

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

The tenth meeting of the Labor and Employment Relations Committee was called to order at 1:00 p.m. on February 9, 1985, by Chairman Senator J.D. Lynch in room 325 of the Capitol.

ROLL CALL: All members were present.

FURTHER CONSIDERATION OF SENATE BILL 281:

Senator Thayer asked which cases are eligible for lump-sum settlements and which are not. Norman Grossfield answered most lump-sum settlements deal with permanent partial disability. Lump-sum settlements are appropriate to get the cases ended. You can always justify the need for a lump-sum settlement. To try to meaningfully restrict the lump-sum settlement is a practical matter almost impossible to do and it is not appropriate.

Senator Fuller offered amendments to Senate Bill 281.
(Exhibit No. 1)

Joe Bottomly, an attorney whose practice is mostly in workers' compensation, offered two amendments. The first would exclude permanent partial. Second, if there is going to be a discount it should be tied to a straight figure and that figure should reflect that there are no cost of living increases.

Senator Towe offered additional amendments to Senate Bill 281. (Exhibit No. 2)

Bob Gabriel, an attorney from Great Falls, said he has practiced workers' compensation law since 1957. He said Montana has one of the better workers' compensation laws in the United States. He said Senator Towe's amendment restricts the discretionary powers of the people who review the cases.

Terry Trieweller, an attorney from Whitefish, said Senator Towe's amendment is an improvement over the original bill. The 6% rate of reduction is better than tying it to the cost of an annuity.

February 9, 1985

George Wood, Executive Secretary of Montanas Self-Insurer's Association, agreed with Senator Towe and the intent of the bill to curtail lump-sum. However, he did not feel the amendment would be more successful than was the conference committee on which he served. If lump-sums are to be curtailed, it will have to be by statute with a definite amount placed in the law. The annuity price is the amount we will have to pay today to provide the employee with the full benefits of the Workers' Compensation Act for his lifetime. In most cases an annuity settlement provides benefits beyond the Workers' Compensation Act since they usually have a guaranteed period of time. Mr. Wood said this organization would support the amendment from Senator Fuller.

Keith Olson, representing Montana Logging Association, said his group supported Senator Fuller's amendments. Mr. Olson suggested giving this bill to a governor's study commission to look at and review whether lump-sums are good or bad or whether or not we need the cost of living increases.

Gary Blewett submitted a list from the Workers' Compensation Division detailing the impact of stepped discount rates. (Exhibit No. 3) Mr. Blewett said the list will give some idea about the impact on state compensation insurance fund rates. The zero (0) % at the bottom of the discount rate column represents the law as it stands right now with the Willis decision; there is no discount rate while lump-sum is generated. Senate Bill 218, as the division has proposed it, has built in an assumption of a discount rate of 11%. The division has between 1 and 10, then discount rates could be applied. For example, in Senator Towe's amendment, a 6% discount rate would still yield under the existing lump-sum criteria.

Gene Peacott spoke about whether or not an injured worker should receive a lump-sum now or partial lump-sum now and periodic payments later on or just periodic payments over a long period of time. He said he could not conceive what was being talked about, what would be an extraordinary circumstance.

Senator Fuller closed on Senate Bill 281 by stating that this bill is an extremely complex issue. He urged allowing the interim committee to take a look at it. Senator Fuller added that Senator Towe's amendment is unworkable. The more you can leave this bill alone, the better its chance of getting something through. The hearing was closed on Senate Bill 281.

CONSIDERATION OF SENATE BILL 218:

Chairman Lynch called on Senator Richard Manning, sponsor of Senate Bill 218. Senate Bill 218 is an act to require a lump-sum workers' compensation payment at the request of the worker or his beneficiary and to eliminate the workers' compensation division powers and duties relating to approval or settlement. (Exhibit No. 4)

PROPOSERS OF SENATE BILL 218:

Bob Gabriel rose in support of Senate Bill 218.

Joe Bottomly stated the justification for lump-sum is the same for a permanent total as it is in permanent partial. Mr. Bottomly said he supports Senate Bill 218.

Terry Trieweller, attorney from Whitefish, said Senate Bill 218 would eliminate the need for attorneys to be involved in workers' claims.

OPPOSERS OF SENATE BILL 218:

Gary Blewett, Montana Department of Labor and Industry, said the department neither opposes or supports this bill, but was present to supply information. He said the Insurance Compliance Bureau did reviews of settlements. There were 960 settlements for self-insurers and private carriers; there were 690 settlements for the State Compensation Insurance Fund. Of these 1,650 settlements, 963 of them were what is called full and final compromises; those are compromises in which all of the wage loss benefits are settled out and there is no further compensation in that area. The department prepared a fiscal note on this bill, which indicated a savings in the first year, 1986, of \$111,972 and in 1987 of \$120,934.

George Wood, Executive Secretary of Montana's Self-Insurer's Association, rose in opposition to Senate Bill 218 and submitted testimony. (Exhibit No. 5)

Ben Havdohl, representing Montana Motor Carriers Association, rose in opposition to Senate Bill 218 and submitted testimony. (Exhibit No. 6) (Mr. Havdohl's testimony is in regard to Senate bills 218, 219 and 220.)

Jim Reardon, workers' compensation judge for Montana, stated that he was not here to either oppose or support this bill. The intent of this bill is to transfer the division function to his office.

February 9, 1985

Forrest Boles, President of Montana Chamber of Commerce, rose in opposition to Senate Bill 218. He stated he wanted to avoid increasing the cost of living.

QUESTIONS FROM THE COMMITTEE:

No questions were asked.

Senator Manning closed on Senate Bill 218, stating there are a lot of people who need these benefits and they need them now, not down the road.

The hearing was closed on Senate Bill 218.

CONSIDERATION OF SENATE BILL 219:

Chairman Lynch called on Senator Richard Manning, sponsor of Senate Bill 219. Senate Bill 219 is an act to require that the weekly workers' compensation benefits be adjusted yearly to take into account the change in the cost of living. (Exhibit No. 7)

PROPOSERS OF SENATE BILL 219:

Representative Jerry Driscoll, representing House District 92 in Billings and also speaking for the Montana AFL-CIO and the Montana State Building Construction Trade, explained what happens to an injured worker when he is injured on the job and what happens after. He said if the committee doesn't pass this bill, all they have done is lower the amount of money the worker might receive; it hasn't stopped the pressure for that worker to settle. If this committee passes Senate Bill 281, it should pass Senate Bill 219 so workers can get a cost of living increase. In this state you cannot get a settlement of any size without the aid of an attorney.

Terry Trieweller, President of Montana Trial Lawyers Association, rose in support of Senate Bill 219 and urged the committee to consider increasing workers' benefits according to the cost of living.

Alfred Elwell, representing himself, said in 1979 he was permanently totally disabled in an industrial incident. Mr. Elwell submitted testimony in support of Senate Bill 219.

Mark Guenther, lawyer, told about an accident that took place due to an industrial accident and explained the payments he is receiving. He said employees are in an occupation by choice, but the injured are not injured by choice.

John Wisten, lawyer from Missoula, said the cost of living should be included.

OPPONENTS OF SENATE BILL 219:

Keith Olson, representing Montana Logging Association, said his organization could rise in support of this bill if the committee completely and totally eliminated lump-sum payments.

George Wood, Executive Secretary of the Montana Self-Insurers Association, rose in opposition to Senate Bill 219 and submitted testimony. (Exhibit No. 9)

Ben Havdohl, representing Montana Motor Carriers Association, rose in opposition to Senate Bill 219 and submitted testimony from an economic standpoint. (Exhibit No. 6)

Irvin Dellinger, representing the Montana Building Material Dealers Association, stated he would like to echo what Mr. Wood and Mr. Olson said, that people need the cost of living. Mr. Dellinger would like to see these bills put into a study commission.

Gary Blewett, representing the Montana Department of Labor and Industry, rose for information purposes, not as an opponent or a proponent. He said in Senate Bill 281, instead of using an annuity, some fixed figure could be in there; or, instead of using a PCE, a fixed price could be introduced. Mr. Blewett referred to line 13 of the bill, saying the language "biweekly" could be changed to "weekly."

QUESTIONS FROM THE COMMITTEE:

Senator Haffey addressed Mr. Olson, saying he had stated that he sympathized with the bill and the cost of living concept. Mr. Olson said that was true.

Senator Haffey added that Mr. Olson had said the committee eliminated an opportunity for lump-sum payments. Mr. Olson answered that was also true.

Senator Towe addressed this question to Mr. Wood, Mr. Havdohl, and Jerry Driscoll: "If we did away with all lump-sum payments, would you support the bill?" Mr. Wood replied no, because the bill is badly written. Mr. Havdohl replied yes. Jerry Driscoll replied there are circumstances where lump-sums are justified, and he felt it would be a much better system if fewer people got lump-sums and got a cost of living increase.

Mr. Trieweller stated if the committee eliminates lump-sum under any circumstances altogether, it will drive people out ten story windows. He felt the committee could make them more restrictive if it adopted a cost of living increase, but they must be eliminated under all circumstances.

February 9, 1985

Mr. Gabriel stated that we must remember that we are not dealing with a fixed rate for each injury.

Senator Towe addressed Keith Olson, saying there is a constitutional question that in fact we have required employers to pay in benefits and that benefits would be payable upon accident. He asked Mr. Olson if we have any problems with increasing that obligation at this time without putting in additional funds to pay for it from some other source than the employer.

Gary Blewett answered that question for Mr. Olson, saying the bill as proposed here would only address accidents that occur after the date of passage, so it would not affect individuals who are covered right now.

Senator Thayer asked if there were any tax treatment for those on disability benefits; are they taxed any different from anyone else in any other income? Bob Gabriel asked if Senator Thayer were talking about federal income tax. Senator Thayer said yes. Mr. Gabriel said it is not taxable under the present federal income tax law.

Senator Manning closed on Senate Bill 219 by stating the cost of living, which includes food and medicine, has gone up incredibly. In fact, medical and hospital insurance and such things have gone up 100%.

The hearing was closed on Senate Bill 219.

CONSIDERATION OF SENATE BILL 220:

Chairman Lynch called on Senator Richard Manning, sponsor of the bill. Senate Bill 200 is an act increasing workers' compensation partial disability benefits for certain injuries. (Exhibit No. 10)

PROPOSERS OF SENATE BILL 220:

Joe Bottomly rose in support of this bill. This bill deals with only permanent partial disability, not permanent total disability. Under permanent partial, a worker can elect to fall under one of two statutes. One statute is based on the loss of earnings; the other statute is what is called an indemnity statute. A worker can choose whether he wants to prove a loss of earning or a specific indemnity. Mr. Bottomly had posters as a visual aid to explain this.

Representative Jerry Driscoll, House District 92, rose in support of the bill. Mr. Driscoll stated that if the committee puts Senate bills 218, 219 and 220 in a study commission, they should also put Senate Bill 281 with them.

February 9, 1985

Gene Peacock, lawyer from Helena, asked how many industrial accident claims are filed each year. What percentage of money is paid out of the system for different types of permanent disability? He said if workers do not receive some of these benefits they go into a low state of poverty.

Bob Gabriel, from Great Falls, stated that Joe Bottomly adequately pointed out the specific injury statute. The specific injury statute is simply unfair. This bill would remedy this situation. We are paying the amount that represents the percentage of his loss of earnings.

OPPONENTS OF SENATE BILL 220:

George Wood, Executive Secretary of the Montana Self-Insurers Association, submitted testimony in opposition of Senate Bill 220. (Exhibit 11)

Gary Blewett, Workers' Compensation Division, Department of Labor and Industry, rose as an information person, neither in support of nor in opposition to this bill. Mr. Blewett spoke to the fiscal note saying it has inaccuracies. He said the division does not have the kind of data stored in a way that they then could separate the influence of this shift and the division change, and therefore they just put in gross estimates. The data that the division did generate as being the "outside cost" is subject to change.

Jan VanRiper, Bureau Chief for State Fund, spoke in an attempt to expand upon an example that Mr. Bottomly gave. There is a slight problem with his example; it only tells one part of the story. The statute, 39-71-703, MCA, does not speak in terms of actual loss of wages. It speaks in terms of actual diminution and earning capacity.

QUESTIONS FROM THE COMMITTEE:

Senator Towe told Jan VanRiper he was confused about taking the language out. If we take it out of 703 and 709, 703 is the permanent partial disability section and that provides for the specific injury, which is a earning loss disability. Jan VanRiper replied 703 was the section in question.

Senator Towe asked, if you determine the degree of partial disability, is it the degree of loss earning capacity? Jan VanRiper replied yes, earning capacity. Senator Towe said if the person has a 25% loss of earning capacity, even though he may be earning more dollars, he is still going to be limited to whatever a hand is worth, the 200 weeks. Jan VanRiper replied not if the bill passes with the proposed language. If the person elected to go under 703 he is limited to that at the present time.

February 9, 1985

Senator Towe added after the bill passes, the person would be able to continue a full 500 weeks under 703. Jan VanRiper replied that is how she understands it. She explained 709. 709 was intended to describe a situation where a worker can elect to go under the provisions of 703 or 705. 705 would be a disability statute, so if someone wasn't actually losing wages, they could get either an indemnity award or get more money for a disability over and above the impairment rating, which is an actual loss of wages. 703 was intended to be an actual wage loss statute.

Joe Bottomly explained 705 is indemnity for a loss that may or may not reflect earnings lost.

Senator Keating asked George Wood if a man loses a hand and after some medical work he returns to work for the same employer for the same amount of wages, he has not lost any earning power, but he can still be compensated under 705 for 200 weeks of loss of wages and does not have to prove any loss of wages.

George Wood replied that is correct, the question of permanent partial disability is almost impossible to answer.

Senator Manning closed on Senate Bill 220 saying he felt that all three of the bills that he presented, also with SB 281, should be deliberated with a lot of consideration. The Workers' Compensation Division and workers' compensation insurance was instituted by employers for their protection more so than it was for the protection of the workers. In reference to the first bill, SB 218, 39-71-2908 MCA, it required judicial review of an agreement that is a full final compromise settlement. Lump-sum conversion is neither a compromise nor a settlement, so it is not judicially reviewed.

The hearing was closed on Senate Bill 220.

EXECUTIVE ACTION ON HOUSE BILL 285:

Senator Thayer offered an amendment to House Bill 285. Exhibit No. 12) Senator Thayer moved the amendments.

Senator Keating stated the committee has not had a public hearing with Senator Thayer's amendments. Senator Haffey agreed with Senator Keating. Senator Thayer withdrew his amendments.

Senator Manning made a motion that House Bill 285 Be Not Concurred In. Senator Keating made a substitute motion that House Bill 285 Be Concurred In. He offered an amendment:

February 9, 1985

Page 6, line 22.

Following: "Commissions"

Strike: "or otherwise"


On a voice vote, with senators Blaylock, Haffey and Manning voting no, all others voting yes, the amendment passed.

The committee then voted on the motion that House Bill 285 Be Concurred In As Amended. A roll call vote was taken; with the committee voting 6-2, the motion passed.

Senator Towe suggested reversing the vote on the original motion that House Bill 285 Be Not Concurred In. See attached roll call vote sheets for both motions.

ADJOURNMENT:

The committee, having no further business, adjourned at the hour of 4:15 p.m.


J. D. Lynch, Chairman

bd

STANDING COMMITTEE REPORT

February 11 19 85

MR. PRESIDENT

We, your committee on Labor and Employment Relations

having had under consideration House Bill No. 285

first reading copy (white)
color

EXCLUDING NEWSPAPER AD SALESMEN FROM OVERTIME PROVISIONS

Respectfully report as follows: That House Bill No. 285

be amended as follows:

1. Page 6, line 22.
Following: "commissions"
Strike: "or otherwise"

AND AS AMENDED

BE NOT CONCURRED IN

~~XXXXX~~

DO PASS

~~XXXXXXXXX~~

DO NOT PASS

SENATOR J.D. LYNCH

Chairman.

Labor and Employment

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 2/9/85

SENATE SEAT #

NAME	PRESENT	ABSENT	EXCUSED
1 Senator Aklestad	X		
46 Senator Blaylock	X		
9 Senator Haffey	X		
20 Senator Keating	X		
49 Senator Manning	X		
33 Senator Thayer	X		
Sentor Towe	X		
5 Chairman Lynch	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

DATE February 9 1985 BILL NO. HB 285 TIME

NAME	YES	NO
SENATOR AKLESTAD	X	
SENATOR BLAYLOCK		X
SENATOR HAFFEY		X
SENATOR KEATING	X	
SENATOR MANNING		X
SENATOR THAYER		X
SENATOR TOWE		X
CHAIRMAN LYNCH		X

Beth Dwyer
SECRETARY

J.D. Lynch
J.D. LYNCH

Motion: Be Concurred In As Amended. Motion failed.

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

DATE February 9 1985 BILL NO. HB 285 TIME

NAME	YES	NO
SENATOR AKLESTAD		X
SENATOR BLAYLOCK	X	
SENATOR HAFHEY	X	
SENATOR KEATING		X
SENATOR MANNING	X	
SENATOR THAYER	X	
SENATOR TOWE	X	
CHAIRMAN LYNCH	X	

Betty Daulton
SECRETARY

J.D. Lynch
J.D. LYNCH

Motion: Be Not Concurred In. Motion passed.

Labor + Employment

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Alfred M. Elwell	Self + All Industrial ^{7 figures}	218 219	✓	
Bonnie Tippy	Alliance of American Insurers	218 219-220		✓
Ben Harvahl	Mont Motor Carriers Assn	218, 219, 220		✓
DAN GLENNY	Orion Group	218 219, 220		✓
EH. Bales	MONT CHAMBER	218-219 220		✓
KEITH OLSON	MT. Logging Assn	218-29 220		✓
John E. Elington	Elington Logging			
Tom Krompholtz	W.C. County			
Bob Atch, Lohr	Atch & Lohr	218 - 281	✓	✓
Bill McPhee	Atch. J.C. Porter #1 & 2	218-219 220, 281	218-219 220	281
May Ward	Mont. Self Insurance Assn	218-219 220, 281	281	218-219 220
Thomson	Self	285		✓
John Atchison	Self	218, 219	219	
Herb Hamilton	Self	285		✓
W.A. Hamilton	Self	285		✓
Richard Roper	Self	285		✓
De Bottomly	Self	218 220	X	
Roger McGinn	INDEPENDENT INSURANCE AGENTS OF MONTANA	218 219 220		✓
Mark L. Latta	Self	218 219	219	
Go. Hollman		218-219 220		✓
Samy L. Latta	Dist 9	219	✓	
Harry L. Latta	Montana State Building Trades	218 219, 220	X	
Geoff Allen	Mont. Retail Assn	218 219, 220		X

PROPOSED AMENDMENT TO SENATE BILL NO. 281

INTRODUCED COPY

1. Title, line 10.

Following: "MCA;"

Insert: "PROVIDING FOR RETROACTIVE APPLICABILITY
AND EFFECT;"

2. Page 3, line 4.

Following: line 3.

Insert: "NEW SECTION. Section 3. Applicability -
~~Retroactive~~ Effect. This act applies
retroactively within the meaning of 1-2-109
to injuries incurred and lump sums awarded
or paid prior to the effective date of this
act if a lump sum is awarded or paid for the
injury , or the award or settlement is reopened
and redetermined, after the effective date of
this act."

Renumber: subsequent sections.

Proposed amendments to SB 281, introduced copy.

1. Title, lines 7 through 10.

Following: "PAYMENT" on line 7

Strike: "TO" through "PERIOD" on line 10

Insert: "BY DISCOUNTING THE LUMP-SUM BY 6 PERCENT; PROVIDING A METHOD FOR
DETERMINING WHETHER A LUMP-SUM WILL BE GRANTED

2. Page 1, line 13.

Following: line 12

Insert: "WHEREAS, the Montana Supreme Court has interpreted the law to
disallow any discounting of a lump-sum workers' compensation payment; and

WHEREAS, this would greatly increase insurance rates; and

WHEREAS, the Department of Labor and Insustry desires to amend the
law to provide a lump-sum payment not exceeding the purchase price of
an annuity that would yield income equal to the total biweekly benefits
payable; and

WHEREAS, annuity rates fluctuate widely and are at a currently
high rate of 10 or 11 percent; and

WHEREAS, the inflation rate also fluctuates widely, is currently
at approximately 3 percent, and affects the worker's purchasing power; and

WHEREAS, the Legislature desires to reach a compromise between
the interests of workers and the interests of employers.

THEREFORE, the Legislature finds it appropriate to amend section
39-71-741, MCA, in the manner provided by this act."

3. Page 1, line 18 through page 2, line 4.

Following: "payment." on page 1, line 18

Strike: remainder of subsection (1)

4. Page 2, line 9.

Following: "as to"

Strike: "what"

5. Page 2, lines 9 and 10.

Following: "what the" on line 9

Strike: "purchase" through ", the" on line 10

6. Page 2, line 11.

Following: "conversion."

Insert: "The following procedure must be used by the division and the workers' compensation judge in determining whether a lump-sum conversion will be awarded:

(a) It is presumed that biweekly payments are in the best interests of the worker or his beneficiary. The award of a lump-sum must be the exception, not the rule, and may be made only in extraordinary circumstances. The worker or his beneficiary has the burden of proving that extraordinary circumstances exist, that there is a genuine and substantial need, and that it is highly probable that the use to which the lump-sum will be put will successfully address the extraordinary circumstances that gave rise to the award.

(b) A lump-sum may not be awarded solely because it would put the worker or his beneficiary in a better financial position than he was in prior to the injury; and the fact that biweekly payments will not put him in the same financial position he was in prior to the injury is not alone grounds for awarding a lump-sum.

(3) A lump-sum award must equal the total of the biweekly payments that would otherwise be due under this chapter, minus a discount equal to 6 percent per annum without compounding."

Renumber: subsequent subsections

WORKERS' COMPENSATION DIVISION

Exhibit No. 3
2/9/85IMPACT OF STEPPED DISCOUNT RATES

<u>Discount Rate</u>	<u>% Increase in Rates</u>	<u>Biennium Dollar Impact</u>
11%	0%	\$ -0-
10	02	1,963,000
9	04	4,176,000
8	06	6,639,000
7	08	9,388,000
6	11	12,529,000
5	14	16,062,000
4	18	20,096,000
3	21	24,700,000
2	27	29,948,000
1	32	36,016,000
0	38	42,976,000

LUMP SUM

IN THE EXISTING STATUTES, WORKERS' COMPENSATION BENEFITS ARE PAID ON A WEEKLY BASIS. THE PROPOSED BILL WOULD ALLOW THE BENEFICIARY TO RECEIVE THE FULL AMOUNT OF COMPENSATION IN ONE LUMP SUM. THE DIVISION OF WORKERS' COMPENSATION AND THE INSURANCE COMPANIES OPPOSE THIS BILL BECAUSE THEY WILL NOT BE ABLE TO COLLECT INTEREST ON THIS MONEY IF IT IS GIVEN OUT IN A LUMP SUM. THESE COMPANIES SHOULD NOT BE RECEIVING THIS INTEREST IN THE FIRST PLACE SINCE ONCE THE COMPENSATION IS AWARDED, THAT MONEY SHOULD GO DIRECTLY TO THE RECIPIENT AND SO SHOULD ALL INTEREST STEMMING FROM IT. THE REASON THESE INSURANCE COMPANIES WANT THIS INTEREST IS BECAUSE OVER A PERIOD OF 10 YEARS THE INTEREST WILL NEARLY REPLACE THE INITIAL AMOUNT OF BENEFITS PAID OUT.

THIS IS UNREASONABLE BECAUSE THE DIVISION AND INSURANCE COMPANIES ARE MAKING MONEY OFF OF THE INJURED PERSON WHILE THEY ARE LOSING MONEY THAT SHOULD RIGHTFULLY BE THEIRS. THESE PEOPLE ARE FULLY CAPABLE OF HANDLING THEIR OWN FINANCES AND WOULD BE MUCH LESS DISADVANTAGED IF THEY RECEIVED THEIR BENEFITS IN A LUMP SUM SO THEY COULD SAVE OR INVEST IT.

MONTANA SELF-INSURERS ASSOCIATION

Exhibit No. 5
2/9/85

GEORGE WOOD, Executive Secretary

SENATE BILL 218

MR. CHAIRMAN, MEMBER OF THE COMMITTEE, MY NAME IS GEORGE WOOD, EXECUTIVE SECRETARY OF THE MONTANA SELF-INSURERS ASSOCIATION.

I ARISE IN OPPOSITION TO SENATE BILL 218.

THE BILL MAKES A DRAMATIC CHANGE IN THE WORKERS' COMPENSATION ACT.
IT PROVIDES THAT:

1. BI-WEEKLY COMPENSATION BENEFITS MUST BE CONVERTED INTO A
LUMP-SUM

AND

2. THE CONVERSION IS AT THE DISCRETION OF THE INJURED WORKER
NOT THE WORKERS' COMPENSATION DIVISION.

1. THE CHANGE FROM BI-WEEKLY BENEFITS IS A CHANGE IN THE BASIC PHILOSOPHY OF THE WORKERS' COMPENSATION ACT. THAT IS, FROM PAYMENT OF BI-WEEKLY COMPENSATION BENEFITS IN LIEU OF WAGES TO PAYMENT OF BENEFITS FOR FUTURE PROSPECTIVE LOSS OF WAGES IN A LUMP-SUM.

THE PAYMENT FOR FUTURE LOSS OF WAGES IS CERTAINLY CONJECTURAL AND SUBJECT TO LITIGATION. HOW DOES ONE DETERMINE WITH ANY ACCURACY THE AMOUNT OF WAGE LOSS 10, 20 OR 30 YEARS IN THE FUTURE? WILL A WAGE LOSS ACTUALLY OCCUR AS THE RESULT OF THE INJURY?

WHAT EMPLOYEE WOULD PAY WAGES TO AN EMPLOYEE 10 YEARS OR MORE IN THE FUTURE?

COMPENSATION SHOULD BE PAID BI-WEEKLY FOR THE LOSS OF WAGES.


LUMP-SUMS SHOULD BE ELIMINATED OR AT LEAST MINIMIZED.

2. THE DISCRETION OF THE WORKERS' COMPENSATION DIVISION TO APPROVE LUMP-SUMS SHOULD NOT BE REMOVED. THE DETERMINATION THAT A LUMP-SUM IS IN THE BEST INTERESTS OF THE INJURED EMPLOYEE SHOULD BE MADE BY A DISINTERESTED THIRD PARTY.

THIS SECTION OF THE ACT NEEDS AMENDMENTS BUT NOT AS PROVIDED FOR IN THIS BILL. IF AMENDED IT SHOULD BE AS PROVIDED IN SENATE BILL 281 WITH A FURTHER AMENDMENT LIMITING THE AMOUNT OF THE LUMP-SUM.

I RESPECTFULLY REQUEST THAT THIS COMMITTEE REPORT SENATE BILL 218

DO NOT PASS.


GEORGE WOOD
EXECUTIVE SECRETARY

MMCA STATEMENT ON SB 218, 219, 220

SENATE COMMITTEE ON LABOR AND EMPLOYMENT

The Montana Motor Carriers Association is opposed to Senate Bill 218 mandating the conversion of bi-weekly payments for permanent total disabilities to lump sum payments at the discretion of the injured worker.....

MMCA is opposed to SB 219 adjusting the weekly Workers' Compensation benefits to take into account cost of living increases....

MMCA is opposed to SB 220 increasing partial disability benefits....

We're opposed to these bills, not because we are opposed to adequately compensating workers who are injured on the job....but simply because we CANNOT AFFORD IT....

The total cost to employers of these three bills is a staggering \$51,481,235 for the next biennium as I read the fiscal notes....

The Montana Motor Carriers Association has some 450 Carrier and Supplier Members, all of whom are employers and range in size from a one-truck operation to medium size companies operating fleets of trucks up to 300 plus in numbers. We have only a handful of large out-of-state carriers as members of MMCA. 90% of our Montana based trucking companies operate in several states, some in all 48 states. They have to if they are to survive. Because of the economics, few trucking companies I know of can operate profitably solely within Montana. Some trucking operations such as log hauling, wood chip hauling, and livestock hauling are operating solely within Montana; however, their economic well being is marginal at best and unprofitable at worst.

In 1983, for example, from reports to the PSC, 56 Montana regulated livestock carriers reported a combined revenue from livestock hauling of \$3,151,536 and expenses of \$3,194,781....an operating ratio of 101% or a loss of 1% AND THAT WAS BEFORE INCREASED FEDERAL AND TRUCK TAXES AND 6 MONTHS OF STATE INCREASED TAXES.

The burden of the "cost price squeeze" faces all our members and the problem has grown to acute levels. Costs of doing business, including those imposed by governments at the federal and state levels, are among major costs adversely affecting the trucking industry in the State. These costs are in the form of increased taxes....fuel taxes...truck taxes, and property taxes. Other costs for insurance premiums are skyrocketing because of higher federal government mandatory levels of liability insurance....cargo insurance rates are soaring out of sight....Montana Workers' Compensation premiums for truckmen increased 25% two years ago and are threatened with an additional 35% hike.... Unemployment Compensation premium costs will go up approximately 40% for trucking companies to offset a large deficit balance in that trust fund. All of these factors, together with partial deregulation of interstate trucking in 1980, coupled with the 1981-1982 recession during which time many carriers scraped by with chewing gum and rubber bands, cutting rates in an effort to keep customers while putting off capital improvements....all of these have added up to adversely affect trucking operations bringing some to the brink.

The industry shake out continues in Montana. In the last few weeks, two companies, Salt Creek Freightways and Tomahawk Transportation have filed for bankruptcy - since January 1 of this year.

Another Montana carrier, Transystems has moved 80% of its employees that were based in Montana out of Montana. Because of the drop in industrial activity, the company has placed nearly all of its Montana trucking properties on the market for sale and anticipates that in the near future its operations in Montana will consist of only a few contractual projects.

No doubt others will follow suit.

During the 1983 session of the legislature and the preceding year, the motor carrier industry worked very closely with the various interim committees as well as the Governor to design and obtain passage of a huge highway program designed to improve and extend the life of Montana's highways. Since the last session of this legislature, state fuel taxes on our industry increased 55%; federal fuel taxes have increased 363%....federal use taxes on trucking increased 129%....federal excise taxes increased 50%. Proposals are forthcoming in this legislature to increase fuel taxes even more - an additional 3¢ or 18% - to bail out the general fund deficit.

Industry liability insurance rates, effective January 1, 1985, increased, ranging from 50% to 400% because of required liability limits for general commodity carriers to \$750,000, \$1 million for non-bulk hazardous materials, and trucks carrying bulk hazardous materials to \$5,000,000....

Cargo insurance rates have increased from 50% to as high as 370%....these rates are not manual rates or not published in a book but are based on certain criteria of the company....the most important is the carrier's perceived financial health....in other words, the poorer a company's financial status, the higher the rate.

I point out all these factors notwithstanding they are not costs related to workers' compensation taxes....they are, however, factors affecting the bottom line...and are all affecting the "cost price squeeze".

It's appropriate, I think, to remind this committee that Montana is the most remote, transportation dependent state in the Union. To serve the same number of people that would be served in the industrial northeast United States, a truck in Montana must travel 12 times farther over roads paid for by only 7% of the number of people per mile as the industrial northeast. Transportation burdens in Montana are staggering and the principal users of our services, the farmers, ranchers and timber industry, are in no position to pay the bill.

As the inability to pay higher transportation costs increases, it is simple for the motor carrier industry to reduce in size, find alternatives, or leave the state. Unfortunately the latter is the option most frequently used. Total state and federal Highway Use taxes alone now exceed \$1,000 a month on Montana based over-the-road vehicles. If one further considers the impact of property taxes, I believe that we would find that Montana has the most highly taxes vehicles in the entire nation. We question seriously whether further tax increases of any kind is an intelligent approach for a state that both requires more transportation per capita than any other state in the Union and whose principal industries of agriculture, timber, mining and petroleum are transportation intensive.

It's time to stop increasing taxes and unnecessary costs to employers in the state....WE CAN STAND NO MORE....

We urge the defeat of these bills.

THE EXISTING STATUTES ALLOW BENEFITS TALLING 66 2/3% OF THE WAGE RECEIVED AT THE TIME OF INJURY - NOT TO EXCEED \$110.00 OR THE STATE'S AVERAGE WEEKLY WAGE. THIS APPLIES TO TEMPORARY TOTAL DISABILITY. FOR PARTIAL DISABILITY THE INJURED PERSON IS ALLOWED 66 2/3% OF HIS/HER EARNING CAPACITY NOT TO EXCEED 1/2 OF THE STATE'S AVERAGE WEEKLY WAGE.

THIS BILL IS DESIGNED TO ADJUST WORKER'S COMPENSATION BENEFITS TO TAKE INTO ACCOUNT INFLATIONARY CHANGES CAUSING COST-OF-LIVING INCREASES. THIS BILL COVERS ALL CLASSES OF DISABILITY. WHEN DETERMINING THE IMPLICIT PRICE DEFLATOR FOR PERSONAL CONSUMPTION EXPENDITURES (THE RATE AT WHICH MONEY IS LOSING BUYING POWER), WE USE THE "PCE," WHICH IS A VERY ACCURATE MEASURE OF INFLATIONARY CHANGES IN THE ECONOMY SET UP AND ENDORSED BY THE U.S. DEPARTMENT OF COMMERCE.

LOOKING AT THE FISCAL NOTE ONE CAN SEE THAT FROM 1972--1983 THE PCE HAS EXPERIENCED AN AVERAGE ANNUAL INCREASE OF 7.2%, AND OVER THE SAME PERIOD, MONTANA'S AVERAGE WEEKLY WAGE HAS EXPERIENCED NEARLY THE EXACT AVERAGE ANNUAL INCREASE OF 7.4%. THEREFORE, BY INDEXING WORKER'S COMPENSATION BENEFITS ACCORDING TO THE PCE, WE WOULD IN ESSENCE BE INCREASING BENEFITS ANNUALLY AT THE SAME RATE AS THE AVERAGE WEEKLY WAGE INCREASES. SO REAL INCOME ÷ BUYING POWER WOULD JUST BE MAINTAINED.

NOTES: THIS WOULD NOT BE RETROACTIVE AND AN AMENDMENT MIGHT BE USEFUL IN CLARIFYING THIS.

THE FISCAL NOTE DOES NOT TAKE INTO ACCOUNT THE IMPACT OF THE WILLIS DECISION PENDING LEGISLATION CONCERNING IT.

(This sheet to be used by those testifying on a bill. 2/9/85)

NAME: Alfred M. Elwell DATE: 2-9-85

ADDRESS: 3078 Howard Rd.

PHONE: 227-5240

REPRESENTING WHOM? SELF + all industrial injured

APPEARING ON WHICH PROPOSAL: SB 218 - SB 219

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

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

①

Lump Sum Amendment

Urge that they change this amendment for a lump sum without penalty and without actual cash value - discount

Why should the injured worker be penalized?

①

Cost of Living

totally + permanently

① Oct 1979 I was ~~injured~~ disabled in an industrial incident -

of the incident

② At the time I was a welder and was making 9.50 a hr and took home approx \$70 every 2 weeks

③ Because I ~~am~~ was 45 and with my medical background and my training I can not ever go back to my occupation as a welder - ~~and~~ we felt our only alternative to ever be able to earn a decent living was to seek ~~a~~ out some type of ~~my wife~~ business that either I could operate

③

Since that time 2 business opportunities have arisen

Business Opportunities

① Buy & sell agreement

② Wait for decision

③ How much I can produce

④ Discount

⑤ Insurance are powerful

① Original incident Oct 1979

② Worker Comp ~~Oct~~ Nov 1982

③ ~~Business~~

Final Business Opportunity

④ Decision

totally 100% disabled

However, I might be able to purchase
your business - if the judge
approves

The award was \$298,000 - paid
to me with an actual cash
amount of 10% - total award
was 125,000 actual compared to
4,310.34 for my life expectancy
of 29 years - this was to last me
rest of my life
Decision Oct, 1982

- ③ Workers Comp determined through
their formula that I would
receive \$4.90 an hr or \$396 every
2 weeks a difference of approx ^{\$200} every 2 weeks
I worked on the same job that
I was on as now receiving ^{\$13.00}
and I'm still at \$396.00 or \$490
④ Everything has gone up but
my 516 (Gas, food, medicine
toilet and etc

① Dep Base was tried in Nov '82
and a decision in Dec '83
approximately 11 months after

GEORGE WOOD, Executive Secretary

SENATE BILL 219

MY NAME IS GEORGE WOOD, EXECUTIVE SECRETARY OF THE MONTANA SELF-INSURERS ASSOCIATION AND I ARISE IN OPPOSITION TO SENATE BILL 219.

THE BILL PROVIDES FOR ANNUAL INCREASES IN COMPENSATION BENEFITS FOR TEMPORARY TOTAL, PERMANENT TOTAL, PERMANENT PARTIAL DISABILITY AND DEATH BENEFITS STARTING IN FISCAL YEAR 1986. I CONFESS THAT I DO NOT UNDERSTAND THE TERMINOLOGY ONE IS TO USE IN COMPUTATIONS. HOWEVER, "PCE" IS A TERM BASED ON NATIONAL STATISTICS.

THE FISCAL NOTE WILL UNDOUBTEDLY PROVIDE YOU WITH "EYE-OPENING" INFORMATION ON THE COSTS TO MONTANA EMPLOYERS, PUBLIC AND PRIVATE, OF THESE PROPOSED "COST OF LIVING" INCREASES. YOUR ATTENTION IS CALLED TO THE FACT THAT THERE IS NO MAXIMUM ANNUAL CHANGE. ANY SUCH CHANGE IN THE LAW SHOULD HAVE A CAP ON IT.

I RECALL THAT A SIMILIAR BILL WAS PROPOSED DURING THE LAST SESSION AND WAS WITHDRAWN WHEN THE SPONSOR WAS MADE AWARE OF THE TREMENDOUS INCREASE IN COSTS THAT WOULD HAVE RESULTED.

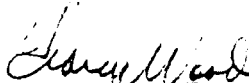
I CERTAINLY DO NOT OPPOSE THE "COST OF LIVING" PRINCIPLE. IT SHOULD, HOWEVER, BE LIMITED TO BENEFITS PAID BI-WEEKLY FOR PERMANENT TOTAL DISABILITY AND DEATH BENEFITS. THE INCREASED COSTS SHOULD BE KNOWN AND SHOULD BE BORNE BY BOTH EMPLOYERS AND EMPLOYEES.

THE APPLICATION AND MECHANICS OF COMPUTING THE "COST OF LIVING" INCREASE SHOULD BE EASILY UNDERSTOOD AND BE BASED ON MONTANA STATISTICS, THE PERCENTAGE CHANGE IN THE STATE'S AVERAGE WEEKLY WAGE, FOR EXAMPLE.

A GREAT DEAL MORE INFORMATION AND STUDY IS REQUIRED BEFORE THIS BILL COULD EVEN BE AMENDED IN AN ACCEPTABLE MANNER.

I, THEREFORE, RESPECTFULLY SUGGEST THAT THIS COMMITTEE REPORT SENATE BILL 219

DO NOT PASS.



GEORGE WOOD
EXECUTIVE SECRETARY

PARTIAL DISABILITY

IN THE EXISTING STATUTES, ONE WHO LOSES A MEMBER IS ONLY ALLOWED A PREDETERMINED NUMBER OF WEEKS OF WORKERS' COMPENSATION AS OUTLINED IN 39-71-705 MCA. OFTENTIMES THE MEMBER LOST IS CRITICAL TO THE PERSON'S PROFESSION AND THUS CAUSES THEM TO NOT ONLY BE PARTIALLY DISABLED BUT TOTALLY DISABLED.

THIS BILL WOULD ALLOW THE INJURED PERSON AN OPPORTUNITY TO PROVE THAT THE INJURY HE/SHE HAD INCURRED HAS LEFT THEM PERMANENTLY DISABLED AND THEREFORE THEY SHOULD RECEIVE FULL WORKERS' COMPENSATION BENEFITS. IN ESSENCE, THIS BILL WOULD REMOVE THE LIMITS PLACED ON SPECIFIC INJURY AND OPENS UP THE OPPORTUNITY FOR THE INJURED PERSON TO RECEIVE TOTAL DISABILITY BENEFITS IF THEIR DISABILITY PROVES TO BE PERMANENT.

MONTANA SELF-INSURERS ASSOCIATION

Exhibit 11
2/9/85

GEORGE WOOD, Executive Secretary

SENATE BILL 220

MY NAME IS GEORGE WOOD, EXECUTIVE SECRETARY OF THE MONTANA SELF-INSURERS ASSOCIATION AND I ARISE IN OPPOSITION TO SENATE BILL 220.

THIS IS ONE OF THE MOST UNUSUAL BILLS THAT I HAVE SEEN PRESENTED TO THE LEGISLATURE ON THE SUBJECT OF WORKERS' COMPENSATION. IT PERTAINS ONLY TO PARTIAL DISABILITY. IT SAYS THAT YOU COULD BE ENTITLED TO MORE COMPENSATION FOR PARTIAL DISABILITY FOR AN INJURY TO A MEMBER, ARM, LEG, ETC. THAN YOU WOULD BE ENTITLED TO HAD THE MEMBER BEEN LOST BY AMPUTATION.

THE LOGIC ESCAPES ME.

PRESENTLY AN INJURED EMPLOYEE RECEIVES COMPENSATION FOR TEMPORARY TOTAL DISABILITY DURING THE HEALING PERIOD. THIS PERIOD MAY BE CONSIDERABLY LONGER FOR AN INJURY TO A MEMBER THAN IT WOULD BE IF THE MEMBER IS AMPUTATED. AFTER THE END OF THE HEALING PERIOD THE INJURED EMPLOYEE WHO SUFFERED THE AMPUTATION OF THE MEMBER WOULD RECEIVE COMPENSATION GREATER THAN THE EMPLOYEE WHOSE INJURY WAS LESS THAN TOTAL LOSS OF THE MEMBER.

I FIND THIS LOGICAL.

THIS IS NOT A GOOD BILL AND I RESPECTFULLY REQUEST THAT THIS COMMITTEE REPORT SENATE BILL 220

DO NOT PASS.



Proposed amendment to HB 285, third reading copy.

1. Title, line 6.

Following: line 5

Insert: "PROVIDING THAT THE COUNTRY ELEVATOR EMPLOYEE EXCLUSION APPLIES ONLY
TO FULL-TIME EMPLOYEES;"

2. Page 4, line 21.

Following: "five"

Insert: "full-time"