

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

March 3, 1979

The meeting of the Labor and Employment Relations Committee was called to order by Chairman Lowe on March 3, 1979, in Room 404 of the State Capitol at 1:00 p.m.

ROLL CALL: All members were present with the exception of Senator Palmer who was excused.

Chairman Lowe opened the hearing on House Bill #212 and asked Representative Fasbender of District #17 to address the Committee. Representative Fasbender explained that the bill related to collective bargaining of public employees and exempting confidential employees from the definition of a public employee and that these confidential employees must be represented by unaffiliated labor organizations.

Mr. LeRoy H. Schramm, representing the Labor Relations Bureau of the Personnel Division and the Governor's Advisory Task Force on Collective Bargaining, informed the Committee that this law would put Montana in line with other state laws and did not limit the employees from joining unions as long as they were independent unions.

Mr. Maurice J. Mulcahy, representing the AFSCME, AFL/CIO and the Montana Police Protective Association, stated that they would support the bill if his proposed amendment was included in the bill. Mr. Mulcahy's amendment is attached as Exhibit "A".

There were no opponents to House Bill #212.

Representative Fasbender agreed to carry the bill on the floor.

Senator Smith moved the amendment which carried unanimously. Senator Smith then moved the bill as amended which also passed unanimously.

The hearing on House Bill #378 was then opened with Representative Manning of Great Falls addressing the Committee. Representative Manning explained that although the Department of Labor & Industry had been charged with the enforcement of the Montana Maternity Act, this act did not give the Department any authority to enforce this act and that House Bill #378 would give them that authority. Representative Manning explained that the Department had received 55 verified complaints and 26 violations in cases where employers had terminated employees due to pregnancy, but that the Department's hands were tied due to the lack of the enforcement authority. Mr. Manning's testimony is attached as Exhibit "B".

Mr. Dick Kane, representing the Labor Standards Division of the Department of Labor and Industry, then spoke in favor of House Bill #378 and his testimony is attached as Exhibit "C".

Ms. Gail Stoltz, representing herself, addressed the Committee in favor of House Bill #378 explaining that she had been one of the initiators of the original bill and leaving out an enforcement procedure was an oversight at the time the bill was drafted.

There were no opponents to House Bill #378, so this hearing was closed.

Chairman Lowe then opened the hearing on House Bill #548 and asked Representative Harper of District 30 to address the Committee on this bill. Representative Harper explained that this act was designed to change the benefit year for unemployment compensation so that the Department would not have an overlap every three or four years when the first day of the work week went into the previous year.

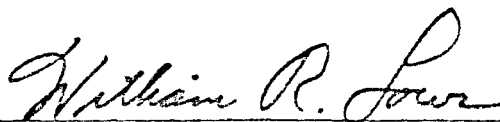
Mr. Rich Clough, representing the Employment Security Division, explained to the Committee that at the present time the way the benefit year was established, it caused two claims which were submitted at the end of one year and the beginning of the next year, to fall within the same month.

There were no opponents to House Bill #548.

Senator Smith moved the bill which passed unanimously. Senator Smith also moved that this bill be placed on the Consent Calendar which carried unanimously. It was agreed that Senator Lowe would carry House Bill #548.

Senator Smith moved that House Bill #378 do pass and withdrew his motion as there were members of the Committee who were awaiting additional information on this bill.

There being no further business, the meeting adjourned at 2:00 p.m.



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Senator William R. Lowe, Chairman

*Amendment "A"*

AMENDMENTS TO HOUSE BILL 212

Amend House Bill 212 on Pages 3 and 4 as follows:

On page 3, Line 25

Following: "Confidential employee" means

Strike: an employee who directly assists and acts in a confidential capacity to a person who formulates, determines, or administers management policies in the field of labor relations or personnel management."

Insert: <sup>*Second*</sup> any person ~~ruled upon~~ by the Board to be a confidential labor relations employee and those persons employed in the Personnel Division, State Department of Administration, who act with discretionary authority in the creation or revision of state classification specifications."

HOUSE BILL NO. 378

MR. SPEAKER, I RISE IN SUPPORT OF THIS LEGISLATION,  
"AN ACT TO GIVE THE COMMISSIONER OF LABOR AND INDUSTRY AUTHORITY  
TO ENFORCE MATERNITY LEAVE PROVISIONS THROUGH A DISTRICT COURT  
PROCEEDING".

THE MONTANA MATERNITY LEAVE ACT IS A LAW WHICH ASSURES  
CERTAIN JOB RIGHTS TO WOMEN WHO BECOME PREGNANT. THIS ACT  
MAKES IT UNLAWFUL FOR AN EMPLOYER TO:

- TERMINATE AN EMPLOYEE BECAUSE SHE IS PREGNANT;
- TO REFUSE TO GRANT HER A REASONABLE LEAVE FOR CHILDBIRTH  
AND RECOVERY;
- TO DENY COMPENSATION OR DISABILITY BENEFITS TO A WOMAN  
WHILE SHE IS DISABLED DURING HER PREGNANCY AND CHILDBIRTH,  
AND;
- TO REQUIRE A WOMAN TO TAKE A MANDATORY MATERNITY LEAVE FOR  
AN UNREASONABLE AMOUNT OF TIME.

THE ACT ALSO REQUIRES AN EMPLOYER TO REINSTATE A WOMAN AT  
THE END OF HER LEAVE.

SINCE OCTOBER 1977 THE LABOR COMMISSIONER HAS RECEIVED 55  
VERIFIED COMPLAINTS FROM MONTANA WOMEN. THROUGH THE PROCESS OF  
AN ADMINISTRATIVE HEARING THE LABOR COMMISSIONER HAS FOUND 26  
VIOLATIONS OF THIS ACT. THE REMAINING COMPLAINTS WERE SETTLED  
BETWEEN THE WOMAN AND HER EMPLOYER PRIOR TO A HEARING OR THE

LABOR COMMISSIONER FOUND NO VIOLATION AND DISMISSED THE COMPLAINT. ONE LARGE EMPLOYER (MOUNTAIN BELL) WAS FOUND TO HAVE VIOLATED THIS ACT 26 TIMES. THE COMMISSIONER FOUND THAT THESE 26 WOMEN WERE DUE ABOUT \$38,000.00.

AS WOMEN IN MONTANA BECOME MORE FAMILIAR WITH THE ACT, MORE COMPLAINTS WILL BE FILED.

THE ORIGINAL ACT PROVIDED THAT THE LABOR COMMISSIONER COULD ORDER AN EMPLOYER TO REINSTATE A WOMAN TO HER JOB AND TO PAY HER THE DAMAGES WHICH RESULTED FROM THE EMPLOYER'S VIOLATION OF THE MONTANA MATERNITY LEAVE ACT. THE ACT DID NOT SPECIFICALLY PROVIDE A METHOD FOR ENFORCEMENT OF THE ORDER. THIS AMENDMENT PROVIDES A SPECIFIC METHOD FOR THE ENFORCEMENT OF THE COMMISSIONER'S ORDER AND ELIMINATES ANY POSSIBLE UNCERTAINTY.

THE METHOD IS IDENTICAL TO THAT PROVIDED IN THE WAGE PAYMENT ACT (SECTION 39-3-212 MCA). THE METHOD WHICH IS USED IN THE WAGE PAYMENT ACT IS WELL TESTED AND IS UNDERSTOOD BY THE DEPARTMENT OF LABOR AND INDUSTRY, ATTORNEYS, AND THE COURTS. ON AT LEAST TWO OCCASIONS THIS METHOD WAS TESTED IN AND UPHELD BY THE SUPREME COURT. (GARSJO V. DEPT. OF LABOR & INDUSTRY AND DEPARTMENT OF LABOR AND INDUSTRY V. HOLMAN AVIATION).

IT SHOULD BE EMPHASIZED THAT IF AN EMPLOYER FEELS THAT THE ORDER OF THE LABOR COMMISSIONER IS WRONG, THE EMPLOYER CAN FILE A PETITION FOR JUDICIAL REVIEW IN DISTRICT COURT WITHIN THIRTY DAYS OF RECEIPT OF COMMISSIONER'S ORDER. IF THE EMPLOYER DOES NOT FILE FOR JUDICIAL REVIEW, OR DOES NOT COMPLY WITH THE ORDER THE COMMISSIONER APPLIES FOR A JUDGMENT TO ENFORCE HIS ORDER. THEREFORE, THIS ACT DOES NOT DEPRIVE AN EMPLOYER OF THE RIGHT OF APPEAL THAT HE CURRENTLY HAS UNDER THE EXISTING LAW.

THE MATERNITY LEAVE ACT IS A GOOD LAW. THIS ACT CLARIFIES THE COMMISSIONER'S POWER TO ENFORCE THIS ACT. THEREFORE, I URGE YOU TO VOTE IN FAVOR OF THIS BILL.

Mr. Chairman, members of the committee, for the record I am Dick Kane, Administrator of the Labor Standards Division, Department of Labor and Industry. I am here today in support of House Bill 378.

The Montana Maternity Leave Act is a law providing for certain job rights for women who become pregnant. The Maternity Leave Act makes it unlawful for an employer to;

- terminate employment,
- refuse to grant reasonable leave,
- to deny compensation or disability benefits due the woman,
- to retaliate against the employee who files a complaint, or
- to require that an employee take mandatory leave for an unreasonable amount of time.

The employer is also required to reinstate the employee at the end of her leave.

The Commissioner of Labor has the authority to investigate, make findings of fact and to order the employer to pay the complainant any damages resulting from a violation.

If an employer chooses to ignore the Commissioner's order the present statute does not provide for any remedy.

Other laws administered by the Department of Labor and Industry address this problem by providing that the orders of the Commissioner are enforceable by application to district court.

In such a process the Commissioner will apply to district court for a court order enforcing the Commissioner's order, or for a judgement against the employer.

Without enforcement power, the Maternity Leave Act is very difficult to administer.

The Maternity Leave Act is a good law and I urge you to vote in favor of this bill.

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

46TH LEGISLATIVE SESSION - - 1979

Date March 3, 1979

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	✓		



NAME: LeRoy H. Schramm DATE: 2-3-79

ADDRESS: Labor Relations Bureau

PHONE: \_\_\_\_\_

REPRESENTING WHOM? \_\_\_\_\_

APPEARING ON WHICH PROPOSAL: \_\_\_\_\_

DO YOU: SUPPORT?  AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: will be brief

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: MAURICE J. Mulcahy DATE: 3-3-78

ADDRESS: 522 No. Franklin ST

PHONE: 792-8560 - 442-1192 - 442-3327

REPRESENTING WHOM? A.F.S. C.M.E. A.F.L. C.I.O. MONTANA Police  
Protective Assn.

APPEARING ON WHICH PROPOSAL: H.B. 212

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Wjm Gosnell DATE: 3/2/75

ADDRESS: Helen

PHONE: 449-2871

REPRESENTING WHOM? State Personnel

APPEARING ON WHICH PROPOSAL: HA 212

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Cook, Lisa DATE: 1/1/78

ADDRESS: 35 S. Main

PHONE: 409-5700

REPRESENTING WHOM? John Stedman, Director, Dept of Soc & Health

APPEARING ON WHICH PROPOSAL: H-11-577

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: Written notes submitted  
↓

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Rod Wilson DATE: 4-2-77

ADDRESS: 1234 N. 1st St. Phoenix, AZ 85001

PHONE: 482-5445

REPRESENTING WHOM? Employee & Security Division

APPEARING ON WHICH PROPOSAL: 410 545

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: Report by 5-17

NAME: MAURICE J. MULCAHY DATE: 3-3-78

ADDRESS: 522 N. FRANKLIN ST.

PHONE: 792-8560 - 442-3327 - 442-1182

REPRESENTING WHOM? A.F.S.C.M.E. P.F.A.-C.T.O

APPEARING ON WHICH PROPOSAL: H.B. 378

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



# STANDING COMMITTEE REPORT

March 1 1929

MR. PRESIDENT.....

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration ..... **HOUSE** ..... Bill No. **212**

**South (Fasbender)**

Respectfully report as follows: That..... **HOUSE** ..... Bill No. **212**  
third reading bill, be amended as follows:

1. Page 3, line 25 through line 4 on page 4.

Following: "means" on line 25

Strike: Line 25 through "management" on line 4, page 4

Insert: "any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications"

And, as so amended

BE CONCURRED IN

~~XXXXXX~~

*J.A.*



# STANDING COMMITTEE REPORT

March 1

19 79

MR. President:.....

We, your committee on Labor & Employment Relations

having had under consideration House Bill No. 543

Parker (Lowe)

Respectfully report as follows: That House Bill No. 543

BE CONCURRED IN  
AND PLACED ON CONSENT CALENDAR

DO PASS