FINAL
Signed:

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on March 19, 1999 at 3:20 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:
Sen. Al Bishop, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. John C. Bohlinger (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

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

Committee Business Summary:
Hearing(s) & Date(s) Posted:
Executive Action: **HB 111, SB 322**

Discussion: RE: HB 111

CHAIRMAN AL BISHOP commented the day he was gone, the vote was taken on this bill, and the vote was **-11-0.**

SEN. DUANE GRIMES answered yes.

SEN. FRED THOMAS clarified they also asked that **HB 111** be held back from being reported out for a day or two, so they could go over a couple of amendments.

CHAIRMAN AL BISHOP inquired if that was part of the vote.

SEN. GRIMES and other Committee members confirmed it was agreed to allow a couple of days to review amendments before reporting the bill out to the Committee of the Whole.

Susan Fox, Legislative Researcher, said she was handing out copies of the amendments that have been agreed upon to date. These were the three different sets the committee adopted on Wednesday, March 17, 1999.

SEN. GRIMES explained the amendments. He said, remember when they were all so close to supporting his attempt to insert the word "solely" in the bill. He'd almost convinced them. In lieu of that, he would like to thank the Insurance Commissioner's Office for bringing forward another statement that goes in the section on discrimination. It indicates that this does not mean to prohibit things otherwise allowed by law. That's all it is. It may be much about nothing, but he thinks it's comforting and everybody's comfortable with it. He would like to move the amendment.

SEN. EVE FRANKLIN said she would like to read through it before they act on it.

Motion:

SEN. GRIMES moved to **AMEND HB 111 - HB011106.asf, EXHIBIT(phs62a01).**

CHAIRMAN BISHOP asked **Susan Fox** to explain the amendment, since he was gone on Wednesday, March 17, 1999.

Susan Fox, Legislative Researcher explained, at her request, the language was prepared by the **Auditor's Office,** trying to get at this concept. She was not sure if they necessarily endorse the language, but they did provide it, trying to get the language from an insurance perspective. The amendment, as it reads, doesn't prohibit an insurer from business as usual. Discriminating is otherwise allowed by law on the basis of environmental, behavioral, medical, or other factors unrelated to genetic traits. There are certain practices in insurance right now that allows them to say they will not cover certain people.

SEN. GRIMES said he would give them an example. His whole concern is to reiterate it again, if it wasn't clear. Example -- somebody is applying for insurance, who has obviously a pending heart attack. They also have on the insurance form they filled out, that they've had some kind of cancer history. They screen for that, and know that they don't have the manifestations of that genetic predisposition apparently. But you find out they were going to have some severe heart trouble.

The insurance company decides to raise the rates or exclude them, or whatever. So the concern is, the one that is excluded could come back in and say, well you excluded me because of these genetic factors. Of course the other side of it is, the sponsor of the bill would say, we don't want insurance companies to come in and use the heart problem, if it's not that severe, to exclude for genetics. It's just on what side you are looking at it. They feel this language in the bill, without picking sides, will clear the air. If there is something legitimate to screen for, they can do that. Otherwise all the discrimination, for known or presumed factors, will be against the law.

Questions from Committee Members and Responses:

SEN. ECK said her question might muddy it up a bit. She thought one of the things they use now, is family history. It is not based on genetics. Its just based on you going in, and they ask you if you have, or if any member of your family ever had, etc. And you give them that information. Now that is not really genetics, but isn't that something now being used.

SEN. GRIMES answered he has asked every insurance company in the hall, whether or not, solely based on family history, they would exclude someone from coverage. Universally they said, "not without the manifestation of the disease or trait." Maybe **REP. GUGGENHEIM** could correct him if he is wrong. That is how he understands it.

SEN. THOMAS told **SEN. ECK**, those questions are asked concerning life insurance. Like how old is your dad, or how old was he when he died, and what did he die from, your mother, your siblings. In health insurance it really is not a standard.

SEN. ECK responded, they use it to determine whether you get a mammogram or not.

SEN. THOMAS continued. On life insurance, remember, they exempted life out of the bill. Life insurance is exempted out of this legislation. That is a question that is asked on life insurance not on medical insurance.

SEN. FRANKLIN asked if she could address a question to **Russell Hill**. She is trying to figure out what the implication is. Sometimes she understands it on the face, but sometimes that doesn't always mean that you understand it in terms of the implementation. When it says, "it does not prohibit, etc., otherwise, allowed by law on the basis of environmental, behavioral, medical, or other factors unrelated to genetic traits," are we putting into statute, some things which are not expressly stated in law. Her concern is that it is so broad. Sometimes in insurance law, there are certain things that are done by a custom, which we may, or may not endorse by law. Then, once you have put in language like this, it sort of becomes law by defacto. She asked **Russell Hill** if he would remark on that.

Russell Hill, Chief Legal Counsel, State Auditor's Office, said he did draft this language. He has since had some very uncomfortable reactions from his allies for including words like "environmental, behavioral, and medical." He doesn't think it substantively changes the bill, but he also thinks maybe it is cleaner to drop those three words, since environmental and behavioral don't appear elsewhere in the bill.

SEN. GRIMES is exactly right with what we are trying to do in the bill. Cholesterol, is a great example. You can have a genetic trait that predisposes you to high cholesterol levels, which have health impacts, or you can have high cholesterol. They want to make it clear, that if you have the trait, the company can't discriminate, but if you have the manifestation, they can discriminate. For instance, if in your behavioral habits, you eat a quart of ice cream a day, and have high cholesterol, he thinks this language helps to give **SEN. GRIMES** and the companies, comfort. When you discriminate against that person, they can't then come back and say you did it because of genetic factors. You did it because you have another factor that they can legitimately discriminate against you. Discrimination in insurance is not always improper.

CHAIRMAN AL BISHOP said **Susan Fox** reminded him they should make a motion to reconsider their actions on Wednesday, March 17, 1999, because the bill was adopted on March 17, 1999.

Motion: **SEN. GRIMES** moved to **Reconsider the Committee's Action** on **HB 111.**

Vote: **The motion carried unanimously -11-0.**

Motion: **SEN. GRIMES** moved to further **AMEND HB 111 BY ADOPTING AMENDMENT #HB011106.asf**, and **striking out of AMENDMENT #HB011106,asf**, the language, **"environmental, behavioral, medical, or".**

Vote: **The motion carried unanimously -11-0.**

Motion: **SEN. GRIMES** moved to **AMEND HB 111 BY ADOPTING AMENDMENT #HB011107.asf.**
EXHIBIT(phs62a02)

SEN. GRIMES explained this amendment inserts the words" or presumed" in the definition of genetic trait, to say "known or presumed." Basically without this amendment it is questionable whether the definition even functions correctly. He is more comfortable with that especially now with the amendment they just passed. The amendment says now that a genetic trait will be something known or presumed to be known. It is pretty self explanatory.

SEN. CHRISTIAN said he doesn't have a problem with the amendment, but without looking at the bill and how it all fits in, he has real heartburn over this kind of stuff. They don't have the bill in front of them to look at, and see how it fits in with the paragraph, or if is a full sentence.

Russell Hill Chief Legal Counsel, said he didn't realize it wasn't right there in front of them. This is important for exactly the questions **SEN. ECK** asked a minute ago about family history. Here is the sentence on Page 4, Line 19,(3)"Genetic trait" means any medically or scientifically identified genetic factor, known to be present in the individual or a biological relative. What we want to say is, "known or presumed to be present" because on family history, remember the questions about family history. It would make no sense to prohibit an insurance company from discriminating when they have genetic test results that show you have that genetic trait. And yet allow them to discriminate just by extrapolating it from questions about family history. It is an important amendment. If you can see it in the language, it is a self explanatory amendment. He apologized for the confusion.

Vote: **The motion carried unanimously -11-0.**

Motion: **SEN. GRIMES** moved **HB 111 BE CONCURRED IN AS AMENDED.**

SEN. ECK asked about Amendments #HB011105.asf.

SEN. GRIMES explained those amendments were already on the bill. There was one other amendment he'd considered, but now he just didn't think it was necessary.

Vote: The motion carried unanimously -11-0.

EXECUTIVE ACTION ON SB 322

CHAIRMAN AL BISHOP asked for the **Subcommittee Report on SB 322**.

Senate Subcommittee Report on SB 322:

CHAIRMAN FRED THOMAS said he'd like to thank the other two members, **SEN. GRIMES** and **SEN. CHRISTIAENS**, for working so hard on this legislation. More importantly he thanked **Susan Fox, Legislative Researcher**, for her extraordinary work. In front of them is the Gray Bill. It has a plethora of amendments beyond belief. They are not before them. However they are in the form of the Gray Bill. So this makes their job much easier.

Motion: SEN. THOMAS moved **SB 322 DO PASS AS AMENDED.**

Motion: SEN. THOMAS moved the **AMENDMENTS on SB 322.**

SEN. THOMAS explained that the amendments before the committee which they would technically vote upon, are now incorporated into the Grey Bill.
EXHIBIT(phs62a03)

That is the copy they have in front of them. This legislation deals with a conversion of a nonprofit health entity, converting to in essence a for-profit entity, or some version thereof. Its been in our Subcommittee a long time. They allowed some time in there for the parties at hand to get together and work out as much of the details as they could.

He couldn't report to the committee that everybody likes this bill precisely the way it is. There is going to be a lot of little things here and a lot of little things there, that certain people will and won't like. Part of the problem here, is that you have a divided community out there to some degree within this area of interest. That's just the way it is. It was a difficult bill because of that. They have a bill that has been brought to,

as close as they could, to a consensus within the interested parties. They all worked very hard on this bill.

On the same token, where they didn't agree, they worked very very hard on it. In a case like this, as he said before, they have a bill that is trying to treat a situation that is not exactly a problem. They have to be forward looking in how they deal with the nature of this conversion.

It makes it a little bit more difficult because you don't have this problem to fix, or that problem to fix. You are trying to make sure you do the right thing in general. **SEN. THOMAS** said he'd call on the people who have worked long and hard on this legislation, who have some interest in it, and can give the committee their basic positions in a general sense on the legislation. He called on **Chris Tweeten, Chief Counsel, Attorney General's Office.**

Chris Tweeten stated they came before the committee, and asked for a favorable consideration on the bill because it made it easier, and made it better for them to be able to carry out the responsibilities they have in the area of regulating nonprofit corporations that hold assets from charitable trusts.
The problems they can put their fingers on were they don't have access to adequate resources in the case of a very large and complicated transaction, to adequately review that transaction. They urged **SEN. WATERMAN** to bring this bill forward in order to correct that problem.

They also thought it would be helpful, not only to the **Attorney General**, but also to the regulated community, if there was legislation on the books that laid out procedurally and substantially how that review is going to take place.
Everybody would know what the rules of the game would be, and they could proceed accordingly in trying to get the transaction from the conceptual stages through fruition.

The bill they have in front of them is substantially different from the one that was heard in the hearing. Some of the changes they supported. Some of the changes are changes that were brought forth by other parties with which they could readily agree. And a few of the changes are changes that they think makes the bill more problematic.

So the question, that **SEN. THOMAS** had for him was id he think the bill ought to go forward, and he thought the answer to that question is yes. On balance, he thought it makes them better able to do what they do in the area of regulating the disposition of charitable trust assets.

He didn't think he could speak for **SEN. WATERMAN**, with respect to that. He thought there were some provisions in the amendments that she would probably try to have changes made as it goes through the process. Frankly given the difficulty they had in pulling these amendments together, it is probably a good idea that there will be further debate on some of these points. For example the threshold for triggering the review provisions of this bill now is the disposition of 40% of assets of a nonprofit corporation evaluated according to their fair market value. What that means is that by definition in this statute, if the hospital wants to sell 39% of its assets, that's an immaterial transaction. This seems to him to raise some significant problems, and it is something that needs to be debated further as this bill proceeds.

On balance, he thinks that given the lateness in the session, and the hard work that has gone into the bill up-to-date, they would urge the committee to pass this bill out of committee. Send it to the Floor, and allow it to continue on its way through the process. Hopefully, it can be further improved as it goes through the process towards the Governor's desk. Hopefully we will end up with a bill that both the regulated community and they as the regulators can live with and they will all be happy.

SEN. THOMAS thanked **Chris Tweeten**, and asked that he be available for questions from the committee. He asked to call on another party, **Chuck Butler, Blue Cross and Blue Shield of MT.**

Chuck Butler, Representative, Blue Cross and Blue Shield of Mt. He said, **Mike Becker, Associate General Counsel** is present also, and has been involved in this issue the last couple of months. **Mr. Butler** will start where **Mr. Tweeten** left off.

Chuck Butler said, when this bill was first heard, they appeared in strong opposition to this legislation. There were many reasons, but he won't go into all of those. There is one significant item that they still have to swallow very hard on which he will explain in a moment. If this committee does recommend passage of this bill, they believe this bill should go through this body, and through the other body, as it is to the Governor. They would pray and hope that the committee would recommend passage all the way through the process. In fact with all the work that has been done, by the Subcommittee, by **Mr. Tweeten**, and Attorney General Mazurek because they have been at the table with Attorney General Mazurek as well, that yes, this is a major compromise. But the bodies who are affected by it, or are potentially affected by it, have spent a lot of time getting to this point, and they think that deserves a lot of consideration. There are two points that he would draw their

attention to that are significant to them, to the Attorney General, and to **Mr. Tweeten.**

Chuck Butler referred to Page 7, under new Section 7, on Lines 25 - 29. He said they will see where the language clearly states, that the Attorney General shall "retain, at the expense of the nonprofit healthcare entity, actuaries, accountants, attorneys, or other experts that may be reasonably necessary to assist the Attorney General in reviewing the proposed nonprofit healthcare conversion transaction." And that they shall provide documents, etc., necessary for him and her to do their job, and that they will pay for it. They agreed to that, and that's a major issue.

On Page 1, on Lines 28, and 29, the other significant issue deals with the "material amount" that will be reviewed. **Mr. Tweeten** addressed that point. They will recall in their testimony, and in the Subcommittee there was discussion. They recommended that if in fact this bill was going to go through, that 85% should be the threshold. **Mr. Becker**, presented testimony to point out where they got that from. He could talk more clearly about it, but it comes from IRS (Internal Revenue Service) code.

As the Subcommittee continued to do its work, they agreed to 40% and the Subcommittee has recommended 40%. Based on all of the discussions, he wanted to thank **Subcommittee Chairman Thomas** and **the Committee members.** Regarding the 40%, they've had to swallow very hard for that. If the committee would recommend the bill as it is, and if they can all hold together throughout the process for the next 30 days, he would think they'd done a heck of a job.

SEN. THOMAS thanked both speakers. There are others that may want to speak. This may cover the spectrum for the committee at this point. A couple of things to give them an update, he is going to walk through a couple of these real quick. The "look back" was a point of considerable discussion. At this point in time, the current Attorney General's ability to look back 3 years, remains intact. The bill had a 5 year look back, that has been taken out. The "material amount" definition on Page 1 at the bottom, on Line 28, the "material amount" is in there. It is at the percentage of 40%. Using the term substantial, has been qualified into a percentage for that purpose of having a measure they can say this is it. It is at a measure of the fair market value of the assets as well. That further delineates that right there. **Mr. Butler** mentioned one key clause which is critical to a review of this is on Page 7, as to whom pays for this. That would be the entity applying for the conversion. They are the entity that will pay for the attorneys, actuaries, and accountants and other experts necessary to assess everything.

They left common-law, as it is today, intact completely. He understood why they needed to do that. They did state that. They need to leave that intact. They did do that, so they are not messing with it. This is not the only way this could be reviewed. The Attorney General's common-law authority and powers remain intact, potentially the correct way of saying that. It goes along with what they have talked about in the Subcommittee meetings, and what he has thrown out repeatedly, that common sense as well prevails, maybe even more so.

{Tape : 1; Side : A; Approx. Time Counter : 1 - 29}

SEN. THOMAS said if somebody is out there doing something wrong, and its there, then the law is there to ferret it out and go after it. That is something they need to keep in the back of their mind. Even though they write this bill, it doesn't mean that somebody can be just outside and walk away with something of value. That's wrong and that will always be wrong. He can just walk them through the bill, if they don't mind, and he won't get too detailed.

On Page 1 is the start of some definitions of what is what in the new Section 2. It is important to look at Page 3, where you go into the new Section 4, there is approval and disapproval of written notice. There is the written notice. The notice being given, the formal application being given to the Attorney General Office, that they want to make this change. At that point in time, assuming that is the trigger on the 90 days, they have 90 days then to re-act to that. They can have a short extension of 15 days beyond that which is stipulated there.

The discussion here is first the 90 days, then you have 15 more days, and 105 days is not long enough. It's a short period of time to review this whole thing, and yet its not all of a sudden. Something of this nature may have been going on for the last 2 years or 2 1/2 years, or some good period of time, before this application was filed. This is not something new to the Attorney General's Office, and the Auditor's Office. It should be something they have been appraised of, and there has been some discussion on. Frankly if there weren't, it would probably fall into common-law. The Attorney General would have more authority than this bill gives them, to really get into that area. That is some of the background beyond before the 90 days would kick in, that they went through.

Then in Section 5, at the bottom of Page 3, Line 24, Public Hearings that the Attorney General may, or the Attorney General may have to conduct hearings, one or more or the applicant could demand a public hearing to be held, etc. That is retained in the bill and touched up there a bit.

On Page 4, Line 8, there is the Discretion of the Attorney General having to do with making the decision of whether to approve or disapprove the nonprofit healthcare conversion transaction. The Attorney General shall consider in essence the main question here is, is there a receiving a full and fair market value for the assets, or operations that are subject to these transactions. That is the main question at hand here. The language is saying that the Attorney General makes approvals or disapproves that.

Then drop down to Line 19 (B). They are talking about fiduciary duty of the entity applying, which can be looked upon, as to whether there is breach of fiduciary duty to be determined by the Attorney General in that clause (B).

Reviewing Line 26 (C). Whether the nonprofit healthcare conversion transaction will result in a private inurement to any person, meaning kind of a golden parachute to its president or directors, getting a bunch of stock given to them, then the stock shifts outside to them and the new entity.

Lastly in this section on the next page, Page 5, in (2) on Line 19, this is having to do with the Attorney General being bound to the findings that the Insurance Commissioner has found, or Department of Public Health and Human Services in Administrative proceedings in jurisdiction, that they have found, the Attorney General is bound by those findings.

Then going over to Page 7, there is a new Section at the top, which is not new to the bill, but new to law. This is having to do with the retention of the experts and the access to records. The data which is primarily on the bottom of Page 7, starting on Line 25. This is where the applicant will pay for the actuaries, accountants, attorneys, etc., experts, that the Attorney General deems necessary. They will have to provide all access to documents and records, etc. that are necessary to evaluate the application.

On Page 8, Section 8, public records document here that these records except proprietary or confidential information on Line 22 would not be public. Any of the other records that are submitted to the Attorney General in conjunction with the Attorney General's review, are public records. The documents having to do with the conversion, would be public records, unless they are proprietary or deemed confidential.

Following this, in the Remedies Section, on Line 9, in essence it says primarily, the Attorney General in Section 2, on Line 15, the Attorney General may initiate proceedings in District Court for the first in Helena, or in the County, that this is being

done to take this matter to Court. There is new language on Line 17, to secure a declaration that the transaction is void and to recover any assets transferred in violation of these sections of this legislation.

At the bottom of Page 8, Section 4, on Line 29 it states that, "this section may not be construed to limit the common-law authority of the Attorney General to protect the charitable trust and charitable assets of this state." That is where they retained that common-law application.

On Page 9, the bill left intact Section 10, for Judicial Review, and Section 12, that being left primarily intact completely without anything really interesting coming out.

Then the very back page, they made the effective date to be "July 1,1995." What is important here is that some wanted passage and approval, some wanted October 1, 1999, and some wanted today. They struck an agreement in the middle. What is of consideration here, and **Susan Fox** pointed this out to them in the Subcommittee, is if they are in the process right now, this act won't apply to anybody until they apply, after its in effect. This will not apply to anybody until its in effect, and they apply afterwards.

He thinks the bill is acceptable at this point in time. He guessed that **Sen. WATERMAN** is going to have amendments she is going to put on the bill which she will want them to consider on the Floor. He said beyond this legislation, they have to revert back to the law of common sense. More of this law depends on what is in here and what's in common sense, and who is in the Attorney General's Office. He thanked **Susan Fox** for her hard work on this. Particularly putting all of this together in front of them, so they could read this bill. This is their **report,** and they recommend that the committee adopts the bill as it is.

SEN. CHRISTIAENS said he thinks **SEN. THOMAS** did a good job in explaining the bill to the committee and was glad **SEN. THOMAS** went through it in detail. The bill they have in front of them now, was not the bill that they saw when it went to Subcommittee. He thought **SEN. THOMAS** was right. There are a number of things that **SEN. WATERMAN** will not be in agreement with. A couple of those included, the fact that the penalty section has been removed. The penalties no longer apply. Also the look back provision is gone and he really didn't know how strongly **SEN. WATERMAN** felt about that. He was sure they are going to hear. Also the effective date, as **SEN. THOMAS** said, that was a compromise. They had gone from October 1, 1999, effective on passage and approval, as was in the original bill. He felt that

since everyone says there is nothing in place right now that is going on, going 90 days, because they are almost at April 1st, they could probably live with that.

The one part that he has a problem with, and he has an amendment to offer, is in what the material amount is. The committee heard **Mr. Butler** talk about as well. He thinks they would like to see that higher than the 40%. The Subcommittee passed the 40%. He did not support that. He felt that the 20% was adequate because under the methods the way this bill looks now, the 20% is actually a higher than the 20% would have been as they originally saw the bill. Just with the definitions that are in this bill, and **Mr. Steve Browning** has a memo that he would pass out. He thinks 20% is a more appropriate material amount than is the 40%. When you look at what other states, who have this kind of legislation in place have done, like California.

EXHIBIT(phs62a04)

There is only one other state that is higher and that is South Dakota, at 30%. He believes the 20% material change is appropriate percentage trigger when you start looking at some thing like a conversion. For that reason, he is offering an amendment that is being passed around to the committee members.

Susan Fox said she wanted to make that the committee understood that the amendments had not been edited at that point in time, so there may be technical changes, not substantive, just changes that are in the traditional editorial fashion.

SEN. BARTLETT questioned **SEN. THOMAS** concerning the public records section. She asked when the **Subcommittee** recommended excluding confidential information, what would be considered confidential information in these kinds of transactions. Would those be patient records, and things like that which are commonly understood to be confidential because the individual right of privacy exceeds the public right to know.

SEN. THOMAS responded that certainly personnel records would be an example. Probably most of the data here is going to go to proprietary language there, which she didn't ask about, but he thought those are most of the records in his assessment that would be held out of public record. Most of the data at hand which is necessary to evaluate the questions is going to be public and would not be a matter of confidence. That is most of the data in his assessment. He has never been involved in such a process. However, since **Mr. Tweeten** has, he may be the one to give a broad overview of that confidential question.

Mr. Tweeten, Chief Counsel, Attorney General's Office said, the Montana Constitution protects the right of privacy with respect to documents. The Supreme Court has held that the Constitution protects the proprietary records of corporations as well as the individual rights of individual persons. That's the way it has generally been applied, and **Mr. Becker** may want to fill in some of that also. It's fair to say the way it's generally been applied, that a corporation has the right under the Constitution to maintain in confidence those documents, and the information it wants to keep confidential in order to avoid undue loss of business to competitors.

So there are certain things about the way businesses are structured and conduct their business that they consider confidential because if their competitors get a hold of it, they can use it to their competitive disadvantage. That is generally the kind of stuff that is protected under the term proprietary information in the YCHIP transaction, which they recently had the opportunity to review. There was a bulk of information that was provided to them by parties to that transaction. Some of it was public record, which remained public record after it was submitted to them.

Some of it constituted personnel information about the employees of entities that were converting, and they asked for that information specifically to look for evidence that those employees were improperly benefitting from the disposition of these private charitable trust assets. They didn't find in that information, but it was private because it was personnel records. Some of it was proprietary information dealing with certain transactions that the parties to the transaction had done in the past. They considered those to be confidential because they didn't necessarily want the other competing HMO's in the State of Montana to know those deals were structured, because it would give them a competitive advantage in the marketplace. Those are the general categories of things they consider to be considered confidential in that context.

Mike Becker, Assistant General Counsel, Blue Cross/Blue Shield said, the only thing he would add to **Mr. Tweeten's** comment is that Montana has a trade secrets statute on the books. It was pursuant to that trade secrets statute that they claimed confidentiality in trade secrets and those documents. They were as generally described by **Mr. Tweeten.** Another example that would come out in these transactions when you are dealing with insurance companies lists customers. Some of that would go into the evaluation process. That's something an insurance company would not give out on the street, so competitors could say,"oh this is who they do business with", or "here is how much they are

paying for your product." That sort of thing. Those are the types of examples he can give them.

SEN. THOMAS restated the motion they have before them is to adopt these major amendments to the bill that the **Subcommittee** is **reporting out** to the full Senate Public Health, Welfare and Safety Committee.

Vote: The motion carried unanimously -11-0.

CHAIRMAN BISHOP noted that **Susan Fox** will have the amendments edited.

SEN. CHRISTIAENS moved that **SB 322 BE AMENDED -AMENDMENT #SB032218.asf, BE ADOPTED.**
EXHIBIT(phs62a05)

SEN. CHRISTIAENS explained this changes the material amount from the 40% in the bill, and the amendments they just adopted, and changing that to 20%. He thought that explained the amendment.

Discussion:

SEN. BOHLINGER said he was asking the committee to resist this amendment. It seemed to him a great deal of work was entered into bringing this bill forward in the shape it presently is in. A lot of compromise was made on part of both parties. He is afraid that if the committee tinkers with the bill, and allows for a change in what they have accepted in this form as the "material interest," this whole thing could fall apart. This bill could fall apart. In the interest of bringing this bill forward, they have to keep it in the form it is presently in.

SEN. THOMAS said he certainly thinks that **Sen. Bohlinger** is right. He appreciates **Mr. Steve Browning** providing the data that shows what other states have done. It is just like the percentage, a percentage of what. They don't delineate out in any of these situations. In this bill they are delineating out as the statutes do in other states. What percentage of what - well here they have had fuzz. They don't in these other states. He concurs with **SEN. BOHLINGER**, and he thinks they can leave it as it is. They aren't putting anything in peril with this amount they have now.

SEN. GRIMES said he had two things on this. He understands the intention, and there are two reasons that moved him off of the 20% amount. One is the fact that they have a fairly in-depth public hearing especially in the cases of smaller towns. He doesn't know where they are going to have all these public

hearings it just didn't make sense that they would have that level of public scrutiny for substantially lower amount of review. Secondly, is the whole issue that they still have a look back essentially under common-law. There is some retrospection, they can go into it.

It seems to him that what the legislature ought to do because there isn't a current major problem out there with this. They can always come back and change this retrospectively to cover anything, and everybody knows that any way. What they need to do with this is proceed cautious in legislation and incrementally, and that 40% may be more incremental and reflect a little bit more of a cautiously approach than 20%. Especially given that they don't know quite how it will function in the small rural areas with a rural hospital with that level of public hearing involved and some of the acrimony that may occur in a small community. That is why he feels they aught to reject this amendment. Stick with what they have got for now, and change it in the next legislature if its not working out.

SEN. BARTLETT asked if she could ask **Mr. Butler**, or if he prefers **Mr. Becker**, a question about that.

SEN. BARTLETT said she was interested in why it seems appropriate from his perspective for the percentage in Montana to be higher than those other states.

Chuck Butler said he would also like **Mr. Becker** to address the question. As **SEN. GRIMES** has addressed, a small percentage of a small entity, is a lot of money. That's a major issue and then with regard the document presented by **Mr. Steve Browning**, he would like to point out that he is a native of Vermont, and they have just about socialized medicine in the State of Vermont. He knows that for a fact because he lived there, grew up there, and worked for the Blue Plan there. The Blue Plan there is nearly bankrupt. That's how they operate. The State runs the healthcare in the State of Vermont.

{Tape : 1; Side : B; Approx. Time Counter : 1 - 32}

Mike Becker, said you see how few states have passed this type of legislation. What that means is the majority of the states are still operating under the type of legislation that Montana has currently. The Attorney General looks at these transactions when they involve all or substantially all of the assets of a nonprofit corporation. That is the acceptable standard today. They are tightening up that standards substantially when they go to 40%. He believes North Carolina is a state that is not listed here. They have a 40% standard for this threshold. He said 40%

is appropriate based on the costs that are imposed on the nonprofit when they have to go through this review transaction and review process.

SEN. BARTLETT said if she is understanding correctly, you believe that the higher percentage in Montana is justified because we have smaller facilities and non-profits that might be going through this.

Mike Becker answered yes, that is an example of why this is appropriate, yes.

SEN. BARTLETT said she wanted to point out the hearings are permissive, they are not automatic.

SEN. CHRISTIAN said he doesn't know how many more questions there may be, he would like to close on his motion. It is important that they look at this and they look at it very carefully. If they will look at the amendment, it now says, go to Line 3, the value of the interest of a non-profit healthcare entity is calculated with reference to fair market value of assets at the time of disposition.

In some entities the threshold that you are going to start looking at a material change, is significant if you leave it at 40%. He really thinks that 20% is more appropriate.
The other thing that he needs to let the committee know, that they wouldn't have this 40% in the bill, because **Sen. Grimes** had to leave the meeting, and he reluctantly moved the amendment be adopted. It was with the proxy vote of **SEN. GRIMES** and with **SEN. THOMAS'S** vote, that the bill **passed** out of the **Subcommittee.**

Like he stated, he did it, and he prefaced it. It was a reluctant motion on his part. That is why they have the bill in front of the Committee. It wasn't his preference for it to be 40% up front, and it never has been. He closed.

SEN. ECK said that she has problems with this because she'd like to talk with people some more about the 20% and 40% and what they mean. She thinks they will have amendments on the Floor from **SEN. WATERMAN.** She would be willing to vote it out of committee at the 40% level, assuming on the Floor, she would probably want something else.

Vote: On Roll Call Vote, with Sen. Bartlett and Sen. Christian voting "yes," - that SB 322 be amended, the MOTION TO ADOPT Amendment #SB032218, FAILED ON ROLL CALL VOTE - 2-9.
EXHIBIT(phs62a06)

Motion: **SEN. THOMAS** moved that **SB 322 DO PASS AS AMENDED.**

Vote: **The motion carried unanimously -11-0.**

{Tape : 2; Side : A; Approx. Time Counter : 1 - 6}

ADJOURNMENT

Adjournment: 4:30 P.M.

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SEN. AL BISHOP, Chairman

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MARTHA MCGEE, Secretary

AB/MM

EXHIBIT(phs62aad)