendments to the amendment.

{Tape: 1; Side: A; Approx. Time Counter: 5.2 - 30.5}
{Tape: 1; Side: B; Approx. Time Counter: 0 - 2.8}

CHAIRMAN WHEAT stated that he had moved the amendment, however, he wanted his amendment to reflect, as **Mr. Melby** had suggested, in paragraphs 48 and 49 that 2% be stricken and 1% inserted.

SEN. MCGEE stated he was reluctant to vote in favor of the amendments and explained why. He further stated he could not support the bill as it was presented.

SEN. ELLINGSON expressed his support for the amendments.

SEN. O'NEIL stated he would like to support the amendments, however, he was not going to be able to do so and explained why.

SEN. ELLINGSON asked **Mr. Melby** when the 15% increase would kick in. **Mr. Melby** clarified that the 15% would not be charged against other policyholders, it would only be charged against policyholders of the Joint Underwriting Association. He went on to say the other Medical Malpractice insurers, still in the State, would not charge an additional 15% on their premiums. He

further stated it would only be those healthcare providers that purchased policies from the Joint Underwriting Association who would pay the Stabilization Reserve Fund charge. **Mr. Melby** further stated that this would be expensive insurance and is probably why there was very little likelihood it would ever be used.

SEN. O'NEIL asked **Mr. Melby** if he was correct that the Doctors' Company would not be charging its members an additional 15%. **Mr. Melby** replied he was correct. He went on to say that it did not require any casualty insurer, that is a member of the association, to charge 15% on their automobile, homeowner policies or medical malpractice insurance policies. He continued saying that it would only be the policyholders of the Joint Underwriting Association, who are funding this association, that would pay the 15%. He concluded saying the 15% would be charged until there was an amount equal to the anticipated premiums over the next year, then it would no longer be charged.

SEN. O'NEIL asked **Ms. Jamison** if she agreed with **Mr. Melby.** She referred the Committee to Page 6, Amendment 36(c). She stated, the assessment upon the members, which is provided for in those sections, would be imposed upon the member, The Doctors' Company, as the bill now stands. She continued saying this was because the exemption on The Doctors' Company is no longer in the amendment, it is part of another amendment. She further stated the 15% being discussed is referenced on Page 7. She went on to say, that section says, "each policyholder shall pay to the association a stabilization reserve fund charge equal to 15% of each premium". She added that while The Doctors' Company would be charged an assessment, the policyholders would be charged the 15%.

SEN. O'NEIL asked **Ms. Jamison** if this 15% would increase the premiums The Doctors' Company charges to the doctors. **Ms. Jamison** responded that it would, by virtue of the assessment which would be placed on The Doctors' Company if they are not excluded from the bill.

SEN. ELLINGSON asked **Jacqueline Lenmark** if it was their intention to apply the 15% to all policyholders, but rather to the policy holders that would be with the Joint Underwriters Association. He further asked if she thought the amendment needed further clarification. **Ms. Lenmark** explained the assessment procedures set forth in the bill to the Committee. She stated that what they had tried to do was make as unlikely as possible that an individual purchasing automobile insurance was going to end up funding this state created insurance company to provide medical malpractice insurance.

SEN. CURTISS referred to number 50, on Page 10, of the Amendment and the language, "a member may not be assessed an amount that would jeopardize that member's solvency." She then asked who would make that determination and when.

CHAIRMAN WHEAT asked **Ms. Lenmark** if she could answer the question. **Ms. Lenmark** replied the determination would be made under the current laws of the Montana Insurance Code regarding the solvency of an insurer. She went on to say the determination would ultimately be made by the Insurance Commissioner under Title 33, Chapter 2.

SEN. MCGEE referred **Mr. Melby** to the phrases, "reasonably available, unavailability and cost or" which are used in the bill and asked him to explain the difference between reasonably available and unavailable and then explain what the word "cost" means and who decides "because of costs." **Mr. Melby** stated that Subsection 4 describes how the Commissioner determines whether or not there is insurance reasonably available. He continued saying that (a) and (b) are the factors the Commissioner will look at to determine whether or not the insurance is reasonably available. He went on to say that Subsection a does not just say, if the cost is high, what it says is "if there is a lack of healthcare services because of the cost or unavailability of medical malpractice insurance." He then stated under (b) the language was more specific as actually not being able to obtain medical malpractice insurance. He concluded saying it was not just the cost it was whether or not healthcare services have become unavailable because of the cost of insurance.

{Tape: 1; Side: B; Approx. Time Counter: 2.8 - 27.9}

SEN, MCGEE referred **Mr. Melby** to New Section 1 and asked why the Commissioner could not declare, right now, that the JUA needs to go into effect. **Mr. Melby** referred to paragraphs 3 and 4 of the amendment and stated that the purpose clause had been amended to say, "the Legislature finds that if a crisis exists because of the potential unavailability of medical malpractice insurance, caused by a carrier." He then referred to Line 12 and stated that "lack of affordability" had been deleted. **SEN. MCGEE** stated that he would oppose the bill because of the number of amendments and the lateness of them being presented to the Committee.

CHAIRMAN WHEAT stated that he viewed the bill as something he hoped would never go into effect. He went on to say that all HB 331 would do is create a safety net for all of the doctors in the community. He further stated that if they did not deal with the problem now, there could be a real crisis, and then they would be back in special session to deal with it which would cost the

taxpayers considerable money and may cost more money to create an insurance safety net the doctors need. He concluded saying he felt HB 331 was a piece of legislation that is important enough for them to pass as a policy statement that they stood in support of the medical community.

SEN. O'NEIL moved to suspend action on HB 331 until Wednesday.

CHAIRMAN WHEAT withdrew his motion to adopt the amendments.

SEN. MANGAN withdrew his motion of do concur in HB 331.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 5.9}

EXECUTIVE ACTION ON HB 747

Motion: SEN. MANGAN moved that HB 747 BE CONCURRED IN.

Discussion:

SEN. LASLOVICH stated he had missed the hearing and asked if there had been an example presented regarding something which had occurred on one of the construction projects. **CHAIRMAN WHEAT** responded "No, it was just the opposite, the program has been in existence for 29 years and they have never been sued."

SEN. ELLINGSON stated he would not support the bill. He continued saying he had a problem with immunity for carelessness and he felt that was what the bill was all about.

SEN. MCGEE referred to a February 25 Gazette opinion which points out the problem that being, the district could not buy insurance on portions of the construction training programs which left the district with no liability protection. He went on to say he felt HB 747 was being presented because of the threat of suit since they were unable to obtain liability insurance.

CHAIRMAN WHEAT expressed his support for the program. He then reminded the Committee of the bill passed the previous session which gave contractors a "right to cure". He explained that if a contractor built a house, and within a certain period of time, there was a defect found, the person who purchased the house would contact the contractor, who would go back and rectify the problem. He concluded saying he could not support the bill because someone was a victim of an insurance company. He further stated that he could not support immunity bills.

SEN. CURTISS expressed her support for HB 747.

SEN. MANGAN stated that he understood the concerns regarding liability, however, the fact is, without insurance, school districts will have to discontinue offering such programs. He continued, saying, by not passing this bill and granting immunity to the school districts, they were hurting the kids the programs are there to protect.

Vote: Motion that HB 747 BE CONCURRED IN failed 6-6 by roll call vote with SEN. CURTISS, SEN. MANGAN, SEN. MCGEE, SEN. MOSS, SEN. PEASE, and SEN. PERRY voting aye.

{Tape: 2; Side: A; Approx. Time Counter: 5.9 - 16.8}

ADJOURNMENT

Adjournment: 11:30 A.M.

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SEN. MIKE WHEAT, Chairman

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MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT(jus62aad0.PDF)