

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN ARLENE BECKER**, on March 23, 2005 at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Arlene Becker, Chairman (D)
Rep. Tom Facey, Vice Chairman (D)
Rep. Don Roberts, Vice Chairman (R)
Rep. Mary Caferro (D)
Rep. Emelie Eaton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. William J. Jones (R)
Rep. Dave McAlpin (D)
Rep. Tom McGillvray (R)
Rep. Mike Milburn (R)
Rep. Art Noonan (D)
Rep. Ron Stoker (R)
Rep. Pat Wagman (R)
Rep. Bill Warden (R)
Rep. Jonathan Windy Boy (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Mary Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: SJR 15, 3/18/2005
HJR 32, 3/18/2005
SB 324, 3/18/2005
SB 481, 3/18/2005

Executive Action:

HEARING ON SB 481**Sponsor:** SEN. VICKI COCCHIARELLA, SD 47, MISSOULA**Opening Statement by Sponsor:**

SEN. VICKI COCCHIARELLA opened the hearing on **SB 481**. She handed two exhibits to the Committee. One is acronyms and definitions of Workers' Compensation terms. The second exhibit is the beginning of the law regarding Workers' Compensation which is included in Title 39 under Labor. The declaration of policy is pertinent to the topic which is being presented today. She highlighted "(3) Montana's workers' compensation...are intended to be primarily self-administering." Workers, employers and anyone in Montana should be able to pick up this section of law and know what their benefits are and why and what they pay for. This bill merges 39-71, the Occupational Disease Act into 39-72, the Workers' Compensation Act. This will simplify the law and make the law comply to be self-administering. This should have been done long before the Supreme Court decisions forced the Legislature to address this issue.

[**EXHIBIT \(huh64a01\)**](#)[**EXHIBIT \(huh64a02\)**](#)

The Interim Committee on Economic Affairs worked on this issue and included every interested entity involved. **SEN. COCCHIARELLA** believes that this bill will solve a problem in the world of Workers' Compensation and will comply with decisions of the Supreme Court: if a person has an occupational disease which has happened over more than one shift, that person needs to be treated the same as if they had an injury that occurred in one shift. That is the basic essence of the Court's decisions. Almost all of the Occupational Disease Act is being stricken because now all the benefits would be the same. The definitions of occupational disease are being preserved for reporting requirements.

She asked the Committee to consider an amendment. She explained the amendments.

[**EXHIBIT \(huh64a03\)**](#)***{Tape: 1; Side: A; Approx. Time Counter: 0 - 12.5}*****Proponents' Testimony:**

George Wood, Executive Secretary, Montana Self-Insurers Association, explained that he represented employers not employees who self-insure under Plan 1 of the Act. He strongly supports SB 481.

Jacqueline Lenmark, American Insurance Association, represents 450 insurance companies many of whom write Workers' Compensation in Montana under Plan 2. It is the national trend to take occupational disease acts, repeal them, and include those provisions within the Workers' Compensation Act. It makes good sense and is a more appropriate way to treat this type of disease that results from employment. They support the bill and the amendment.

Nancy Butler, Montana State Fund, said they insure 26,000 employers in Montana. They are in full support of the bill and the amendment.

Bob Worthington, Montana Municipal Insurance Authority (MMIA), explained that MMIA is a self-insurance organization of cities and towns. This is a very good bill and urged the Committee to concur in the bill.

Jason Todhunter, Montana Logging Association, stated they have 600 members that employ five to seven people. This bill will simplify the Workers' Comp and make it easier for the workers and the adjusters to understand.

Jed Fitch, Montana Trial Lawyers Association, supported the amendment and submitted a handout that explained their support.

EXHIBIT(huh64a04)

{Tape: 1; Side: A; Approx. Time Counter: 12.5 - 18.3}

Shawn Bubb, Director of Insurance Services, Montana School Boards Association, explained they administer the self-insured program for the majority of the public schools. This is a good bill and they support the amendment as well.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MILBURN asked about the Interim Committee's reasoning for or against this particular issue. **SEN. COCCHIARELLA** responded that this bill was a subject of the Interim Committee. They did not, at the end, adopt any approach. They did recommend a bill that at least combined or put into law the Supreme Court's decisions that had been made. The consensus fell apart, but she felt this bill brought it back together.

{Tape: 1; Side: A; Approx. Time Counter: 18.3 - 20.7}

REP. STOKER wondered if the bill addressed any asbestos related disease. **SEN. COCCHIARELLA** explained that the bill does not change any policy in the State of Montana regarding any disease.

REP. STOKER asked how, in the past, an occupational disease was handled as a claim. **SEN. COCCHIARELLA** said that the Occupational Disease Act had been in effect since about 1959. Diseases rather than injuries, or in addition to injuries, became Workers' Comp claims. This bill changes nothing. It takes the two statutes and puts them together. It makes benefits the same which is what the Court ruled.

Closing by Sponsor:

The Sponsor closed.

REP. MCNUTT will carry the bill.

{Tape: 1; Side: A; Approx. Time Counter: 20.7 - 26.3}

HEARING ON HJ 32

Sponsor: **REP. JON SESSO, HD 76, BUTTE**

Opening Statement by Sponsor:

REP. JON SESSO opened the hearing on **HJ 32**. It would urge the Department of Health and Human Services to review their rules on provider payments and overpayments. These providers of wheel chairs and durable goods to patients who are on Medicaid, provide the services and submit their invoices for those services to DPHHS. Those invoices are paid in a timely manner by the Department and the providers continue on in their services. But because of the stringent rules of Medicaid and the Federal requirements therein, DPHHS is compelled to audit the providers sometimes as long as six years after the provision of the service. The Department is allowed by law to recover what are considered to be overpayments. These payments for services rendered, for some reason, do not fulfill all of the technical requirements of the Federal law. The problem is the service is a product that has been given to the patient, used by the patient and consequently there is no opportunity for that provider to get the equipment back.

REP. SESSO looked at the law concerning overpayment and thought to have that changed. That did not pass because of a large fiscal note. This Resolution seeks to remedy the situation not

by law but by a Resolution that would ask the Department to review its rules governing the submission of these invoices, overpayments and audits and try to provide a shorter period of finality to these providers and give some relief from this onerous process of being audited so far out after service.

{Tape: 1; Side: A; Approx. Time Counter: 26.3 - 32}

Proponents' Testimony:

Mike Calcaterra, Branch Manager, Norco Medical, Missoula, and President, Big Sky Association of Medical Equipment Suppliers, said that with the current rules of the Department, there is a very broad definition of overpayment. Anything that is in error is deemed to be an overpayment whether that error changes the necessity or not, and they recoup that money. There may be a service ordered by a physician, provided to a recipient, billed at the appropriate amount, supplied in the appropriate amount, but because there is a missing item, DPHHS considers that an overpayment. This could be years worth of services. They would like the Department to work with the suppliers. If a legitimate product was provided to an eligible recipient and paid in an appropriate manner, and a technical error or omission of a minor piece that wouldn't change the medical necessity and was not a fraudulent situation, the State could not recoup that money.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 2.6}

Dan Harrington, Harrington's Surgical Supply, Butte, said that he had gone through an audit process and spent approximately three years in court trying to prove that he was right. He finally ended up in District Court and that Court ruled in his favor on every issue. It was a waste of time and money on his part and he thought if the Resolution could be passed, that hopefully would be a beginning. Something needs to be done.

Tom Mitchell, Harrington's Surgical Supply, Butte, has worked at Harrington's for twenty years. He explained the difficulties that faced medical supply companies. It is a service that people need and there are fewer and fewer Durable Medical Equipment (DME) providers in the state. He urged passage of HJ 32.

Robert Gervich, Billings stated that he is associated with a medical supply company in Billings. He was in support of HJ 32.

Maureen O'Reilly, Spectrum Medical, Great Falls, explained that they serve areas from Great Falls, to Browning, Harlem, White Sulphur, Helena and back to Great Falls. This is a very rural area but there are people who need this service. They have experienced the same type of situations as Mr. Calcaterra and

urged this Resolution be passed in order to have more direction in these cases and a better manual to follow.

{Tape: 1; Side: B; Approx. Time Counter: 2.6 - 6.8}

Opponents' Testimony: None

Informational Testimony:

Anna Whiting-Sorrel, Family Policy Advisor, Governor's Office, spoke that she had met with DPHHS and providers concerning this issue. Steps have already been taken to address the problem.

Mary Dalton, Administrator, Quality Assurance Division, DPHHS, explained that one of her duties in the Division is to do recoveries through the Surveillance Utilization Review system. This issue should have been solved before having to come to the Legislature. She pledged that it will be solved before the next session.

Questions from Committee Members and Responses:

REP. ROBERTS asked if an honest attempt can be construed as a dishonest attempt to be reimbursed because of the obliqueness of the rules. **Mr. Harrington** agreed totally. He believed that when they were audited there would be no problem. Because there were prescriptions that did not have a length of need or diagnosis on them that was not required by the Medicaid manual or by Medicare, they were taken to court.

REP. ROBERTS discussed ways that could alleviate some of the problems. He asked Mr. Harrington if these problems made him reluctant to participate in working with Medicaid. **Mr. Harrington** said that was very much in his mind and hoped that things could get back on track and they could work with Medicaid. He was in full support of prosecuting those who are truly trying to commit fraud.

{Tape: 1; Side: B; Approx. Time Counter: 6.8 - 12.7}

REP. MILBURN asked if the Department overpays someone unintentionally, does this Resolution say the State cannot come back and recoup that money. **Ms. Dalton** said that is not what the Resolution would do.

REP. MILBURN questioned the Whereas clause that spoke about the provider being responsible for the error even if the error was on the part of the Department. **Ms. Dalton** said the "Whereas" clauses were laying out the case for DME providers. The resolution calls for the Department to look at their rules and

procedures and make possible revisions to those rules and procedures.

{Tape: 1; Side: B; Approx. Time Counter: 12.7 - 14.4}

REP. STOKER said a six-year look back was quite long. He asked how many suppliers are in Montana. **Ms. Dalton** responded that there are 571 DME providers and 12,000 Medicaid providers.

REP. STOKER asked how often does the Department audit 571 DME providers. **Ms. Dalton** spoke again about the Surveillance Utilization Review. They run statistical samplings to see if one physician is different from another. They look at referrals from anyone. Since 2002, the Department's policy has been to go back only three years.

REP. STOKER asked about the practice of mark-up. **Ms. Dalton** explained that providers are in business and they set their prices based on their many expenses.

REP. STOKER asked Mr. Mitchell the same question. **Mr. Mitchell** said that in looking at a mark-up on gloves, there is an allowable set by Medicare and followed by Medicaid on most of the items they carry. Otherwise, it is a 25 percent discount off the usual and normal charge to Medicaid recipients.

REP. STOKER wondered how many of the 571 DME providers have reported an audit. **Mr. Mitchell** explained that those 571 providers include everyone such as a pharmacy in Two Dot. There are fewer than 50 full-line DMEs. Seventy-five percent of their members have gone through one of these audits and have complained to the Association.

{Tape: 1; Side: B; Approx. Time Counter: 14.4 - 21.1}

REP. NOONAN inquired if a report was being required of DPHHS after they had reviewed their rules and procedures. **REP. SESSO** said they did expect DPHHS to meet with the providers and to report their changes in the rules and procedures.

CHAIRMAN BECKER asked what a "clean claim" was. **REP. SESSO** explained that it has everything on the claim that is required. That is the conundrum here. The provider provides the service, the wheelchair is on the street, the claim is submitted and payment is made fairly quickly. The problem is by having to get the payment done quickly, they don't do the checking of the claim first. Most of the claims are fine, but when guidance is changed between the providing of the service and the audit, what may have been legitimate at the time of payment now becomes an error.

Closing by Sponsor:

REP. SESSO reiterated that this Resolution does not change the rules concerning true fraud and abuse. The intent is to give clear guidance to providers as they submit their claims.

{Tape: 1; Side: B; Approx. Time Counter: 21.1 - 29.3}

HEARING ON SB 324

Sponsor: SEN. JON TESTER, SD 15, BIG SANDY

Opening Statement by Sponsor:

SEN. JON TESTER opened the hearing on **SB 324**. The bill will provide meaningful drug benefits to the elderly, the disabled and the uninsured. Prescription drugs take a lot of dollars and healthcare is a major concern for Montanans.

{Tape: 1; Side: B; Approx. Time Counter: 29.3 - 32; Comments: SEN TESTER's opening continued onto Tape 2, Side A.}

The bill creates a prescription drug program that accesses Medicare, Part D that the Federal Government is introducing on January 1, 2006. It creates a pharmacy discount program for uninsured Montanans who make less than 250% of Federal Poverty Level (FPL). It creates educational materials for physicians and patients informing them of the costs and benefits of various drugs and provides for access to evidence-based research on the comparative effectiveness of prescription drugs. This bill will be funded through I-149 revenues.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 2.2}

Proponents' Testimony:

REP. DON ROBERTS, HD 56, spoke that as an oral surgeon, he sees patients all the time who have to make a choice between shelter, food or other necessities. This bill will help them survive in a better way. Prescription drugs can be very expensive. Congress is helping and Montana needs to do all that they can to help the elderly, the disabled and the uninsured.

{Tape: 2; Side: A; Approx. Time Counter: 2.2 - 5.6}

John Morrison, State Auditor, explained that SB 324 is part of a larger picture of healthcare legislation that has come from I-149. He gave some background history on I-149. He urged the Committee to support the bill.

{Tape: 2; Side: A; Approx. Time Counter: 5.6 - 9.5}

Anna Whiting-Sorrel, Family Policy Advisor, Governor's Office, explained that she had some oversight and responsibility for DPHHS, Corrections and Industry and Labor. She stood in support of SB 324 and thanked the sponsors for bringing this bill forward at the Governor's request. The Governor directed her office to ensure that I-149 programs have sustainability on two levels: 1) the first was fiscal sustainability, and that is happening, 2) SB 324 would provide constraints within its program implementation. This program will be made available only to certain levels of poverty. In one program it will be 200% and in another it is 250%. DPHHS will only increase participation when they are confident that the necessary funds will be available in order to sustain the program.

{Tape: 2; Side: A; Approx. Time Counter: 9.5 - 13.2}

Claudia Clifford, Montana AARP, explained the bill completely and submitted her written copy. She also handed out a packet of information from AARP.

[EXHIBIT\(huh64a05\)](#)

[EXHIBIT\(huh64a06\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 13.2 - 27}

Verner Bertolsen, Representing Himself, concurred with Ms. Clifford and urged a do concur.

Bill Kennedy, Commissioner, Yellowstone County, stood in support of SB 324. Yellowstone County had offered a general assistance program with pharmaceuticals and within six months the Deering Clinic came and asked for more money. There is a major need for help with prescription drugs.

{Tape: 2; Side: A; Approx. Time Counter: 27 - 28.4}

Mary Williams, Volunteer Advocate, AARP, spoke on behalf of Beverly Robinson of Helena. She submitted Ms. Robinson's testimony.

[EXHIBIT\(huh64a07\)](#)

Betty Beverly, Executive Director, Montana Senior Citizens Association, spoke in favor of the bill. Prescription drugs have been a big issue for them since 1993. Montana's senior citizens supported I-149 heavily. She urged a do concur.

Peter Wolfgram, Montana Pharmacists Association, gave his testimony and submitted a written copy.

[EXHIBIT\(huh64a08\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 28.4 - 32}

Beda Lovitt, Montana Medical Association and Montana Psychiatric Association, spoke for these two groups and said they stand strongly behind the legislation. The doctors face daily the problems with the cost of prescriptions as they do their best in treating their patients.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 0.6}

Jani McCall, Deaconess Billings Clinic, stood in strong support of the bill.

Chuck Hunter, DPHHS, spoke about the amendments that had been prepared for the sponsor. He encouraged the adoption of the amendments.

[EXHIBIT](#)(huh64a09)

Jim Aherns, Chairman, Alliance for a Healthy Montana, urged the Committee to support the bill.

Bonnie Adee, Mental Health Ombudsman, urged the Committee to support the bill.

Jim Smith, American Cancer Society, submitted a letter.

[EXHIBIT](#)(huh64a10)

{Tape: 2; Side: B; Approx. Time Counter: 0.6 - 2.2}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. CAFERRO asked for an explanation of the potential cost savings with the consulting portion of the bill. **Ms. Clifford** replied that program is set up so that the State will pay a small consulting fee to the pharmacist and the consumer will pay a small fee as well. The pharmacists will give advise. In Wyoming, it was saving consumers between \$350 and \$420 a year.

REP. CAFERRO wondered if there are savings to the consumer, would there be savings to the whole system. **Ms. Clifford** said, "Yes."

REP. WINDY BOY inquired about the projected revenues that had been mentioned and asked if a smoking ban would have an effect on revenues. **Ms. Whiting-Sorrel** was not positive but responded that they had used the best figures possible and did not think it would have an adverse effect.

REP. WINDY BOY asked about the fiscal note and the reasons for two different levels of poverty being used. **Mr. Hunter** replied that there are two different parts of the program. For the Medicare Part D, that benefit would be available up to 200% FPL. For the new discount drug card program, that benefit would be available up to 250% FPL.

{Tape: 2; Side: B; Approx. Time Counter: 2.2 - 6.3}

REP. EATON inquired about the four areas that were to benefit from I-149. **SEN. TESTER** replied they were: 1) CHIP, 2) Medicaid provider rates, 3) prescription drug program, and 4) pooling and tax credits for employers who provide healthcare benefits.

REP. EATON asked if this bill takes all of the money that is raised. **SEN. TESTER** answered that this bill will take about \$8.75 million. The projection for I-149 revenues is about \$35 to \$36 million.

REP. EATON asked about an effective date. **SEN. TESTER** said that the effective date is July 1, 2005. It accesses the Medicare Part D program on January 1, 2006.

REP. MCGILLVRAY asked Ms. Clifford why she thought a family of five could not afford their prescription drugs when their income is \$57,000 a year. **Ms. Clifford** replied that the wrap-around program will only be available to people who currently qualify for Medicare. That program is for people over 65 and for those who are very disabled. There is a discount card that people can use to buy their drugs and this is for anyone who doesn't have a pharmacy benefit whether they are completely uninsured or if they have a little bit of insurance. That could help a family with that kind of income. When the uninsured pay for a prescription, they have to pay full retail price. Those who have insurance benefits don't pay full retail price.

REP. MCGILLVRAY could not believe that a family making \$57,000 a year would not have insurance. **Ms. Clifford** replied that they might and then they would not qualify for a discount card.

REP. MCGILLVRAY felt that 250% FPL was too high. **Ms. Clifford** responded that 250% might be too high but they are trying to help the uninsured to the greatest extent possible. It doesn't cost the State anything once the program is started. It is self funding by the pharmaceutical company rebates.

REP. MCGILLVRAY asked if Ms. Clifford thought these programs would enable people who could otherwise afford insurance. **Ms. Clifford** again thought he had a good question. The discount

cards are not going to make prescriptions cheap. It would discount between 15% and 45% off the retail price.

{Tape: 2; Side: B; Approx. Time Counter: 6.3 - 11.7}

REP. MCGILLVRAY referred to the letter from Ms. Robinson (Exhibit 7). He asked **REP. ROBERTS** if he had an answer as to why prescription drugs have become so expensive. **REP. ROBERTS** replied that medicines now require about \$800 million worth of trials and review before they become available to the public. There is a certain amount of time for patents to clear. People are living longer and there is a greater need for medications. There are orphan drugs which are drugs that take care of less than 5,000 people. Those drugs are very expensive and return a lower profit. Litigation has also become a factor in the problem.

REP. MCGILLVRAY asked if Montana and the country are moving toward socialized medicine. **REP. ROBERTS** replied that people are living so much longer and he felt that had come about because of new public health procedures.

{Tape: 2; Side: B; Approx. Time Counter: 11.7 - 14.8}

REP. STOKER wondered if pharmacies would handle Lipitor under the card program where the patient would pay \$4.70 and the State would get a four percent rebate. **Mr. Wolfgram** explained how the program worked. The dispensing fee is \$4.70 which is over what he would have to pay for the drug. It is a negotiated selling price to the patient. It would not be just \$4.70 paid to the pharmacy.

REP. STOKER again asked **Mr. Wolfgram** if he would be willing to handle a \$100 inventory of Lipitor on the shelf for \$4.70. **Mr. Wolfgram** said he has four pharmacies and they do a significant amount of Medicaid business. This would be a plan similar to that and he would do that.

REP. WAGMAN asked if the sponsor would be willing to accept an amendment to amend the bill to say that if the revenue source dries up in the future, money would not come out of the General Fund. **SEN. TESTER** felt that would be fine; but this program, as it evolves, should be a good enough program so that the Legislature would be willing to fund it.

Closing by Sponsor:

The Sponsor closed.

HEARING ON SJ 15

Sponsor: SEN. CAROL WILLIAMS, SD 46, MISSOULA

Opening Statement by Sponsor:

SEN. CAROL WILLIAMS opened the hearing on **SJ 15**. Polybrominated diphenyl ethers (PBDEs) are man-made chemicals commonly added to plastics, foam, appliances, computers, and furniture. They are toxic, bio-accumulative and can be replaced with safer alternatives. Making household products fire-resistant is a good thing, but flame retardants are causing new problems as they work to solve an old one. PBDEs are stored in a mother's body and are released during pregnancy. They are also known to accumulate in breast milk and can enter the bodies of babies while breast feeding. This Resolution supports both safe and non-toxic solutions. Americans have been shown to have a remarkably high exposure; more than most other people around the world. The Resolution doesn't act to ban PBDEs but does support a phase-out.
{Tape: 2; Side: B; Approx. Time Counter: 14.8 - 24}

Proponents' Testimony:

Alexandra Gorman, Director, Science and Research for Women's Voice for the Earth, gave her testimony and handed out fact sheets on PBDEs.

EXHIBIT(huh64a11)

EXHIBIT(huh64a12)

EXHIBIT(huh64a13)

{Tape: 2; Side: B; Approx. Time Counter: 24 - 29.2}

Laurie Yung, Mother, Missoula, gave her testimony and submitted her written testimony.

EXHIBIT(huh64a14)

{Tape: 2; Side: B; Approx. Time Counter: 29.2 - 32; Comments: Ms. Yung's testimony continued on Tape 3, Side A; Approx. Time Counter: 00 - 0.5}

Anna Whiting-Sorrel, Family Policy Advisor, Governor's Office, stood in support of the Resolution. This will strengthen Montana families. She urged the Committee's support.

{Tape: 3; Side: A; Approx. Time Counter: 0.5 - 2.2}

Dori Gilels, Northern Rockies Program Director of Women's Voices for the Earth, Missoula, gave her testimony and submitted her written testimony. She also submitted a letter from Rebekah Griffin and a joint letter by Women's Voices of the Earth and Dr.

Dana Headapohl, Director of Occupational & Environmental Health Services at St. Patrick Hospital in Missoula.

[EXHIBIT\(huh64a15\)](#)

[EXHIBIT\(huh64a16\)](#)

[EXHIBIT\(huh64a17\)](#)

Florence Williams, Mother, Helena, said that she had written an article two months ago on breast milk and flame retardants. She submitted that article.

[EXHIBIT\(huh64a18\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 2.2 - 9}

Mark Augenas, Montana Trout Unlimited, said that PBDEs accumulate in fish and people eat the fish. That is one way people get elevated amounts of PBDEs in their body. This bill will help not only mothers but fish.

Leslie McClean, Montana Environmental Information Center, stood in strong support for the Resolution. She concurred with the previous testimony.

{Tape: 3; Side: A; Approx. Time Counter: 9 - 10.1}

REP. GAIL GUTSCHE, HD 99, Missoula, urged the Committee to consider the policy question. SJ 15 would make a policy statement for Montana.

Opponents' Testimony:

Glade Squires, Vice President of Government Affairs, Ameribrom, Inc. and Bromine Science and Environmental Forum (BSEF), stood as an opponent of SJ 15. He gave his testimony and submitted a written copy. As a chemist, he introduced his testimony as fact.

[EXHIBIT\(huh64a19\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 10.1 - 20.8}

Haley Beaudry, BSEF, said that he had spoken with Montana State Fire Marshals. The National Association of State Fire Marshals had issued a document. He read a small portion. "They asked state legislators to postpone any further action on bills banning PBDEs to avoid unnecessarily exposing their constituents to the increased risk of fire. The debate creates an unnecessary and unconstructive conflict between fire safety and environmental officials. It has resulted in the dissemination of much inaccurate information and is a serious distraction for those who are seeking fair and honest solutions." He felt that if PBDEs are as bad as has been presented, a bill to ban them should be in order, not just a resolution. A ban would be a great detriment to Montana. There are too many things that have PBDEs in them and it would be impossible to ban everything. He also spoke for

Pat Klinch who is the Legislative Chairman of the Montana Professional Firefighters. He signed in as an opponent but could not stay to testify because he had to go to work.

{Tape: 3; Side: A; Approx. Time Counter: 20.8 - 24.4}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MCALPIN asked if it would be less expensive to produce fire retardants with bromines in them than the alternative. **Mr. Beaudry** answered, "Yes, they are." He believed that it was a factor of four times. By taking the bromine solutions out and replacing them with one of the expensive fire retardants, a lot of the materials that have been made fire retardant won't be around any more or the price will go up.

REP. MCALPIN asked if he would be in opposition to the bill if it cost the same to produce fire retardants without bromine solutions. **Mr. Beaudry** thought he would still be in opposition because decisions should be made on a scientific basis.

REP. MCALPIN asked if the studies that Mr. Beaudry referred to had been peer reviewed. **Mr. Beaudry** replied that they had been peer reviewed and the European study that had been referred to earlier was not only peer reviewed but also reviewed by scientists from each country of the European Union.

REP. MCALPIN redirected his question to Ms. Gorman. **Ms. Gorman** replied that she did not know if the studies had been peer reviewed. As for the European Union study, she had other opinions that declared there were serious problems with the conclusions of that report.

{Tape: 3; Side: A; Approx. Time Counter: 24.4 - 27.9}

REP. STOKER asked if this problem is across Montana or concentrated in certain areas. **Ms. Gorman** said that they were not aware of any one area in particular. The studies of breast milk were conducted in Missoula and Helena. The levels ranged but there were little differences. They had not found one part of the country to have considerably higher levels.

REP. STOKER wondered if there could be an individual sensitivity that would make one mother more susceptible. **Ms. Gorman** replied that would be good information to have but that kind of research has not been done as of yet.

REP. STOKER inquired if there were any chemicals or foods that should be avoided that would cleanse the body. **Ms. Gorman** did

not have research on that either. One of the best ways to rid the body is to breast feed but then the mother is passing it onto her child.

{Tape: 3; Side: A; Approx. Time Counter: 27.9 - 30.9}

REP. NOONAN commented that both sides have referenced that science should bear out. With the three bromides of penta, octa and deca, it seems to imply they were discovered over time. For penta and octa, there is general agreement they are toxic and should be taken from the environment. **Mr. Squires** said that was correct and that is where the manufacturer of penta and octa stepped up, ceased production and consulted with the U.S. EPA to prevent any future production. The terms penta, octa and deca refer to the number of bromine atoms in a molecule: five, eight and ten. Penta is a liquid material mainly used in polyurethane foam. It would have a propensity to find its way out of the foam and into the environment quite easily. The octa was a fairly low use material. The deca is ten bromines in the molecule, is solid and has no vapor pressure. It is used mainly in plastic materials.

{Tape: 3; Side: A; Approx. Time Counter: 30.9 - 32}

REP. NOONAN understood that these bromines are still out there in products. He asked if Mr. Squires' organization was the one who declared that the first two were toxic. **Mr. Squires** replied that it was not their findings. The findings of penta in breast milk in Sweden was done by an independent researcher. Sweden identified that. There was only one manufacturer of penta from his group. They had come forward and discussed with the European Union that penta was not used solely as a flame retardant. It had been used as a high density fluid in the drilling of oil wells in the North Sea.

REP. NOONAN wondered about the research and where it had come from. **Mr. Squires** responded that the testing of their products and the chemicals they produce are in compliance and tested to EPA standards as well as to European standards. They have also funded studies of bromine solutions.

CHAIRMAN BECKER said that questions would be more than welcomed and asked the Representatives to give their questions to proponents and opponents. Their responses would be read to the Committee at Executive Action.

Closing by Sponsor:

The Sponsor closed.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 4.8}

ADJOURNMENT

Adjournment: 6:00 P.M.

REP. ARLENE BECKER, Chairman

MARY GAY WELLS, Secretary

AB/mw

Additional Exhibits:

EXHIBIT ([huh64aad0.PDF](#))