

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

SELECT COMMITTEE ON WORKERS' COMPENSATION

Call to Order: By VICE CHAIRMAN JERRY DRISCOLL, on March 3,
1993, at 3:00 P.M.

ROLL CALL

Members Present:

Rep. Chase Hibbard, Chairman (R)
Rep. Jerry Driscoll, Vice Chairman (D)
Rep. Steve Benedict (R)
Rep. Ernest Bergsagel (R)
Rep. Vicki Cocchiarella (D)
Rep. David Ewer (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Evy Hendrickson, Committee Secretary

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

Committee Business Summary:

Hearing: SB 163
Executive Action: SB 163, HB 511, HB 455

VICE CHAIRMAN DRISCOLL called the meeting to order.

HEARING ON SB 163

Opening Statement by Sponsor:

SEN. JOHN HARP, Senate District 4, Kalispell, said the bill was introduced at the request of Governor Racicot and would require employers to establish safety programs; require safety training and education programs; require workers' compensation insurers to provide safety consultation services; grant immunity to insurers for certain occurrences; create a safe employment, education and training advisory committee; allow the State Fund to implement variable pricing levels; allow the State Fund to place a surcharge on high-loss employers; amend Section 39-71-2311, MCA; and provide effective dates. EXHIBIT 1

Proponents' Testimony:

Don Allen, said that the Coalition of Work Comp System Improvement, had developed a set of recommendations and that safety was one of the four main areas addressed. SB 163 incorporates most of the Coalition's recommendations. The Coalition, representing over 200 employers, employees, organizations and associations representing over 50,000 people, endorsed the reasons for the bill outlined by SEN. HARP.

Harlee Thompson, member of the safety committee of the Coalition for Work Comp System Improvement (CWCSI), presented testimony.
EXHIBIT 2

Rick Hill, representing the Governor's Office, said this was one of several measures the Governor specifically mentioned in the State-of-the-State message with regard to workers' compensation problems. They support the bill.

Pat Sweeney, representing the State Fund, supported SB 163 as this would reduce the cost of workers' compensation coverage and the suffering of injured workers by preventing the injury before it occurred.

Mr. Sweeney said the bill would add four additional safety consultants to the current field staff of seven. This would also allow for approximately 1,600 additional contacts with employers in a year by the State Fund. They would also add four safety consultants to the office in Helena which would be divided into two units. Two persons would be dedicated to conducting group training seminars; this would provide contact and exposure to small policy holders. Two persons would be dedicated to the production, publication and distribution of training materials, guidelines, video tapes and other materials for businesses to borrow or purchase. These additional staff persons would enable the State Fund to facilitate establishment of the safety programs by employers and employees.

In addition, the State Fund would be given the authority to access a surcharge of an additional 20% for high loss employers. The section providing immunity to insurers in the provision of safety services would promote the ability to provide services to employers and would ultimately promote safety in the work place.

Mr. Sweeny said the State Fund urged a do pass on this bill and believed this was one of the most important pieces of legislation to reduce the cost of workers' compensation in this state for both employers and employees.

Jerry Kline, Director of Loss Prevention for the State Fund, said they are doing as much as physically possible with the resources available to reach employers who have high loss problems and provide them with assistance. They currently have a staff of seven consultants who secure employers, write safety programs,

set up job descriptions and functional task analyses to use in early return-to-work programs, perform job safety analyses, conduct training sessions and do whatever possible to help the employer improve. The State Fund could assist with getting the program established for the employer.

Mr. Kline then gave examples of the results achieved. He said they do get results; safety is only one piece of the workers' comp puzzle and a very positive piece. He urged a do pass which would enable the State Fund to have a greater impact on the losses the employers and employees are experiencing.

George Wood, Executive Secretary of the Montana Self Insurers Association, said they strongly supported the legislation as they have had effective safety programs for years. He said they are under programs from the Department of Labor and Industry and the guaranty fund that requires safety programs. Mr. Wood urged a do pass on this bill.

Mike Micone, representing the Montana Motor Carriers Association (MMCA), supported SB 163. He said MMCA initiated a safety program working with the State Fund three years ago, and every member's mod factors have been reduced significantly.

Riley Johnson, representing the National Federation of Independent Business (NFIB), said they did not have a valid position on SB 163; however, NFIB strongly supported SEN. HARP'S other three workers' comp bills, mainly the fraud, lawyers' fees and medical description that will come before the committee at a later time. Mr. Johnson said NFIB would support this package which would include SB 163.

Chuck Hunter, representing the Department of Labor and Industry, said the bill would expand the department's safety effort in two areas. One, it would require the department to prepare rules on safety programs and it would require work with the advisory committee and use the expertise already around the state in helping guide those rules.

Secondly, the bill would require the department to work with school students. They would attempt to stress the importance of safety prior to young people's entry into the work force.

Darrell Holzer, representing the Montana State AFL-CIO, said they strongly supported the bill and commended SEN. HARP. They have two areas of concern. One is granting civil immunity to insurers who either furnish or fail to furnish workers' consultation services, although the bill does provide exceptions for such services that are clearly inappropriate. If insurers are going to be able to write policies, they should be liable for not providing safety consultation service.

Mr. Holzer said the second concern is requiring that a worker's satisfactory job performance is contingent upon an arbitrary

safety awareness standard, not clearly defined in the statute which may conflict with existing collective bargaining agreements. They offered to work with the committee to address those concerns and they strongly recommended a do pass.

Russ Ritter, representing **Washington Corporations**, said their seven companies operate in the state of Montana and each one of the companies has its own safety officer. Their safety programs are extremely effective, and he applauded **SEN. HARP**, the committee, and others who are addressing this issue.

Bob Worthington, Programs Administrator for the **Montana Municipal Insurance Authority (MMIA)**, said they represent approximately 7,000 employees and insure 86 cities and counties across the state. Their program is seven years old and represents what safety programs can do. They have experienced a great deal of success in reducing the cost to their members.

Mr. Worthington said the one area the committee should consider is the assessment process being based on a future service basis rather than a straight assessment process. They also represent the taxpayers, and tax dollars are going to provide that through their assessment. In some areas it would be a duplication of services and double taxation for their representatives.

James Tutwiler, **Montana Chamber of Commerce**, said they supported SB 163.

Russell Hill, representing the **Montana Trial Lawyers Association (MTLA)**, submitted written testimony. EXHIBIT 3

Charles Brooks, representing the **Montana Retailers Association**, **Montana Hardware Implement Dealers**, and the **Montana Tire Dealers**, said two of their members had installed highly successful safety programs. **Noble Tire Company** has several locations throughout the state and is operating at about 60%; **Gallatin Equipment** in **Bozeman** is privately insured and has one of the finest safety programs of farm implement dealers in the state of Montana. **Mr. Brooks** said his organizations were strongly behind SB 163 and urged a do pass.

Jacqueline Lenmark, representing the **American Insurance Association (AIA)**, supported the passage of SB 163. She called the committee's attention to the section of the bill authorizing the department to avail itself of private entities for educational services and contributions. AIA commented to the Governor's task force when this idea was being generated and to the Senate Committee that they would like to assist in providing those educational services and wanted to reiterate that to this committee as well.

Mona Jamison, representing the **Montana Association of the American Physical Therapy Association**, strongly supported this legislation. They believed through education and safety programs

the state could control and diminish injury and illness.

Keith Olsen, representing the Montana Logging Association, said they strongly supported SB 163.

Ray Barnicoat, Risk Manager for the Montana Association of Counties, said they fully supported this bill. He said the only concern is in the assessment area, and they would like the committee to consider working out something on the user basis.

Bill Christianson, Risk Manager for the Montana School Services Foundation, said they administer the Montana schools workers' comp program and insure over 23,000 employees in 230 school districts. He said he was with the State Fund prior to this and knows this bill would be a good instrument for the State Fund. He reiterated the same concern on the assessment for plan one, saying that the assessment would be unduly large for the school group. He asked that the committee look into changing the assessment, but they do support the bill.

Questions From Committee Members and Responses:

REP. BENEDICT asked SEN. HARP if he had modeled this bill on a particular state's safety program. SEN. HARP said to some degree he modeled it after the Oregon plan but also tried to fit it to Montana's needs. The difference was in having an effective comprehensive plan and more of a volunteer plan with five or more employers.

REP. BENEDICT asked why SEN. HARP decided to drop it from ten to five employees. SEN. HARP said 60% of the State Fund's policyholders have five or fewer employers, and they wanted to include everybody in the safety program; that's why the break off was at five.

REP. BENEDICT asked Chuck Hunter when he set up the criteria for the safety programs how he would write the rules and what kind of input would he receive so that the rules are not the same for a high risk business as a low risk business like a radio station. Mr. Hunter said the bill had quite a list of specific things that must be addressed in the safety program. They would get input from people in the work place and who are knowledgeable about safety. They would take into consideration things like risk factors and size of employers.

CHAIRMAN HIBBARD asked SEN. HARP what recourse there would be if employers didn't elect to put the safety committee into effect as required by the bill if there are five or more employees. There would be a 20% surcharge if they were unsafe but possibly several could operate without the safety program and get into the upper echelon where they qualify. SEN. HARP said the surcharge would go into place but the employer would be informed and educated at some point. SEN. HARP said the department would look at that on

a quarterly basis so they would be able to change or respond as quickly as possible.

REP. EWER asked SEN. HARP what the funding would be for the safety programs other than a higher surcharge. SEN. HARP said the primary funding would come from the State Fund itself to the employers of Montana; the assessment kicks in from the Department of Labor.

REP. EWER asked Mr. Hunter if his department had the ability to assess every employer. Mr. Hunter said the State Fund, as an insurer, the private insurers and the self insurers all pay for the regulator function housed in the Department of Labor. Mr. Hunter believed since they already run the safety programs, to be assessed again and safety rules set would be a duplication of what they already had.

SEN. HARP said currently, 75% of premiums are in the State Fund and asked the committee to think about all the employers in Montana who currently don't have any safety programs. The crisis is not with plan one or plan three; it is with the State Fund.

SEN. HARP said basically the people who are going to pay for this program are the same people who have no safety program at all.

SEN. HARP said the benefit side of this bill was the fact the department would be going to all the high schools in Montana to educate high school seniors before they enter the work place.

As a follow up to CHAIRMAN HIBBARD'S question, REP. BENEDICT asked SEN. HARP how they would tell whether a small company with a good safety record with eight employees had a safety program in place. SEN. HARP said at some point, with additional field people, they would hope to have an additional 1600 contacts per year and would hope to reach those people. The safety consultants would communicate that by mail, phone, and by physically getting in contact with these people. The Department of Labor would play a roll in getting the word out that there would be a safety program implemented.

Mr. Cline said the intent of the bill was one of cooperation and working with each other. Safety doesn't cost; it pays benefits to implement a good safety program.

REP. DRISCOLL asked SEN. HARP whether there would be pamphlets, booklets or some other type of education for small employers who don't know anything about safety so they would know how to comply with Section 5.

SEN. HARP said pamphlets would definitely be one way and this had been addressed by inclusion in the fiscal note.

REP. COCCHIARELLA asked what the accountability would be besides the language that says the State Fund would separately account

for money it has spent. Would there be another way to have a control mechanism on safety so it didn't become a monster that would be taking from the Fund?

SEN. HARP said they would keep close watch; if there seemed to be a monster growing, it would be checked.

Closing by Sponsor:

SEN. HARP referred to line 21, page 2 and said he was contemplating an amendment to this section. He said part of the employees' job performance should be to work with a safety program as a team work effort. SEN. HARP also said in dealing with trial lawyers, they need to expand the ability for one to potentially sue. He thinks it makes sense to allow insurers the same protection allowed employers under the exclusive remedy protection. He said the intent of the bill was to facilitate a safe work place in Montana.

EXECUTIVE ACTION ON SB 163

Motion: REP. BENEDICT MOVED SB 163 BE CONCURRED IN.

Discussion: CHAIRMAN HIBBARD said the bill was a step in the right direction and that, if the bill was passed and safety programs were implemented, it may be something people would want to do voluntarily and the state would see a financial return.

REP. DRISCOLL said he would like to propose amendments to SB 163. He said in talking to the department, helping employers and employees with manuals on how to do this is important.

REP. EWER said he would hope that the Fund really would be serious about having literature so people would know what they could do in the area of safety.

REP. BENEDICT said he strongly supported the bill and believed this was one of the most important pieces of legislation that the committee would pass this session in terms of bringing overall costs down and in trying to prevent accidents before they happen.

Motion/Vote: REP. DRISCOLL called the question. Voice vote was taken. Motion carried.

EXECUTIVE ACTION ON HB 511

Motion: CHAIRMAN HIBBARD MOVED HB 511 DO PASS.

Discussion: CHAIRMAN HIBBARD discussed the first amendment on line 25, page 1. EXHIBIT 4

The second set of amendments dated February 19, page 2, line 8, would insert a section. EXHIBIT 5 CHAIRMAN HIBBARD said he had reviewed this with the Department of Labor and it would be a positive addition to the bill.

Jacqueline Lenmark said some reporting items could be handled by tape transfer or other means of data collection that the insurer would already have in place.

Motion/Vote: REP. BENEDICT moved amendment #1. EXHIBIT 4 The question was called. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. DRISCOLL moved amendment #2. EXHIBIT 5 The question was called. Voice vote was taken. Motion carried unanimously.

Motion: CHAIRMAN HIBBARD MOVED HB 511 DO PASS AS AMENDED.

Discussion: REP. BENEDICT said the cost of this bill is about \$1 million, and whether the information that was collected could be utilized efficiently was something the committee hadn't had a chance to fully comprehend. He suggested that the joint select committee conduct a study and come back in two years with a recommendation.

REP. DRISCOLL said REP. GRADY would take it in the Appropriations Committee and maybe it could be trimmed down. He said the bill should be passed because the data is needed. If the cost is too great, maybe that would be the ultimate demise of the bill.

REP. BENEDICT said most of the data is already available from different sources; it just needs to be collated.

REP. DRISCOLL said he didn't think they needed all the FTE to run a computer and it could probably be done with a good calculator. He said the fiscal note needs to be looked at.

CHAIRMAN HIBBARD said he shares the concern of the cost but in spite of that he still favored the bill.

MOTION/Vote: REP. DRISCOLL called the question. Roll call vote was taken. Motion carried 4 to 2 with REP. BENEDICT voting no and REP. BERGSAGEL abstaining. EXHIBIT 6

EXECUTIVE ACTION ON HB 455

Motion: REP. DRISCOLL MOVED DO PASS.

Discussion: REP. DRISCOLL said the bill should be passed out of committee so the employers who that think workers' comp is too expensive and everything is so bad know they can opt out. Texas has done this, as well as other states. It's no longer mandated.

REP. EWER asked how it has been working in Texas and whether people are suing or opting out. REP. DRISCOLL said very few are opting not to buy the insurance. They finally understand that it's a protection for the employer but they don't have to buy it.

REP. BENEDICT said he did not agree with REP. DRISCOLL. He thought there would be some employers very interested in it until they got sued and it's not in the best interest of the employer or the employee. He said there are a lot of small employers that don't understand the ramifications of what they have to lose.

REP. COCCHIARELLA said it would be up to the employer to take that risk and the problem has been that we mandate they do this. Let them decide if they want to take the risk.

REP. DRISCOLL said some of the people don't buy until they get caught and then they call and ask why we didn't the state force them to do it. Employers are all supposed to have coverage now and they are going to have to opt out. If they opt out, then the insurance company will inform the employer of the ramifications of that decision. The employer can then make a free choice.

REP. DRISCOLL said the greatest safety program is understanding the workers' comp law. If we teach the benefits part of this workers' comp law to employees, they would be safer.

CHAIRMAN HIBBARD read from the bill, Section 3, lines 8-12, and said this imposed a tremendous burden on an employee to prove negligence. If the employer is not covered, he doesn't have an exclusive remedy. The employer could lose his business if the employee does collect and both of them stand to lose.

REP. DRISCOLL said under the existing law if you get hurt tomorrow, you would only receive about \$100 a week. He said the best option in the state of Montana for a worker would be to hope he was working for an uninsured employer that had some money.

REP. COCCHIARELLA said labor supported this bill for all the reasons stated by REP. DRISCOLL. The workers do not reap the benefits. She said there are people on welfare that are on workers' compensation.

REP. ELLIOTT said the argument pro and con was that Montana had the highest workers' compensation rates of any state in the region. Wyoming puts a cap on the amount of premium and charges \$7.00. They also subsidize heavily out of their trust fund. The result of that, to some extent, is jobs are leaving Montana for Wyoming. He asked that the bill be passed onto the floor for more discussion and debate.

REP. DRISCOLL offered an amendment on page 3, line 23 insert "not necessary," which would address the concerns about the employees. This way they wouldn't have to prove negligence.

Vote: REP. BENEDICT called for question and the motion failed with CHAIRMAN HIBBARD, REP. BERGSAGEL and REP. EWER voting no.


CHAIRMAN HIBBARD said he has thought about this bill long and hard and in a way he agrees with REP. DRISCOLL. He said there might be some value in debating this on the floor, and there were a lot of things people need to understand about workers' comp. He suggested that a motion be made to postpone this bill indefinitely with the idea that the committee would try to work it out so there could be some alternative coverage available and decide whether we will go forward with this or not.

REP. DRISCOLL said before the amendment everyone was concerned about the worker having to prove negligence. When the amendment was offered, the vote being four to two, then no one was concerned about the worker anymore.

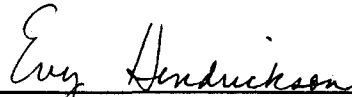
Motion/Vote: REP. BENEDICT MADE A SUBSTITUTE MOTION THAT HB 455 BE TABLED. Motion failed. EXHIBIT 7

ADJOURNMENT

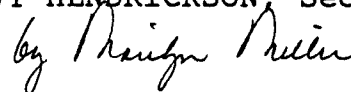
Adjournment: 6:30 p.m.



REP. CHASE HIBBARD, Chairman



EVY HENDRICKSON, Secretary



CH/eh

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL

DATE 3-3-93

NAME	PRESENT	ABSENT	EXCUSED
CHASE HIBBARD, CHAIRMAN	✓		
JERRY DRISCOLL, VICE CHAIRMAN	✓		
STEVE BENEDICT	✓		
ERNEST BERGSAGEL	✓		
VICKI COCCHIARELLA	✓		
DAVID EWER	✓		

HOUSE SELECT COMMITTEE REPORT

March 9, 1993

Page 1 of 1

Mr. Speaker: We, the select committee on Workers' Compensation recommend that Senate Bill 163 (^{third}~~first~~ reading copy -- ^{blue}~~white~~) *ORA* do be concurred in, and that the House refer the bill to the House Committee on Labor and Employment Relations for its consideration as part of the Workers' Compensation package.

Signed: *Chase Hibbard*
Chase Hibbard, Chair

Committee Vote:
Yes 6, No 3.

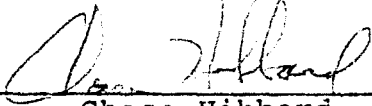
541542SC.Hpf *STG*

HOUSE SELECT COMMITTEE REPORT

March 9, 1993

Page 1 of 1

Mr. Speaker: We, the select committee on Workers' Compensation recommend that House Bill 511 (first reading copy -- white) do pass as amended, and that the House refer the bill as amended to the House Committee on Labor and Employment Relations for its consideration as part of the Workers' Compensation package.

Signed: 
Chase Hibbard, Chair

And, that such amendments read:

1. Page 1, line 25.

Following: "medical"

Insert: ", "

Following: "indemnity"

Insert: ", and rehabilitation"

2. Page 2, line 9.

Following: line 8

Insert: "(3) The workers' compensation data base system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (3)(a) through (3)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance."

Renumber: subsequent subsection

Committee Vote:

Yes 4, No 2.

531600SC.Hpf

TESTIMONY ON S.B. 163
by Senator John Harp

EXHIBIT _____
DATE 3-3-93
~~SB~~ 163

At the request of Governor Racicot, I am introducing a bill to promote safety for workers' in Montana. The workers' compensation system needs changes to reduce premium for employers but also to provide for the ultimate in cost containment, which is to prevent injuries before they occur. Preventing injuries before they occur also truly benefits our workers.

This bill focuses on safety from several perspectives as it addresses the role of employer and employee, workers' compensation insurers and the Department of Labor. What we need to establish in Montana is a safety culture and this bill I believe provides us the tools.

The basis for this bill comes from Oregon but it has been adapted to Montana. This is one approach they used to decrease costs in the workers' compensation system and they have actually seen a decrease in premium rates in Oregon.

This bill's primary focus is on the employer and employee. The employer will be required to establish a safety program. These are not intended to be burdensome to implement and carry out. The program is to consist of:

- (a) a safety training program for employees;
- (b) periodic hazard assessment; and
- (c) documentation of performance of these activities.

Employers with five or more employees will also be required to have in addition:

- (a) a safety committee that holds regularly scheduled meetings;
- (b) procedures for reporting and investigating work-related incidents; and
- (c) policies and procedures that assign specific safety responsibilities and safety performance accountability.

The Department of Labor's role is important as they will have two primary functions. The first is to implement a safety advisory committee at the Department of Labor which is made up of three members representing employers, three members representing employees, and one member representing the Department of Labor. This committee's function is to advise the Department in facilitating employers in establishing their safety programs.

The advisory committees also have the even more important function of providing education to Montana students on safety before they enter the work force full time. A third function of the committee is to universally increase safety awareness in the work place. This will pay off for all employers and insurers, as safety on the job will then be an expectation by workers from their perspective employers. Labor's second function will be to promulgate rules on implementing safety programs, again we can use Oregon's rules as a basis for promulgating our own.

The insurer's role in this bill is one that requires the insurer to provide safety consultative services to their insureds as part of the insurer's responsibility in providing coverage. Priority is to be given to those employers that have an unreasonably high actual or potential loss experience. Safety consultative services will include:

- (a) identification and evaluation of exposures;
- (b) recommendation on control of exposures and on improvement of safety programs;
- (c) training programs;
- (d) consultations to advise employers;
- (e) accident analysis; and
- (f) industrial hygiene services.

Immunity for safety consultative services is also provided for in this bill. If we are to contain the cost of workers' compensation insurance, insurers need to be able to provide safety consultations and employers need to be able to receive these services without an insurer incurring liability which exceeds the employers liability under the exclusive remedy provision of the Workers' Compensation Act.

Insurers also need the ability to increase or decrease premium to provide an inducement to employers to provide safety, but should not be in the role of a safety enforcer. The State Fund has been given authority in this bill to provide for a level of higher premiums for those employers who do not satisfactorily implement safety programs. In addition, the bill provides for a surcharge of an additional 20% on high-loss employers.

The State Fund currently has three premiums levels for each class code under their current plan of variable pricing. Each

policy is analyzed and placed into one of the three levels based on criteria established by the Board of Directors.

This bill adds two unique provisions to provide for higher premiums. It is anticipated that employers who do not satisfactorily implement safety programs will receive a percentage increase, determined by the Board, which will be attached to the employer's premium level. A percentage increase on a premium level allows for flexibility as it can be added or removed quarterly.

The surcharge of 20 percent on high loss employers can be assessed on all employers who meet the criteria established by the Board. The 20 percent would be added to the premium the employer would pay.

Both of these provisions may be applied to all employers, regardless of total premium payable each year, and in addition to other premium modifiers, such as the experience modification factor.

This bill will be effective 1/1/94 and thereby provides sufficient time for the Department of Labor to promulgate rules for safety programs and also allows insurers to be in a position to assist employers in implementing safety programs.

Conclusion

This is potentially the most important component of changes to the workers' compensation system the Legislature will be looking at this year. Prevention of accidents is our goal here, and I believe this bill by utilizing the efforts of employers, employees, insurers and the Department of Labor, will accomplish our goal.

EXHIBIT 1
DATE 3/3/93
SB 163



COALITION FOR
WORK COMP
SYSTEM IMPROVEMENT

EXHIBIT 2
DATE 3-3-93
~~HB~~ SB 163

SB 163
Creating the Montana Safety Culture Act

Recommend:
Do Pass

Mr. Chairman, Members of the Committee:

I am Harlee Thompson member of the safety committee of the Coalition for Work Comp System Improvement (CWCSI).

The best claims management the work comp system can have is prevention! The best medical care the work comp system can provide is prevention! The best way to keep the work comp system out of the courts is prevention! The easiest way to fix the work comp system is to prevent an accident from ever happening!

SB 163 is a very good start to help prevent work place injury and illness. It will require insurers to provide aid to every insured employer to help setup and maintain a quality safety program. Currently the insurer has no obligation to do so. In fact even if an insured employer approaches and begs for help setting up a safety program some insurers do little or nothing until the employers loss ratio goes above 60%. That makes good sense, if losses are low why help keep them that way?

SB 163 also mandates education in our school system. This program will begin educating our children and grandchildren of the basic safety skills in the work place before they ever enter the work force. It will educate our future employers of the importance of safety in their future work places. This will have long range and far reaching effects. It will prepare our youth to be safety aware at all times, in and out of the work arena. This will reduce accidents in the home, as they begin to drive, and even while they are playing. This will reduce medical cost and liability across the board, something not only the state but the nation desperately needs.

SB 163 will penalize employers that do not implement a safety program in the work place. There already is tiered pricing inside the various class codes but the breaks between the levels are not enough. There will be a surcharge of 20% added to the high loss employers. If there is a flaw in this bill it is the 20% surcharge. I feel that if an employer doesn't implement a safety program and continues to have accidents the rate should be high enough to drive the employer out of business before another one of his workers gets injured.

Again the Coalition for Work Comp system Improvement and I would like to urge a DO PASS on SB 163.

Montana Trial Lawyers ASSOCIATION

Directors:
Dee Dahood
Director Emeritus
Monte D. Beck
Thomas J. Beers
Michael D. Cok
Michael W. Cotter
Carl J. Englund
Robert S. Fain, Jr.
Rector R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Paul M. Warren
Michael E. Wheat

Executive Office
#1 Last Chance Gulch
Helena, Montana 59601
Tel: 443-3124

March 3, 1993

Officers:
Thomas J. Beers
President
Monte D. Beck
President-Elect
Gregory S. Munro
Vice President
Michael E. Wheat
Secretary-Treasurer
William A. Rossbach
Governor
Paul M. Warren
Governor

Rep. Chase Hibbard, Chair
House Select Committee on Workers Compensation
Room 325, State Capitol
Helena, MT 59624

RE: SB 163

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's qualified support for SB 163.

MTLA has long advocated safety programs to reduce workplace injuries, workers compensation claims, and ultimately employer premiums. MTLA supports the provisions in SB 163 which require employers to establish and administer safety programs. MTLA supports the provisions in SB 163 which require employees to participate in ongoing safety training programs. MTLA supports the provisions in SB 163 which require workers compensation insurers to provide safety consultation services to their policyholder employers. And MTLA supports the provisions in SB 163 which implement variable pricing levels to reward employers with good safety records and penalize employers with poor safety records.

Moreover, upon closer analysis, MTLA has concluded (contrary to its earlier testimony) that Section 9 of the bill does not immunize workers compensation insurers who negligently fail to furnish safety consultation services. Despite the initial reference in that section to "failure to furnish safety consultation services" (page 8, lines 21-22), the operative language of the section refers only to "damages from injury, loss, or death, whether direct or consequential, occurring as a result of any act or omission by any person in the course of providing safety consultation services." [emphasis added] To the very limited extent, therefore, that SB 163 holds insurers liable to insured employers for breach of the insurance contract and statutory violations which result in injuries, MTLA believes the bill genuinely encourages safety. Regrettably, though, the provisions of

Section 7 concerning insurer discretion in providing safety consultation services (page 6, lines 20-21) and prioritizing responses to requests for those services (page 6, lines 24-25) drastically constrict this liability.

MTLA opposes several provisions of SB 163:

1. Section 9, which provides virtually blanket immunity to workers compensation insurance companies which do provide safety consultation services, cripples the bill. Expert safety consultation services are the key component of this plan to reduce workplace injuries, and SB 163 properly requires insurers to provide safety consultation services. But then the bill insulates those same insurers from liability when they carelessly furnish those services, even when they are grossly negligent in furnishing those services. Since civil liability provides more reliable guarantees of compliance than administrative enforcement, MTLA proposes the following amendment to Section 9:

Page 8, line 21.

Following: "(1)"

Strike: "The"

Insert: "Except in cases of gross negligence or willful or wanton misconduct, the"

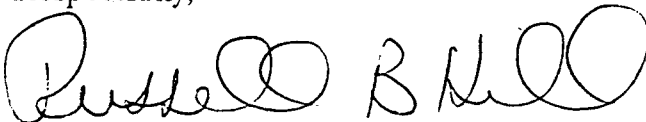
2. As amended by the Senate, Section 5 mandates the department of labor to adopt rules which require "an employer of more than five employees to have a comprehensive and effective safety program" (page 5, lines 23-24), yet those employers have no recourse whatsoever against insurers who provide only minimal, ineffective safety consultation services. In other words, SB 163 subjects non-complying employers to increased penalties (for example, Section 10, subsection (1)(a), page 9, line 22 through page 10, line 4) with no corresponding guarantee that they can comply.

3. SB 163 insulates the State Fund, private insurers, and self-insurers alike from liability but requires no corresponding demonstration by private insurers or self insurers that their safety consultation services are efficient or effective. Section 10 should require all workers compensation insurers, not just the State Fund (page 10, lines 15-16) to regularly record and report expenditures for safety consultation services separately, in conjunction with their loss experience.

4. Section 7 requires workers compensation insurers to provide safety consultation services upon request but establishes no meaningful standard for those services. Safety engineering is a recognized discipline, and SB 163 should require safety consultation services to meet the objective criteria of nationally recognized certifying bodies.

Thank you for considering these comments. If I can provide additional information or assistance, please notify me.

Respectfully,



Russell B. Hill, Executive Director

EXHIBIT 4
DATE 3-3-93
HB 511

Amendments to House Bill No. 511
First Reading Copy

Requested by Representative Hibbard
For the Select Committee on Workers' Compensation

Prepared by Paul Verdon
February 11, 1993

- 1. Page 1, line 25.
Following: "medical"
Insert: ", "
Following: "indemnity"
Insert: ", and rehabilitation"

Amendments to House Bill No. 511
First Reading Copy

Requested by Jacqueline Lenmark
For the Select Committee on Workers' Compensation

Prepared by Paul Verdon
February 19, 1993

1. Page 2, line 9.

Following: line 8

Insert: "(3) The workers' compensation data base system must be designed in accordance with the following principles:
(a) avoidance of duplication and inconsistency;
(b) reasonable availability of data elements;
(c) value of information collected to be commensurate with the cost of retrieving the collected information;
(d) uniformity to permit efficiency of collection and to allow interstate comparisons;
(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;
(f) reasonable availability of the data at a fair cost to the user;
(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;
(h) compatibility with electronic data reporting;
(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (3)(a) through (3)(h);
(j) implementation of reporting requirements that allow reasonable lead time for compliance."

Renumber: subsequent subsection

EXHIBIT 7
 DATE 3-3-93
 HB 455

HOUSE OF REPRESENTATIVES
 53RD LEGISLATURE - 1993
SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL *Vote* *HB 455* DATE *3-3-93*
Motion to table

NAME	PRESENT	ABSENT	EXCUSED
CHASE HIBBARD, CHAIRMAN	<i>Yes</i>		
JERRY DRISCOLL, VICE CHAIRMAN			<i>NO</i>
STEVE BENEDICT	<i>Yes</i>		
ERNEST BERGSAGEL	<i>Yes</i>		
VICKI COCCHIARELLA			<i>No</i>
DAVID EWER			<i>NO</i>

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Select Workers Comp

COMMITTEE

BILL NO.

SB 163

DATE 3-3-93 SPONSOR(S) _____

Sen. Harp

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
MIKE MICONE	MMCA	X	
Port Andrew	ALI		
Dianna [unclear]	ERD-DLI		
Jim Tutwiler	MT Chamber	✓	
Harrell Holzer	mt. St. AFL-CIO	✓	
George Wood	MT Self Insurance Assoc	✓	
Jerry Klein	SMCIF	✓	
HARLEE THOMPSON	CWCSI	X	
Riley Johnson	NFIB	X	
Mara Lammie	MCAPTA	X	
Charles R. Brooks	MT Retail Assoc	✓	
Dick [unclear]	Gov. Office	✓	
Pat Weatherington	DMITB	—	
Russell B Hill	Mont Trial Lawyers	—	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

House Select Comm No

COMMITTEE

BILL NO. SB 162

DATE 3-3-92

SPONSOR(S) Sharp

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jacqueline Denmark	AIA	✓	
John Sweeney	State Farm	✓	
Chuck Hunter	DOH	✓	
Robert Ober	MT Hospital Assoc	✓	
Gene Turkiewicz	MT Auto Dealers Assn	✓	
Ray Barnicoat	MACo	✓	
Carl Schweitzer	MT Cont Assn	✓	
Bill Christensen	MT School Service Found	✓	
Don Allen	CWCST / M... 1992	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.