

HOUSE BILL 305

Introduced by J. Rice, et al.

1/21	Introduced
1/21	Referred to Labor & Employment Relations
1/22	First Reading
1/22	Fiscal Note Requested
1/28	Fiscal Note Received
1/29	Fiscal Note Printed
2/05	Hearing
2/13	Committee Report--Bill Passed as Amended
2/15	2nd Reading Passed
2/18	3rd Reading Passed
	Transmitted to Senate
2/19	First Reading
2/19	Referred to Labor & Employment Relations
3/05	Hearing
3/05	Tabled in Committee

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INTRODUCED BY House BILL NO. 305
Glenn Drumell
BY REQUEST OF THE DEPARTMENT
OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO CONDUCT HEARINGS BY TELEPHONE IN CERTAIN CASES; AUTHORIZING THE DEPARTMENT TO INCLUDE A TAPE RECORDING OF A CONTESTED CASE AS PART OF THE RECORD ON APPEAL; AUTHORIZING THE DEPARTMENT TO RECOVER FEES AND COSTS FOR PROVIDING COPIES OF DOCUMENTS; AMENDING SECTIONS 39-1-103, 39-3-216, 39-51-1109, 39-51-2403, 39-71-204, AND 39-72-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-1-103, MCA, is amended to read:

"39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

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(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

(3) In a proceeding under this title, the commissioner may include a tape recording of a contested case hearing in a record certified to a district court, the workers' compensation court, or the Montana supreme court. If a transcript is requested or required, the cost of transcription by the commissioner and any copying and postage must be paid by the appealing or requesting party, prior to delivery of the transcript.

(4) The commissioner may charge a fee for copies of papers and records, including certified copies of documents and orders filed in his office, sufficient to recover the copying costs and may charge for postage. The fee must be paid prior to delivery of the copy.

(5) Fees and costs collected under this section may be retained by the department to cover the cost of providing material under this section.

~~(3)~~(5) Nothing in this chapter applies to labor violations preempted by federal law or regulation."

Section 2. Section 39-3-216, MCA, is amended to read:

"39-3-216. Hearing. (1) When the department determines that a wage claim exists and if it fails to settle the claim



1 with the parties, it shall cause the matter to be brought to
 2 a hearing before a department hearings officer. The hearing
 3 must be conducted according to contested case procedures
 4 under Title 2, chapter 4, part 6, except that the hearings
 5 officer is not bound by statutory or common-law rules of
 6 evidence. The hearing may be conducted by telephone.

7 (2) The decision of the hearings officer is final
 8 unless further review is initiated pursuant to 39-3-217
 9 within 15 days after the decision is mailed to each party's
 10 last-known address. The period may be extended by the board
 11 for good cause."

12 **Section 3.** Section 39-51-1109, MCA, is amended to read:

13 **"39-51-1109. Tax appeals.** A decision, determination, or
 14 redetermination of the department involving contribution
 15 liability, contribution rate, application for refund,
 16 employment status, or the charging of benefit payments to
 17 employers making payment in lieu of contributions is final
 18 unless an interested party entitled to notice thereof
 19 applies for an appeal to an appeals referee. The appeal must
 20 be made in the same manner as provided in 39-51-2402 for the
 21 appeal of a decision relating to a claim for unemployment
 22 insurance benefits. The appeal may be heard by telephone.
 23 Statutory rules of evidence and civil procedure do not apply
 24 to hearings in the appeal. The decision of the appeals
 25 referee and any appeal therefrom must be made in the same

1 manner as prescribed in 39-51-2403 through 39-51-2410."

2 **Section 4.** Section 39-51-2403, MCA, is amended to read:

3 **"39-51-2403. Decision of appeals referee.** After a
 4 hearing, which may be conducted by telephone, an appeals
 5 referee shall make findings and conclusions promptly and on
 6 the basis thereof affirm, modify, or reverse the deputy's
 7 determination or redetermination. Each interested party
 8 shall be furnished promptly a copy of the decision and the
 9 supporting findings and conclusions. This decision shall be
 10 final unless further review is initiated pursuant to
 11 39-51-2404 within 10 days after such notification was mailed
 12 to the interested party's last-known address, provided that
 13 such period may be extended for good cause."

14 **Section 5.** Section 39-71-204, MCA, is amended to read:

15 **"39-71-204. Rescission, alteration, or amendment by**
 16 **department of its orders, decisions, or awards -- effect --**
 17 **appeal.** (1) The department has continuing jurisdiction over
 18 all its orders, decisions, and awards and may, at any time,
 19 upon notice, and after opportunity to be heard is given to
 20 the parties in interest, rescind, alter, or amend any such
 21 order, decision, or award made by it upon good cause
 22 appearing therefor. The hearing may be conducted by
 23 telephone.

24 (2) Any order, decision, or award rescinding, altering,
 25 or amending a prior order, decision, or award has the same

1 effect as original orders or awards.

2 (3) If a party is aggrieved by a department order, the
3 party may appeal the dispute to the workers' compensation
4 judge."

5 **Section 6.** Section 39-72-612, MCA, is amended to read:

6 "39-72-612. Hearing and appeal to workers' compensation
7 judge. (1) Within 20 days after the department has issued
8 its order of determination as to whether the claimant is
9 entitled to benefits under this chapter, a party may request
10 a hearing. In order to perfect an appeal to the workers'
11 compensation judge, the appealing party shall request a
12 hearing before the department. The department shall grant a
13 hearing, and the department's final determination may not be
14 issued until after the hearing. The hearing may be conducted
15 by telephone.

16 (2) Appeals from a final determination of the
17 department must be made to the workers' compensation judge
18 within 30 days after the department has issued its final
19 determination. The judge, after a hearing held pursuant to
20 39-71-2903 and 39-71-2904, shall make a final determination
21 concerning the claimant's claim. The judge may overrule the
22 department only on the basis that the department's
23 determination is:

24 (a) in violation of constitutional or statutory
25 provisions;

1 (b) in excess of the statutory authority of the agency;

2 (c) made upon unlawful procedure;

3 (d) affected by other error of law;

4 (e) clearly erroneous in view of the reliable,
5 probative, and substantial evidence on the whole record; or

6 (f) arbitrary or capricious or characterized by abuse
7 of discretion or clearly unwarranted exercise of
8 discretion."

9 NEW SECTION. **Section 7. Severability.** If a part of
10 [this act] is invalid, all valid parts that are severable
11 from the invalid part remain in effect. If a part of [this
12 act] is invalid in one or more of its applications, the part
13 remains in effect in all valid applications that are
14 severable from the invalid applications.

15 NEW SECTION. **Section 8. Effective date.** [This act] is
16 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0305, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill to: authorize the Department of Labor to conduct hearings by telephone in certain cases; authorizing the department to include a tape recording of a contested case as part of the record on appeal; and authorizing the department to charge fees for costs of providing copies of documents.

ASSUMPTIONS:

1. Under HB0305, the department could not be compelled by the courts to provide written transcripts.
2. The number of transcripts provided by the department would remain unchanged (52 @ \$196). The department currently charges for 19 of these transcript requests. Under HB0305, the department could charge for the remaining 33 requests.
3. The department would not require \$8,000 per year for court recorders as requested in the executive budget.
4. Current law expenditures in the Legal Services Division assumes the abatement of expenditures for the 19 transcripts for which the department currently charges. Under the charge system authorized by HB0305, the department would budget for the costs of providing transcripts.
5. The Workers' Compensation Judge would require the purchase of listening equipment.

FISCAL IMPACT:

see next page



ROD SUNDSTED, BUDGET DIRECTOR 1-26-91 DATE
Office of Budget and Program Planning



JIM RICE, PRIMARY SPONSOR 1-29-91 DATE

Fiscal Note for HB0305, as introduced.

HB 305

FISCAL IMPACT:

Department of Labor:
Expenditures:

	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Legal Services Div.</u>						
FTE	18.00	18.00	0.00	18.00	18.00	0.00
Personal Services	588,395	588,395	0	587,851	587,851	0
Operating Expenses	250,813	246,537	(4,276)	251,278	247,002	(4,276)
Equipment	<u>5,422</u>	<u>5,422</u>	<u>0</u>	<u>5,584</u>	<u>5,584</u>	<u>0</u>
Total	844,630	840,354	(4,276)	844,713	840,437	(4,276)
<u>Funding:</u>						
State Spec. Rev. (02)	241,016	234,753	(6,263)	240,920	234,657	(6,263)
Federal Revenues (03)	467,840	459,635	(8,205)	468,006	459,801	(8,205)
Proprietary (06)	<u>135,774</u>	<u>145,966</u>	<u>10,192</u>	<u>135,787</u>	<u>145,979</u>	<u>10,192</u>
Total	844,630	840,354	(4,276)	844,713	840,437	(4,276)
<u>Workers' Compensation Court:</u>						
FTE	8.00	8.00	0.00	8.00	8.00	0.00
Personal Services	253,383	253,383	0	252,534	252,534	0
Operating Expenses	91,613	91,613	0	92,971	92,971	0
Equipment	<u>5,600</u>	<u>6,200</u>	<u>600</u>	<u>5,600</u>	<u>6,200</u>	<u>600</u>
Total	350,596	351,196	600	351,105	351,705	600
<u>Funding:</u>						
State Spec. Rev. (02)	350,596	351,196	600	351,105	351,705	600

TECHNICAL NOTE:

Section 4 of HB0305 may conflict with, or be governed by under certain instances, Section 39-51-4104, MCA. The current statute under this section appears to prohibit charging for preparation and copying of transcripts for cases contesting Unemployment Insurance benefits.

HB305

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 305

INTRODUCED BY J. RICE, DRISCOLL

BY REQUEST OF THE DEPARTMENT

OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO CONDUCT HEARINGS BY TELEPHONE IN CERTAIN CASES; AUTHORIZING THE DEPARTMENT TO INCLUDE A TAPE RECORDING OF A CONTESTED CASE AS PART OF THE RECORD ON APPEAL; AUTHORIZING THE DEPARTMENT TO RECOVER FEES AND COSTS FOR PROVIDING COPIES OF DOCUMENTS; AMENDING SECTIONS 39-1-103, 39-3-216, 39-51-1109, AND 39-51-2403, 39-71-2047, AND 39-72-6127 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-1-103, MCA, is amended to read:

"39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

(3) In a proceeding under this title, the commissioner may include a tape recording of a contested case hearing in a record certified to a district court, the workers' compensation court, or the Montana supreme court, if a transcript is requested or required, the cost of transcription by the commissioner and any copying and postage must be paid by the appealing or requesting party prior to delivery of the transcript.

(4) The EXCEPT FOR TRANSCRIPTS, THE commissioner may charge a fee for copies of papers and records, including certified copies of documents and orders filed in his office, sufficient to recover the copying costs and may charge for postage. The fee must be paid prior to delivery of the copy.

(5) Fees and costs collected under this section may be retained by the department to cover the cost of providing material under this section.

(6) Nothing in this chapter applies to labor violations preempted by federal law or regulation."

Section 2. Section 39-3-216, MCA, is amended to read:

"39-3-216. Hearing. (1) When the department determines

SECOND READING



1 that a wage claim exists and if it fails to settle the claim
2 with the parties, it shall cause the matter to be brought to
3 a hearing before a department hearings officer. The hearing
4 must be conducted according to contested case procedures
5 under Title 2, chapter 4, part 6, except that the hearings
6 officer is not bound by statutory or common-law rules of
7 evidence. The hearing may be conducted by telephone.

8 (2) The decision of the hearings officer is final
9 unless further review is initiated pursuant to 39-3-217
10 within 15 days after the decision is mailed to each party's
11 last-known address. The period may be extended by the board
12 for good cause."

13 **Section 3.** Section 39-51-1109, MCA, is amended to read:

14 "39-51-1109. **Tax appeals.** A decision, determination, or
15 redetermination of the department involving contribution
16 liability, contribution rate, application for refund,
17 employment status, or the charging of benefit payments to
18 employers making payment in lieu of contributions is final
19 unless an interested party entitled to notice thereof
20 applies for an appeal to an appeals referee. The appeal must
21 be made in the same manner as provided in 39-51-2402 for the
22 appeal of a decision relating to a claim for unemployment
23 insurance benefits. The appeal may be heard by telephone.
24 Statutory rules of evidence and civil procedure do not apply
25 to hearings in the appeal. The decision of the appeals

1 referee and any appeal therefrom must be made in the same
2 manner as prescribed in 39-51-2403 through 39-51-2410."

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4 "39-51-2403. **Decision of appeals referee.** After a
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7 the basis thereof affirm, modify, or reverse the deputy's
8 determination or redetermination. Each interested party
9 shall be furnished promptly a copy of the decision and the
10 supporting findings and conclusions. This decision shall be
11 final unless further review is initiated pursuant to
12 39-51-2404 within 10 days after such notification was mailed
13 to the interested party's last-known address, provided that
14 such period may be extended for good cause."

15 ~~Section 5.--Section 39-71-2047, MCA, is amended to read:~~

16 ~~"39-71-2047.--Rescission,--alteration,--or--amendment--by~~
17 ~~department-of-its-orders,--decisions,--or--awards----effect----~~
18 ~~appeal.--(1)--The department has continuing jurisdiction over~~
19 ~~all its orders,--decisions,--and awards and may, at any time,~~
20 ~~upon notice,--and after opportunity to be heard is given to~~
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24 ~~telephone.~~

25 ~~(2)--Any order, decision, or award rescinding, altering,~~

1 or amending a prior order, decision, or award has the same
 2 effect as original orders or awards;
 3 (3) If a party is aggrieved by a department order, the
 4 party may appeal the dispute to the workers' compensation
 5 judge.⁴
 6 Section 6. Section 39-72-612, MCA, is amended to read:
 7 "39-72-612. Hearing and appeal to workers' compensation
 8 judge. (1) Within 20 days after the department has issued
 9 its order of determination as to whether the claimant is
 10 entitled to benefits under this chapter, a party may request
 11 a hearing, in order to perfect an appeal to the workers'
 12 compensation judge; the appealing party shall request a
 13 hearing before the department. The department shall grant a
 14 hearing, and the department's final determination may not be
 15 issued until after the hearing. The hearing may be conducted
 16 by telephone.
 17 (2) Appeals from a final determination of the
 18 department must be made to the workers' compensation judge
 19 within 30 days after the department has issued its final
 20 determination. The judge, after a hearing held pursuant to
 21 39-71-2903 and 39-71-2904, shall make a final determination
 22 concerning the claimant's claim. The judge may overrule the
 23 department only on the basis that the department's
 24 determination is
 25 (a) in violation of constitutional or statutory

1 provisions;
 2 (b) in excess of the statutory authority of the agency;
 3 (c) made upon unlawful procedure;
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 5 (e) clearly erroneous in view of the reliable,
 6 probative, and substantial evidence on the whole record; or
 7 (f) arbitrary or capricious or characterized by abuse
 8 of discretion or clearly unwarranted exercise of
 9 discretion.⁴
 10 NEW SECTION. Section 5. Severability. If a part of
 11 [this act] is invalid, all valid parts that are severable
 12 from the invalid part remain in effect. If a part of [this
 13 act] is invalid in one or more of its applications, the part
 14 remains in effect in all valid applications that are
 15 severable from the invalid applications.
 16 NEW SECTION. Section 6. Effective date. [This act] is
 17 effective on passage and approval.

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