MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 11, 1999 at 9:00 A.M., in Room 108 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 251, SB 390, 2/8/1999
Executive Action:

HEARING ON SB 390

Sponsor: **SEN. AL BISHOP, SD 9, BILLINGS**

Proponents: **Dolores Olsynski, Injured Worker**
Richard Donnelly, Injured Worker
Carol Ramberg, Injured Worker
Don Judge, AFL-CIO
Robert Kemp, Injured Worker
Tom Murphy, Attorney

Al Smith, Montana Trial Lawyers Association

Opponents: **George Wood, Montana Self Insurers Association**
Nancy Butler, State Fund
Bob Worthington, Montana Municipal Insurance Authority

Opening Statement by Sponsor:

SEN. AL BISHOP, SD 9, Billings, introduced SB 390. He explained that page 1, lines 19-21, contained the main changes in this legislation. The old law stated that the insurer shall pay reasonable costs and attorney fees established by the workers' compensation court if "(c) in the case of attorneys' fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable." There is a very great economic difference between most insurers and the claimants. This bill will give an insured the chance to be heard, even though the action of the insurer was not found to be unreasonable.

{Tape : 1; Side : A; Approx. Time Counter : 9.05}

Proponents' Testimony:

Dolores Olsynski, Injured Worker, related that she was a nurse at Benefis Hospital and was injured two years ago. She is a mother of seven children who went back to school to get her degree in nursing. At the time she was injured, she had hoped to return to work as soon as possible. She was in severe pain and when it came to signing papers from her insurance company, she wasn't coherent enough to understand what she was signing. She couldn't relax enough to heal. Workers' compensation would not help her with a lot of her treatment, so she had to get this treatment on her own. A neurologist and a neurosurgeon both suggested that symptoms she had two years after her injury show that to this day they do not really know what is wrong with her. They have suggested that she go to Mayo Clinic. Workers' Compensation is denying benefits. She has had to hire a lawyer. She has lost her career in nursing and also her self esteem due to things that have happened because of her injury. She has acquired a huge debt. This bill will help her.

Richard Donnelly, Injured Worker, reported that he has been a carpenter for 25 years. In October of 1997, he injured his back. He went to Compwise and they did not want to provide the proper treatment for his back. They were afraid of his heart condition and did not want to be liable for any heart problems. His

benefits were stopped after they offered him a settlement. He had to hire a lawyer to reinstate the benefits and receive proper treatment on his back. Compwise does not provide options. They simply tell you what they will do for you. They do not advise the claimant of his rights although they do explain their rights. If this bill was in effect, maybe the insurance companies would not be so willing to take advantage of people.

Carol Ramberg, Injured Worker, explained that she is a widow with two small children. She was injured on her job as a habilitation aide. The working conditions were unsafe. The reason she sought an attorney is because her employer told her that they had a medical release and that she was to return back to work. She has been through mediation five times since 1997. They have had to fight for treatment. She is attending college through the vocational rehabilitation program. She believes there are alternatives to medication. The cost of hiring an attorney is a problem since many attorneys do not like to handle injured worker cases due to the high risk involved. This bill will especially help injured single mothers who are raising children.

She believes workers' compensation should help those who need help. It is important that workers' compensation provide proper treatment and care instead of medication.

{Tape : 1; Side : A; Approx. Time Counter : 9.17}

Don Judge, AFL-CIO, contended that for the last ten years the legislature has enacted a significant number of statutes that have cut benefits to injured workers and restricted access to those benefits by injured workers. Legislation has denied access to rehabilitation or permanent partial disability benefits to 66% of the claimants involved in workers' compensation claims. Language states that an actual wage loss needs to occur in order to be entitled to benefits. Secondary medical care is also prevented if that secondary medical care cannot enhance their ability to go back to work.

For example, there could be an instance where a high school student working in a fast food restaurant accidently dropped a coke glass full of ice into the french fry grease. This would cause an explosion which would severely burn the child. The insurer would be responsible to take care of the wound until it is medically healed. This person is working at minimum wage. There is no obligation of the insurer to deal with the scars on this child's face. There have been instances where a young person has lost an arm and been awarded $39,000 at age 20 for the total loss. A man who lost his leg in 1994 was awarded $19,000 for this loss under Montana's new workers' compensation system. The system is functioning for the employers and the insurers. It

isn't functioning for injured workers. Injured workers are routinely being denied access to legitimate claims for benefits.

A few weeks ago a group was formed called "The Montana Injured Workers Resource Council". The trial lawyers and the AFL-CIO have made donations to form this independent committee. In a matter of two weeks, 200 injured workers joined the council. They testified last week at a committee hearing and since that time there have been at least three calls a day from injured workers wanting to join the council. Every story that is being told by the injured workers is that the benefits are low, they are continually denied access to those benefits and they cannot find an attorney to represent them. This bill states that if the benefits are denied and subsequently found to have been wrongfully suspended or terminated, the attorneys fees that go to recovering those benefits ought to be paid by the insurer.

Robert Kemp, Injured Worker, remarked that he was injured in 1995. This injury caused five surgeries. Workers' compensation denied the claim on his left wrist surgery, even though the doctors agreed that it was associated with his fall. They also cut his temporary total disability benefits early. Insurance companies know more than the claimant. He had to hire an attorney to get the money that he was entitled to, which was half of what he was receiving. He wasn't looking for a large settlement. He only wanted what was fair. This harmed his family and he needed to have food baskets sent to his home. The system is really unfair. He has been in construction for 25 years. He has worked all these years, paid his taxes, and served his country in the war. It isn't fair that he had to pay an attorney to get what was rightfully his.

Tom Murphy, Attorney, commented that he hears the same stories on a regular basis. He remarked that **Ms. Ramberg's** case is a test case. They have been through five mediations. He wanted to see how far and how hard the insurance companies would push on basic medical treatment. Each of the five mediations involved medical treatment in the area of $200 to $300 a treatment. It took approximately 100 hours of his time to go through the mediations. **Ms. Ramberg** is a widow who is trying to raise two children while she attends school on her own funds. If they will treat **Ms. Ramberg** in this manner, they will probably treat everyone else likewise. People like **Ms. Ramberg** cannot find a lawyer. He will not do this for anyone else since he cannot afford to litigate a $200 or $300 medical bill. The only way these claimants will be able to find a lawyer is if there is a law that states if an insurance company owes a benefit, the insurance company must not only pay for the benefit but also the lawyers' fee for obtaining the benefit for the client.

Possession is 9/10ths of the law because 9/10ths of the time you cannot fight to get possession of what is rightfully yours. This bill changes the equation by making the injured claimant able to find a lawyer. It is only after it is proven that the insurance company was wrong to deny or terminate the benefit that the attorney fee comes into play. The insurance company has the resources to determine whether the benefit should be paid or terminated. If they make the wrong decision, the burden for that decision should be on the insurance company and not on the injured claimant.

{Tape : 1; Side : A; Approx. Time Counter : 9.35}

Al Smith, Montana Trial Lawyers Association, claimed that this involves an unequal power situation. Insurance companies, the workers' compensation insurers, know all the rules, have all the power, and hold the key to the money for the benefits that these people need. The bottom line for insurance companies is to make money. Too often, the way to make money is to deny a claim. Also, the injured worker doesn't have the financial ability to hire an attorney. On lines 19 and 20 on page 1, the wording is deleted that the insurer's actions need to be unreasonable before attorneys' fees are awarded. "Unreasonable" is a standard that is almost impossible to prove. It is not uncommon for insurers to shop around for a doctor. If the first doctor doesn't say what they want, they will go to a second or third doctor.

The purpose section of the Workers' Compensation Act states that they want the system to function so that it is not necessary to have attorneys involved. This isn't a giveaway for attorneys. They have to work for their money. Attorneys have to go through the entire process and prove to the workers' compensation court that the benefits were wrongfully denied in the first place.

At last week's hearing on SB 303, he offered some amendments that accomplish the same thing that will be accomplished with this bill. The doctors, the hospitals and the sponsor **SEN. THOMAS** were asked if it was fair that the attorney should be compensated by the insurer for obtaining medical benefits which were wrongfully denied. One of the benefits of this legislation is we will see the insurers agree to pay what appears to be a legitimate claim and they will not fight the claim. There will be no need for attorneys. Insurers will know that if they wrongfully deny benefits, they will not only have to pay the benefits but the attorneys fees as well.

{Tape : 1; Side : B; Approx. Time Counter : 9.43}

Opponents' Testimony:

George Wood, Montana Self Insurers Association, remarked that this is not a benefit increase bill for the injured worker. It is a guarantee of fees to the attorney when reasonable denial of a benefit is made and later information is obtained that indicates that the denial may have been incorrect. Both the mediation units and the workers' compensation court allow unrepresented claimants. Some objectivity is lost when the mediation people and the judge, in effect, represent the interests of the injured worker. The employer pays the full cost of this. The unreasonableness is a test of whether or not at the time the denial was made, it was fair based on the information available. A claim adjuster makes several thousand decisions a year and very few are denials.

Nancy Butler, State Fund, related that current law for attorneys fees was a part of the benefit reform in l987. It required that insurers pay fees if their actions were unreasonable and at the same time the court could award a 20% penalty if they were found to be unreasonable. Mediation was also put in place that same year. Mandatory mediation is an informal process that all disputes must go through before going to the Workers' Compensation Court. This bill would create the standard where insurers would pay if they lost regardless of whether or not their position was reasonable or unreasonable. At no time do the claimants pay the insurer's fees. This bill might increase litigation. These are costs that we do pass on to the employers in the form of higher premium rates. Montana's premium rates are among the highest in the region at this time.

She referred to the language on page 2, lines 9 and 10 and remarked that they make written offers all the time. This either overstates the obvious or something else was intended.

Bob Worthington, Montana Municipal Insurance Authority, remarked that 92 cities and towns across the state participate in their workers' compensation program. They insure approximately 7,000 workers. He believed that the present system works very well. He has concerns about raising the standard. Even if they act reasonable, they can be penalized.

{Tape : 1; Side : B; Approx. Time Counter : 9.50}

Questions from Committee Members and Responses:

SEN. HOLDEN referred to page l, line 20, and questioned whether the word "unreasonable" could be substituted with the word "unjustified". The term unreasonable can mean a lot of things to a lot of people. When he reviews a claim to determine whether benefits should be paid or denied, he questions whether it can be

justified and shown in writing. **Ms. Butler** remarked that if the change was made, a definition of the word "unjustified" versus "unreasonable" would need to be added. To her the word "unjustified" would mean that she had no basis for making that decision.

SEN. HOLDEN also referred to page 1, lines 15-17. The words "medical benefits" were added to the language. This would be reasonable to him to single out medical benefits. He questioned whether medical benefits were considered part of the term "benefits". **Ms. Butler** explained that they have always interpreted benefits as meaning both wage loss and medical benefits. She wasn't aware if the court had made any such distinction.

CHAIRMAN GROSFIELD questioned whether compensation would include medical benefits. **Ms. Butler** responded that compensation is interpreted as a wage loss benefit.

SEN. DOHERTY questioned how many medical benefit claims the State Fund denied in the last year. **Ms. Butler** responded that she did not know. They see about 400 cases for which the State Fund requests mediation per year. Approximately 100 cases go on to the Workers' Compensation Court.

SEN. DOHERTY gave the example of a convenience store clerk who was shot in a holdup and that person's psychological counseling was denied. Is this an unreasonable denial or an unjustified denial? **Ms. Butler** explained that she would need to see whether the doctor stated it was related to the injury.

SEN. DOHERTY questioned the process when the person's treating physician said it was justifiable but the insurer shopped around and found someone to state that it wasn't. Also, the insurer may dig into this person's past and learn that this person was divorced about ten years ago and then take the position that he has obtained psychological counseling for getting shot due to his divorce. Is this reasonable or unreasonable? **Ms. Butler** stated this would depend on whether it was an acute problem versus a chronic problem.

SEN. JABS questioned whether the court set the fees. **Mr. Judge** explained that fees were set by statute on workers' compensation recovery. **Ms. Butler** responded that the court approves the fees.

Mark Cadwallader, Department of Labor and Industry, clarified that workers' compensation claimant's attorneys fees are regulated by the Department of Labor and Industry. Claimant attorneys who work on a contingency fee basis receive a maximum

amount of 20% for matters resolved without litigation and 25% if the matter goes to the Workers' Compensation Court or the Supreme Court. There are three different ways for an attorney to establish fees. One is a contingency fee which cannot be higher than allowed by rule. Attorneys may also claim a fee on an hourly basis with a maximum fee of $75 an hour. They may ask for a variance from the two scheduled fees.

SEN. MCNUTT remarked that one of his mechanics was injured and was on workers' compensation for 4 or 5 months. His medical costs were all paid. When he returned to work, an attorney called the store and asked to speak to the injured worker to see if he could intervene for him on additional care. **SEN. MCNUTT** added that he talked to the worker and asked if he was okay and whether he needed anything else. The worker said no and explained that this attorney called three nights in a row trying to convince him that he should represent him for additional coverage. He raised a concern that this bill could cause attorneys to seek out injured workers to see if they could represent them in obtaining additional benefits.

Mr. Judge hoped that the effect of this bill would be that insurers would award more benefits without putting workers to the process of needing an attorney. There are no records kept of injured workers. An attorney would not know of an incident unless it was reported in a newspaper or if they checked the hospitals. Most attorneys don't have time for this. Most of the contacts are made by the worker to the attorney.

SEN. HALLIGAN questioned whether denials were backed up with medical or professional opinions. Were denials made by a staff person who reviewed guidelines. How would an attorney ever show that the decision was unreasonable? **Ms. Butler** explained that they received the medical information which describes the treatment. The adjusters use that information to determine whether the bill is related to the claim for injury that they have. If so, the bills are paid. This is fairly routine. However, if the claimant has injured his or her back and they start receiving bills for knee treatments, this would raise the question as to whether or not the two were related. The treating physician's opinion weighs heavily with adjusters.

SEN. HALLIGAN maintained that acting unreasonable would be difficult to shown if there was a medical opinion behind the decision.

Mr. Murphy contended that the denied benefit needed to proceed to the litigation stage. If the benefit is denied on a reasonable basis early on in the process and then later new information

comes to light, the insurer can change their position without penalty. The claimant must go to litigation, a determination needs to be made that the benefit was owed but not paid, and then the judge makes an award of a reasonable attorney fee. This is an ongoing process as information is developed. He questioned whether there would be any benefit for an attorney to call an injured worker and try to get more treatment for the person because there is no fee involved. He only asks for what the doctor believes is necessary.

In the instance of **Mr. Kemp's** case the treating physicians stated that the claimant needed the two left wrist surgeries because he fell off a bridge and slammed his hand. The insurance company determined that the surgeries were not related to the accident. The insurer has a doctor who works for them. There is a new doctor in Great Falls who has received 30 of his workers' compensation cases. He determined that none of the claimants were injured. Perhaps some of them were not, but he questions how all 30 could not be injured. He believes this establishes a pattern of denial. The State Fund has their own panel of doctors who are employees of the State Fund. How long do they keep their jobs if they agree that the claimant is injured and needs treatment? In 15 years, he has never seen them say that the treating physician was right. He does not believe that a claimant usually shops for a doctor because the first doctor is his treating physician. Generally speaking, this is usually the doctor suggested by the employer. The claimant generally has no repeat injuries. Insurance companies handle hundreds of repeat injuries. They have learned which doctors to use.

The unreasonable conduct standard is impossible to prove. If anyone has said, on the insurance company's behalf, that the claim is undisputable, the judge will not find this unreasonable and therefore will not award attorneys' fees.

SEN. DOHERTY asked **Mr. Kemp** what he would say to a lawyer who called him and asked him to go in for another wrist surgery because he thought he could get him some money for it. **Mr. Kemp** stated that he would tell him no.

CHAIRMAN GROSFIELD reiterated that it was important to know how many claims were brought to workers' compensation as well as the types of claims. The claims referenced this morning were not very huge claims. No one will hire a lawyer to take care of a $200 claim. He believes the agency would not want to spend a lot of time fighting a $200 claim. **Ms. Butler** stated they are conscientious that the employer is not paying for something that they shouldn't be paying for and at the same time they are interested that services be provided when necessary. The

criteria is set out in statute. They rely on information from the treating physician when determining whether or not to pay a claim. They have consultants who help adjusters because they are not medical professionals. They may seek independent medical evaluations to help make the decision. She added that she did not know the claims history. The initial bills may be paid because they are clearly related. Down the road, a new condition may be involved and there may be a question as to whether this is still related. A dispute may arise as the claim matures.

Mr. Cadwallader explained that the question of whether an insurer acted reasonably or unreasonably only arises in the context of a request for attorneys fees in the workers' compensation court. There is no provision for obtainment of the claimant's attorneys fees for any disputes that are resolved short of that. Section 39-71-614 provides calculation of attorneys fees and establishes how the judge sets the fees.

SEN. MCNUTT asked if workers' compensation provided for retraining and rehabilitation. **Ms. Butler** responded that the Workers' Compensation Act provided a variety of benefits beyond permanent partial disability. There is temporary total disability when the claimant is first injured and unable to work. This amounts to 2/3rds of their wages at the time of the injury and is capped at the state's average weekly wage which is $411. These benefits continue as long as the claimant is healing. Once the injured worker is healed, they are evaluated to determine their permanent partial disability. This is based on functional impairment which is provided by a physician. If the injured worker has a wage loss because they are not able to go back to making the same amount of money they were making when they were injured, they are also eligible for additional benefits based on age, education level, and physical restrictions. If there is an actual wage loss, the injured worker is eligible for rehabilitation benefits. This is the temporary total rate that can extend for two years. If there is a 15% impairment rating and no actual wage loss, the injured worker is also eligible for up to two years of additional benefits while retraining.

{Tape : 2; Side : A; Approx. Time Counter : 10.23}

Closing by Sponsor:

SEN. BISHOP summarized if a frivolous suit was brought, the workers' compensation judge can award sanctions as any other district judge in the state. He added that the injured worker must not only face the physical wound but a psychological wound as well. The fact of not being able to work again can be devastating to the worker. The worker needs to bring this

situation to a closing. The benefits in Montana are among the lowest benefits paid out and the premiums are among the highest paid.

{Tape : 2; Side : A; Approx. Time Counter : 10.27}

HEARING ON SB 251

Sponsor: **SEN. MIKE HALLIGAN, SD 34, Missoula**

Proponents: **Harold Hansen, Chairman of the State DUI Task Force**
Pat Sandon, Administration of the Transportation Planning Division, Dept. of Transportation

Opponents: **Robert Throssell, Montana Magistrates Association**
Candace Payne, Rimrock Foundation
Mike Ruppert, Executive Director of the Boyd Andrew Chemical Dependency Care Center
Joan Cassidy, President of Montana Addiction Service Providers
Chris Johnson, Acting Director of Lake County Chemical Dependency Program

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, Missoula, explained that the DUI task force was appointed several years ago. Senate Bill 251 has been prepared by this task force, but there is controversy involved. The bill needs to be amended. The main issue is that when someone is charged with a DUI and pleads guilty, it is to be mandatory that before the court issues a sentence, the individual must be assessed to see if he or she has an alcohol problem. If inpatient treatment is necessary, there is a separate hearing. There are issues with respect to the assessment, pre and post sentencing. The concerns include the actual alcohol education program as opposed to a chemical dependency assessment. They want to make sure that the judges have the best possible information when sentencing.

{Tape : 2; Side : A; Approx. Time Counter : 10.29}

Proponents' Testimony:

Harold Hansen, Chairman of the State DUI Task Force, maintained that the Task Force had no objections to the recommendations of the opponents with the exception of two items. The first

involves extending the ability of the lower court to have jurisdiction for up to one year for first offenders. The reason is that under current law, the jurisdiction extends for six months. Justice of the Peace in Yellowstone County, Janet Eschler, tried to go around the existing law. In Yellowstone County, approximately half of first offenders neither report for treatment nor do they complete it and in six months their drivers license is reinstated. Extending the jurisdiction to one year seems to be reasonable and sensible and takes the joke out of the first offense. People who have addictive problems need treatment or they will be repeat offenders.

The second area of concern is the ability of the lower court to ask for an assessment prior to sentencing. Judge Eschler tried to accomplish this in several different ways. There were three separate cases that went to the Montana Supreme Court and each time the Court held that her actions were not under existing law. The judge needs factual information before setting the sentence. The Supreme Court cases upheld that when the judge sentences an offender to any part of a sentence, this is a one time process. If an offender is sentenced to have the assessment, this would be the sentence. Under this proposal, if the assessment is ordered before sentencing, then at the time of sentencing the court would then order the course of treatment and there would only be one assessment. Many of the lower court judges have expressed a high level of frustration with the need for a full year jurisdiction over first offenders and the ability to ask for the assessment before they render judgment.

Pat Sandon, Administration of the Transportation Planning Division, Department of Transportation, related that highway traffic safety is one of their programs and they work very closely with the State DUI Task Force. They support the bill and believe the judges should have the option of conducting assessments before sentencing a DUI offender. They also believe that the court should have extended jurisdiction.

Opponents' Testimony:

Robert Throssell, Montana Magistrates Association, explained that the magistrates are concerned about making the assessment option for sentencing. They see first time offenders who do not have any other criminal records and the individual doesn't appear to be the type where a more detailed assessment is necessary before sentencing. Once the sentencing takes place, the fine can be assessed and the person has already spent their time in jail. They do like the idea of making the assessment optional in that they see people who do need more attention. If this amendment is adopted, that area of concern would be withdrawn.

The other area of concern is in the amendments which have been drafted but not offered. The amendments would allow the defendant, after the assessment, to obtain a second opinion. In the smaller communities, the state would need to approve additional counselors who are professionally qualified. The magistrates do like the one year jurisdiction on the persons who have been sentenced.

Candace Payne, Rimrock Foundation, related that she has been working with **Ms. Lane** on amendments to this bill. She added that even with the amendments, there are problems with the bill. The providers cannot support this legislation. She asked that the bill be placed in a subcommittee.

Mike Ruppert, Executive Director of the Boyd Andrew Chemical Dependency Care Center, remarked that he is also a member of the DUI Task Force. When the bill left the DUI Task Force, it was totally bungled. With the amendments, the bill is a total mess. He asked that the bill be tabled. The parties who have a stake in this matter need to understand everything involved.

Joan Cassidy, President of Montana Addiction Service Providers, stated that they support the concepts of pre-sentence and looked at the jurisdiction extending to one year. There are concerns with the language. They are willing to continue working to clean up the language to provide clarity.

Chris Johnson, Acting Director of Lake County Chemical Dependency Program, explained that she supported the concepts of the bill but was concerned that the language may have far reaching effects and cause harm to the smaller programs in rural areas.

Questions from Committee Members and Responses:

CHAIRMAN GROSFIELD asked for more information regarding the problems with the bill. **Ms. Cassidy** responded that the language in the amendments needs to be clarified.

CHAIRMAN GROSFIELD asked that the amendments, **EXHIBIT(jus34a01),** be distributed with the understanding that **SEN. HALLIGAN** is not offering the amendments at this time. **Ms. Lane** explained that LC777 showed the proposed §61-8-732.

Ms. Cassidy explained that the program providers wanted to make sure the language is clear regarding the assessment. If the judge does not choose the sentence option prior to sentencing, that assessment continues to be a part of the Assessment Course of Treatment (ACT). This needs to be continued as a state approved program as is currently the status.

There is a grave concern that in rural Montana, the second opinions need to be accessible to the offender. On page 2, section 4, of LC7777, "A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a licensed program or a program approved by the department of public health and human services." Currently, the state approved programs are under the Department of Health and Human Services. The concern is, what is a "licensed program"? For instance, in Scobey there is a state approved program, but it is not a licensed program. Would the defendant need to travel 200 to 300 miles to have the second opinion? Also, in Butte they have numerous certified chemical dependency counselors who are not working within a state approved facility. The defendant would not have the option of going to the certified counselor, but would need to go to a licensed program. There is no definition of a licensed program within the state.

CHAIRMAN GROSFIELD questioned whether this could be addressed by the language "licensed program or a program approved by the department of public health and human services or a licensed chemical dependency counselor." **Ms. Cassidy** agreed this would address the second issue. She added that the first issue is to make very clear that on a pre-sentencing assessment if the judge does not chose the option of pre-sentence assessment, the assessment is automatically completed as a part of the ACT Program.

Mr. Ruppert remarked that extending the jurisdiction is a good idea. The idea of pre-assessment is also a good idea. The problem with the bill is that, as originally introduced, it mandates pre-assessment. This doubles the appearances of all DUI offenders in front of the court and doubles the admissions of all DUI offenders into their program. Both of these circumstances are a big deal. The amendments change the mandatory pre-assessment to optional, which is a good thing. The bill, as introduced, was very different from the decisions of the DUI Task Force. He would like to have the language clarified. He suggested tabling the bill and allowing the DUI Task Force to come up with a final product.

Ms. Payne explained the term "licensed program" was brought up in the memorandum from **Peg Shea**. Attached to this was a memorandum from **Al Goke, Chief of the Traffic Safety Bureau**, which contained five items that needed to be in the bill. Item (e) states that the language needed to be changed to read, "licensed or state approved programs".

Ken Mordan, Chemical Dependency Officer at the Department of Public Health and Human Services, explained that the licensure issue was a concern of the Task Force when this bill addressed pre-assessment. The existing law allows the second opinion and the treatment to be provided by a state certified chemical dependency counselor. The Task Force wanted to change this back to the circumstances prior to 1991, which would only allow state approved programs to provide the second opinion and the treatment. There was a concern from one of the programs, St. Patrick's in Missoula, that as a licensed hospital program under the Joint Commission of Hospitals, they are not state approved. Licensed facilities include Benefis in Great Falls, Northern Montana in Havre, and Pathways in Kalispell.

Mona Jamison, Montana Association of Addiction Providers, added that regarding the issue of licensure, the drafting is not as precise as necessary. Her understanding is that there is no state licensure program, per se. Hospitals under JCHO, have a license for certain certification to these hospital-based programs. These programs are legitimate. The word "licensure" does not connect to a statute.

Closing by Sponsor:

SEN. HALLIGAN summarized that the assessment issue is a good idea and there should be only one assessment. The one year jurisdiction is also a good idea. Agreement needs to be reached on the licensure and/or certified counselor language.

CHAIRMAN GROSFIELD summarized that he did not favor appointing a subcommittee on this matter due to time constraints this close to the transmittal date. He asked the parties to work together on the issues.

Additional handout - written testimony of **Brenda Nordlund, Department of Justice, EXHIBIT(jus34a02).**

ADJOURNMENT

Adjournment: 11:00 A.M.

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SEN. LORENTS GROSFIELD, Chairman

_____
JUDY KEINTZ, Secretary

LG/JK

EXHIBIT(jus34aad)