MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

March 18, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on March 18, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

SENATE BILL NO. 359 - Provide That State Minimum Wage Applies to Employees Covered by Federal Law, sponsored by Senator Jack Haffey, Senate District No. 33, Anaconda. Sen. Haffey stated this bill allows the state minimum wage law to apply to employees covered by the Fair Labor Standards Act and to exclude tips from the minimum wage paid to Montana employees.

PROPONENTS

Barbara Archer, representing Women's Lobbyist Fund. Ms. Archer stated this bill would correct the discrepancy that arose as a result of an April, 1986 Attorney General's opinion. Because of this opinion some restaurants have been paying less than the minimum wage of $3.35. Businesses that gross over $362,500 can let tips from customers make up 40% of the minimum wages that businesses should be paying, which means they are paying their waitresses just $2.01 per hour, and small businesses are still required to pay them at least $3.35 per hour. She presented a fact sheet. Exhibit No.1.

Jack Zink, representing the Montana AFL-CIO. Mr. Zink stated it was their opinion that the intent of the 1985 Montana legislature was to guarantee Montana's minimum wage of $3.35 to all Montana workers, even if their vocations entitled them to patron gratuities such as tips. He presented written testimony on behalf of Jim Murry, Executive Secretary, AFL-CIO.

Seymore Flanagan, representing Hotel, Restaurant and Bartenders Union. Mr. Flanagan stated it was their understanding when the law was passed in 1985 that the minimum wage would be $3.35, and now the new law circumvents that. He urges passage of this bill.

OPPONENTS

None.

QUESTIONS

None.

CLOSING

Senator Haffey stated that there was no reason for the effective date of January, 1988, and suggested that the committee consider making it effective on passage and approval.

SENATE BILL NO. 318 - Allow Sale of Liquor-Filled Candy, sponsored by Senator Judy Jacobson, Senate District No. 36, Anaconda. Senator Jacobson stated this bill authorized the sale of candy containing up to 5% of alcohol by volume, providing the state liquor code does not apply to candy containing alcohol, and exempting candy containing up to 5% of alcohol by volume from the adulterated food law.

PROPONENTS

John Jarvis, representative from Winters Liquor Chocolate Company. Mr. Jarvis stated the candy is a confection item. He said that there is a lot of products that contain more than 5% alcohol that children have access to, such as Scope mouth wash, cough drops, and different flavorings for baking. He said the liquor-filled candy referred to in the legislation was intended for adult consumption, and a child would not buy or eat these particular chocolates.

OPPONENTS

Jon Hurst, Manager, State Government Relations, Hershey Foods Corporation. Mr. Hurst stated it should be noted that their corporation is on record as indicating they have no intention to manufacture or distribute such products, and stated there are enough problems with liquor use and it doesn't have to be candy coated for children. He submitted written testimony and other material. Exhibit Nos. 3-7.

Mike Murray, representing 37 Chemical Dependency Programs of Montana. Mr. Murray distributed a sample of the candy that is legal in New Jersey with an August 1986 expiration date. He said one of the problems with the product is that there was no indication of the alcohol content on the label even though it was a liquor-filled candy product. He stated SB 318 will change a liquor item to a food item available to unsuspecting minors. He said the candy could be harmful to people who are alcoholics.

QUESTIONS

Rep. Wallin asked if the candy would enhance the life of children to have this available. Senator Jacobson responded

that they did not envision that children would care to either buy or eat it. She said it was too expensive and was a bittersweet chocolate that would not appeal to children.

Rep. Bachini asked how the sale of the candy would be prohibited to children and if Senator Jacobson would have any objection to the labeling of the alcohol content on the candy, and the sale restricted only to liquor stores. Senator Jacobson responded she did not think the state liquor stores would want to sell the candy, and she doesn't see a point in limiting to them. She said she does not see the problem with grocery stores selling the product, since they now sell wine and beer and do not sell to minors. She commented that the Department of Revenue would have to update their rules as to the labeling of the candy.

CLOSING

Senator Jacobson stated if the committee wants to include in the bill a statement assuring that the candy is not sold to minors, she has no objections. She said she does not see what the reasons are for the opposition to the sale of this candy, and does not see the harm in it.

SENATE BILL NO. 385 - Defining Medical Assistance Facility, sponsored by Senator Cecil Weeding, Senate District No. 14, Jordan. Senator Weeding stated this bill defines a medical assistance facility and adds this definition in the definition of a health care facility. He said the bill with amendments confines it to a definition of a new facility, which he submitted. Exhibit No. 8.

PROPONENTS

Rep. Marion Hanson, House District No. 100, Powder River, Rosebud, and Big Horn Counties. Rep. Hanson stated that the county commissioners in her area wish to support this bill.

George Fenner, Department of Health and Environmental Sciences. Mr. Fenner stated the Department was submitting amendments to the bill. Exhibit No. 9.

Ellie Parker, Attorney, Department of Health and Environmental Sciences. Ms. Parker stated she drafted the amendments proposed by the Department and supported this bill. She said the Department understands the difficulty of small rural hospitals, especially in maintaining the professional staff that are required of hospitals. She commented the Department is also responsible for regulating and licensing the medical assistance facilities that this bill creates, and the way the bill is drafted, it prevents them from doing that adequately. She added that was the reason for the amendments.

Jim Arins, President, Montana Hospital Association. Mr. Arins stated they support the bill with the amendments. He said that small communities are facing the prospect of losing their hospitals, and at the same time, they are anxious to provide health care for the people in their communities. He commented that the medical assistance facilities are a step in the right direction.

Gene Buxcel, representing the recruitment committee for Garfield County Health Center, Jordan. Mr. Buxcel presented written testimony. Exhibit No. 10.

George Haggenman, representing the business community, Jordan. Mr. Haggenman stated that what they want to do is to protect the people in the small communities. He said many times the people in their area have to drive fifty miles on a gravel road to the town of Jordan, then another 60-100 miles to a hospital.

Rocky Nelson, Director of the Garfield County Ambulance Service, Jordan. Mr. Nelson stated this bill would be a big savings to Garfield County in time and travel for the ambulance services to arrive at a hospital.

OPPONENTS

Anne Bartos, representing Montana Medical Association. Ms. Bartos stated the Association supports the overall intent of the legislation, but they oppose the bill as it was submitted. She said the amendments they propose are similar to ones submitted by the Department of Health. She commented that it was probable that a licensed physician would not be located at that facility, and it was crucial that there be a doctor or some medical supervision of that patient. She added their proposed amendments insert a new section to provide this. Exhibit No. 11.

QUESTIONS

Rep. Hansen asked Ms. Bartos to explain the amendment that restricts the amount of hours to retain a patient to 24 hours instead of the 96 hours. Ms. Bartos responded that the 24 hour restriction was a restriction that the Association felt necessary because in the rural communities where there was not more than one nurse, 24 hour nursing care could not be provided to the patient admitted to the facility.

Chairman Kitselman asked Ms. Parker to explain the differences in the references, in section 50-5-501, to temporary section and permanent section. Ms. Parker responded the reason for the two sets of definitions is because they apply

both to the licensure part and to the certificate of need which sunsets, and the temporary definitions delete all the definitions that were in the section.

CLOSING

Senator Weeding stated it seemed the bill would have an amount of amendments, which are not substantive but are important to the areas.

Chairman Kitselman referred this bill to a subcommittee composed of Reps. Wallin, Brandewie, and Hansen, with Rep. Wallin as chairman.

SENATE BILL NO. 360 - Notice Requirements For Public Construction Supplier on Right Against Bond, sponsored by Senator Al Bishop, Senate District No. 46, Billings. Sen. Bishop stated this bill revises the notice requirements concerning a supplier's right of action on a bond under a public construction contract. He said the contractor gets a public contract from a city, county, or school district, and they post a surety bond, and give the bond to the entity to ensure that the contract is performed and that all people who work on the project and the materials are paid.

PROPONENTS

Lloyd "Sonny" Lockrem, representing Montana Contractors Association. Mr. Lockrem submitted a scenario that makes this bill necessary. Exhibit No. 12. He said this bill does not relieve the contractor from any obligation to pay any person, firm, or corporation doing any work on the project. He commented what it does do is require those people to file a certified letter, identify themselves, particularly on the second and third tier liens, and on that basis they keep the obligation to pay.

Irv Dillinger, representing Montana Building Material Dealers Association and the Montana Home Builders Association. Mr. Dillinger stated they do not have any problems with the bill and highly support it.

OPPONENTS

None.

QUESTIONS

Rep. Glaser stated the problem that subcontractors and material suppliers have at this particular time is determining who the surety company is, and asked Mr. Lockrem how

they could find out. Mr. Lockrem responded that they were working with public contracts as opposed to private and with a sophisticated clientele, and that information is more readily available in the public contract area than in the private work where a legal description of the property is needed.

Mr. Lockrem stated he is sorry to hear there is such a lack of cooperation from the general contractors and the architects and engineers, but within their Association, they have liaison committees with the Montana Tech Council and their general contracting firms, and he will see that some kind of dialog and cooperation exist between the architects, engineers, and the general contractor.

Senator Bishop stated that the bonding requirements provide that a copy of such bond shall be filed with the County Clerk and Recorder.

CLOSING

Senator Bishop stated that the case that Mr. Lockrem cited was what precipitated this legislation.

SENATE BILL 210 - Defining Professional Counselors As Health Care Providers, sponsored by Senator Thomas Keating, Senate District No. 44, Billings. Sen. Tom Keating stated this bill addresses third party payments under the law and includes professional counselors' services in the definition of medical assistance established for Medicaid, and defines professional counselors as health care providers for purposes of disability insurance and health service corporation plans.

PROPONENTS

Ted Doney, representing Montana Mental Health Counselors Association. Mr. Doney stated that there are currently 61 licensed counselors. He said the drafting of the bill is intended to reflect the same coverage that is now being provided for social workers, and the bill mirrors the current law for social workers. He added the amendments made in the Senate were technical in nature to ensure that the sections referred to were covered in the act.

Joan Rebich, representing Mental Health Counselors Association. Ms. Rebich submitted written testimony. Exhibit No. 13.

Dwight Leonard, representing Helena Comprehensive Guidance Clinic. Mr. Leonard stated that this bill would provide services to rural areas, the developmental disabled, and the

chronic users of health services. He said counselors do have specialities. Exhibit No. 14.

Sally McCarthy, representing Professional Counselors Association. Ms. McCarthy stated that many families that have insurance would not be able to use her private practice if this bill did not pass. She said many people do not have money for her services.

Les Tanberg, representing Mental Health Association, and professional counselors. Mr. Tanberg submitted written testimony. Exhibit No. 15.

Joy McGrath, representing Montana Health Association. Ms. McGrath stated they feel that this bill would provide reimbursement and would allow the freedom of choice for people in need of their services.

Rep. Stella Jean Hansen, House District No. 57, Missoula, stated she wanted to be on record as supporting the bill.

OPPONENTS

Dr. Bill Bredehoft, clinical psychologist, Billings, submitted written testimony. Exhibit No. 16.

Dr. Bailey Molineux, psychologist, representing the Montana Psychological Association. Dr. Molineux stated that the problem was the independent unsupervised private practice. He said professional counselors do receive third party reimbursement if they work for a hospital or mental health center.

Tom Hopgood, representing Health Insurance Association f America. Mr. Hopgood stated that this is a competency issue and a fair issue, but it is also a money issue. He said the statistics show that when you have third party payments, the cost of insurance and the premiums increase.

Anne Bartos, representing Montana Medical Association. Ms. Bartos stated that they object directly to the language on page 2, lines 4 through 7, which removes the option of disability and health coverage for services performed by licensed counselors. She said the Association believes that the cost for services for counselors should not be mandated but should remain as an option to the consumer.

Dr. Rick Emery, representing the Montana Psychological Association. Dr. Emery stated they infrequently hire counselors for the Mental Health Center, because most of them are less qualified than the social workers or psychologists they do hire. He said the Association is concerned

that this bill will legitimize all counselors, many of whom are not qualified to work with mentally ill individuals.

Steve Waldron, representing Community Health Centers. Mr. Waldron stated that they have the same concerns as the other opponents. He said the bill does not address the training for diagnosis and treatment of mental illness.

QUESTIONS

Rep. Hansen asked if it wasn't better to have a counselor than no one at all. Mr. Waldron responded it was not better to have people that were not qualified to diagnose and treat mental illness.

Rep. Simon asked Ms. McGrath about the difference between these various professions and the fact that they aren't qualified to do certain things, and if it is known by a person that these individuals have limitations, if this should enter into the equation. Ms. McGrath responded the licensing process is to determine that and restricts requirements in that process.

CLOSING

Sen. Keating stated it was interesting that the Mental Health Centers have opposed this. He said they have professional counselors on their staff, and if a patient goes to a mental health center they are covered under the insurance. He commented that this is a fairness issue, and the equality under the law should be addressed.

EXECUTIVE ACTION

ACTION ON SENATE BILL NO. 210

Rep. Hansen moved that Senate Bill No. 210 BE CONCURRED IN.

Rep. Hansen moved to add a coordination clause with SB 120. The motion carried unanimously.

Rep. Hansen moved that Senate Bill No. 210 BE CONCURRED IN AS AMENDED. The motion carried with Rep. Driscoll, Rep. McCormick, and Rep. Bachini opposed.

Rep. Hansen will carry the legislation in the House.

ACTION ON SENATE BILL NO. 318

Rep. Pavlovich moved that Senate Bill No. 318 BE CONCURRED IN.

Rep. Wallin moved a substitute motion that Senate Bill No. 318 BE NOT CONCURRED IN. The motion failed.

Rep. Pavlovich moved that Senate Bill No. 318 BE CONCURRED IN. The motion carried 10 to 8.

Rep. Pavlovich will carry the bill in the House.

ACTION ON SENATE BILL NO. 359

Rep. Thomas moved that Senate Bill No. 359 BE CONCURRED IN.

Rep. Driscoll moved the amendments to Senate Bill No. 359. The motion carried unanimously.

Rep. Thomas moved SB 359 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

Rep. Thomas will sponsor the bill in the House.

ACTION ON SENATE BILL NO. 328

Rep. Simon stated that the bill still has problems and the subcommittee agrees that there are too many problems and amendments that have to be worked out, given the time constraints. He said the recommendation from the subcommittee is that the committee draft a committee resolution to address (1) the legislative policy to give the various state agencies that do internal printing the authority whenever possible to give the printing to the private sector not do it in-house; (2) to address specifications; (3) that the advisory council on printers be reactivated, and (4) to call for a legislative study into this issue.

Rep. Hansen moved that Senate Bill No. 328 BE TABLED. The motion failed.

Rep. Simon moved to draft a committee resolution to deal with certain policies of the printing issues in the state. The motion carried with Rep. Grinde, Rep. Jones, and Rep. Thomas opposed.

ACTION ON SENATE BILL NO. 213

Rep. Brandewie moved that Senate Bill No. 213 BE CONCURRED IN.

Rep. Brown moved the amendments to Senate Bill No. 213. The motion carried unanimously.

Rep. Brandewie moved SB 213 BE CONCURRED IN AS AMENDED, including the statement of intent. Exhibit No. 17. The motion carried unanimously.

ADJOURNMENT

The meeting was adjourned at 12:00 p.m.

Les Kitselman

REP. LES KITSELMAN, Chairman

DAILY ROLL CALL

BUSINESS & LABOR COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 18, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD			✓
REP. NORM WALLIN	✓		

CS-30

STANDING COMMITTEE REPORT

MARCH 18 19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 217

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☒ statement of intent attached

REP. LES KITSELMAN Chairman

AMENDMENTS AS FOLLOWS:

1) Page 3, line 5
Strike: "one"
Insert: "two"

2) Page 8, line 6
Strike: "interest"
Insert: "interests"

3) Page 11, line 6
Following: "LICENSED"
Insert: "as a real estate broker or salesperson"

4) Page 11, line 7
Strike: "BECOME LICENSED"
Insert: "act"

5) Page 11, line 11
Following: "APPLICANT"
Insert: "No license other than that issued pursuant to Title 37, chapter 51, is required."

Rep. Brandewie will sponsor

THIRD reading copy (BLUE color)

STATEMENT OF INTENT

A statement of intent is required for this act because it delegates rulemaking authority to the board of realty regulation. The board is authorized to adopt rules concerning:

(1) licensing of timeshare brokers and timeshare salespersons;
(2) information contained in applications for registration of timeshare offerings;
(3) documents acceptable in lieu of registration documents;
(4) conditions upon registration;
(5) gift and promotional activities; and
(6) disciplinary proceedings.

It is the intent of the legislature that the board use as guidelines for these rules the rules of the board of realty regulation implemented pursuant to the real estate licensing laws and the rules of other states governing the timeshare industry. The board may also use as guidelines for these rules the rules of the securities division of the state auditor's office.

Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

MARCH 13 19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 210

☐ do pass ☐ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

REP. LES KITSELMAN Chairman

AMENDMENTS AS FOLLOWS:

1) Page 10, line 23
Following: line 22
Insert: "NEW SECTION. Section 13. Coordination instruction. If Senate Bill No. 120 and this act are both passed and approved, the code commissioner shall add in Senate Bill No. 120 the words and punctuation "licensed professional counselor, licensed" on page 2, line 18, following "psychologist;".

Rep. Stella Jean Hansen will sponsor

THIRD reading copy (BLUE color)

STANDING COMMITTEE REPORT

MARCH 13 19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 359

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. LES KITSELMAN Chairman

AMENDMENTS AS FOLLOWS:

1) Title, line 12
Strike: "A DELAYED"
Insert: "AN IMMEDIATE"

2) Page 5, line 11
Strike: "JANUARY 1, 1988"
Insert: "on passage and approval"

REP. FRED THOMAS will sponsor

THIRD BLUE
reading copy (color)

STANDING COMMITTEE REPORT

MARCH 13 19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 319

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. LES KITSELMAN Chairman

REP. Bob Pavlovich will sponsor

THIRD BLUE

_____ reading copy (_____)
color

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

EX 3 1-18-87 SB 359

THE INTERPRETATION OF MONTANA'S MINIMUM WAGE LAW FAILS TO MEET LEGISLATIVE INTENT.

SB 359 returns Montana's Minimum Wage Law to where it was before the Attorney General's decision in April, 1986.

Before the Attorney General's opinion in April 1986, when an occupation was covered by both federal and state law, the law providing the most benefits to the employee applied. This is what the federal law requires, and what is done in other states.

After the Attorney General's opinion, when an occupation is covered by the federal law, the state law does not apply.

Federal Labor Standards Act	Montana Minimum Wages & Maximum Hours Act
-tip credits allowed	-tip credits not allowed
-$3.35/hour, or $2.01 if employees are tipped	-$3.35/hour after 10/1/86
-applies only to businesses grossing over $362,500	-applies only to areas specifically exempted from FSLA

Big restaurants can pay tipped employees $2.01 an hour, but small restaurants are required to pay $3.35 an hour. Businesses making over $362,500 annually are subject to the federal law, which allows tips to be used in the computation of 40 percent of the minimum wage, and 40 percent of $3.35 is $2.01. However, businesses making under $362,500 are subject to Montana law, and cannot use tip credits.

WOMEN ARE BEARING A DISPROPORTIONATE BURDEN BECAUSE OF THIS MISINTERPRETATION.

* Waitresses outnumber their male counterparts 17 to 1 in Montana, according to 1980 census data.

* 23 percent of working women are employed as service employees, according to the U.S. Department of Labor's 1985 statistics. This includes health service workers, however, who are not tipped.

* The poverty rate for households headed by women is six times that of households headed by men nationwide. (Women's Economic Agenda, July, 1984).

* Women are 80 percent of AFDC recipients and 60 percent of all social service recipients nationwide. (Women's Economic Agenda, July, 1984).

When employers start paying their workers enough money to feed their families, taxpayers will stop subsidizing women's wages.

... designed by Kathy Smith and Melinda Artz

EXHIBIT 2
DATE 3-18-87
HB SB 359

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF JACK ZINK ON SENATE BILL 359 BEFORE THE HOUSE BUSINESS AND LABOR COMMITTEE, MARCH 18, 1987

Good morning, Mr. Chairman and members of the committee. For the record, my name is Jack Zink and I am here today representing the Montana State AFL-CIO. I am presenting this testimony on behalf of Executive Secretary Jim Murry as he has a scheduling conflict today and cannot be available for this hearing.

Members of the committee, our organization's support of Senate Bill 359 reflects a desire to correct a discrepancy within Montana's wage and overtime statutes that was caused by an act of congress and subsequent interpretation by Montana's attorney general.

In 1986, the congress amended the Fair Labor Standards Act and applied its provisions to employees -- particularly certain public employees -- not previously covered under the federal Fair Labor Standards Act (FLSA.)

Following this congressional action, the Lewis and Clark County Sheriff's Department requested a Montana attorney general's ruling on the applicability of the Fair Labor Standards Act, as amended, and its effects on Montana's minimum wage and overtime statutes.

The effect of the Montana attorney general's ruling is that wherever the Fair Labor Standards Act applies, state laws are no longer applicable.

The implications of this decision extended far beyond sheriff's deputies or even all covered public employees. The attorney general's opinion regarding the Fair Labor Standards Act applies to private sector employees in Montana as well.

This application of the Fair Labor Standards Act effectively reversed a decision by the 1985 legislature to raise Montana's minimum wage to $3.35, without off-setting reductions for tipped employees.

Let me explain: Under federal law, employers covered under the FLSA may withhold up to 40 percent of minimum wages paid, which must then be made up by tips (gratuities) received by employees.

For example, employees covered under FLSA guidelines must currently receive a $3.35 per hour minimum wage. An employer may pay as little as $2.01 per hour in wages, so long as the employee receives tips of at least $1.34 per hour.

In 1985, the hotel and restaurant industry joined with workers and other employers to support raising Montana's minimum wage to $3.35 per hour with no off-set of wages resulting from tips paid to employees.

In fact, each of Montana's minimum wage levels established before the $3.35 per hour floor was enacted, were recognized by all Montana industries as the minimum hourly compensation to be paid solely in wages.

Unfortunately, the attorney general's decision negated the intent of the 1985 legislature by issuing its broad application of the FLSA.

We stand before you today to state our firm belief that standards set forth by Montana's minimum wage and overtime laws should be the minimum acceptable for all workers, regardless of FLSA guidelines.

It is our opinion that the intent of the 1985 Montana legislature was to guarantee that Montana's minimum wage of $3.35 would be the minimum wage paid to all Montana workers, even if their vocations entitled them to patron gratuities such as tips.

For this reason, we urge you to support Senate Bill 359.

WRITTEN TESTIMONY OF

JON B. HURST, MANAGER
STATE GOVERNMENT RELATIONS

HERSHEY FOODS CORPORATION

For the Business & Labor Committee
Montana House of Representatives

Subject -- Senate Bill 318

March 18, 1987

Mr. Chairman and members of the Business & Labor Committee, my name is Jon Hurst, and I am Manager of State Government Relations of the Hershey Foods Corporation. We appreciate the opportunity to testify here today.

Hershey Foods is based in Pennsylvania and its divisions, which include the Friendly Ice Cream Company, the Hershey Chocolate Company and Hershey Pasta Group, have facilities across the United States and in several other countries.

I submit this testimony to you today on behalf of Hershey Foods in opposition to SB 318 which would permit the unregulated sales of alcoholic candy.

As the largest publicly held United States confectioner, Hershey has always been concerned about children's health and well being. That is a vital concern since in the United States, nearly half of all confections sold are consumed by children and teens. Milk chocolate is a safe and nutritious snack food for children -- a snack that parents can normally keep in the candy bowl at home, and can also permit their children to purchase at candy stores, newsstands and convenience stores.

Yet, today across our country, and in some of those very same candy stores, newsstands and convenience stores, chocolate products containing alcohol beverages are being sold to children and adults alike.

In the few states where distribution is legal, regulation varies from permitting candy store sales to all customers including children, to classification of the products as alcoholic beverages with regulation required under the liquor code.

Montana is one of approximately thirty-five states which are consistent with Federal law and consider alcoholic candy to be adulterated food. However, some liquor-laced products are being shipped illegally into states not permitting the sale -- and some retailers are knowingly or unknowingly breaking state laws by marketing the products.

Illegal sales have been widespread in Pennsylvania, Massachusetts and New York, and probably in other states. This illegal distribution is very alarming.

The amount of alcohol that is present in some of these products is higher than you would expect, and the potential for harm to children, pregnant women and recovering alcoholics has often been ignored.

Testing of a 1/2 ounce, hollow chocolate bottle filled with alcoholic beverages was conducted in February, 1986 by the Pennsylvania Liquor Control Board when it was found being sold illegally at a candy counter in a shopping mall. The liquid center of the Scotch "flavor" was 24.6 Proof, which is equal to most wines. (It is important to remember that the weight of chocolate has a large effect upon alcohol volume testing results. It would be similar to adding in the weight of the glass when testing a bottle of Scotch.)

Adding to our alarm is the fact that the chocolate bottle did not have to be consumed in order to drink the alcoholic beverage center. One needs only to bite off the top of an edible chocolate container to drink its contents. Besides the liquid center products, alcoholic candy is available in various molded shapes with jelled and creme centers.

Senate Bill 318 would raise the present limit of 0.5% alcohol for the contents of confections to 5.0% by volume. Furthermore, under present law, candy can only contain alcohol derived from the use of flavoring extracts, such as vanilla; and diluted alcoholic beverages do not qualify under FDA rulings as flavoring extracts. Thus SB 318 will permit the legal, unregulated sale of liquor in candy in Montana.

Hershey Foods believes that there is a strong potential for harm to children in the sales of alcoholic candy; we also have concerns that adults and children alike may not be adequately informed as to the potentially high amounts of alcohol contained in many of the products. Some containers and individually wrapped and sold products do not state the alcohol volume content on any packaging or label, and could be easily mistaken for candy containing flavorings rather than the actual liquor which they contain.

In reference to alcoholic candies, Thomas Seessel, the Executive Director of the National Council on Alcoholism has expressed concern about "inadvertent alcohol consumption by children, recovered alcoholics and pregnant women."

"To reduce these health risks, products such as these should be prominently labeled as to the alcohol content by volume, and their sale regulated under state law to meet the same requirements as all other beverage alcohol products," the Council director stated.

This comment emphasizes the need to classify and regulate alcoholic candy in the same ways as hard liquor, wine, and beer. Hershey Foods believes that these products are alcoholic beverages in edible containers and should be defined and sold as such.

It should also be noted that our Corporation is on record as indicating that we have no intention to manufacture or distribute such products.

A recent move by the Attorney General of Kansas to restrict the sale of such products to liquor stores reflects a growing movement in states to regulate these liquor products appropriately.

This issue is best summed up by Kansas Assistant Attorney General Neil Woerman, who was quoted in the November 24 issue of the National Law Journal as saying, "We've got enough problems with liquor use that we don't have to candy-coat it for children."

EXHIBIT 4
DATE 3-18-87
HB 638

NOALCC National Organization Against Liquor in Candy for Children

==========

Background **********

Model NO-ALCC Bill--Adulterated Food States

BACKGROUND:

The National Organization Against Liquor in Candy for Children (NO-ALCC) believes that confections containing alcoholic beverages are nothing more than a solid form of liquor and should be treated no differently than liquors, beer and wine. The purpose of this model bill is to require state regulation of the sales of alcoholic candy in the same manner as that of alcoholic beverages. The bill would require the products to be taxed, regulated and sold as a liquor product and not as a food or confection.

Under the provisions of the bill, any candy containing alcohol--other than tinctures, extracts or solvents--would be defined as "Confectionery Containing Alcohol" under the state liquor code. Exempted from regulation would be candy containi alcohol-based tinctures, extracts or solvents, which under Federal and most state laws are permitted to contain up to only .5% alcohol by volume. Alcoholic beverages--whether diluted, concentrated or denatured--do not qualify as tinctures, extracts or solvents under FDA regulations. On line four of the bill, the section of the state code to fill in at that point is usually contained in the Food Act, which defines adulterated food, including confections containing alcohol.

MODEL NO-ALCC BILL--AMENDING STATE LIQUOR CODE

CONFECTIONERY CONTAINING ALCOHOL

Subject to regulation by the Board [generally the liquor control agency of the state] pursuant to the provisions of this Act and notwithstanding the prohibition against the manufacture and sale of confectionery containing alcohol under the "Pure Food Law" [generally these statutes permit the use of alcohol not in excess of one-half of 1 percentum by volume derived solely from the use of flavoring extracts--but NOT from alcoholic beverages] the manufacture, possession, sale, consumption, importation, use, storage, transportation, and delivery of confectionery containing alcohol shall be permitted

subject to and governed by the requirements and provisions set forth below. For purposes of this Section, alcohol shall mean ethyl alcohol of any degree of proof orginally produced by the distillation of any fermented liquid, whether rectified or diluted with or without water, whatever may be the origin thereof, other than tinctures or extracts used for flavoring purposes or solvents for glazes.

(1) Confectionery containing alcohol, as permitted by this section shall be sold only in [define outlets where alcoholic beverages are legally sold sold depending on local state law].

(2) For the purpose of any other state statute, rule or regulation, or any local ordinance, the sale of confectionery containing alcohol as defined herein shall be considered the sale of alcohol or liquor and not the sale of confectionery.

(3) Confectionery containing alcohol as defined herein shall be sold only in a package or container which bears the following legible label:

"NOTICE--THIS CONFECTIONERY CONTAINS ALCOHOL AND MAY BE PURCHASED ONLY BY PERSONS 21 YEARS OF AGE OR OLDER."

EXHIBIT 5
DATE 3-18-87
HB SB311

KMOX RADIO -- St. Louis, MO

January 27, 1987

Announcer:

The products in question are Winters Chocolate liquor bottles. As the name implies they are miniature..inch and a half high chocolate replicas of liquor bottles. In a hollowed out portion of the candy.....is real liquor. The candies are sold in a variety of stores in the area....when South County parent Phyllis Tonkavich's nine year old son came home from a 7-11 store this past Sunday with a couple of pieces of the candy..she was angry.

Tonkavich:

There right on the counter where garbage pail kids are. Little kids are grabbing stuff - can I have this? He had his own money, a dollar to spend. That's what he bought. No sign where it says this contains alcohol. When he brought it home, I was aggravated -- when I did find out today, I was mad, really mad that a 9 year old could go in and do that.

Announcer:

Winters produces two types of the candy..one has a higher alcohol content than the other. Some states allow the candy with the higher alcohol....But others..like Missouri..don't. A KMOX Radio..and Food and Drug Administration check found that the candy with the higher levels of alcohol...were being sold at the 7-11 in question..Winters spokesman Wes Ragsdale says his company made a mistake...

Ragsdale:

We found that a mistake had been made in our shipping department out of our Manteno, IL location. It is Winters Chocolates responsibility, it has nothing to do with Southland, they inadvertently received the wrong shipment. As soon as I found out about this today, I immediately cont cted the Southland distribution center and they in conjunction with us quickly retracted all of that product from any location it was sent to and then we will make sure that the right product is sent.

Announcer:

Ragsdale notes a child woul. have to eat hundreds of pieces of the candy to become intoxicated...but that statement comes as little comfort to parents like Tonkavich..who says the sale to children of a product that looks like a liquor bottle and tastes like liquor..isn't right

EXHIBIT 6
DATE 3/13/87
FB 2B313

EDITORIAL

CANDY WARS P U B L I C [illegible] A [illegible]

THE SWEETEST CONTROVERSY IN SACRAMENTO THESE DAYS HAS TO DO WITH HOW HIGH KIDS CAN GET...NOT FROM DRUGS BUT FROM LIQUOR FLAVORED CANDY. THAT SEEMS TO BE THE CHIEF ARGUMENT FACING GOVERNOR DEUKEMEJIAN WHEN HE DECIDES, WHETHER OR NOT, TO SIGN LEGISLATION LEGALIZING THE SALE OF SPIKED CHOCOLATES AND OTHER GOURMET CANDIES.

ARE WE KIDDING, YOU ASK? WELL, NO...THE STATE LEGISLATURE TOOK THIS BILL VERY SERIOUSLY, AND DID EXHAUSTIVE RESEARCH. IRISH WHISKEY CAKE, ALCOHOL LACED TRUFFLES AND CHOCOLATES WERE BRAVELY CONSUMED IN THE NAME OF RESEARCH. ALTHOUGH NO SENATOR REPORTED A HANGOVER, SOME STILL FELT CHILDREN AS WELL AS ELECTED OFFICIALS, COULD ACQUIRE A TASTE FOR ALCOHOL FROM THESE TREATS.

WE'RE ALL CONCERNED WITH DRUNK DRIVING AND ALCOHOL ABUSE AMONG TEENS. BUT YOU'D HAVE TO EAT SIX POUNDS OF THIS STUFF, TO FEEL A BUZZ. NOW ASSUMING, YOUR TEETH DON'T ROT AND STOMACH CAN HANDLE IT, YOUR WALLET MIGHT NOT. IT TAKES TWO HUNDRED DOLLARS WORTH, TO GET A LITTLE HIGH. AND FRANKLY, THERE'S BETTER WAYS...VANILLA EXTRACT HAS 35% ALCOHOL, MOUTHWASH 25%, AND FOR THE HARDCORE, BRANDY RUM FLAVORING, 71%. NONE OF THESE, BY THE WAY, ARE ILLEGAL.

NOW IF THE GOVERNOR, SIGNS THE BILL, ONLY 5% ALCOHOL WOULD BE ALLOWED IN CANDY AND NO ONE UNDER 21 YEARS COULD PURCHASE IT. WE URGE THE GOVERNOR TO SIGN THIS BILL TO PUT AN END TO THIS STICKY ISSUE. AND MOVE ON TO MORE IMPORTANT BILLS INVOLVING CHILDREN.

I'M RUSS COUGHLAN.

KNBC EDITORIAL

KNBC 4

NBC Television Stations Division
National Broadcasting Company, Inc.
3000 West Alameda Avenue
Burbank, CA 91523 (818) 840-3311

LIQUOR IN CANDY

Do you want alcohol in candy? The two hardly seem to mix, but fancy chocolates filled with different liqueurs and such seem pretty popular in states which allow their sale.

As of last Thursday, California joined the list when the governor signed a new law to increase the allowable alcohol content [redacted] from one half of one percent to five percent.

The anti-alcohol forces, along with competing candy makers opposed the five percent ceiling, fearing that small children will make booze-filled candy the first step toward life in a stupor.

We don't see that as worth worrying about. A 50-pound child would have to eat two pounds of liquored candy, costing around $15 per pound, to consume the alcohol equivalent of half a can of beer. Meanwhile, mouthwashes and cough syrup run as much as 25 percent alcohol, and no one cries out.

Alcohol abuse is a major problem. Alcohol use in high priced candy, with sales to minors prohibited, is not.

#B-204
Broadcast times: 10/1-6:26PM; 10/1-Signoff; 10/2-6:27AM
Time: 1:00

The Record

Make it a double

You won't get a Monday-morning hangover from a handful of spiked chocolates, but liquor-flavored candy has been the target of prohibitionists since 1906. In all but four states, it's illegal to add more than a smidgen of alcohol — 0.05 percent — to candy. Now the New Jersey Legislature has passed a bill that would legalize the production and sale of candy with up to 5 percent alcohol. Governor Kean should sign it.

Heightened concerns about drunken driving and alcohol abuse among teen-agers have made the governor hesitate. But he shouldn't worry that these candies would entice kids — or anyone — to get drunk. You would have to eat six pounds of the most potent variety at one sitting to feel the effect of a shot of scotch. Even if you had the stomach, you couldn't afford it. An adult must eat $200 worth to get drunk on the stuff.

The law against liquor-flavored candy has been illogical for decades, but now there's a compelling reason to spike it for good: Winters, a leading producer of liquor-flavored chocolates, is waiting for adoption of the New Jersey measure to open a new plant in Garfield. But the company won't wait forever, and Illinois recently enacted a similar law precisely to attract the 100 jobs the factory would create.

The sooner the governor acts, the better. This is too sweet an opportunity for New Jersey to pass up.

The Bergen County, New Jersey Record
August, 1984

NO ALCC

National Organization Against
Liquor in Candy for Children

164 Lexington Avenue
New York, New York 10016-7326
(212) 213-4696

Gerald W. Lynch

NO ALCC

National Organization Against
Liquor in Candy for Children

164 Lexington Avenue
New York, New York 10016-7326
(212) 213-4696

NO-ALCC SUPPORTERS (COMMITTEE IN FORMATION)

Dr. Gerald Lynch - Chairman of Committee
President, John Jay College of Criminal Justice, City University, New York, NY.
New York, NY

Dr. Myron Winick - Professor of Nutrition and Pediatrics, Columbia University College of Physicians and Surgeons, New York, NY.

Dr. Abraham Twerski - Medical Director, Gateway Rehabilitation Center, Aliquippa, PA.

Mimi Hewlett - Chairman, Board of Directors, Boston Childrens' Services, Boston, MA.

Jeane Myddelton - Executive Director, Florida Informed Parents for a Drug Free Youth, Tallahassee, FL.

Paul Clymer - State Representative, Harrisburg, PA.

Monsignor Joseph A. Dunne - Director, Institute on Alcohol and Substance Abuse, NY,NY.

William J. Hybl - President, El Pomar Investment Co., Colorado Springs, CO.

Martha Baker - President, National Council on Alcoholism, New York, NY.

NO ALCC

National Organization Against Liquor in Candy for Children

164 Lexington Avenue
New York, New York 10016-7326
(212) 213-4696

Contact: NO-ALCC Information Bureau -- Guy Read, (412) 391-4003; or Jeff Ourvan, (212) 213-4696; or, Ken Anderson, Chemical Dependencies Program of Montana, (406) 755-6453

FOR IMMEDIATE RELEASE

MONTANA OPPONENTS OF ALCOHOLIC CANDY

SUPPORTED BY NATIONAL ORGANIZATION

HELENA, MONTANA, March 9, 1987 -- The National Organization Against Liquor in Candy for Children (NO-ALCC) has joined a Montana group in opposing a legislative proposal to allow the unregulated sale of alcoholic candy in the state.

Ken Anderson, President of the Chemical Dependency Program of Montana, said his organization opposed SB318. A hearing on the bill is scheduled for Friday, March 13 at 8 a.m. before the Montana House of Representatives Business and Labor Committee. The bill has already passed the Montana Senate.

"Alcohol is available to young people in enough places. It shouldn't be in candy," Mr. Anderson said.

In a letter to committee members, Dr. Gerald W. Lynch, volunteer chairman of NO-ALCC and President of the John Jay College of Criminal Justice in New York, said his organization also opposed the general availability of confections that contain liquor.

"Parents should be assured that the candies their children buy are in no way the first step toward acquiring a taste for alcohol," Dr. Lynch wrote, adding that "such products should be available only to adults."

"Having worked with police officials worldwide to develop programs for fifth and sixth graders to dissuade them from taking drugs and alcohol, I am convinced that the availability of such so-called candies will subvert our efforts," the NO-ALCC chairman wrote.

According to testimony prepared for the committee by Jon Hurst, manager of government relations for Hershey Foods Corporation, Montana is one of approximately 35 other states that consider alcoholic candy to be adulterated food.

The National Organization Against Liquor in Candy for Children (NO-ALCC) is a non-profit public education program sponsored by responsible confectionery manufacturers with volunteer advisors from alcoholism treatment programs and child welfare organizations. #####

NO ALCC

National Organization Against
Liquor in Candy for Children

164 Lexington Avenue
New York, New York 10016-7326
(212) 213-4696

Gerald N. Lynch

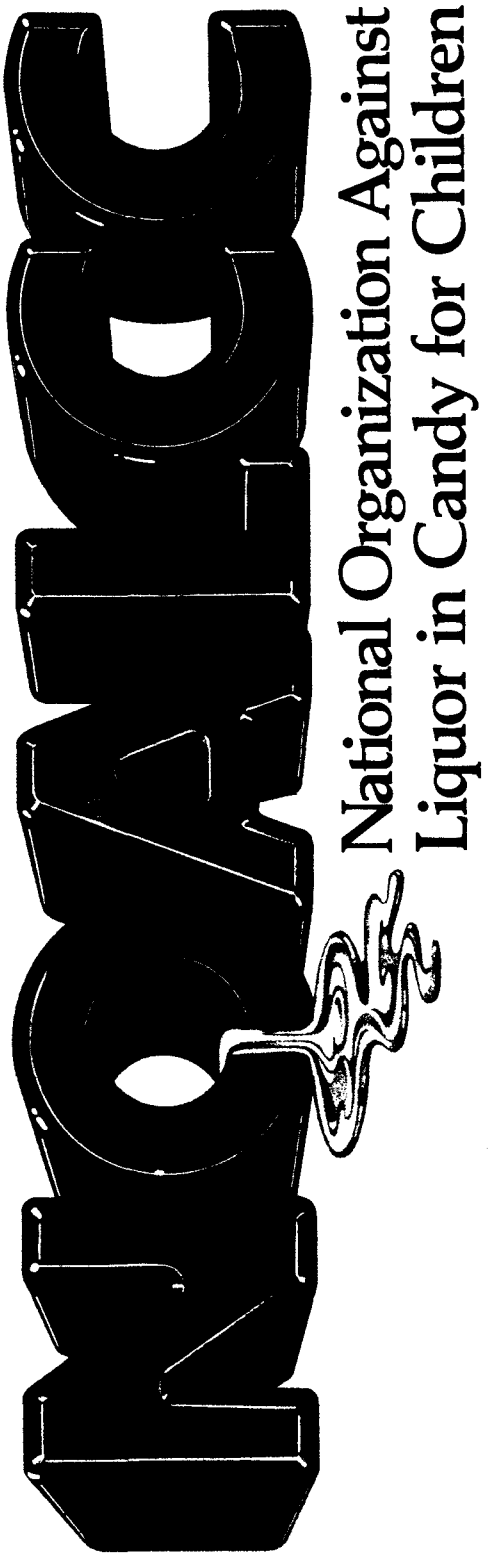
3. Alcohol content should be limited to five percent by *volume*. If the product contains a drinkable alcoholic beverage, the percentage of alcohol should be measured by the liquid contents only, not the entire piece. In such products, it is possible to drink the liquid center without consuming the container.
4. Alcoholic candy should be controlled by state alcoholic beverage control authorities. The product should be sold only in outlets authorized to sell other alcoholic products.
5. Alcoholic candy should be sold only to adults, as defined under the state's legal drinking age requirement.
6. All alcoholic candy – including pieces individually wrapped and sold – should be prominently labeled as to alcohol content by volume, as defined above. An "age to purchase" statement should be included.

Liquor-filled confections are alcohol products which can harm children and others. When marketed, alcoholic candy should be sold in a responsible manner consistent with its true nature as a liquor novelty, not as a confectionery product.

NO ALCC

National Organization Against Liquor in Candy for Children

164 Lexington Avenue
New York, New York 10016-7326



3/14/87
SB 385

Proposed Amendments to SB 385

Offered by Sen. Weeding

1. Page 8, line 20 through page 9, line 11.
Following: "(a)" on page 8, line 20
Strike: the remainder of line 20 through line 11 on page 9
Insert: "provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital."

2. Page 16, line 16 through page 17, line 7.
Following: "(a)" on page 16, line 16
Strike: the remainder of line 16 through line 7 on page 17
Insert: "provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital."

3. Page 20, line 6.
Following: line 6
Insert: "NEW SECTION. Section 3. Coordination instruction. If Senate Bill 246 and this bill are both passed and approved, the code commissioner shall add the term "medical assistance facility" to the list of facilities defined as "health care facilities" in 50-5-301, as amended by Senate Bill 246."
Renumber: subsequent section

EXHIBIT 9
DATE 3-11-87
SB 385

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
PROPOSED AMENDMENTS TO SENATE BILL NO. 385 (THIRD READING)

1. Page 8, line 18.
Following: "(29)"
Insert: "(a)"

2. Page 8, line 19.
Following: "that"
Strike: ":"
Insert: "provides inpatient care to ill or injured persons prior to their transportation to a hospital or inpatient medical care to persons needing that care for a period of no longer than 48 hours.

(b) A medical assistance facility may only be located in a county with fewer than six residents per square mile or in any county if the facility is located more than 50 road miles from the nearest hospital."

3. Page 8, line 20, through line 11, page 9.
Following: line 19, page 8.
Strike: line 20, page 1, through line 11, page 9, in their entirety.

4. Page 20.
Following: line 6
Insert: "NEW SECTION. Section 2. Coordination instruction. If Senate Bill 246 and this bill are both passed and approved, `medical assistance facility' is added to the list of facilities defined as `health care facilities' in section 2 of Senate Bill 246."
Renumber: subsequent section.

STATEMENT OF INTENT

SENATE BILL NO. 385

A statement of intent is provided for this bill because it extends the authority of the Department of Health and Environmental Sciences to set licensure standards to cover medical assistance facilities. It is the intent of the legislature that the department adopt licensure standards for such facilities that include, but are not limited to, the following:

1. The types, training, and supervision of staff the facility must have, including either a physician, nurse practitioner, or physician assistant, with the restriction that a physician, nurse practitioner, or physician assistant need not be on site at all times but may be on call so long as they are available within twenty minutes.

2. Requirements for medical treatment protocols that must be utilized by staff.

3. Review by a professional review organization or its equivalent to determine if the level of care provided is appropriate.

4. A requirement that the facility have a referral agreement with a hospital ensuring acceptance of patients needing hospital-level care who are treated at the facility.

5. Minimum construction standards that are the same as those required for hospitals for the services the facility chooses to provide.

WITNESS STATEMENT

NAME _____ BILL NO. _____

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT? _____

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

3/11
SB 385

AMENDMENTS TO SENATE BILL NO. 385 (yellow copy)

1. Page 9.
   Following: line 6
   Insert: "(g) has an arrangement with a hospital providing criteria for and establishing the circumstances under which patients would be transferred from the facility to a hospital;"
   Insert: "(h) has an arrangement for telephone consultation with a physician or group or physicians who will function as medical director of the medical and nursing staff at the facility, if the facility is not staffed by a licensed physician;"
   Renumber: subsequent subsections

2. Page 9.
   Following: line 9 of subsection (g)
   Insert: "The medical facility shall be subject to inspection by the department of health to insure compliance with this provision."

3. Page 9.
   Following: line 11
   Insert: "The facility shall not retain any patient for more than 24 hours."

Sonny Lockram MCA

STATE REPORTER
Box 749
Helena, Montana 59624

VOLUME 42

3/12/87 SB 365

No. 85-175

ROBINTECH, INC.,

Plaintiff and Respondent,

v.

WHITE & McNEIL EXCAVATING, INC., and TRANSAMERICA INSURANCE CO.,

Defendants and Appellants.

Submitted: Aug. 15, 1985
Decided: Nov. 6, 1985

CONTRACTS--JUDGMENT, SUMMARY, Appeal by prime contractor and its surety on a public works project from summary judgment in favor of plaintiff, a materialman and supplier to a subcontractor. The Supreme Court held: (1) Defendants, as prime contractors, were bonded to assure payment to their materialman under the public works bonding provisions, and (2) Defendants had adequate legal notice on Plaintiff's claim and Plaintiff was entitled to payment under the contract and under the bonding statutes.

Appeal from the Fourteenth Judicial District Court, Musselshell County, Hon. Roy Rodighiero, Judge

For Appellant: Landoe, Brown, Planalp & Kommers; James M. Kommers, Bozeman

For Respondent: Jardine, Stephenson, Blewett & Weaver; William D. Jacobsen, Great Falls

Submitted on briefs.

Opinion by Chief Justice Turnage; Justices Harrison, Weber, Hunt and Gulbrandson concur.

Affirmed.

____Mont.____

709 P.2d 631

Robintech, Inc., Plaintiff and Respondent, v.
White & McNeil Excavating, Inc., Defendants and Appellants
42 St.Rep. 1690

Mr. Chief Justice Turnage delivered the Opinion of the Court.

Defendants, prime contractor and its surety on a public works project, appeal summary judgment in favor of plaintiff, a materialman and supplier to a subcontractor, entered in the Fourteenth Judicial District, Musselshell County, on December 28, 1984. The District Court determined that as a matter of law plaintiff was entitled to summary judgment in the amount of $47,639, plus interest at 6 percent and costs.

We affirm. We hold that White & McNeil Excavating, Inc., as the prime contractor, was bonded by Transamerica Insurance Company to assure payment to its materialman, Robintech, under the public works bonding provisions in Part Two of Title 18, Chapter 2, MCA. We hold that White & McNeil had adequate legal notice on Robintech's claim, and Robintech was entitled to payment under the contract and under the bonding statutes.

Both parties moved for summary judgment claiming that the material facts were undisputed. For its first issue on appeal, White & McNeil challenges the court's conclusion that Robintech was a supplier or a materialman to a subcontractor, alleging that Waterworks Supplies Company was a materialman and not a subcontractor. Therefore, appellant urges this Court, Robintech supplied a materialman and is not protected by the bond. For its second issue, appellant alleges error in the court's ruling that Robintech complied with Section 18-2-206, MCA, by mailing invoices but failing to send notice by certified mail of any claim upon the bond.

The facts material to the summary judgment follow. On June 9, 1982, the City of Roundup, Montana, entered into a public works contract with White & McNeil Excavating, Inc., for the construction of water main improvements to be incorporated into the city water system. White & McNeil, prime contractors on the project, executed a payment bond with co-defendant Transamerica Insurance Company as surety.

The payment bond contained the following language:

"NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, ... [Emphasis added.]"

A further provision limited the claimants entitled to coverage:

"PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, and persons, firms and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS."

The general contract defined a "subcontractor" as "an individual,

firm or corporation having a contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of the WORK at the site." "Work" was defined in the contract as "[a]ll labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT." (Emphasis added.)

White & McNeil contracted with Waterworks Supplies Company as the sole direct supplier of pipe and all materials for the project, and Waterworks in turn contracted with Robintech to provide the pipe. Steve McNeil testified at his deposition that he knew when they "were quoted the job, that it was Robintech pipe." Robintech shipped its pipe directly to the project and a representative of White & McNeil signed for the pipe as consignee. The packing lists and receipts bore the Robintech letterhead. Before the project completion, Betty White, secretary of the prime contractor, realized that Waterworks was not paying for the Robintech pipe, so she withheld payments to Waterworks.

The City Council of Roundup met and approved final payment to White & McNeil on or about August 3, 1982. On August 30, 1982, Robintech mailed a notice to the City of its claim against the bond executed between White & McNeil and Transamerica on the project, pursuant to notice requirements for a right of action, Section 18-2-204, MCA. Defendants admitted that copies of this notice were mailed to them the next day, August 31, 1982.

I

Appellant contends that Waterworks Supplies was a materialman, not a subcontractor, to White & McNeil, and that Robintech supplied one who was not a subcontractor. Arguing that Robintech did not have a direct contract with the principal or a subcontractor, appellant claims that Robintech did not qualify for protection under the limiting provision.

[illegible] no merit in appellant's contentions. Waterworks had a [illegible] the principal, White & McNeil, to provide materials, and [illegible] contract with Waterworks to provide pipe. Robintech [illegible] the limiting provision as well as the general bond. [illegible] was protected under the bonding statutes for [illegible] project. Section 18-2-201, et seq., as a materialman [illegible] for the prosecution of work under the contract.

First, appellant incorrectly argues that Waterworks was only a supplier and not a subcontractor, apparently from a misconception that a subcontractor must perform labor at the work site. White & McNeil contracted with Waterworks to provide all its pipe for the public works project, knowing that the pipe would be supplied by Robintech. Under the general contract, work encompassed both labor and materials [illegible] to the project. Waterworks was clearly a subcontractor [illegible] the project. The bond assured payment to a corporation having a direct contract with a subcontractor. Robintech had such a contract and qualified under the limiting provision of the bond. Therefore, the prime contractor or its surety was liable for payment.

Second, Robintech is entitled to claim on the bond under Montana's public works bonding statutes, Section 18-2-201 et seq., MCA, provided that it gave adequate legal notice under Section 18-2-206, MCA.

"Bonding requirements. (1) Whenever . . . any public body shall contract with any person or corporation to do any work for the . . . city, . . . such . . . body shall require the corporation, person, or persons with whom such contract is made to make, execute, and deliver to such . . . body a good and sufficient bond with . . . a licensed surety company as surety, conditioned that such corporation, person, or persons shall:"

"(a) faithfully perform all of the provisions of such contract;

"(b) pay all laborers, mechanics, subcontractors, and materialmen; and

"(c) pay all persons who shall supply such corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for the carrying on of such work." [Section 18-2-201, MCA. Emphasis added.]

By statute, the bond assures payment to materialmen and persons supplying the corporation or subcontractor with material. Regardless of its contract with Waterworks, Robintech supplied White & McNeil which benefitted in fulfilling its contractual promise. When the City of Roundup accepted the project as completed, it acknowledged that all of the provisions of the contract were performed, including the installation of the Robintech pipe. Robintech supplied the corporation of White & McNeil the material for the project, White & McNeil knowingly received the benefit, and its surety company, Transamerica, has guaranteed payment.

II

In claiming failure to comply with the notice required under Section 18-2-204, MCA, appellant White & McNeil argues an argument of form over substance although [illegible] in favor of respondent's position in [illegible] Leigland (1968), 151 Mont. 288, 443 P.2d [illegible]. Appellants argue that Robintech was only entitled to proceed against the prime contractor if it had strictly complied with the provisions [illegible] the prime contractor concerning subcontractor under Section [illegible], MCA, including a certified letter within thirty days to the [illegible] agent, which is a separate requirement from Section 18-2-204, MCA. We have held that statutory notice was waived and the notice requirements were satisfied if the prime contractor had actual knowledge that materials were being furnished for the project by a particular supplier and contracted thereto. Treasure State Industries v. Leigland (1968), 151 Mont. 288, 297, 443 P.2d 22, 27. To require more notice than White & McNeil had from the beginning in contract discussions and specifically from direct shipments and packing lists and receipts would, as in Treasure State, "be to require an idle act and to defeat its claim on this ground would deny it justice." Treasure State, 443 P.2d at 27.

We find appellant's argument particularly strained in requiring all or nothing notice by certified mail, otherwise foreclosing respondent's claim. Section 18-2-206(1), MCA, provides that every person, firm or corporation furnishing materials to be used in the work for the [city] shall "deliver or send by certified mail to the contractor a notice in writing stating in substance and effect that [it has provided materials] with the name of the subcontractor or agent ordering or to whom the same is furnished and [the contractor or his bond will be held for the same]." (Emphasis added.) The accompanying packing lists and receipts were written notice stating in substance that Robintech provided materials, and White & McNeil's duty under the provisions of this part to its materialmen sufficed to hold the contractor and his bond liable to pay. Robintech provided the materials to White & McNeil for its project, qualifying under the bonding statute, Section 18-2-201, MCA. We therefore conclude that the requirements for notice in Treasure State Industries v. Leigland, supra, are satisfied.

Affirmed.

13
3.18.87
SB 210

Information regarding

Senate Bill 210

provided by the

Montana Mental Health Counselors Association

Montana is a state in which medical service is in short supply, medically underserved, qualifying the state for special programs to attract doctors. A National Institute of Mental Health study reveals that reducing insurance coverage for mental health care may be a short-sighted approach to health care cost containment.

The study compared overall health care costs for Federal Employees Health Benefit Program enrollees who did and did not use mental health services from 1980 to 1983.

The researchers found that the overall health care costs for individuals receiving mental health treatment rose gradually during the three years prior to treatment, and then dropped significantly following treatment entry.

"Although the study population -- federal employees -- is not necessarily representative of other insured groups, the findings indicate that the use of mental health coverage may provide an important vehicle for reduction in general health care use and costs," said Paul Widem, coordinator of the study at NIMH.

The drop in general health care costs for persons eventually receiving mental health treatment was "dramatic" according to Widem. He added that the results "call for a rethinking of any attempt to reduce mental health coverage."

The study found that total monthly health care costs of mental health care recipients increased from about $103 three years prior to treatment to more than $493 during the six months before treatment. Costs declined to an average of $239 per month during the first six months of treatment and three years after treatment initial costs fell to $137 per month.

Today, most Americans have more health insurance coverage to pay for physical ailments, such as a broken leg or cardiovascular disease, than for mental disorders. Yet the odds of needing mental health treatment are five times higher than needing open heart surgery, the experts say. During any 6-month period, approximately 29.4 million adult Americans suffer from one or more mental disorders (1).

Equitable Group and Health Insurance Co., New York, finds fewer employees go on disability and take long leaves of absence, saving money on health benefits, as the result of its "personal concerns" counseling program. Better benefits can cut overall medical bills, says Towers, Perris, Forster & Crosby, New York, consultant.

In cases where the availability of outpatient Mental Health coverage does increase demand, it is possible that this increase is balanced by a decrease in medical or inpatient Mental Health claims. When outpatient coverage is limited or not offered, patients seeking help may resort to medical or inpatient treatment, at a higher expense to the insurer. Sharfstein (2) reports that in 1973-4, physicians reported 13 million office visits for colds, 18 million for back problems, 12 million for headaches, and 12 million for fatigue. Summaries of studies of offsets in medical utilization show that in general psychotherapy

permits a reduction in medical utilization of around 20 to 25 percent. As for inpatient usage, one cost utilization study calculated that the cost of a neighborhood Mental Health unit could be met through the cost of only six chronic patients who would otherwise be institutionalized. So although demand for outpatient services may increase as a result of expanded coverage, this increase may actually be representing a transfer of costs from medical and inpatient sources, resulting in overall savings for the insurer. (2).

A 1984 study by National Institute of Mental Health (3) states that 20% of the population of the U.S. over age 18 suffers from a mental disorder. 12% of these under 18 -- 32% in all. At risk groups include those in rural areas and low socio-economic groups.

A study of Federal employees insured by Blue Cross/Blue Shield (4) supports the contention that mental health treatment can cut medical costs. Research was conducted by tracking patients who suffered from heart disease, respiratory problems and diabetes. Total health care costs were reduced by 57% by the end of the second year and 66% by the end of the third year after diagnosis for those who had received counseling than for those who did not. Mental health treatment was cost effective for those who had a minimum of seven visits. The research concluded that those who receive mental health treatment were more likely to improve health related behaviors.

From data collected over a period of 18 years at the Kaiser Permanente HMO in California, N.A. Cummings reported that mental health treatment does reduce medical costs. Some of his conclusions were: (1) 60% of all medical patient care was due to mental rather than organic illness. (2) Even one visit to the mental health provider can reduce medical care by 60% over the next 5 years. (3) Six visits can reduce medical care utilization by 75% over the same time period (5 years). (4) A 12% reduction in the total medical care costs and a 68% reduction in hospital days were calculated by the 5th year after mental health treatment. Brief intervention, an average of 8 visits, seemed to be most cost effective. Cummings concluded that mental health treatment more than pays for its way by reducing medical costs. He also reported the 29 additional studies previously funded by the federal government replicate his findings.

At the University of Colorado, School of Medicine and the Denver VA Medical Center, Mumford, Schlesinger, and Glass (5) found that surgical or coronary patients who received mental health treatment left the hospital an average of two days earlier than those who did not. Mental health treatment can be cost effective, the study concludes.

Schlesinger, Mumford, Glass, Patrick, and Sharfstein (6) compared chronically ill federal employees covered with Blue Cross and Blue Shield from 1974 through 1978 who were first diagnosed and within one year began mental health treatment to persons who were also diagnosed but had no subsequent mental health treatment. In the third year following diagnosis, those having seven to twenty mental health treatment visits had medical charges $309 lower and

those having over 21 visits had medical charges $284 lower than the comparison group. The savings in medical charges over the three years of the group having 7 to 20 mental health visits were a function of lower use of inpatient services and roughly equalled the cost of 20 mental health visits. The researchers concluded that outpatient mental health treatment can be included in a fee-for-service medical care system to improve the quality and appropriateness of care and, if not extensive, may also serve to lower medical care costs.

Schlesinger, Mumford, and Glass (7) analyzed 510 outcome indicators from mental health treatment experiments that had economic implications, such as days lost from work, days of hospitalization, etc. and found that the average mental health treated person exceeded the average control subject by .51 to .78 standard deviation units. They reported that the effects of mental health treatment upon use of other medical services showed an average reduction of up to 20 percent. Jones and Vischi (8) review the studies of the effects of alcohol, drug abuse, and mental health treatment yielded similar findings.

Jameson, Shuman, and Young (9) conducted a study of a fee-for-service system which covered up to 50 visits per year of outpatient mental health treatment and considered only the effects of hospitalization and certain hospital -- based outpatient services. They found a reduction of about 30% in medical costs.

Lieberman (10) conducted a study funded by the National Cancer Institute at the Jefferson Medical College in Philadelphia. Lieberman reported that mental health treatment was effective in controlling cancer pain and reduced admissions to the hospital. The findings of this study add support to the fact that mental health treatment can be cost effective.

Margollis (11) reported first hand experience in the ability of mental health treatment to lower medical costs. As a consultant to the Hemophilia Foundation, she found that not only was the number of problem patients substantially decreased with mental health treatment, but it also prevented a significant number of patients from developing chronic mental health problems.

Sharfstein (12), who is Assistant Medical Director of the American Psychiatric Association, reported definite evidence that mental health treatment does cut medical costs.

Blue Shield of Pennsylvania (13) found medical-surgical expenditures reduction of 57% among patients when a two year period after mental health treatment was compared to a similar period before.

Twelve of 13 mental health studies (14) conducted over a period (1962-1978) showed a reduction of medical care utilization following mental health treatment from 5% for outpatient services to 85% for hospital stays. The median reduction was 20%.

Psychiatrists' Fees

The median fee charged by psychiatrists for individual therapy is $70.00, the modal or more popular fee is $60.00, while 6% charges $100.00 or more per hour (15). The same report found that they charged a median fee of $100.00 for family therapy with 15% charging $150 or more. GLS Associates (16) reported the average fee charged by psychiatrists to be $65.00. Covin (17) reported median and modal fees of $40.00 for both family and individual therapy charged by doctoral level Licensed Professional Counselors in Alabama. Weikel, et.al., (18) reported an average fee of $35.00 for individual therapy charged by counselors throughout the United States. Seligman and Whitley (19) reported an average fee of $41.95 for individual therapy charged by counselors in Virginia.

Psychologists' Fees

The average fee charged by a psychologist is $53.00 according to GLS Associates (20). Covin (21) found the average fees charged by those counselors below the doctoral level to be $43.97, for counselors at the Ph. D. level to be $43.75 and for counselors at other doctoral levels (Ed. D., S.T.D., and D.D.) to be $48.32. Weikel, et. al., (22) reported an average fee of $35.00 for individual therapy charged by counselors throughout the United States. Seligman and Whitley (23) reported an average fee of $41.95 for individual therapy charged by counselors in Virginia.

Increased availability of mental health treatment services does not mean drastically higher medical care costs according to a study by researchers at the Rand Corporation (24). They found that only 9% of those with full mental health care coverage for up to 52 visits per year received any mental health treatment and only 5% underwent counseling. Only a small percentage of those with liberal mental health benefits actually used it. The same study also found that there were about the same number of people utilizing medical doctors, the general practitioner and internist for informal counseling as there were those using psychiatrists and other mental health providers for "formal" counseling.

The availability of mental health services in a health contract does not increase the use. Rand Corporation (25) researchers found that the pattern for the use of mental health services in contracts was not significantly different from the pattern of use of the other health services under similar contracts.

Increased availability of mental health services through third party payments does not equal increased use, according to a Department of Defense study of its CHAMPUS program (26). The researchers found that CHAMPUS, which offers some of the most liberal benefits of all insurance contracts, yielded the second lowest counseling utility charges of any five Federal Employee Programs. Among the 8 million people eligible for CHAMPUS, the per capita dollar utilization rate was $24.13 per covered person.

A comparison of this rate with the utilization charges of the other programs reveals the stresses of diplomacy produce a $89.46 rate for Foreign Service employees, those covered by Blue Cross/Blue Shield have a $46.35 rate, and those insured by Aetna

have a $29.09 rate. Letter carriers have the lowest rate, a $19.22 per capita charge (27).

Researchers at the Rand Corp, a Santa Monica based think tank, reported in 1983 that employers or insurance companies would face only a small increase in costs if they offered full mental health coverage to participants in health care plans.

The federally funded study of 7,706 randomly selected people found that a full coverage health care plan paid out an average of only $24 a year per insured family for mental health treatment -- about 5% of the amount paid for all health services. Only 5% of those with full coverage underwent psychotherapy.

In Virginia, Blue Cross and Blue Shield recognized in 1984 that Professional Counselors' services were covered under their standard policies.

A 1983 ruling by Florida's Insurance Commission made state counselors eligible recipients of third-party payments. The action, keeping with the state's freedom of choice legislation, required group insurance policies covering mental or nervous conditions to include counselors as service providers.

In 1980, licensed professional counselors were included by the U.S. Office of Personnel Management as health care providers whose services were reimbursable under federal employee insurance contracts. To qualify, counselors must serve consumers in areas designated by the OPM as having shortages in primary medical care manpower.

The Los Angeles Times, February 23, 1986, wrote the Legislature in California is preparing to consider a proposal that would require all health insurance sold in the state to contain minimum coverage for mental health treatment. This bill would require all mental health insurance co-payments and deductible charges to be the same as for other health insurance. The bill would place a lifetime maximum benefit per individual at 20% of the total major medical insurance coverage or $100,000 whichever is less. Similar measures have been enacted in 14 other states.

The United States Office of Personnel Management (OPM) no longer supports the view that mandating coverage of additional categories of mental health providers will lead to the inevitable increase in and utilization of and consequently in costs paid for the delivery of psychotherapy. In the March 1986 report, the OPM recommended the separate evaluation of each category of health care practitioners in order to determine the quality of care issues. Criteria for the evaluation include the existence of a clearly defined body of knowledge, a body of professional standard practices to be adhered to, and some form of accreditation or certification process.

This opens the door for mental health counselors who have met National Academy of Clinical Mental Health Counselor certification to be approved by health care providers by the OPM. Thus their services can be recognized and reimbursed under the

more than 300 Federal Employees Health Benefit plans.

In 1985, Blue Shield of California agreed to include licensed marriage, family and child counselors as "participating health care professionals" in its medical coverage plans.

Colorado Insurance Commissioner J. Richard Barnes required in February 1984 that counselors' services be recognized and paid for by health insurance companies operating in that state.

On June 3, 1985, the United States Supreme Court upheld the constitutionality of a Massachusetts law which mandated minimum mental health benefits be provided state residents insured under health insurance policies. Thus, mandated mental health coverage is a function which can be controlled by state government.

Fees charged by counselors range on average between $35.00 and $50.00 per 50 minute session compared with $60.00 to $70.00 for a psychologist and $100.00 and more by a psychiatrist. Some cases should be seen by a psychiatrist and knowledge of referral is expected of a counselor, but well over 50% of the counseling that is done is presently being done by counselors.

References

1. WALL STREET JOURNAL, January 21, 1986.

2. Sharfstein, S.; Muszynski, S.; and Gattozzi, A. Maintaining and Improving Psychiatric Insurance Coverage: An Annotated Bibliography. AMERICAN PSYCHIATRIC PRESS, 1983.

3. U.S. NEWS AND WORLD REPORT, October 1984, p. 18.

4. PSYCHOTHERAPY FINANCES, 1983, p. 8.

5. Mumford, E.; Schlesinger, H. J.; Glass, G.V., 1982, AMERICAN JOURNAL OF PUBLIC HEALTH, p. 141-151.

6. Schlesinger, H.J., Mumford, E., Glass, G.V., Patrick, C., and Sharfstein, (1983). Mental Health treatment and medical care utilization in a fee-for-treatment system: outpatient mental health treatment following onset of a chronic disease. AMERICAN JOURNAL OF PUBLIC HEALTH, 73 (4), pp. 422-429.

7. Schlesinger, H.J., Mumford, E., and Glass, G.V. (1980). Mental health services and medical utilization. In Vandenbos, G.(ed). PSYCHOTHERAPY: FROM PRACTICE TO RESEARCH POLICY. Beverly Hill: Sage.

8. Jones, K. and Vischi, T. (1979). Impact of alcohol, drug abuse, and mental health treatment on medical care utilization: A review of research literature. MEDICAL CARE (Supplement) 17: pp.ii-82.

9. Jameson, J., Shuman, L., and Young, W. (1978). THE EFFECTS OF OUTPATIENT PSYCHIATRIC UTILIZATION ON THE COSTS OF PROVIDING THIRD-PARTY COVERAGE. A Study sponsored by the Blue Cross of Western Pennsylvania. Research Series 18, 1976. Medical Care, 16, 383.

10. Lieberman, D. (1983). Cited in PSYCHOTHERAPY FINANCES, 10 (9), p. 2.

11. Margolis, C. (1983). Cited in PSYCHOTHERAPY FINANCES, 10 (9), p. 2

12. Sharfstein, S. (1978). Third-party payers: To pay or not to pay. AMERICAN JOURNAL OF PSYCHIATRY, 135, 1185-1188.

13. Practice issues: Does therapy cut overall medical costs? PSYCHOTHERAPY FINANCES, 10 (9), 1983, p. 1.

14. Same as 13.

15. How much do psychiatrists charge for psychotherapy? PSYCHOTHERAPY FINANCES, 9 (8), 1982, p.8.

16. GLS Associates, Inc. (1983). PSYCHOLOGISTS AND UNION MENTAL HEALTH BENEFITS DESIGNED FOR THE FUTURE. Philadelphia, PA. Susan C. Sargent and Irene Wasserman.

17. Covin, T. M., (1984). Trends in third-party reimbursement among licensed professional counselors in Alabama. (accepted) AMERICAN MEDICAL JOURNAL, 1985.

18. Weikel, W.J., Daniel, R.W. and Anderson, J. (1981). A survey of counselors in private practice. AMCHA JOURNAL, 3, 88-94.

19. Seligman, L. and Whitley, N. (1983). AMHCA and VMHCA Members in Private Practice in Virginia. AMHCA JOURNAL, 5, 179-183.

20. Same as 16.

21. Same as 17.

22. Same as 18.

23. Same as 19.

24. Would extended mental health services mean drastically higher health care costs? PSYCHOTHERAPY FINANCES, 10 (6), 1983.

25. Staff. COST SHARING AND THE DEMAND FOR AMBULATORY MENTAL HEALTH SERVICES. R-2960-HHS. Rand Corporation. 1700 Main Street, Santa Monica, California, 90406.

26. Persons eligible for CHAMPUS are modest users of psychotherapy services. PSYCHOTHERAPY FINANCES, 10 (8), 1983, p. 8.

27. A Perspective on Third Party Reimbursement and the Licensed Professional Counselor in Alabama. Theron Michael Covin, Ed. D., LPC, NCC, CCMHC, Center for Counseling and Human Development, Ozark, AL, 1985.

WITNESS STATEMENT

3-18-87
SB 210

NAME Dr. Hal Conard BILL NO. 210

ADDRESS Rm. 27, Capitol Bldg, Helena DATE 3-

WHOM DO YOU REPRESENT? Montana Primary Physicians Assistant Clinic

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

Comments:

This bill would help provide services to rural areas, the developmental disabled, and chronic users of health services such as dysfunctional families & chronic pain patients.

3.18.87
SB 210

WITNESS STATEMENT

NAME [illegible] Tintery, M.Ed. BILL NO. SB 210

ADDRESS [illegible]25 Dry Gulch Dr DATE 3/18/87 Wed

WHOM DO YOU REPRESENT? Professional Counselors

SUPPORT X OPPOSE ____ AMEND ____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The connection between emotional/mental health & physical health are increasingly being recognized. As is most apparent with depression or anxiety & alcohol & drug problems lead to wide variety of physical symptoms & ailments (just as examples). It is absolutely apparent to me that effective mental health services [illegible] & reduce physical health problems.

Also, I frequently find myself in a difficult position of referring clients/employees to mental health services but [illegible] to send them to in our rural areas — without having to send them traveling [illegible] distances to urban areas or to licensed [illegible] professional counselors in [illegible] area. [illegible] they often don't [illegible] [illegible] [illegible] difficult [illegible] more [illegible] since the [illegible] insurance currently does not cover these services [illegible]

CS-34

MONTANA PSYCHOLOGICAL ASSOCIATION, INCORPORATED

3-16-87
SB 210

TESTIMONY OPPOSING SB 210

My name is Dr. Bill Bredehoft. I am a clinical psychologist from Billings. I am the secreatary of the MT Psychological Association and the Vice-Chairman of the Board of Psychologists.

I represent the members of the MT Psychological Association in asking you to vote against SB 210. By requiring third party reimbursement for licensed counselors, this bill increases the possibility that the citizens of our state will receive mental health services from unqualified individuals. Before this bill is passed, the licensing law for counselors must be strengthened.

It has been said by some that this bill deals with equity with other licensed mental health professionals. This chart shows a comparison of training for psychologists, social workers, and counselors. As you can see, their training is far from the same. A psychologist must have a doctorate degree in psychology which typically involves four to six years of graduate training and two years of experience, supervised by a licensed psychologist, ie., a person with extensive experience in the diagnosis and treatment of mental illness.

Social workers need a doctorate or masters degree in social work and 1½ years of post degree work experience providing psychotherapy.

In contrast, counselors need only have a graduate degree from a program which can be completed in five quarters of study and then just a ½ year of additional experience to be licensed. So it is clear that counselor's training is not equal under the current law.

However, this is not just a problem concerning the relative amount of training for the various professions. The fundamental problem here is that the counselors' licensing law does not in any way guarantee that a licensed counselor will know specifically how to diagnose or treat mental illness, regardless of how much training he's had.

Here's a worst case scenario: Someone gets a school counselling degree and works for six months in a school, supervised by another school counselor. He then gets licensed and opens up shop as a professional counselor, qualified under Senate Bill 210 to accept third party payments for the diagnosis and treatment of mental illness.

Can this person be required to have training in his new area of practice? Not under the current licensing law.

The counselors have said that they will address this problem sometime in the future by strengthening their rules. As the vice-chairman of the psychology licensing board, I am aware, as I'm sure you are all aware, that a board's rules cannot be more restrictive than the law. We strengthened our licensing law this year to better assure that all licensed psychologists will have extensive training in the diagnosis and treatment of mental illness. Counselors should strengthen their law to provide consumers with the same assurance before further legitimizing and encouraging private practice by licensed, but possibly undertrained counselors.

This could be done simply by making the requirements for licensure as a counselor include education and supervision in the diagnosis and treatment of mental illness.

SB 213

50th Legislature LC 1392

EXHIBIT 3 1/21/91 SB 213

STATEMENT OF INTENT

SENATE Bill No. 213

A statement of intent is required for this act because it delegates rulemaking authority to the board of realty regulation. The board is authorized to adopt rules concerning:

(1) licensing of timeshare brokers and timeshare salespersons;

(2) information contained in applications for registration of timeshare offerings;

(3) documents acceptable in lieu of registration documents;

(4) conditions upon registration;

(5) gift and promotional activities; and

(6) disciplinary proceedings.

It is the intent of the legislature that the board use as guidelines for these rules the rules of the board of realty regulation implemented pursuant to the real estate licensing laws and the rules of other states governing the timeshare industry. The board may also use as guidelines for these rules the rules of the securities division of the state auditor's office.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. SENATE BILL NO. 359 DATE MARCH 18, 1987

SPONSOR SENATOR JACK HAFFEY

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Barbara Archer	Montana Legislative Fund	✓	
Jack Ruck	MT St. AFL-CIO	✓	
[illegible]	[illegible]	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. SENATE BILL NO. 318 DATE MARCH 18, 1987

SPONSOR SENATOR JUDY JACOBSON

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Jon B. Hurst	Hershey Foods Corp		X
[illegible]	Chemical Dependency Programs of Mt	Y	
			X
JOHN JARVIS - KAY SMITH	JARVIS SALES CO.	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. SENATE BILL NO. 385 DATE MARCH 18, 1987

SPONSOR SENATOR CECIL WEEDING

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
[illegible]	DHES	✓	
[illegible]	[illegible]	X	
[illegible]	[illegible]	X	
[illegible]	[illegible]	X	
[illegible]	[illegible]		L-
Ellie Parker	DHES	X	
[illegible]	[illegible]	X	
[illegible]	[illegible]	✓	
Jacqueline McKnight	DHES	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. SENATE BILL NO. 360 DATE MARCH 18, 1987

SPONSOR SENATOR AL BISHOP

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
[illegible]	[illegible]	X	
[illegible]	[illegible]	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. SENATE BILL NO. 210 DATE MARCH 18, 1987

SPONSOR SENATOR THOMAS KEATING

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
SAlly McCarthy, MA	SELF Prof. Counselor Assoc	yes	
Les Tanberg, MEd.	Professional Counselors	Yes	
Dwight Leonard Ed.D	Professional Counselor	yes	
Sarah Herold M.Ed	Prof Counselor	Yes	
Ted J. Doney	MT Mental Health Counselors Assn	X	
Annie Bartos	Montana Medical Asn		X
Joan Kebich	Mont Mental Health Couns.	X	
Gene Miller	Mont. Mental Health Centers		X
Rick Emery	Mental Health Center		X
Bailey Molineux	MPA		X
[illegible]	Mental Health Assoc	X	
[illegible]	MT Psychological Association		X
Tom Hopgood	Health Ins Assoc. of Mont		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

MEETING MINUTES
WORKERS COMPENSATION SUBCOMMITTEE
MARCH 18, 1987

The meeting of the Workers' Compensation Subcommittee was called to order at 12:35 p.m. on March 18, 1987 in room 437 of the state capitol building by Chairman Bill Glaser.

All members were present.

SENATE BILL 315

(5a:000) Betsy Griffing, staff attorney, Legislative Council, presented the committee with exhibit 1 on a two-thirds vote for change in Workers' Compensation (WC) subrogation statute, section 12 of SB 315, amending section 39-71-414, MCA. The issue is whether a change in subrogation laws would require the two-thirds vote and is it an express dollar limit for compensatory damages. She stated her interpretation is that since the change in subrogation is not an expressed dollar limit on compensatory damages for a particular cause of action, a two-thirds vote is not necessary. She added that while the claimant may receive a smaller proportion of the damages awarded in a third party action, the amount of damages resulting from the action itself is not necessarily limited by the proposed change.

(5a:028) Rep Driscoll stated the wrongful discharge bill that was passed out of the house that did not have an actual dollar limit but stated three (3) years wages, and also needed a two-thirds vote. He stated this legislation limits the amount of money an injured worker will receive. He said it doesn't say expressed dollar limitations, but if a bill needs to have a dollar limit in order for the two-thirds vote, then he felt the people who pushed CI-30 hookwinked the public. He stated that if this legislation was not changed in subcommittee he would try to divide the question on the floor. He noted page 24 lines 18 - 25 are not part of the Workers' Compensation Advisory Council (WCAC) recommendations, but was inserted by the division.

Uninsured

(5a:070) Jim Murray, bureau chief of the State Fund, noted the change made in page 25 sec 13, 39-71-502 which will allow the division to pay some benefits out of the uninsured fund to injured workers whose employer did not provide coverage. Presently, because the uninsured fund is required to keep proper surpluses and reserves, which is the stricken language in the bill. In 1981 the administrator declared the fund insolvent because the amount of money available was not sufficient to pay all the reserves and liabilities incurred by the fund. In order to pay those benefits this language was inserted to allow the fund to operate on a cash basis and pay off compensation and medical benefits.

Attorneys

(5a:107) Bob Robinson, administrator of the Workers' Compensation Division, (WCD), presented an overview of section 16 of the legislation. He stated the language developed by the Workers' Compensation Advisory Council (WCAC) is fairly intact as they had recommended. It basically states that costs of attorney fees will be assessed only when the insurer has been judged to have taken an unreasonable position relative to the payment of the benefits. He added that the legislation includes that a finding of unreasonableness by the court does not mean the insurer has acted in bad faith.

Mr Robinson continued with section 18 of the bill that has two (2) amendments. Basically the legislation states that when an attorney represents a claimant, that claimant/attorney relationship will be provided on a form provided by the division. He noted that currently it take 1.0 FTE to regularly monitor attorney fee agreements for compliance with the rules and the law. He said by having the attorney and claimant using this form describing the relationship would save staff time. The forms would need to be checked for proper completion, and there would not be the need for research for these agreements. The legislation also clarifies up front that the attorney would be paid on the additional benefits that the claimant gained due to the efforts of the attorney.

Mr Robinson the commented on section 19 on the assessed attorney fees. This requires the documentation of attorney time and multiplied against an hourly rate and this assessment is assessed against the insurer if they were unreasonable in the courts decision. He added the amount assessed against the insurer and paid by the insurer is netted against the amount that the claimant would have to pay.

(5a:191) Rep Driscoll noted that the language on page 28 concerning attorney's fees was developed by the WCAC because the division thought there were some abuses by some attorneys. At that time it was in a bill that was thought to be 330, and there were lump sums possible under that bill. He said the attorneys working for the claimant always work on a percentage of their lump sum and not a percentage of their temporary total. He stated with the almost elimination of partials and lump sums, the claimant will not be able to get an attorney because he will be in there trying to sue for temporary total benefits. He said if the claimant wins those and might be eligible for the 500 weeks of benefits, those benefits are paid out in such small amounts the attorney will not be able to take a percentage or the injured worker will be on welfare. He stated now attorneys are completely eliminated from the plaintiff's side. He stated the subcommittee should reinsert the stricken language on page 28 lines 3 - 8 and remove the other language on the page through pages 29 and 30 so that if the insurer

denies liability and the case is later judged compensible, the insurer would have to pay the attorney's fees because there is no lump sum settlements.

In response to questions from Chairman Glaser, Mr Robinson stated new rules were filed on Monday stating that the attorney can receive 20% of the additional benefits gained through his efforts if the case does not go to hearing and 25% if the additional benefits are gained by a decision of the WC court or the supreme court. The hourly rate established is to not exceed $75.00 an hour. The total dollars cannot exceed the contingency fee rates of 20% or 25% He added that most of the attorneys representing claimants, especially those who specialize in the business who handle the bulk of the business know the system very well. Agreements with the claimant and attorney on biweekly checks usually state the percentage that will go to the attorney. He added that the checks are actually sent to the attorney, who cashes the check, takes his percentage and sends the remainder to the claimant.

Rep Driscoll stated the department has the authority to stop checks from going to the attorney's office first on temporary total checks where there is a contingency agreement in effect.

George Wood, _____ Association, added the checks are sent to where ever the claimant directs.

(5a:324) George Wood stated the question of the attorneys fees has always been a problem, and his association has taken the position that they are not a collector of anybody's bill, so they do not split the check and then mail them. In cases where the attorney requests the check to be sent to his office, he does not think it is just. He stated one case that he talks about all the time in which a man was on compensation for a heart attack for a long time and was totally disabled and finally died as a result of the heart condition. The association sent the widow a letter and stated they would continue with the payment of compensation if she would file a beneficiary form. She went to an attorney and those checks are still going to the attorney's office. He noted the legislation contains a provision of the payment of impairment in a lump sum. He said Rep Driscoll was referring to cases that primarily deal with denial of liability, or temporary total. Mr Wood stated that if there is establishment of claim undoubtedly there will be permanent impairment where lump sums are available. If this is established, he is establishing the temporary total and the impairment. Under a contingency agreement Mr Wood believed the claimant would be entitled to compensation on all.

Rep Driscoll stated that under that section there is not going to be very much money. He stated a 10% impairment is

equal to 50 weeks times $149.50 maximum is $7,000. He stated the legislation greatly limits impairment.

Mr Wood stated the legislation does not limit the impairment a bit. He added the council recommended that no impairment was to be paid.

(5a:385) Mr Robinson commented on section 20 as a major compromise for labor in the WCAC recommendations arising from two (2) major problems have developed over time. There have been claims made that when an individual is injured and files a claim, the employer fires them because they have filed a WC claim. This legislation makes it clear that an employer cannot terminate a worker just for filing a claim. He stated that the legislation also states that if an injured worker is capable to of returning to work is capable to work within two (2) years of the date of injury, that worker is given a preference over new hires for comparable positions that become vacant over that period of time. Those positions have to be consistent with their abilities and the worker has to show that he is substantially equally qualified as the other applicants. Disputes over this are not in perview of the WC court and would be handled in district court.

Chairman Glaser stated that this means that if an individual can come back to work they can "bump" someone that has been hired in the meantime.

Mr Robinson clarified that they cannot "bump" another individual, but that they have a preference over new hires for substantially comparable positions.

Chairman Glaser noted the legislation states preference over new hires for comparable positions that became vacant within such a two (2) year period. He stated he felt it referred to the same two (2) year period.

Mr Robinson stated the two (2) year time frame was the same, but this referred to other vacancies. He presented a scenario that if he personally was in a car accident and unable to work, another individual would be permanently in his position. If after 1 1/2 years he was able to go back to work, he would have six (6) months where he would have a preference over new hires for other openings within the division. He stated this was the intent of the legislation, and hoped that the language was clear.

Compensation

(5a:465) Mr Robinson then presented an overview of the sections of the bill dealing with compensation. Section 21 deals with injuries that produce temporary total disability. During this period of time the individual is eligible for maximum benefits calculated at two-thirds of their wage received at the time of injury subject to the maximum of the

state average weekly wage, which is currently $299.00. If they are earning over $450 then they run into the cap. There is no cost of living allowance (COLA) involved. The legislation also calls for a two (2) year freeze of the state's average weekly wage at $299.00.

(5a:589) Mr Robinson then continued with section 22 which describes the determination of compensation for permanent total disability. He noted the permanent total wage replacement is the same as temporary total. There is a COLA adjustment for these benefits limited to no more than ten (10) adjustments after 104 weeks of benefits have been paid, payable on the next July 1. The adjustments must be the percentage increase in the state average weekly wage or 3%, whichever is less. He stated this was a major compromise and provides for a more humane system of compensation and reduces the need for lump sum settlements. There is a two (2) year freeze in benefits in this area also.

Mr Robinson went on with section 23 dealing with permanent partial disabilities compensation. This is an injury that is permanent in nature but only partially debilitating. He stated most of the injuries covered are partials. He stated the legislation proposes two (2) fold benefits. Temporary total benefits are paid up to the time of maximum healing. At that time an impairment evaluation is conducted by a physician as to the loss of body function. That percentage of disability is then applied to the 500 weeks of benefits. He said a 10% impairment translates to 10% of 500 weeks at the individuals rate payable to the claimant any way they prefer to receive them - lump sum or biweekly payment. To the extent that a certain number of weeks are paid on a lump sum basis, the individual is then eligible for wage loss supplements for the remainder between the difference of 500 weeks less the number of weeks that the impairment award is paid.

(5b:000) Rep Driscoll stated the impairment rate paid to the claimant is discounted at present value, a reduction in payments. Mr Robinson concurred.

Mr Robinson another concept that is included in this area that is different from the current law is an expansion of benefits. The current law has a schedule has a schedule of injuries included where specific injuries are eligible for a maximum number of benefits. The new legislation eliminates the schedule of injuries and provides individuals with up to 500 weeks of benefits as long as there is documented wage loss due to the injury.

(5b:035) He noted the wage loss calculation is different than the present situation. The wage loss calculation is the difference between what the person used to earn and what they are judged capable of earning. Two third of that amount is paid to an individual as an incentive to try to

find employment, they are not compensated for not trying to find work.

Mr Robinson stated the senate had amended the bill on page 37 paragraph V to clarify same injury site versus "same body area".

Mr Robinson continued with section 24 on impairment evaluation. He stated the senate changed paragraph 2 line 10 concerning disagreement on impairment and the described the procedure on resolution. It was noted that page 4 line 1, 3b(ii) and 3b(iii) were incorrect.

(5b:200) Section 25 on freezing rates for medical, hospital and related services was the next area of discussion. Mr Robinson stated the with the present system medical providers set rates and submit them to the division. This legislation calls for a system of rates to be established by the division for payment to medical providers, and establishes a two (2) year freeze on those rates.

(5b:243) Mr Robinson spoke briefly on section 26 dealing with language on the clarification for disfigurement.

Mr Robinson stated section 27 is a major change from the current system. Currently a permanently totally disabled individual receiving benefits are entitled to 500 weeks of partial benefits at age 65. He said there was nothing in the law that says that is the case. He stated section 710 in the current law does not establish this provision of entitlement. This became the practice based on the transition from lifetime benefits to retirement benefits.

(5b:268) Rep Driscoll commented that this was legislative intent from 1981. When legislation was brought in to reduce these people to partials benefits, as they used to receive full disability benefits as long as they lived, a compromise was reached for the current system.

Mr Robinson rebutted that the division has not been able to find that intent in the minutes, and this is not established in the law. He added the a supreme court decision last fall stated that 500 weeks of partial benefits at age 65. He said some private insurers who do not pay, and state fund had generally paid. He stated it has been a dispute for two (2) or three (3) years. He said the issue here was if a person receives permanent total benefits is he entitled to a lump sum at retirement as well as retirement benefits.

(5b:310) Section 28 of the legislation deals with the payment of benefits to an individual who is incarcerated. The WCAC recommends that benefits not be paid to an individual who is incarcerated because they are not eligible to participate in the work force and therefore are not eligible for benefits on a wage loss situation.

Mr Robinson then covered the changes in section 29 dealing with payment to beneficiaries. The legislation provides for 500 weeks of benefits to a spouse or until she remarries, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to unmarried children under the age of 18 years or an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program. The rate is the state's average weekly wage, with no COLA.

(5b:380) Rep Driscoll noted that payments end for a spouse who does not have children and remarries within the 500 week period. He was concerned with extra martial arrangements that would benefit the spouse as far as collection of the benefits was concerned.

(5b:405) Mr Robinson went on to section 30 on the reduction of benefits. Currently when an individual is injured, after they have been off work for five (5) days or more, compensation goes back and pays at the first day of loss. The legislation contains an employee deductible in that no compensation may be paid for the first six (6) days of work loss. Compensation begins on the seventh day instead of being retroactively paid from the first day of loss.

He continued with section 31 on compensation running consecutively and not concurrently. This is in relation to sick benefits that are paid by the employer that would be available to an injured worker as well as compensation benefits.

(5b:523) Mr Robinson then presented an overview of the lump sum benefits provided in the legislation. He stated major compromises were made in this section in the senate. Language submitted by the department stated that there was no lump sum settlements of benefits for partial injuries with the exception of the impairment and in the case of a permanent total, the maximum lump sum would be $20,000 and based on some criterion. He noted the language in the bill provided "common sense" in relation to the current complicated and ambiguous system for lump sum settlements.

(6a:000) Rep Driscoll presented the scenario of a 45 year old individual who was totally permanently disabled, received the $20,000 interest bearing loan, and benefits were cut off at age 65. He noted on page 55 lines 11 - 15 state the repayment period will be the life expectancy, which most tables go to age 72, so the individual would not get all his money back.

Mr Robinson stated that paragraph above the noted section, paragraph 5a, should be tied in with 5c. He stated for those individuals whose benefits would expire at age 65, _____. bill - i do not understand this point of issue and the tape has too much room interference - i cant hear what he is saying. please

fill in for me - thanks - However, if the projected compensation period is the claimants lifetime, (those folks injured prior to 1981) life expectancy must be determined.

Jim Murray, WCD, noted this language was in the bill just in case there are people that would not be eligible for Social Security. The 65 is tied to when a person is eligible for Social Security retirement. He said you may very well have an injured employee who is ineligible for Social Security retirement and therefore would be eligible for lifetime benefits under workers compensation.

Rep Driscoll questioned if the claimant dies early if the division would sue his widow or what would happen if the claimant committed suicide.

Mr Robinson stated that was the risk the claimant took.

Rep Driscoll stated maybe the interested rate should be elevated. He stated he wanted the committee to understand totally permanently disabled so called "lump sums" were interest bearing loans. They are tied to last years ten year treasury bill which was about 8%. If this law was in effect now someone who becomes a totally permanently disabled worker is getting the $20,000 at 8% interest.

Mr Robinson stated lump sums could be considered in that light, but that they are an advance on a benefit owed someone down the line, repaid at interest, and that the time value of money is being reflected.

(6a:045) Mr Robinson wanted the committee to be aware of the fact that in the original SB315 gave the division authority to follow up on lump sum settlements. This legislation gives the division full power, authority, and jurisdiction to allow, approve , or condition compromise settlements or lump-sum advances agreed to by workers and insurers if the division wants to condition the settlement on this authority.

Rep Driscoll stated the he could not see why this condition needed to be in legislation, noting the only way the department could loose was if the claimant dies.

(6a:097) George Wood noted this legislation was a good package where many compromises had been made.

(6a:108) Mr Robinson stated that injuries are categorized into four areas: a physical event causing a physical result, a physical event causing a mental result, a mental event causing a physical result, and a mental event causing a mental result. Under this legislation the only definition excluded is a mental event causing a mental result, i.e. stress. In the case of a heart attack, a physician would have to make the determination this was work related.

In response to a question from Rep Driscoll, stated individuals partially disabled by an occupational disease receive two (2) types of benefits: temporary total with medical and permanent total. In the case of an occupational disease that was not totally permanently disabling, an individual would receive temporary total benefits and medical coverage after maximum medical recovery.

Rep Driscoll suggested the committee review page 3 line 6 and asked for the wording "without regard to fault" be stricken from the bill.

Chairman Glaser stated this suggestion would be taken under advisement.

The meeting was adjourned at 2:20 (6a:244)

_____

Bill Glaser, Chairman

bg/gmc/3.18 DRAFT

DAILY ROLL CALL

WORKERS COMPENSATION SUBCOMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 18, 1987

NAME	PRESENT	ABSENT	EXCUSED
Rep William Glaser	X		
Rep Jerry Driscoll	X		
Rep Larry Grinde	X		
Rep Jerry Nisbet	X		
Rep Clyde Smith	X		

EXHIBIT 1
DATE 3/18/87
SB 315

Memo to House Subcommittee on Labor
3-18-87
Betsy Griffing, staff attorney, Legislative Council

Re: Two-thirds vote for change in Workers' Compensation subrogation statute, Section 12 of SB 315, amending section 39-71-414, MCA.

As passed by the voters last November, Article II, Section 16, of the Montana Constitution now provides:

"Section 16. The administration of justice. (1) Courts of justice shall be open to every person, and speedy remedy afforded for injury of person, property, or character. Right and justice shall be administered without sale, denial, or delay.

(2) No person shall be deprived of legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state.

(3) This section shall not be construed as a limitation upon the authority of the legislature to enact statutes establishing, limiting, modifying, or abolishing remedies, claims for relief, damages, or allocations of responsibility for damages in any civil proceeding; except that any express dollar limits on compensatory damages for actual economic loss for bodily injury must be approved by a 2/3 vote of each house of the legislature." *

ISSUE: Whether a proposed change in the Workers' Compensation subrogation statute, section 71-39-414, that would allow an insurer to subrogate in situations where case law previously disallowed subrogation, requires a two-thirds vote of each house?

DISCUSSION: A two-thirds vote is not necessary because the proposed change does not impose an "express dollar limit on compensatory damages." Although a claimant may receive a smaller proportion of the damages awarded in a third-party action, the amount of damages resulting from the cause of action is not limited by the proposed change.

VISITORS' REGISTER

WORKERS COMPENSATION SUB COMMITTEE

BILL NO. SB 315 DATE March 1 1977

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
CHAD SMITH	MONT HOSP ASS'N	X w/amendments	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.