

MINUTES

MONTANA HOUSE OF REPRESENTATIVES  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on January 19, 1989, at 3:00 p.m.

ROLL CALL

Members Present: All present.

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Staff Attorney.

Announcements/Discussion: We will be hearing HB 99. We were scheduled to hear HB 96 but it has been withdrawn.

REP. PETERSON, sponsor of HB 96 explained why it was withdrawn. The bill was put in because there was some confusion whether log trucks and log truck owner-operators had to be in the workers' comp fund or not. Under present law a trucker may exempt himself. This bill really doesn't do anything at all. It has accomplished its purpose and this committee has accomplished its purpose and we have had assurances that those cases in the Workers' Comp Division are going to be flagged so there won't be this confusion, They are exempt presently and the bill just reaffirms that. I am withdrawing it because it served its purpose.

- - - - -

HEARING ON HB 99

Presentation and Opening Statement by Sponsor:

REP. DRISCOLL. HB 99 is by the request of the Department of Labor and approved by the Advisory Council on Unemployment Insurance. The members of that council are the Montana Chamber of Commerce, the Retailers Association, AFL-CIO and other business and labor groups. Bob Murphy, with the Montana Tavern Association, is also on that council. On page 3, if governmental entities have layoffs, they reimburse the unemployment insurance fund dollar for dollar. Their laid off employees would draw out so much money that they would have to reimburse the fund.

Section 2, page 3, (amending), the employer in the base period gets charged for all the benefits that the laid off

employee draws. This change would prorate those benefits among all of the employers in the base period. If an employee worked for two or three different employers in the base period, they would be back charged for the amount of money that person drew out. Instead of just one employer, it would be divided among all of them.

On page 4, new subsection (c), if an employee had two jobs, and they worked 8 hours a day at one place and 4 hours a day somewhere else and he lost his 8-hour per day job, he possibly could be eligible for partial unemployment benefits. This language would make sure the employer of the person on the 4-hour per day job would not be charged for any of the benefit charges because he didn't lay anybody off. The charges would be against the other employer.

Bottom of page 4 and the rest of the bill. In the unemployment rating system, new employers, which mean new businesses in the state (they may be established outside the state but are new to Montana), get an established rate of 3%, I believe. This would get the average of their industry. If you start a new business in the retail trade right now, your rate would be 3%. Your competitor's rate might be .7 or it might be 1.5, you get penalized because you are a new employer. They would give you the average of the industry. It says by 1990 they will establish industrial classifications. In construction and logging it is the other way around. Most construction and logging companies are deficit employers and they are paying 6.5 and the average of the industry is probably 6. A new employer comes in and they get a rate 3 by law, so it is unfair competition because those people are in direct competition bidding. In those two industries it is always a bidding process, or almost always a bidding process. The out-of-state contractor or the out-of-state logger, and there could be other instances, but those are the ones I am most familiar with, get a 3% rate and the established businesses in Montana pay 6 to 6.5%, so that isn't fair.

There are several people who are proponents of this bill and I have asked the division to be here to answer any questions that I can't.

Testifying Proponents and Who They Represent:

FORREST BOLES, President of the Montana Chamber of Commerce.

JOE THARES, Private citizen and formerly a member of the Board of Labor Appeals, my four year term expired on January 1, 1989.

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

January 19, 1989

Page 3 of 14

CHARLES BROOKS, President of the Montana Retail Association.

DON JUDGE, Montana State AFL-CIO.

LAURIE SHADOAN, Bozeman Chamber of Commerce.

CHUCK HUNTER, Administrator of the Unemployment Insurance Division.

Proponent Testimony:

FORREST BOLES, proponent. I want to be on record in behalf of the Montana Chamber of Commerce in support of HB 99. In addition, I serve on the Governor's Employment Security Advisory Council.

(Talked at length about what the bill would do.)

There are very positive features in this legislation and we certainly urge that you pass it.

JOE THARES, proponent. I appear before you as a private citizen who has some knowledge of the bill and the problems to be resolved.

(Repeated what the bill would do to take care of problem areas)

This bill would correct inequities and other problems and I recommend that this bill be passed.

CHARLES BROOKS, proponent. I also serve on the Governor's Unemployment Advisory Committee, and would like to go on record supporting HB 99. I feel that the two major changes are long overdue and we give it strong support.

DON JUDGE, proponent. I am here in support of HB 99. We ask for your positive consideration of this bill.

LAURIE SHADOAN, proponent. We are in favor of HB 99.

CHUCK HUNTER, proponent. This bill was introduced at our request. I don't need to reiterate the testimony that has already been given, but I would be happy to answer any questions.

Opponents: None.

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

January 19, 1989

Page 4 of 14

Questions From Committee Members:

O'KEEFE: Question for Rep. Driscoll. On page 3, lines 10 through 20, I assume this is saying that anyone who employs a person during the same base period in which an injury occurs or a claim is made will prorate the cost of paying that claim.

DRISCOLL: Yes, a percentage based upon the amount of salary you paid, compared to the salary paid by the other employer.

THOMAS: It's salary, not time.

DRISCOLL: Yes, wages paid.

THOMAS: Okay, I understand.

SIMPKINS: Question of Jerry Driscoll. Let's say we have someone who has just entered the labor market for some reason or another. He works two weeks for Mark and is laid off, then works two weeks for me and is laid off, then works two weeks for Clyde and is laid off, then goes home. Really, in a way, as long as there is no experience beyond Mark, we three pay the whole tab for that six weeks of labor.

DRISCOLL: Well yes, but you have to have 20 weeks of work first to qualify. Let's say in your scenario you had eight weeks each and you paid exactly the same amount of money, you would each pay one third.

SIMPKINS: Do you feel that anyone is getting "had" on this deal for a person who is just in the labor market for 20 weeks, or does it even out?

DRISCOLL: What happens now is if they are in the labor market for 20 weeks and they qualify, you have paid \$1 more than Rep. Smith or Rep. O'Keefe, you get charged for all of them.

THOMAS: The 3% is for a new business?

DRISCOLL: On the bottom of page 4, sub 4, all the new language, says you will get the experience of your industry instead of new-employer experience. If you have a new business and there is no industry like yours, you would be a new employer and you would probably still stay in the unrated category.

THOMAS: There is no conflict between the 3% language and this section?

DRISCOLL: I don't see where there would be any conflict. They are supposed to develop these industry classifications by 1990.

THOMAS: If a business has merged or changed its name and they need to file a new document establishing that fact, but they are late doing that and they lose their old unemployment rating, would they still go under section 4 with the average rate for an industry?

DRISCOLL: It is my understanding that if you just change your name and you had a rating already, the rating stays with you.

THOMAS: If you file within a certain period of time.

SOMEBODY FROM THE DEPT: Representative, if you didn't get your filing done in that 90-day time and we didn't grant an extension, yes, you would come into that new average rate. If you didn't have an industry, then you would go 3%.

SQUIRES: Is there a way for abuse of what he is talking about? Can an employer keep changing to maintain his 3%, versus going up to another higher classification?

HUNTER: It is possible to reincorporate under a new name every couple of years to come back in under that new rate. That's possible now, but that would be changed under the new system.

SQUIRES: Have you seen much incidence of this?

HUNTER: We have quite a bit of ability to look at businesses who seem to be doing that. They still have to report their employees, we still look at their payrolls, and we have a good way of knowing if their payrolls are much the same in their former businesses, so we are able to pick that out.

SQUIRES: There is a penalty for that if you find them?

HUNTER: There isn't really a penalty, but we would just transfer their old experience rate right back to that business.

Closing by Sponsor: Close.

- - - - -

DISPOSITION OF HB 99

Motion: Rep. Smith moves a DO PASS.

Discussion: None.

Recommendation and Vote: Rep. Simpkins made a motion to put this bill on the consent calendar. He then changed his mind and withdrew the motion.

Vote: Unanimous vote to DO PASS.

- - - - -

DISPOSITION OF HB 21

Motion:

REP. DRISCOLL: For purposes of discussion I'll move DO PASS and I vote to amend HB 21.

Discussion:

DRISCOLL: The amendments have been passed out. On page 2, line 3, strike the word "duplicative" and add the other verbiage that goes in there. Hopefully we'll give the supreme court some direction and they won't find this one unconstitutional. It is not the amendment by Sherwood, it is the amendment prepared by Eddye McClure on January 14, 1989, which says strike "duplicative of" and insert "may overlap coverage provided under."

RUSSELL: Are there questions on the amendment?

DRISCOLL: I will defer to the researcher, she can explain it a lot better than I can.

EDDYE McCLURE: During the last hearing on HB 21 there was some question on the preamble and how this normally works and what the court looks at. One of the reasons the bill was ruled unconstitutional is that the legislature did not provide a rational basis for what it did. This is the purpose of this bill. Normally the way it works on statutory construction, if you look at the amendment we did on page 3, if those words are clear and unambiguous, the court is supposed to stop right there. They don't go outside the bill to look at preambles or statements of intent. The court can look at anything it wants to. The preamble you see here is an explanation of rationale, why we are doing

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

January 19, 1989

Page 7 of 14

what we are doing. It has to become a part of the session law and with that in mind, Rep. Driscoll was concerned that our court may not go with the statutory construction and it may look outside. The question on "duplicative" came up in the hearing and it was decided it wasn't quite the right word to be used there. The amendment would substitute on line 3 "Workers' Compensation Insurance may overlap coverage provided under other non-work related insurance."

DRISCOLL: When the Trial Lawyers Association brought forth their amendment because of this word, they were honest with us. They brought up the suggestion that it might get thrown out again. If you want to be safe, at least try to do this. Mr. Sherwood, with the Trial Lawyers, was honest with me and he said if he had a case he would introduce this to the court since it was his job to win. He would take this right out of the law book or wherever it is, and he would give it to the Supreme Court, so you better change it. I thanked him for being honest and I think it is a good change. It isn't going to hurt anything and it might make it better.

Votes:

DRISCOLL: Moved to DO PASS the amendment.

The amendment passed unanimously.

DRISCOLL: I move we DO PASS as amended.

Discussion:

WHALEN: I would like to offer an amendment as well. On page 2, line 18, and on page 3, line 17, strike the period and insert "and for whom work or non-work related medical insurance has been provided by the family employer." Instead of putting in "related insurance" it specifically refers to related medical insurance. The reason I made that change is because of some of the discussion about whether or not there is going to have to be disability payments made; whether or not there are going to be death benefits similar to life insurance made. I also took out the "duplicative" language because of the problems everyone seemed to be having with that language. For the people who are opting out of the workers' comp system, this amendment at least would provide their family members with medical insurance, and in that way if they injure their son or daughter or spouse or whatever there would be some medical insurance to pay the medical bills. As far as I am concerned, there ought to be some protection for family members for medical

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

January 19, 1989

Page 8 of 14

insurance if they are not going to be able to get medical coverage under workers' comp. That is the purpose of the amendment.

COCCHIARELLA: Would Rep. Whalen please repeat the amendment slowly one more time.

WHALEN: On page 2, line 18, strike the period and put "and for whom other work or non-work related medical insurance has been provided by the family employer." On page 3, line 17, strike the semicolon and insert that same language and reinsert the semicolon at the end.

KILPATRICK: Did we pass the amendment made by Mr. Sherwood that Tim is referring to?

CHAIRMAN RUSSELL: No, we did not.

SMITH: If a man has an hour a day job for his kid after school, we're going to force him to buy medical insurance whether he wants it or not. We're going to tell him he has to have medical insurance or he can't let that kid work an hour and a half a day.

WHALEN: Is that a question to me? I would say in that particular instance, if I was the father of the son, there would be a lot of ways around that to allow your son to do that.

On the other hand, if you are operating a lumber mill and you have your son working in it and it is kind of a hazardous situation, there is going to be some protection for him if he cuts off his hand or something like that.

In the situation you described, he isn't going to report those wages anyway if he (the son) is working for only an hour or two a day. He's probably just giving his kid an allowance.

THOMAS: Would such an amendment requiring the purchase of medical insurance fit under the title of the bill having to do with exempting unemployment or employment of dependent members?

EDDYE McCLURE: I would suggest you amend the title if you are going to put it in, but I'm not sure it does at this point. I would have to look at it more closely.

DRISCOLL Tim, I don't quite understand how it would work. If a



HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

January 19, 1989

Page 9 of 14

person came in and wanted an exemption for his son or daughter and they show the division an insurance policy, they're covered. The next month they don't pay their premium. How does the division know? If the person got injured and the insurance was not in effect because they had dropped the insurance, do they sue their own father, or would they get back on the comp system? How does that work?

WHALEN: I think if they are going to be granted an exemption from workers' comp they are going to have to continue their coverage. My guess is that if they drop the health insurance, the employer would be considered an uninsured employer and they would have to look to the uninsured employer's fund, which wouldn't be any remedy to them.

DRISCOLL: In the other part of the uninsured employer's fund you have the right to sue your employer. So now you have a dependent suing their father or their mother. The logistics of making sure those people keep that health insurance in effect is going to be a bookkeeping nightmare.

WHALEN: I guess the only way I can answer that is to say there is nothing in this bill with that amendment that would provide that protection, although the division could write rules with that type of language in there. It's just like mandatory liability automobile insurance. You are required to have it and you are required to furnish proof at the time you license yourself, but that doesn't mean that everybody carries it.

KILPATRICK: I know that Tim is a lawyer and I need some help here. Presume the parent has responsibility for the minor child. If he says he has enough money in his bank account to take care of any problems and he doesn't like health insurance, can we force him into taking out health insurance?

WHALEN: I would say if we write it into the statute, we can, because we do that right now with mandatory liability automobile insurance and we also do it with employers insofar as workers' compensation insurance is concerned.

KILPATRICK: If I pay my son \$3 an hour to clean the snow off the walk and he does it every time it snows, I have to make sure I have health insurance, right?

WHALEN: No, because I'm sure you don't report those wages to the IRS either, do you? There are a lot of ways to skin a cat, Tom.

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

January 19, 1989

Page 10 of 14

THOMAS: Question for Tim. What about the single female head of the household who lives on a small ranch. The son changes sprinkler pipes for nothing, and she works in town for an above-minimum wage job. She picks up basic medical coverage for herself by being employed, but cannot afford the medical insurance on the family. What do we do with her? You are putting the legal responsibility even further past her own responsibilities to that family. How far do we go with this sort of stuff? It seems we are going way beyond what is acceptable to dictate "not only are you responsible for your son, but now we are going to dictate that you must buy health insurance." That's expensive. It costs a lot of money every month.

WHALEN: The best way I can answer that question is in that particular circumstance where we require people to have insurance, we know it doesn't always get paid. Not everybody takes workers' compensation insurance that is required. We heard the other day there are 300 or 600 employers who they are aware of who don't have it and really aren't doing anything to make them comply. Those are businesses that are on the ropes and can't afford it. There are a lot of single mothers driving around right now without mandatory liability insurance on their car. Economics forces a lot of violations of the law. That doesn't mean that the law is bad. What I am trying to suggest and am attempting to accomplish is let's take the father or mother or family member who has other family members working in an occupation and they are working full time. It is a family business and I think it is good they are doing that. It may even be a dangerous occupation. I would suspect most fathers and mothers have the type of attitude towards their family that they are going to take care of them, they don't have to be forced to do something. In that case there isn't going to be any problem anyway, they have already purchased the insurance and this law will have no effect on them. The purpose for writing laws isn't for the well intentioned person. The well intentioned person is going to pay something more than minimum wage probably, but the reason for enacting laws is for the person who may not be so well intentioned and that's the purpose of my offering this amendment.

THOMAS: What do you mean by "well intentioned person?" I don't understand that.

WHALEN: As lawmakers we make public policy decisions as to how society is going to function. Sometimes we mandate that

●

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

January 19, 1989

Page 11 of 14

things be done because they don't get done otherwise. We do it for societal purposes and some people don't need that impetus in order to do something that society considers to be valuable. The minimum wage law stems from the fact that we as a society decided that we were going to do certain things regardless of the good intentions of some people who were doing it already.

THOMAS: In just following and finishing the discussion on it, I would reject that kind of logic. I would hope that we don't need to dictate to families to buy medical insurance.

SMITH: We are saying in this bill that we are going to exempt the dependent family members and then we are turning right around and sticking an amendment in here that says "if you will replace that with another insurance policy." I have a real problem with that and I just don't think it will work.

SIMPKINS: A family owned business is an excellent way to build a college education fund for your children, using it as a means of employment, and deducting it from business expenses without having to pay social security and other items like that. If they employ their children four hours a day to sweep the floor and pay them a wage for this, it would go directly to the college fund, deductible, etc. I think the reason for this bill is because of a fluke. It was introduced to the farm families who were going to have to pay workers' compensation because their children milk the cows. I think once we start the trend of requiring families to buy health insurance, it is just the start of the trend. I know of no other case that we require any family members to buy health insurance and that is the thing I have difficulty with.

KILPATRICK: I agree with you, but are we assuming that he is claiming this member, that he is writing out checks to him, he is on the payroll in other words.

SIMPKINS: This is what this bill would cover I think, wouldn't it?

KILPATRICK: That is what we are assuming here and if he is on the payroll, to give him an allowance is one thing, but to put him on the payroll and I presume that is what we are talking about, then they better take care of him some way.

SIMPKINS: If I have a 16 year old son who is injured in an automobile accident, whose responsibility is it? It is mine. At the present time anybody up to the age of 18, the

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

January 19, 1989

Page 12 of 14

parents can legally be held responsible for the actions of that child. That's all we're talking about.

RICE: Tom, I think you are right, we are talking about people who are on a payroll. This isn't just a family allowance situation, but nonetheless many people on the payroll are a part of a family where there is no insurance provided.

(he talked about the cost of insurance and about his experience in his business)

I think we would be burdening those people to do something that they don't want to do if we pass this amendment.

O'KEEFE: I'm not sure how I stand on this amendment right now but I guess that when Rep. Marks talked about this bill, he didn't just talk about those people under 18, he talked about grandma, grandpa, the uncles, aunts and siblings as dependents.

MCCORMICK: That is what the bill says -- dependents of the family.

WHALEN: I would like to make a substitute motion, essentially it would be the same motion I had before but in front of "medical" it would say "major medical" in both of the two places that language appears.

Vote: Vote taken and the amendment failed, DO NOT PASS the above amendment.

Now we return back to the DO PASS on this bill with the first amendment.

Vote: Unanimous DO PASS on this bill with the first amendment.

HB 21 has passed the Labor Committee.

- - - - -

DISPOSITION OF HB 28 AND 49

Motion: PAVLOVICH moved that HB 28 DO PASS.

Discussion:

PAVLOVICH: I would like to amend this bill. On page 2, line 21, after "at least", strike \$4.25 and insert \$3.85; line 22, subsection b, after "at least" strike \$4.65 and insert

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

January 19, 1989

Page 13 of 14

\$4.35; and for the third part of the amendment I would like to strike all of subsection c; line 24 and 25 on page 1 and line 1 through 11 on page 2. Then on page 3, all of lines 5 through 15. That takes off the index and increase of 50 cents an hour instead of 90 cents.

THOMAS: I think the amendments that are proposed are very good in form, but because we have these two bills and particularly because of these amendments, I would encourage the committee towards a subcommittee to discuss the two bills and see what could be brought forth as a compromise. There are good elements in both bills.

I move that a subcommittee be appointed by the chairman.

PAVLOVICH: I have no objection if you would like to do that and I will withdraw my amendments because they can do it in the subcommittee.

GLASER: If this goes to a subcommittee and if Rep. Pavlovich's amendments were considered by that committee, I think they should also look on page 3 of the bill, line 5 and address that in similar fashion. I'm talking about monthly wages for the farmers.

Vote: Chairman Russell asked for a vote on whether to put these bills into a subcommittee.

Unanimous decision to appoint a subcommittee.

Chairman Russell at this point appointed Carolyn Squires, Clyde Smith and Tom Kilpatrick as the subcommittee and requested that they report back on them as early as possible.

- - - - -

SIMPKINS: I would like to make a point of clarification of some testimony that was given here the other day. I want to clear the budget office of the charge that was made of the budget office preparing an illegal fiscal note. The fiscal note is not signed by the budget office. It was provided by the revenue department, which made the statement it would be revenue neutral because of the income tax offset by the business versus the income tax paid by the employee. There are estimates in here, but it was not submitted by the budget department as a fiscal note. The Department of Revenue submitted it to the Budget Department. The budget director did not sign off on it, but it still can be

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

January 19, 1989

Page 14 of 14

introduced as evidence for any type of testimony as work papers from the files.

Technically, this becomes a worksheet in the files which is available to the representatives after the fiscal note has been signed. We are entitled to any pieces of information in that file.

RUSSELL: Thank you for bringing that to our attention.

- - - - -

ADJOURNMENT

Adjournment At: 4:50 P.M.

  
\_\_\_\_\_  
ANGELA RUSSELL, Chairman

AR/mo

1609.MIN

# DAILY ROLL CALL

## LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 1-19-89

*HB 99*

| NAME                           | PRESENT | ABSENT | EXCUSED |
|--------------------------------|---------|--------|---------|
| Rep. Angela Russell, Chairman  | ✓       |        |         |
| Rep. Lloyd "Mac" McCormick, VC | ✓       |        |         |
| Rep. Vicki Cocchiarella        | ✓       |        |         |
| Rep. Duane Compton             | ✓       |        |         |
| Rep. Jerry Driscoll            | ✓       |        |         |
| Rep. Bob Pavlovich             | ✓       |        |         |
| Rep. Bill Glaser               | ✓       |        |         |
| Rep. Tom Kilpatrick            | ✓       |        |         |
| Rep. Thomas Lee                | ✓       |        |         |
| Rep. Mark O'Keefe              | ✓       |        |         |
| Rep. Jim Rice                  | ✓       |        |         |
| Rep. Richard Simpkins          | ✓       |        |         |
| Rep. Clyde Smith               | ✓       |        |         |
| Rep. Carolyn Squires           | ✓       |        |         |
| Rep. Fred Thomas               | ✓       |        |         |
| Rep. Timothy Whalen            | ✓       |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |

STANDING COMMITTEE REPORT

January 20, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that HOUSE  
BILL 99 (first reading copy -- white) do pass.

Signed: \_\_\_\_\_  
Angela Russell, Chairman



STANDING COMMITTEE REPORT

January 20, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that HOUSE BILL 21 (first reading copy -- white) do pass as amended.

Signed: \_\_\_\_\_  
Angela Russell, Chairman

And, that such amendments read:

1. Page 2, lines 3 and 4.

Following: "insurance" on line 3

Strike: "is duplicative of"

Insert: "may overlap coverage provided under"