

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

January 25, 1979

The meeting of the Labor & Employment Relations Committee was called to order by Chairman Lowe on January 25, 1979, in Room 404 of the State Capitol at 1:30 p.m.

ROLL CALL: All members were present with the exception of Vice-Chairman Harold C. Nelson who was excused.

Chairman Lowe informed the Committee that the voting on Senate Bill #110 would be taken on Saturday, January 27, 1979, and those who would not be able to attend could vote ahead of time if they so desired.

Chairman Lowe then asked Senator Mehrens to inform the Committee of Senate Bill #140 which was to be considered at this meeting. Senator Mehrens introduced Norman H. Grosfield, Administrator for the Division of Workers' Compensation, to explain the changes in this bill. Mr. Grosfield explained the reasons for these changes and his statement is attached as Exhibit "A".

Mr. Grosfield indicated that the major insurance companies supported this bill and all members of the Advisory Council had concurred in these changes.

Chairman Lowe asked for opponents to Senate Bill 140. Mr. Steve Williams, Anaconda Company, Butte, Montana, had a prepared amendment to this bill and asked the Committee to consider adding "or award" on page 5, line 25.

Jim Oppedahl of the Legislative Council suggested that the amendment read as follows:

1. Page 5, line 25
Following: "~~er~~-award"
Insert: or award

Senator Smith moved the Committee pass the bill as amended. The motion was seconded and the bill passed unanimously.

Chairman Lowe then opened the hearing on Senate Bill 141.

Mr. Jim Oppedahl from the Legislative Council informed the Committee of a computer error in the printed bill and suggested the following amendment:

1. Page 6, line 23 through line 25.

Strike: "division an application therefor, together with the certificate of the physician who attended him, and it shall be"

Senator Mehrens again introduced Mr. Grosfield to explain the proposed changes in Senate Bill #141. Mr. Grosfield's explanation of changes is attached as Exhibit "B".

Senator Lowe asked if the Division of Workers' Compensation could live with changing line 22 on page 2 from a strict \$500 to "not exceeding \$500". Mr. Grosfield indicated that he felt the Division could live with that change.

Mr. Steve Williams of the Anaconda Company in Butte spoke as a proponent of the bill only in that they wished that the reporting of accidents in writing would not be eliminated from the bill. Mr. Grosfield indicated that companies could require the reporting of accidents in writing as an in-house company procedure and it was not necessary to have it written into the bill.

Mr. Bill Samson of Mountain Bell stated that they had a problem with the bill on the certification of employees who had become vocationally handicapped and also those employees who were new employees certified vocationally handicapped on a previous job. It was suggested that Mr. Grosfield and Mr. Samson get together after the meeting to work this out and submit a proposed amendment to the Committee for the next meeting.

At this point, Mr. Williams of the Anaconda Company withdrew his opposition to the reporting of accidents in writing which he had previously.

The Committee felt they should wait to take action on Senate Bill #141 until Mr. Grosfield and Mr. Samson had worked out the amendment mentioned above.

There being no further business, the meeting adjourned at 2:50 p.m.



Senator William R. Lowe

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

46TH LEGISLATIVE SESSION - - 1979

Date 1-25-79

NAME	PRESENT	ABSENT	EXCUSED
HAROLD C. NELSON, VICE CHAIRMAN			✓
GARY AKLESTAD	✓		
HAROLD L. DOVER	✓		
WILLIAM F. HAFFERMAN	✓		
JOHN (SANDY) MEHRENS	✓		
BOB PALMER	✓		
ELMER D. SEVERSON	✓		
RICHARD G. SMITH	✓		
BILL R. LOWE, CHAIRMAN	✓		

Attach to minutes each day.

MEMORANDUM BY THE DIVISION OF WORKERS' COMPENSATION
REGARDING SENATE BILL 140 WHICH CLARIFIES THE ROLE
OF THE WORKERS' COMPENSATION JUDGE

The Division of Workers' Compensation, through an advisory council made up of representatives of various interest groups concerned with workers' compensation legislation, proposes the changes as set forth in Senate Bill 140. The Division wishes to explain the reason for the changes in each section of the proposed bill. Reference will be made to the bill's section numbers.

Section 1. Section 1 amends section 39-71-204 of the Workers' Compensation Act by clarifying how final settlements shall be reopened, and by providing that disputes concerning the reopening of settlements shall come under the jurisdiction of the Workers' Compensation Judge. The Division has taken the position that the Workers' Compensation Court does in fact now have jurisdiction to hear disputed matters concerning the reopening of awards. However, the Division believes that this matter should be clarified in the statutes.

Section 2. Section 2 would amend section 39-71-611 by providing that the Workers' Compensation Judge rather than the Division of Workers' Compensation shall set the award of attorney fees and costs in certain cases. Under the law, if an insurer denies liability for a claim or terminates benefits, and it is determined that the action of the insurer was wrong, the insurer must pay reasonable costs and attorney fees to the claimant's attorney. The law was passed prior to the creation of the Workers' Compensation Judge, and it currently provides that the Division shall set the fee even though the Workers' Compensation Judge actually hears the case. The Division believes that the Judge should set the fee in that the Judge has heard the entire case and is in a better position to determine an appropriate fee.

Section 3. Section 3 would amend section 39-71-741 of the Workers' Compensation Act relating to the conversion of biweekly workers' compensation payments into a lump sum. The section would be amended to clarify the procedures utilized to convert biweekly payments into a lump sum and would provide that controversies concerning such conversions would go before the Workers' Compensation Court. The Division considers that the current law requires that such controversies go before the Court and the law would merely be amended to clarify this particular matter.

Section 4. Section 4 would amend section 39-71-2905 by providing that the Workers' Compensation Judge has exclusive jurisdiction to hear workers' compensation disputed matters. The Division has taken the position that the Judge has exclusive jurisdiction under Montana law to hear contested matters that arise under the Workers' Compensation Act, and the amendments would merely clarify this position. Also, the amendments would provide that the penalties that may be assessed against insurance carriers under the Workers' Compensation Act are the exclusive penalties for disputed workers' compensation cases. The Division believes that matters concerning penalties and assessments taken against insurance carriers must be clarified, and this language has thus been submitted for consideration.

Section 5. Section 5 would amend section 39-71-2907 by clarifying when the Workers' Compensation Judge may increase benefits due to an insurer's unreasonable

delay or refusal to pay benefits. Under the current law, it is unclear as to when the penalty applies. The Division believes that the penalty should only apply to benefits paid between the time they were delayed or refused and the order by the Workers' Compensation Court granting benefits. The Division does not believe that benefits should be increased on a continuing basis over the entire award due a claimant. Thus, the section is proposed to be modified in order to clarify the penalty section.

Section 6. Section 6 would amend section 39-71-2909 by clarifying the authority of the Workers' Compensation Court concerning the review of previous settlements or awards granted a claimant. The Division considers that the amendments merely clarify the Judge's authority and make the section more meaningful in the day to day workings of this workers' compensation delivery system.

If anyone has questions concerning the proposed bill, please feel free to contact Mr. Norman H. Grosfield, Administrator of the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, phone 449-2047.

NHG/nmb

Ed. Hellet "B"
SB-141

MEMORANDUM BY THE DIVISION OF WORKERS' COMPENSATION
REGARDING SENATE PILL 141, AN ACT TO
GENERALLY REVISE THE LAWS RELATING TO WORKERS'
COMPENSATION

The Division of Workers' Compensation, through an advisory council made up of representatives of the various interest groups concerned with workers' compensation legislation, proposes the changes as set forth in Senate Bill 141. The Division wishes to explain the reason for the changes in each section of the proposed bill. Reference will be made to the bill's section numbers.

Section 1. Section 1 amends section 39-71-208 by removing certain obsolete language from the section. The section originally related to the operation of the now abolished Industrial Accident Board. The board was a three member agency and thus held weekly meetings and minutes were kept at these meetings. The Division of Workers' Compensation is not operated by a multi-member board and thus the reference to minutes no longer has application. However, the Division considers that it should keep records of all awards, and the section is proposed to be amended to reflect this requirement.

Section 2. Section 2 amends section 39-71-210 concerning the Division's annual report. The section requires that the Division shall issue an annual report prior to October 1 of each year. However, due to statistical gathering and the receipt of information from the consulting actuary, it is impossible for the Division to comply with the October 1 deadline. The recent audit conducted through the Legislative Auditor's office suggested that the section be modified to reflect the current practical problems in putting out an annual report. Thus, the section is proposed to be amended by deleting the October 1 deadline and merely requiring that the report be submitted after the end of each fiscal year.

Section 3. Section 3 would amend section 39-71-304, which relates to the authority of the Division to review the books, records and payrolls of employers in order for the Division to properly administer the Workers' Compensation Act. The Division has found that the penalty under the current law for refusal to open the books to the Division is so minimal that it is often ignored. Thus, the Division proposes to increase the penalty from \$100 to \$500. Although the Division has relatively few problems with employers in reviewing and auditing their books, the Division believes that an adequate penalty is needed to enforce the Division's responsibility to properly review certain employer records.

Section 4. Section 4 amends section 39-71-405 relating to certain obligations of an employer who contracts out work. The proposed amendment would clarify the law relating to the obligation of employers when such employers utilize independent contractors to do certain work. The current law is somewhat unclear as to the requirements of the section. It is the Division's position that under the current law, an employer who contracts out work of a kind that is the regular and recurrent part of the business of the employer must determine that the contractor is properly complying with the Workers' Compensation Act. If the contractor has not properly complied, the employer, or the employer's insurer, would be liable for any benefits to an injured worker who was working for an uninsured contractor. The current law is somewhat

unclear in this regard in the use of the term "subcontractor". The section can only mean an independent subcontractor and the term subcontractor is not technically correct as it is used in the present law. Thus, it is proposed to clarify the law by indicating that the term "independent contractor" applies to the provisions of the law. Several style changes have been made in the section to make it more readable. Also, subsection (4) is being deleted in that it is considered that it has no practical application. It merely adds confusion to the section.

Section 5. Section 5 would amend section 39-71-504 by reducing the minimum assessment, under the Uninsured Employers Fund program, from \$500 to \$200. The Division has found a few instances wherein the minimum assessment appeared to be excessive considering the employer's business operation. Most assessments under the Uninsured Employers Fund far exceed the current minimum and thus the proposed change would have little effect on the balance in the fund. Also, it is proposed that the \$30,000 limitation concerning an employer's liability under the Uninsured Employers Fund system would relate only to the liability an employer owes for benefit payments out of the fund, and not for liability an employer would owe for back due premium. The Division believes that an employer should have unlimited liability regarding back due premium, although premium can only be collected for a retroactive three year period. However, the limitation will be maintained for an employer's liability concerning payment from the Uninsured Employers Fund for medical and compensation costs.

Section 6. Section 6 would amend section 39-71-603 by removing language relating to written notice that has little effect and application in the workers' compensation system. An employer merely has to have actual knowledge, and written knowledge is unneeded. Thus, the section has been rewritten to accurately reflect the practical administration of the Workers' Compensation Act relating to notice of an injury to an employer.

Section 7. Section 7 would amend section 39-71-604 by substituting more meaningful language concerning the submission of information to insurers or the Division. Also, the language in the section would be expanded to cover injuries occurring under all three of the workers' compensation plans and not merely State Fund cases. All three plans should be treated equally. The reference to the payment of a physician in the amount of \$1.50 for submission of appropriate information is no longer a viable provision. Physicians should be paid their usual fees and the \$1.50 provision is far outdated. (Note: An error was made in the printing of the bill. Material beginning with the word "division" on line 23 of page 6 through the word "be" on line 25, page 6, should have been deleted. An amendment will be submitted to correct this error.)

Section 8. Section 8 would amend section 39-71-609 by providing that insurers shall notify claimants fourteen days in advance instead of fifteen days when an insurer is going to terminate benefits. The fourteen day provision complies with weekly payment systems. Workers' compensation benefits are paid on a biweekly basis; i.e., every 14 days. The bill would also amend the section by providing that notice must be given to the claimant's authorized representative as well as to the claimant and the Division. The Legislative Auditor recommended that the section be amended in order to indicate that an insurer may terminate benefits when in fact a claimant has returned to work. Currently, there is a statutory conflict in the law. Wage

loss benefits are paid an injured worker while he is off work. However, section 603 would indicate that two additional weeks of benefits would have to be paid to an injured worker even though he has returned to work. The Division has taken the position that an insurer may in fact terminate benefits if the insurer knows that the claimant has returned to work. The proposed amendments would merely clarify the law in this area.

Section 9. Section 9 would amend section 39-71-736 by removing certain superfluous language in the section, and clarifying when compensation is due. Under the current law benefits are not due for the first "week" an injured worker is off work due to an industrial injury. Certain confusion has existed regarding the definition of "week", and it is believed that the section should be clarified. Thus, the term five days has been substituted. Usually workers are employed five out of seven days. Thus, the section would provide benefits after five days of loss of wages.

Section 10. Section 10 would amend section 39-71-901 which relates to procedures for certification under the Subsequent Injury Fund. The Subsequent Injury Fund is a fund that provides limited liability for employers who are willing to hire certain handicapped individuals. The section is to be clarified in certain respects. The term "physical" would be removed from the law so that a vocationally handicapped person could also have a mental handicap, but still be certified under the Subsequent Injury Fund. The definition of certifying agency is to be modified and the Division of Workers' Compensation will be substituted. In fact, it is the Division that makes the certification and the law would merely reflect this procedure.

Section 11. Section 11 would amend section 39-71-905, concerning certification under the Subsequent Injury Fund, by indicating that the Division is the certifying agency. It would also clarify the law by indicating that an individual must be certified prior to employment with a certain employer before certification under the Subsequent Injury Fund is effective. Under the current law, it is unclear as to exactly when certification must take place in order to be eligible for benefits under the fund.

Section 12. Section 12 would amend section 39-71-906 by substituting the word Division for certifying agency. This is merely clarifying language.

Section 13. Section 13 would amend section 39-71-2202 by providing that all insurance policies written by private insurance carriers are considered to be made subject to the provisions of the Workers' Compensation Act. It would remove the requirement that the Division review each insurance contract. If, as reflected in the amended section, all policies must conform to the provisions of the Workers' Compensation Act, there is no need for the Division to review the policies. The current provision adds additional unneeded workloads for private insurance carriers and the Division.

Section 14. Section 14 would amend section 39-71-2301 concerning the establishment of the State Compensation Insurance Fund by merely providing language reflecting what in fact the State Fund is and how it is operated. The current intent and purpose definition is meaningless and is not descriptive of the State Fund. Thus, language is being substituted to accurately state the intent and purpose of the State Fund.

Section 15. Section 15 would amend section 39-71-2306 by removing the current provision allowing the State Fund to charge a penalty of 25% over the established rate when an employer is in default, and substituting a provision allowing the State

Fund to merely charge interest to such an employer. Also, it would allow the State Fund to charge interest to an employer who has misrepresented the employer's payroll, or improperly classified an employer's payroll. This would be a substitute for section 39-71-305 which provides that an employer who misrepresents a payroll can be subject to up to ten times the amount of the difference between what was paid and what should have been paid. The Division believes that such a penalty is excessive and that a provision allowing the State Fund to charge interest at a current interest rate would be an appropriate substitute.

Section 16. Section 16 would repeal various sections in the Workers' Compensation Act. An explanation of each repealed section is set forth below.

Section 39-71-305. This section is proposed to be repealed based on the language of section 39-71-2306 as amended. The repealed section allows the State Fund to charge up to ten times the amount of premium that would be due for employers who have misrepresented payroll. It is believed that this is an excessive penalty and the proposed interest provision of section 39-71-2306 would address this problem.

Section 39-71-404. This section provides that a contractor performing work for public corporations must be bound by either Compensation Plan No. Two or Plan No. Three. The Division considers that contractors which are self-insured may at times wish to do work for public corporations and should not be restricted or required to take out insurance through a private insurance carrier or the State Fund in order to do such work. Thus, it is suggested that the section be repealed. The general law concerning coverage requirements for employers would then apply and an employer insuring under any one of the three compensation plans would be eligible for such public corporation work.

Sections 39-71-2309 and 39-71-2310. These sections provide that an employer insured with the State Fund who is in default is considered an uninsured employer, and an injured worker has the option of either taking under the Workers' Compensation Act or pursuing the employer through a general liability action. When an employer is in default of payment of premiums, the employer is still insured with the State Fund until formally cancelled, and the Division considers that employees should be fully covered under the Workers' Compensation Act. Matters concerning the collection of premium are between the employer and the State Fund and do not affect the injured worker. The injured worker will be fully covered under the Workers' Compensation Act and should receive workers' compensation benefits. Thus, it is suggested that these two sections be repealed.

If anyone has any questions concerning the proposed bill, please feel free to contact Mr. Norman H. Grosfield, Administrator, Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, phone 449-2047.

NHG/nmb

SENATE Labor & Eng. Rel. COMMITTEE

BILL 140 & 141

VISITORS' REGISTER

DATE 1-25-

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPP
<u>James Murphy</u>	<u>Div of Workers Comp. Ins.</u>	<u>140</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>W. L. Hollingsworth</u>	<u>operating Engineers & Teamsters</u>	<u>141</u>	<input type="checkbox"/>	<input type="checkbox"/>
<u>J. B. ...</u>	<u>team of ...</u>		<input type="checkbox"/>	<input type="checkbox"/>
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NAME: Bill Samson DATE: 1-25-79

ADDRESS: 1375 Broadway

PHONE: 443-1947

REPRESENTING WHOM? Mountain Bell

APPEARING ON WHICH PROPOSAL: SB141

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Steve Williams DATE: 1-25-79

ADDRESS: 2030 71th Ave

PHONE: 443-5810

REPRESENTING WHOM? ANACONDA Co.

APPEARING ON WHICH PROPOSAL: H SB 140, SB 141

DO YOU: SUPPORT? _____ AMEND? OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

..... January 25, 19 79

MR. President.....

We, your committee on Labor & Employment Relations.....

having had under consideration Senate..... Bill No. 140.....

Respectfully report as follows: That Senate..... Bill No. 140.....
introduced bill was unanimously passed as amended.

1. Page 5, line 25.
Following: "er-award"
Insert: "or award"

And, as so amended
DO PASS

J.A.