

MINUTES OF THE MEETING  
LABOR & EMPLOYMENT RELATIONS COMMITTEE  
MONTANA STATE SENATE

Janaury 12, 1977

The second meeting of the Labor and Employment Relations Committee was called to order by Chairman Lee on the above date in Room 402 of the State Capitol Building at 9:30 a.m.

ROLL CALL: All members present with Senator Mehrens excused.

GENERAL DISCUSSION: Norman Grosfield, head of the Worker's Compensation Division, was present at this meeting and informed the committee of four proposed bills that the advisory council has been working on. He discussed these proposals with the members of the committee to see if they would be introduced as committee bills.

The advisory council consists of Jim Murray, of AFL-CIO; John Sheehy, Attorney of Claimants; George Wood, Montana Self-Insurers Association; and Larry Zanto, Insurance Alliance. This council meets to set up bills which will help the Worker's Compensation Division and gets these bills set up for legislation.

Jim Murphy of the Worker's Compensation Division, George Wood, and Jim Murray were also present at this meeting and helped Mr. Grosfield in answering questions by the members of the committee.

The first proposed bill was one requiring insurance company writings for Worker's Compensation be written on a continuous basis or until you are informed of a cancellation. The Division is having difficulty receiving proper notices from insurance carriers of coverage of the people insured. This difficulty should be eliminated. (See attachment #1)

The second proposed bill is a house cleaning bill. The primary reason for placing this bill is that under current law, students involved in on-the-job training must be covered by Worker's Compensation as well as while the students are in the classroom. This broad coverage has created problems for the state of Montana. The proposal would exclude coverage while students are on the premises of the public schools. (See attachment #2)

The third proposed bill is a major bill creating an uninsured employer's fund to grant to all employees of this state Worker's Compensation benefits even if their employers are not properly insured. This fund would pay to injured employees of uninsured employers the same benefits such employees would receive if their employers would have been properly insured under the Worker's Compensation Act. The employee would no longer have civil action against his uninsured employer. The employee would be treated in the same manner as if working for a properly insured employer.

(See attachment #3)

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The fourth and final proposed bill that was discussed was one relating to the safety requirements and inspection of steam traction engines. This proposal is to try to clean up the safety act of these engines. (See attachment #4)

Norman Grosfield stated that two other bills were introduced at the advisory council but have not been completely repaired yet. One refers to the Occupational Disease Act which mainly affects the Anaconda Company, the other proposal refers to the removal of certain inspection fees. These will be reviewed and discussed at the next meeting on Friday, January 14.

ADJOURN:

There being no further business, the meeting was adjourned at 10:35.



Robert E. Lee, Chairman

MEMORANDUM CONCERNING THE PROPOSED BILL TO  
AMEND SECTION 92-1002, R.C.M. 1947.

The Division of Workers' Compensation recommends that Section 92-1002, R.C.M. 1947, be amended to require private insurance carriers writing workers' compensation insurance in Montana, to make their policies effective on a continuous basis or until cancelled.

The Division is having a difficulty in receiving proper notices from insurance carriers of coverage of their insureds. This creates difficulties because the Division keeps records of all insured employers. When the Division does not receive proper notice of coverage or cancellation, its recordkeeping system becomes inadequate. By requiring insurers to submit proper notices of coverage within a stated period, and to require insurers to write continuous coverage policies, the present difficulties concerning the Division's record of insureds should be eliminated.

The remedy that can be taken against insurers not complying with the section would be an assessment not exceeding \$200. Common language used in remedy provisions in insurance codes has been utilized.

Section 92-1006, regarding present renewal provisions, would be deleted because the provision would be superseded by the proposed amendments to 92-1002.

MEMORANDUM CONCERNING THE AMENDMENT OF SECTION 92-411,  
R.C.M. 1947, CONCERNING THE DEFINITION OF EMPLOYEE  
UNDER THE WORKERS' COMPENSATION ACT

The Division of Workers' Compensation proposes that Section 92-411, R.C.M. 1947, be amended by clarifying certain language in the section regarding the coverage of students in vocational rehabilitation programs.

It is suggested that certain superfluous language in paragraph (a) be removed. Such language concerns references to certain city, county and state employees. Such a delineation is not required and the coverage of these employees is adequately provided for in the definition of employer and employee under the Workers' Compensation Act. Also, certain language concerning the coverage of casual employees would be clarified and superfluous language regarding the coverage of household or domestic employees would be removed. Section 92-202.1 sets forth the coverage exception for household employees under the Workers' Compensation Act.

The Division proposes to remove the last portion of paragraph (b) that relates to coverage of individuals involved in vocational rehabilitation training programs. The current language is quite broad and appears to cover all students who are enrolled in a vocational rehabilitation program at all times. This language has created problems for school districts as well as the State Fund. The current language appears to require that students who are merely studying in classrooms must be covered. The Division does not believe that the Legislature intended for such broad coverage. The proposed section (c) would delineate when individuals enrolled in vocational rehabilitation and other on-the-job programs would be covered. The proposed amendment would specifically exclude coverage while students are on the premises of a public school. Thus, the questions concerning the coverage of students in the classroom would be clarified.

MEMORANDUM CONCERNING A BILL TO CREATE AN UNINSURED  
EMPLOYERS FUND UNDER THE MONTANA WORKERS'  
COMPENSATION ACT

The Division of Workers' Compensation sets forth the following information concerning a bill to create an uninsured employers fund in Montana. Under the present Workers' Compensation Act, an injured employee who is working for an uninsured employer has a civil remedy against the employer. Such a remedy is generally inadequate and the Legislative Auditor recommended that the Division of Workers' Compensation seek legislation to provide coverage for employees of uninsured employers. The proposed bill would provide for the creation of an uninsured employers fund. Under the proposal, an injured employee of an uninsured employer would receive the same benefits that all employees receive under the Workers' Compensation Act. The bill amends certain sections in the Workers' Compensation Act in order to adapt the proposed uninsured employers fund with the existing Workers' Compensation Act. A detailed explanation is found below discussing the changes that are proposed.

Section 1. Section 1 amends Section 92-202.1, R.C.M. 1947. The section was written to clarify the coverage requirements under the Workers' Compensation Act. The section would contain the requirements of the first sentence of Section 92-207.1, which is proposed to be repealed. The proposed amendments do not change the existing exemptions under the Act.

Section 2. Section 2 amends Section 92-204.1, R.C.M. 1947. The amendment would delete provisions concerning an insurer's subrogation rights under the Workers' Compensation Act. The new subrogation provisions would be placed in a separate section. The reason for removing the subrogation provisions out of Section 92-204.1 was to provide for clarification of the subrogation provisions. Under the present section, the provisions of the section are difficult to read because of its extended length. The amendments to Section 92-204.1 would not change an employer's protection against liability action from injured employees who are covered by workers' compensation

insurance. The proposed amendments do remove some superfluous language.

Section 3. As indicated above, Section 3 creates a new section numbered Section 92-204.2. The section delineates an insurer's subrogation rights, and separates the subrogation provisions into meaningful subsections. There was no intent to change the present substantive law concerning an insurer's subrogation interest. However, certain language, that has been bewildering to everyone attempting to administer or construe the section, has been removed. This language that is found in the second to the last paragraph of Section 92-204.1, as it presently exists, regards possible actions that could be taken by an employer against third parties. The language seemed to create a new action at law and possibly would provide for double subrogation recovery. The language has never been utilized or applied and the Division suggests that the language be deleted from the new subrogation provision.

Section 4. Section 4 creates the uninsured employers fund. The fund would pay to injured employees of uninsured employers the same benefits such employees would receive if their employers had been properly insured under the Workers' Compensation Act. The fund would be funded by penalizing uninsured employers and by providing a subrogation interest against such uninsured employers for the compensation and medical benefits it had to pay to an injured employee. However, a maximum liability would be provided so that an uninsured employer would not be responsible for more than \$30,000 in liability to the fund for a single injury. The fund could also receive assessments that are now provided to another fund under the Workers' Compensation Act. Under the present Act, an assessment of \$1,000 is made for each industrial injury causing a death in Montana. The proposed section would allow the Division to direct that the \$1,000 assessment be referred to the uninsured employers fund, rather than the subsequent injury fund.

The Division would administer the fund and would have to set up proper surpluses and reserves. The Division could also compel uninsured employers to obtain coverage under one of the three compensation plans. An employer who refused to obtain such coverage could be ordered to cease operations.

Section 5. Section 5 provides for an effective date of the uninsured employers fund. The Division believes that it would have to establish an adequate reserve system in order to maintain the fund on a solvent basis. Thus, it proposes that the effective date of any payout from the fund be January 1, 1979. However, penalties received and assessments would be referred to the fund, and would be effective on July 1, 1977. Thus, during a one and one-half year period, the fund could be built up to a point where it could be managed on a solvent basis. This system of funding would avoid a general fund appropriation. Between July 1, 1977 and January 1, 1979, injured employees of uninsured employers would continue to be entitled to a personal liability action against the uninsured employer.

Section 6. Section 6 amends Section 92-435, R.C.M. 1947. This section defines insurer under the Workers' Compensation Act. The term insurer would apply to a self-insurer under Compensation Plan No. 1, an insurance company transacting business under Compensation Plan No. 2, and the State Compensation Insurance Fund. There apparently was an oversight in not including self-insurers under the definition of insurer in prior years. The term insurer would also apply to the uninsured employers fund.

Section 7. This section amends Section 92-614, R.C.M. 1947. The amendments merely set forth that insurers are liable for the payment of compensation and medical benefits in accordance with the Workers' Compensation Act, and the section ties in with the definition of insurer as set forth above.

Section 8. Section 8 repeals certain provisions of the present Workers' Compensation Act that would no longer have application if the other provisions of the proposed bill were passed. Sections 92-201, 92-203, and 92-205, R.C.M. 1947, relate to civil actions that may be brought against uninsured employers. Under the proposed bill, an employee would no longer have a civil action against his uninsured employer, except for the interim between July 1, 1977 and January 1, 1979. The employee would be treated in the same manner as an employee who is injured while working for a properly insured employer.

Section 92-207.1 concerns the penalty provisions for uninsured employers. The new penalty provisions of Section 92-212 would apply, and the mandatory coverage requirement of the first sentence has been transferred to Section 92-202.1.

Sections 92-209 and 92-210 contain superfluous and confusing language concerning the election to be covered by the Workers' Compensation Act. The provisions of these two sections are adequately covered by the provisions of the proposed bill and existing sections in the Workers' Compensation Act.

Section 92-211 would no longer have application if the uninsured employers fund were in effect. Benefits would be paid to employees of uninsured employers out of the fund.

Section 92-1102 relates to the protection an employer has if properly insured under the Workers' Compensation Act. The section is superfluous and its provisions are covered by Sections 92-204.1 and 92-208. The history of amendments to the Workers' Compensation Act dictates that reference to an employee's election not to be bound, as provided for in the section, relates only to the allowance of corporate officers to reject coverage. Such an allowance is provided for in Section 92-208.

MEMORANDUM CONCERNING A PROPOSED BILL TO REPEAL  
SECTIONS 69-1701 AND 69-1702, R.C.M. 1947

The Division of Workers' Compensation suggests that Sections 69-1701 and 69-1702 be repealed. These sections relate to the safety requirements and safety inspection of steam traction engines. The provisions were initially passed in 1913 when the steam traction engine was in wide use. However, there are very few steam traction engines in use at this time, and any such engines in use are generally owned by individuals who have collected the engines for hobby and antique purposes. The inspection of steam traction engines is provided for under the boiler and engineers licensing law, Title 69, Chapter 15. Thus, under present law there is a duplication in the inspection provisions for steam traction engines. The boiler and engineers licensing law outlines detailed provisions for the inspection of traction engines and the licensing of traction engine operators. Thus, by repealing the two sections in question, the Legislature would not be negating legal safety requirements for the operation of steam traction engines. However, the Legislature would be removing conflicting and archaic provisions from the Montana Revised Codes.

## ROLL CALL

## LABOR & EMPLOYMENT RELATIONS COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date

1/12

Each day attach to minutes.

SENATE LABOR + EMPLOYMENT COMMITTEE

**BILL** \_\_\_\_\_

## VISITORS' REGISTER

DATE 1/13/77

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY