

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

January 29, 1987

The sixth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lynch on January 29, 1987 at 1:00 p.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 118: Senator Mike Halligan, Senate District 29, stated this bill will clarify provisions of the Workers' Compensation laws. Senator Halligan stated he would explain the purpose of the bill and then he would leave to present another bill and he would be available to come back at another time if there are any questions. Senator Halligan said this bill will clarify provisions of the Workers' Compensation laws in order to make sure it is clear and that the department can pursue concurrently, both the civil and criminal suits. Senator Halligan stated that before the Department of Labor could pursue someone criminally, the employer must have ample notice and opportunity to obtain the coverage before the Department of Labor could pursue them criminally. Senator Halligan requested a representative from the Department of Labor explain their procedure of notifying employers they are in violation of the act, or that they are uninsured before any action is taken against them. Senator Halligan stated that on page 2, line 5, the remedies provided in Section 39-71-506, MCA are not neutrally exclusive. Section 506 allows for settlements, so even if they sue, there is still an allowance for a settlement out of court.

PROPOSERS: Mr. Keith Olson, representing Montana Logging Association, gave testimony in support of this bill. Mr. Olson stated his organization has been opposed to the fact there are uninsured employers, and these employers have a tremendous competitive advantage. Mr. Olson stated their only problem with this bill is that the Department of Labor deals with these employers only after an employee is injured. Mr. Olson stated his association would like to see that all employers are in compliance with the law.

Mr. Steven Shapiro, representing the Department of Labor and Industry, gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 1.

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Mr. Bob Robinson, representing the Department of Labor, clarified how an uninsured employer is handled by their department. Mr. Robinson stated an uninsured employer is generally identified by the division after an injury has occurred, when a report of injury was submitted and a check made to see who the insurance company was, and it is revealed there is no insurance. Mr. Robinson explained the Department of Labor then makes personal contact with the uninsured employer; an auditor is sent to the company to determine the amount of payroll paid during the uninsured period. Mr. Robinson stated the law requires a \$200 fine be paid, or double the amount of premium that would have been paid had the uninsured employer been insured with the state. Normally the department will look back at a period of three years. Mr. Robinson stated if the uninsured employer objects to the penalty they have two avenues they can pursue: 1) they can ask for a contested hearing; or 2) they can request an administrator's review of the penalty. Mr. Robinson said the Department of Labor tries to give these employers the benefit of the doubt and get them into an insured plan without giving them a severe penalty; however, if there is a case of an employer who is habitually going without insurance, then the Department of Labor will make sure the penalty is strictly enforced.

Mr. Jim Murry, representing the Montana State AFL-CIO, stated his organization would like to go on record that they support this bill. Mr. Murray stated the employer who does not pay the insurance premiums has a distinct unfair competitive advantage. Mr. Murry feels this bill treats both the employer and the employee well.

Mr. Gene Fenderson, representing the Montana State Building Construction Trades Council, stated his organization supports this bill. Mr. Fenderson stated his organization is currently taking a survey on the "underground economy", which is the economy that has a cash flow operation with no taxes paid, no workers' compensation paid, and no unemployment benefits paid. Mr. Fenderson said there are a tremendous amount of companies that don't pay any of these benefits. Mr. Fenderson believes SB 118 will look into this situation.

OPPONENTS: There were none present.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 118:

Senator Blaylock asked Mr. Bob Robinson if there was a faster method to detect the employers who were not paying insurance. Mr. Robinson replied this could be accomplished

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through better enforcement; however, the Department of Labor would need more staff to accomplish this. Mr. Robinson explained there are approximately 1,000 uninsured employer accidents reported on an annual basis, and this keeps the 1.5 allotted persons busy just trying to make contact with the reported uninsured employees. Senator Blaylock asked Mr. Robinson if their department has requested more work force. Mr. Robinson replied they had requested at least one more investigator.

Senator Keating asked Mr. Robinson if each day of violation that the employer is uninsured, is that a separate offense and could these people be fined daily. Mr. Robinson replied the law reads there is a \$200 minimum penalty, or twice the premium that should have been paid, so it would not be multiplied by the number of days. Senator Keating asked Mr. Robinson if a daily rate could be determined on the premium, but the law states there will be a fine of \$200 for an offense, and if each day is an offense, could they be charged for 200-300 offenses. Mr. Robinson directed this question to the Department of Labor's attorney, Mr. Steven Shapiro.

Mr. Steven Shapiro stated there were two kinds of penalties; 1) civil penalty assessed by the division for the failure of having insurance. It is calculated over the period of time when there was no insurance, and it is twice the premium that should have been paid if the employer was insured by the state fund. He stated the minimum penalty is \$200 and that penalty would be one fixed penalty for the entire period when the person failed to have insurance; 2) criminal penalty would be for the criminal violation of the Department of Labor's administrative order, and this would be assessed from \$0-\$500 per offense, according to the discretion of the Justice of the Peace. This is labeled as a misdemeanor, which in the criminal code means \$0-\$500 and/or 0-6 months in jail. Mr. Shapiro stated that generally for a business offense, a Justice of the Peace will not impose a jail term. He said that as a former county prosecutor, in his opinion, the daily opening of a business without insurance constitutes a separate offense each day and could be charged against the negligent party, and that it is at the discretion of the prosecutor how many charges he would like to bring against the negligent party. Mr. Shapiro continued that the purpose of putting this into this bill is to give employers fair notice of the penalties.

Senator Thayer asked Mr. Bob Robinson if there could be some system to inform these employers they are required to

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be insured because it was stated in the testimony that many of these people are unaware they are required to be insured. Senator Thayer stated it is unfortunate some people are unaware of these requirements and they could be subject to prosecution. Mr. Robinson stated the Department of Labor, the Department of Revenue and the IRS put on a series of small business clinics around the state twice a year. Mr. Robinson feels the majority of small business owners get this information from accountants or the Department of Commerce, but he doesn't know if there is a clearing house to inform all new businesses of this law. Mr. Robinson said this was something that should be looked into further.

Senator Gage asked Mr. Robinson if their enforcement personnel keep in contact with the licensing people and the Department of Revenue to keep track of the people being licensed for small businesses, and who is requesting withholding numbers, or was most of this coming from the underground. Mr. Robinson replied they do little, if any, advance notification to uninsured employers.

Senator Galt asked Mr. Shapiro if the case mentioned in his testimony (see Exhibit 1) was the sawmill case in Judith Gap, Montana, and if so, how was it settled. Mr. Shapiro stated yes, that was the case he referred to in his testimony and they pursued a court injunction in the district court in Helena and they defended on the basis they had plead guilty. Mr. Shapiro said on the same day of the hearing in the district court, the owner made arrangements with the state for coverage, so the case was dismissed.

Senator Galt asked Mr. Shapiro if a business had the option to choose the workers' compensation plan, or to go under some other company, or to even insure themselves. Mr. Shapiro explained there are three insurance plans available: 1) plan 3, the State Compensation Insurance Fund, which is the state operated insurer; 2) plan 2, all the private insurance carriers authorized to write workers' compensation insurance; and 3) plan 1, the self-insurers program, which is for large employers who have adequate assets so the Department of Labor is sure they can pay their own claims.

Senator Galt said he received a call today concerning these insurance plans. The gentleman who called Senator Galt was told by the Department of Labor it was mandatory his client have workers' compensation; however, when this gentleman talked to someone else at the Department of Labor, he was also told there were different options, but

they were not explained to him. Mr. Shapiro asked Senator Galt what type of business does this person own. Senator Galt replied it was a trucking business. Mr. Shapiro explained this person's insurance option would probably be Plan 2 or Plan 3.

The hearing on SB 118 closed.

CONSIDERATION OF SENATE BILL NO. 157: Senator Richard Manning, Senate District 18, sponsor of the bill, stated under close scrutiny of this bill, it was found it would not do what was intended and it would probably cause problems. Senator Manning recommended a Do Not Pass.

PROPOSERS: None present.

OPPOSERS: None present.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 157:
No questions from the committee.

Senator Lynch closed the hearing on SB 157.

DISPOSITION OF SENATE BILL NO. 157: Senator Blaylock made a motion that SB 157 DO NOT PASS. The motion CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 118: Senator Thayer made a motion that SB 118 DO PASS. The motion CARRIED UNANIMOUSLY.

FURTHER CONSIDERATION OF SENATE BILL NO. 10: Senator Lynch stated he is opposed to this bill, because as a member of the Prevailing Wage Interim Committee, they have been going out of their way to make it more acceptable, and they have eliminated most of the problems in creating the threshold from \$3,000 to \$7,500 so small maintenance work does not come under prevailing wage. Senator Lynch feels they have gone out of their way to create some different prevailing wage districts, particularly in eastern Montana because there are now 18 counties, and the largest city will be Miles City rather than using the Billings prevailing wage. Senator Lynch feels this committee is making strides in the right direction.

Senator Haffey also stated he would think local county county commissioners, city council members, or the mayor would be concerned about the information from previous testimony where it was stated without the prevailing wage there have been cases where the wage is more than the

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prevailing wage. Senator Haffey stated he would be concerned and very cautious.

Senator Thayer said the testimony heard on SB 10 was clear that the local cities and counties were in support of this legislation because there are a lot of extra costs for rural communities. Senator Thayer feels the wage scales presented did not take into account the wages available in the surrounding communities. Senator Thayer would like to see this bill on the floor and would like to hear a good debate concerning SB 10. He feels this bill has merit and the point brought out about shody work can go both ways, for union work or non-union work. Senator Thayer said the only effect of SB 10 will be when some workers have to travel to another district to do work and the main benefit of this bill will be the savings for the taxpayers in rural communities.

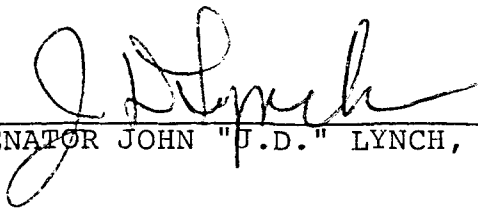
Senator Lynch explained the survey taken by the Prevailing Wage Interim Committee. If the union wage, or the high wage, is not used, then they use the medium wage. The 50% rule is 50% of the work force in that area. This rule was not used because the survey was not adequate.

Senator Galt made a motion that SB 10 Do Pass. SB 10 was held in committee due to a 4/4 tie vote (see attached roll call vote).

FURTHER CONSIDERATION OF SENATE BILL NO. 34: Senator Gage requested Ms. Peg Hartman, Department of Labor prepare a rate increase projection, however, Senator Gage has not received it yet.

Senator Keating stated in regards to SB 34, he felt criticism of the Department of Labor because he doesn't feel they are really making an effort to determine the figures accurately. Senator Keating believes they could put forth more effort in bringing information to the Labor Committee.

ADJOURNMENT: There being no further business to come before this committee, the hearing adjourned at 1:45 p.m.



SENATOR JOHN "J.D." LYNCH, CHAIRMAN

NAME: STEVEN SHAPIRO DATE: 1/29/87

ADDRESS: 5 S. Last Chance Gulch, Helena

PHONE: 444-6520

REPRESENTING WHOM? Dept. of Labor + Industry

APPEARING ON WHICH PROPOSAL: SB 118

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: Copy of testimony provided.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date January 29, 1987 Bill No. 157 Time 1:33

NAME	YES	NO
John "J.D." Lynch, Chairman	X	
Gene Thayer, Vice Chairman	X	
Richard Manning	X	
Thomas Keating	X	
Chet Blaylock	X	
Delwyn Gage	X	
Jack Haffey	X	
Jack Galt	X	

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Do Not Pass

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date January 29, 1987 Bill No. SB 118 Time 1:34 p.m.

<u>NAME</u>	<u>YES</u>	<u>NO</u>
John "J.D." Lynch, Chairman	X	
Gene Thayer, Vice Chairman	X	
Richard Manning	X	
Thomas Keating	X	
Chet Blaylock	X	
Delwyn Gage	X	
Jack Haffey	X	
Jack Galt	X	

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Do Pass

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date January 29, 1987 Bill No. SB 10 Time 1:35 p.m.

<u>NAME</u>	<u>YES</u>	<u>NO</u>
John "J.D." Lynch, Chairman	X	X
Gene Thayer, Vice Chairman	X	
Richard Manning		X
Thomas Keating	X	
Chet Blaylock		X
Delwyn Gage	X	
Jack Haffey		X
Jack Galt	X	

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Do Pass
4/4 tie

STANDING COMMITTEE REPORT

January 29,

19 37

MR. PRESIDENT

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

having had under consideration **SENATE BILL** No. **113**

first reading copy (**white**)
color

**EXTEND PENALTIES AGAINST EMPLOYER WITHOUT WORKERS' COMPENSATION
COVERAGE**

Respectfully report as follows: That **Senate Bill** No. **113**

DO PASS

~~DO NOT PASS~~

.....
Sen. John "J.D." Lynch

Chairman.

STANDING COMMITTEE REPORT

January 29,

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19.....

MR. PRESIDENT

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

having had under consideration **SENATE BILL**

No. **157**

first reading copy (**white**)
color

**WORKERS' COMPENSATION PLAN 2 EMPLOYER GIVE 20 DAYS NOTICE IF
CANCELS POLICY**

Respectfully report as follows: That **SENATE BILL**

No. **157**

~~DO PASS~~

DO NOT PASS

.....
Sen. John "J.D." Lynch

Chairman.

OUTLINE OF TESTIMONY BY
STEVEN J. SHAPIRO, CHIEF LEGAL COUNSEL OF
DIVISION OF WORKERS' COMPENSATION OF
DEPARTMENT OF LABOR AND INDUSTRY

IN SUPPORT OF SB 118
REGARDING ACTIONS AGAINST UNINSURED EMPLOYERS

The Department of Labor and Industry supports SB118 which has been introduced in order to clarify the actions which the Division of Workers' Compensation may take against uninsured employers.

The Legislature has established that workers' compensation insurance is a basic benefit of employment which must be provided to all Montana workers with few exceptions. Employers who are uninsured may leave their injured employees to suffer medical expenses and wage loss without any assistance at all resulting in economic and social disaster for the injured employees.

Recognizing the importance of workers' compensation insurance for Montana workers, the Legislature, through the statutes regarding uninsured employers, has mandated that the Division shall investigate, penalize, and close down employers who fail to provide insurance for the benefit of their employees. The Division is actively pursuing uninsured employers at an ever increasing pace.

One of the tools available to the Division in enforcing the mandatory coverage provisions of the Workers' Compensation Act is the administrative closure order which it can issue ordering the uninsured employer to cease operations until

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 1/29/87
BILL NO. SB 118

he has obtained insurance coverage. Frequently we find that the uninsured employer does not heed our order. In that case, 39-71-507, MCA, provides that an employer who fails to obey our order to cease operations may be charged with a misdemeanor criminal offense.

We have run into problems with pursuing violation of our order only as a criminal offense. First, county attorneys may generally view this offense as a relatively low priority and may not get to it promptly or at all. Second, the penalty imposed by the justice court on the employer, \$0 to \$500 and/or no time to six months in jail, may be accepted by the employer as just a routine cost of doing business. In the short run, minimal fines paid may be cheaper than insurance premiums, but a serious injury may spell disaster for both the employer and employee.

In a much publicized case last year, an employer intentionally and very openly dropped his coverage because of the expense and declared that he would operate without it. At our insistence the county attorney reluctantly charged him with one misdemeanor count. The employer plead guilty and was given a fine of \$25, all suspended. So in this case there was no actual cost of doing business in the criminal charge. When we sought an injunction against the employer in District Court, his attorneys tried to defend him on the basis of an argument that by the imposition of the criminal penalty we were barred

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 1/29/87
BILL NO. SB 112

from seeking a civil injunction despite the fact that the employer continued to operate without insurance in a workplace with dangerous machinery and a high injury record.

The Department feels that it is important to clarify that the Division may pursue all available remedies concurrently in order to minimize the risk of uninsured injuries to Montana workers. In a similar way, the Legislature has already clearly set forth the concurrent remedies that the Department of Health and Environmental Sciences may pursue in regards to hazardous waste facilities and junk vehicle facilities in Title 75, Chapter 10, Parts 4 and 5, MCA.

The Department urges the Committee to recommend that SB118 do pass in order to clarify the remedies available against uninsured employers.

>>>> END <<<<

January 29, 1987

Helena, Montana

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 1/29/87
BILL NO. SB 118