

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 28, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on January 28, 1985 at 9:00 a. m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present with the exception of Representative Lloyd McCormick, who was excused by the chairman.

HOUSE BILL NO. 278: Hearing commenced on House Bill No. 278. Representative William (Red) Menahan, District #67, sponsor of the bill, stated that the purpose of House Bill 278, is to reduce from 20 to 15 weeks the working time needed to qualify for unemployment benefits and to reduce the total qualifying wages from \$1,000 to \$750. This bill would become effective July 1, 1985.

Proponent Jim Murray, Executive Secretary of the Montana AFL-CIO does support the concept of expanding those eligible for unemployment benefits.

Opponent Chad Smith, representing the Unemployment Compensation Advisory Association, stated that House Bill 278 goes in the opposite direction of what is necessary. This will allow more individuals to become eligible for unemployment benefits. The fund is currently running at a deficit. The increase from \$1000 to \$750 for total qualifying wages would allow a person to work only seven weeks at \$2.75 per hour, and then be eligible to draw benefits, explained Mr. Smith.

Opponent Forrest Boles, representing the Montana Chamber of Commerce, stated that we should not make benefits easier to obtain. Unwarranted and unnecessary claims are the number one concerns of employers. A witness statement attached hereto, further outlines Mr. Boles' oral testimony.

Opponent George Allen, representing the Montana Retail Association, explained that we should concentrate on getting the unemployment fund solvent before making any changes in the requirements.

Opponent Riley Johnson, representing the National Federation of Business and the Montana Homebuilders, stated that we should not make any changes until we can make the fund solvent.

Opponent Bill Olson, Secretary of the Montana Contractors' Association expressed his opposition of House Bill 278.

Opponent Ben Havdahl, representing the Montana Motor Carriers Association, explained that House Bill 278 would have an additional drain on the unemployment fund.

Dave Wanzenried, Commissioner of the Department of Labor and Industry, was not a proponent nor opponent to House Bill 278. Mr. Wanzenried offered information only. The fiscal impact of House Bill 278 would be approximately 2.2 million dollars.

Representative Menahan, in closing, stated that it is not fair to say that people who don't work more than 15 weeks per year are unattached to the work force. This is the most work that some individuals are able to find. We have to help the people at the bottom and help the needy not the greedy, stressed Representative Menahan.

Representative Kadas asked Mr. Chad Smith if he feels unemployment benefits should only be drawn by the trained, skilled, and in demand workers. Mr. Smith answered that it should be for those who are attached to the labor force and those that suffer a severe impact when they are not employed.

There being no further discussion by proponent or opponents, all were excused by the chairman and the hearing on House Bill 278 was closed.

HOUSE BILL NO. 213: Hearing commenced on House Bill No. 213. Representative Jan Brown, District #46, sponsor of the bill, supplied written testimony which is attached hereto as Exhibit 1.

Proponent George Allen, representing the Montana Retail Association, supplied written testimony which is attached hereto as Exhibit 2.

Proponent Cathy Galetti, representing Avon Products, supplied written testimony which is attached hereto as Exhibit 3.

Proponent Larry Weinberg, representing the Montana University System, suggested that a closer look may be warranted into the independent contractor situation. House Bill 213 may have an effect on lecturers or performing artists that work in the state once a year. Should these individuals have to apply for workers' compensation, they may be discouraged and thus bypass Montana. House Bill 213 should address more specifically an independent contractor. It should include those that want to be included, added Mr. Weinberg.

Proponent Forrest Boles, representing the Montana Chamber of Commerce, offered his support of House Bill 213.

Representative Kadas asked Mr. Gary Blewett of the Department of Labor and Industry, what the fiscal impact would be. Mr. Blewett explained that an impact could not be contributed to the passing of House Bill 213.

Mr. Blewett explained further that an advisory council has been appointed by the governor to study this issue. An effort is being made to clarify the definition of an independent contractor.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 213 was closed.

HOUSE BILL NO. 272: Hearing commenced on House Bill 272. Representative Norm Wallin, District #78, sponsor of the bill explained that this bill is at the request of the Department of Labor and Industry. House Bill 272 would require that anyone who fraudulently obtains unemployment benefits pay 18 percent annual interest on the amount wrongfully received. Representative Wallin distributed to committee members Exhibit 4, which is attached hereto.

Proponent Dave Wanzenried, Commissioner of the Department of Labor and Industry, explained the proposed amendments which is Exhibit 4.

Proponents George Allen representing the Montana Retail Association, Chad Smith, representing the Unemployment Compensation Advisory Association, and Riley Smith, representing the National Federation of Business and the Montana Homebuilders, all offered their support of House Bill 272.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 272 was closed.

ACTION ON HOUSE BILL NO. 213: Representative Thomas made a motion that House Bill DO PASS. Second was received and House Bill 213 was PASSED unanimously.

ACTION ON HOUSE BILL NO. 278: Representative Brandewie made a motion that House Bill 278 be TABLED. Second was received and House Bill 278 was TABLED unanimously.

ACTION ON HOUSE BILL NO. 272: Representative Schultz made a motion that House Bill 272 DO PASS. Representative Schultz then moved the amendments which PASSED unanimously. House Bill 272 DO PASS AS AMENDED by unanimous vote.

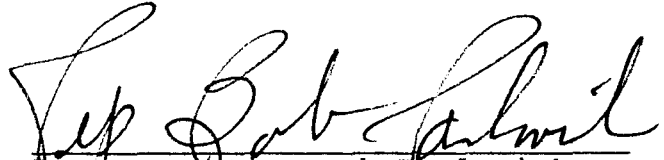
ACTION ON HOUSE BILL NO. 223: Representative Brandewie made a motion that House Bill 223 DO PASS. Representative Kadas moved that on page 2, line 3, following and, insert "reasonable". The amendment did PASS with all but Representative's Ellerd, Schultz and Wallin voting yes. Representative Schultz explained that he is not against the term "reasonable", but doesn't understand what it means. Representative Kadas agreed with Representative Schultz, and added that with the term "reasonable" the tenant would have an advantage and "reasonable" would be left up to the courts, should House Bill 223 be tried. Representative Brandewie's motion that House Bill 223 DO PASS AS AMENDED, received a unanimous vote.

ACTION ON HOUSE BILL NO. 189: Chairman Pavlovich explained that a Statement of Intent was distributed during the hearing on House Bill 189 and that it was not adopted when the committee passed the bill. Representative Schultz asked Paul Verdon, the staff researcher, if the Statement of Intent is needed, along with the Extension of Authority that is presently in House Bill 189. Mr. Verdon did not believe the Statement of Intent was necessary.

ACTION ON HOUSE BILL NO. 184: Representative Schultz made a motion that House Bill 184 DO NOT PASS. Representative Driscoll made a substitute motion that House Bill 184 DO PASS. Representative Kitselman moved that the amendments distributed by Cathy Campbell be adopted. Representative Bachini asked if the sponsor of the bill approved of the amendments. Chairman Pavlovich explained that the sponsor would rather the amendments not be adopted. Representative Ellerd asked if this would effect the bingo games currently played on the reservations. Representative Howe stated that those games fall under the federal law. Representative Driscoll explained that every county in the state currently has some type of bingo game and that by passing House Bill 184 gambling will not be expanded. Representative Wallin moved that an amendment within the proposed amendment be adopted changing "shall" to "may" and Representative Kitselman moved that an amendment within the proposed amendment be adopted changing "shall be" to "is" and changing "may be" to "is". A roll call vote was taken on all the proposed amendments and resulted in 12 members voting yes and 8 members voting no. Representative Driscoll's substitute motion that House Bill 184 DO PASS AS AMENDED was taken by roll call vote, and found 12 members voting yes and 8 members voting no. House Bill 184 DO PASS AS AMENDED.

Business and Labor Committee
January 28, 1985
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ADJOURN: There being no further business before the committee,
the meeting was adjourned at 10:40 a. m.



Representative Bob Pavlovich
Chairman

DAILY ROLL CALL
BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date January 28, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll			
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich			✓
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

STANDING COMMITTEE REPORT

January 25

1945

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE

Bill No. 213

FIRST reading copy (WHITE
color)

**EXEMPTING DIRECT HOME SALESPeOPLE FROM WORKERS'
COMPENSATION**

Respectfully report as follows: That HOUSE

Bill No. 213

DO PASS

STANDING COMMITTEE REPORT

January 28

1935

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 223

FIRST reading copy (WHITE
color)

REMEDY FOR LANDLORD IF TENANT VACATES WITHOUT GIVING PROPER NOTICE

Respectfully report as follows: That HOUSE Bill No. 223

BE AMENDED AS FOLLOWS:

1. Page 2, line 3
Following: "and"
Insert: "reasonable"

AND AS AMENDED,
DO PASS

STANDING COMMITTEE REPORT

January 28

1935

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE

Bill No. 272

FIRST reading copy (WHITE)
color

PAY INTEREST WHEN REPAYING FRAUDULENTLY OBTAINED UNEMPLOYMENT COMPENSATION

Respectfully report as follows: That HOUSE Bill No. 272

BE AMENDED AS FOLLOWS:

1. Page 2, line 10
Following: "that"
Strike: "the interest due"
Insert: "future benefits"
2. Page 2, line 11
Following: "offset"
Strike: "future benefits"
Insert: "the interest due"

AND AS AMENDED,

DO PASS

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE January 23, 1985 BILL NO. 184 TIME _____

NAME	AYE	NAY
Bob Pavlovich		✓
Les Kitselman	✓	
Bob Bachini		✓
Ray Brandewie	✓	
Jan Brown	✓	
Jerry Driscoll		✓
Robert Ellerd	✓	
William Glaser	✓	
Stella Jean Hansen	✓	
Marjorie Hart		✓
Ramona Howe		✓
Tom Jones		✓
Mike Kadas	✓	
Vernon Keller	✓	
Lloyd McCormick		✓
Jerry Nisbet		✓
James Schultz	✓	
Bruce Simon	✓	
Fred Thomas	✓	
Norm Wallin	✓	

Secretary Debbie Aqui

Chairman Bob Pavlovich

Motion: Do Pass Amendments

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE January 28, 1985 BILL NO. 134 TIME _____

NAME	AYE	NAY
Bob Pavlovich	✓	
Les Kitselman		✓
Bob Bachini	✓	
Ray Brandewie		✓
Jan Brown	✓	
Jerry Driscoll		✓
Robert Ellerd		✓
William Glaser		✓
Stella Jean Hansen	✓	
Marjorie Hart	✓	
Ramona Howe	✓	
Tom Jones		✓
Mike Kadas	✓	
Vernon Keller	✓	
Lloyd McCormick	✓	
Jerry Nisbet	✓	
James Schultz		✓
Bruce Simon	✓	
Fred Thomas	✓	
Norm Wallin		✓

Secretary Debbie Aqui

Chairman Bob Pavlovich

Motion:

Do Pass As Amended

Mr. Chairman and Members of the Committee:

For the record I am Jan Brown, House District 46.

House Bill 213 is an act exempting direct home salespeople from workers' compensation. The purpose of the bill is to return direct sellers, such as Amway distributors, to the status accorded them under the Workers' Compensation Act prior to the 1983 legislative session. During that session, House Bill 277 was passed which required certain independent contractors to obtain workers' compensation insurance for themselves or obtain an exemption from the act. The purpose of that law was to clarify the status of workers who were either employees or independent contractors.

Direct sellers such as Amway distributors have always been considered to be independent contractors, however, so the 1983 law did nothing to clarify their status but imposed a burden on them that they don't have in any other state.

House Bill 213 does not exempt direct sellers from the Workers' Compensation Act. Direct sellers who are employees and not independent contractors will still be covered. The bill does not preclude independent contractor direct sellers from obtaining workers' comp insurance for themselves if they want it.

All that the bill does is to remove the unnecessary requirement that independent contractor direct sellers must either obtain a special exemption from the Act, or get insurance.

I would encourage a "do pass" on House Bill 213, and I have other proponents on the bill.



Exhibit 2
House Bill 213
January 28, 1985
Submitted by:
George Allen

Executive Office
P.O. Box 440
34 West Sixth
Helena, MT 59624
Phone (406) 442-3388

TESTIMONY
HB 213

Mr. Chairman and Members of the Committee:

My name is George Allen. I am here today as a lobbyist for the Montana Retail Association, and we are in support of HB 213.

At the present time an independent contractor who is recognized by the Department of Workers' Compensation as an independent contractor is excluded from carrying Workers' Compensation.

This bill simply makes it possible for someone who qualifies as an independent contractor in the direct sales business from going through the paperwork of applying to the Workers' Compensation Department for an exclusion.

We have checked with the Department of Workers' Compensation and they tell us that there are no objections to this bill.

We therefore request that you support HB 213.

Respectfully,

George Allen
Executive Vice President
Montana Retail Association

Avon Products' Position on Montana House Bill 213

Avon Products totally supports H.B. 213 and appreciates the sponsorship of Representative Jan Brown.

House Bill 277 was enacted in 1983 to clarify the workers' compensation status of independent contractors in the logging industry. The thrust of the law was to have non-exempt independent contractors either obtain workers' compensation insurance or formally waive insurance coverage under an application procedure to the Montana Division of Workers' Compensation.

Unfortunately, the clarification of workers' compensation status in the logging industry could lead to confusion and unnecessary red tape in our industry. There is no need to clarify the independent contractor status of Avon Representatives. They are fully aware that they are independent salespeople who work when and if they want. In fact, the Sales Dealer Agreement, which establishes the business relationship between Avon and the new Representative, clearly states - "The Sales Dealer is an independent contractor . . ."

There are thousands of direct selling independent contractors in Montana engaged in consumer sales in the home. In the case of Avon, our Representatives are usually housewives who earn a modest supplemental income. Oftentimes, the goals for entering into this part-time earnings opportunity are short term for some immediate purpose. This leads to a high but voluntary turnover rate in the direct selling industry.

An important factor in becoming an Avon Representative is the ease of entry into and out of this part-time pursuit with a minimum of red tape, expense or delay. A recent profile of the direct selling industry indicated that the basic reason people enter the field is to engage in an independent earnings opportunity. The study further reveals that the overwhelming majority of those in direct selling are women who work less than nine hours a week. It becomes apparent that any bureaucratic interference with a simple, casual business such as ours which complicates the Representative appointment procedure places a burden on Avon and our Representatives.

In our experience, this burden will definitely discourage the average housewife from becoming an Avon Representative. If a prospect can't start earning money immediately and has to go through a pointless waiver procedure, she will find alternative part-time work.

Avon Representatives are clearly considered to be independent contractors in every other state. H.B. 213 will exempt Avon Representatives and other direct sellers who sell consumer products to customers, primarily in the home, from workers' compensation coverage. This will not change the status of direct sellers who already know they are independent contractors. H.B. 213 will simply add direct sellers to the already exempt group which includes such people as domestics; casual employment; members of an employer's family; real estate salespeople, etc.

We appreciate your attention to our point of view and urge passage of H.B. 213.

SALES DEALER AGREEMENT

AVON PRODUCTS, INC.

Newark, Delaware
Atlanta, Georgia
Springdale, Ohio

Morton Grove, Illinois
Kansas City, Missouri
Pasadena, California

_____ intends to begin acting as an independent Sales Dealer in products of AVON PRODUCTS, INC., on _____ 19____, with primary responsibility for specified Territory in _____.

This Agreement is not subject to change, except in writing, signed by an authorized Avon official. It shall not be considered changed by reason of any advice, suggestions or Sales Aids furnished by Avon to you.

Nothing in this Agreement obliges Avon to accept any order placed by you or obliges either you or Avon to enter into any further contract with each other.

Any contract previously made between you and Avon is of no force and effect after the date of this Agreement.

AVON AGREES:

- A. To sell Avon products to you at prices set by Avon.
- B. To pay transportation charges on all merchandise orders shipped by Avon to you.
- C. Avon reserves the right to change paragraphs A and B of this Agreement at any time upon ten (10) days prior written notice.

YOU, THE SALES DEALER, AGREE:

- 1. To pay Thirty Dollars (\$30.00) for the order-taking privilege.
- 2. At times and in a manner within your discretion:
 - (a) To make regular sales trips to the homes within the Territory for which you have primary responsibility in order to promote and make sales of Avon products.
 - (b) To purchase those products and deliver them to customers.
- 3. To pay Avon the amount due for each shipment of products sent by Avon to you no later than the due date for mailing the next Campaign Purchase Order. No shipment will be made on credit if the amount owed for a previous Purchase Order is not paid when due.
 - ☐ A \$6.00 Service Charge will be added to the total amount of the order on orders totaling less than \$75 for products at suggested customer prices, Demonstration Products and Sales Aids.
 - ☐ For the first order, even if it totals less than \$75, \$6.00 will *not* be added to the total amount of the order.
- 4. That this Agreement and all Purchase Orders that you send in are subject to acceptance by Avon.
- 5. To furnish references which shall be subject to approval by Avon.
- 6. The Sales Dealer is an independent contractor and has no power or authority to incur any debt, obligation or liability or to make any promise or contract on behalf of Avon. This is the sole and only Agreement between the parties and does not constitute the Sales Dealer an employee of Avon. In particular, the Sales Dealer will not be treated as an employee with respect to any services for Federal tax purposes.

By _____
DISTRICT SALES MANAGER

SALES DEALER

Amendments to HB 272, introduced copy

1. Page 2, line 10.

Following: "that"

Strike: "the interest due"

Insert: "future benefits"

2. Page 2, line 11.

Following: "offset"

Strike: "future benefits"

Insert: "the interest due"

WITNESS STATEMENT

Name F.H. DOCEY Committee On BUS & CHAIR
 Address HELENA MT Date _____
 Representing WONT CHAIRMAN OF CHAIRMAN Support _____
 Bill No. HB 278 Oppose X
 Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. I Am member of advisory council on employment security worked hard to obtain some reduction in benefits to effect greatly increased the employees need pay. This bill is contradictory to that effort.
- 2.
3. U.C. is designed for the employee and it will throw on back of his own used for these persons that truly are part of the workforce. It has never been designed for that work. If benefits are to be provided to persons who are only barely connected to the work
4. force some other program should be designed to pay for it that has a broader source of revenue than just employees. Not U.C.

Members of Chamber recognize need for more revenue to meet deficit and keep fund solvent. Most concern expressed in meetings we held all over the state was ^{unemployment} that claims being paid - too many people by U.C. recipients and collection of unemployment pay money to recipients.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

NAME Riley Johnson BILL NO. 278
ADDRESS 491 So. PARK Ave DATE _____
WHOM DO YOU REPRESENT? NATIONAL Federation of Independent BUSINESS
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

we must oppose HB 278 in at we need to solve
the problem of the unemployment fund before we reduce
requirements.

WITNESS STATEMENT

NAME LAURENCE WEINBERG BILL NO. HB 213
ADDRESS 33 S. LAST CHANCE GULCH, Helena DATE 1/28/85
WHOM DO YOU REPRESENT? MONT. UNIV. SYS.
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This proposed Amendment to Workers
Comp. Law is just the tip of the
iceberg + the approach to ind. contractors
needs to be reconsidered.

VISITOR'S REGISTER

HOUSE BUSINESS AND LABOR COMMITTEE

BILL House Bill 278

DATE January 28, 1985

SPONSOR Representative Menahan

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE BUSINESS AND LABOR

COMMITTEE

BILL House Bill 213

DATE January 28, 1985

SPONSOR Representative Brown

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE BUSINESS AND LABOR COMMITTEE

BILL House Bill 272

DATE January 28, 1985

SPONSOR Representative Wallin

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.