

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON HOUSE LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on January 24, 1989, at 2:45 p.m.

ROLL CALL

Members Present: All present.

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Staff Attorney.

Announcements/Discussion: Chairman Russell requested a report from the subcommittee on HB 28.

SQUIRES: The subcommittee which consisted of Rep. Tom Kilpatrick, Rep. Clyde Smith and myself met yesterday afternoon with the Department of Labor and some other people who wanted to participate in the drafting of the amendment. Motion was made and passed that Rep. Cohen's bill, HB 49, was to be tabled and we worked with Rep. Dan Harrington's bill, HB 28. The amendments are self-explanatory. (Copy of amendments attached as Exhibit #1.) Rationale for the dates is because that is the beginning of a fiscal year normally for an employer.

The rationale in the area of the farm labor which is increased \$100 is that this particular wage had not been increased at all since 1981 and there have been two increases in the minimum wage since then.

Both of the sponsors were at the committee meeting yesterday and participated in the drafting of these amendments. I want to report to the members of this committee that it was a unanimous decision of the subcommittee to pass these amendments.

KILPATRICK: On the farm one where we changed it to \$100, the Department of Labor stated that they can charge up to 40% for room and board, so actually we are only looking at a \$60 a month raise for the farm labor.

SMITH: I really feel I have to say something on this. You know a 40-cent an hour raise sounds like quite a bit, but when you average that over four years that is a dime a year. Quite truthfully, those people are worse off than they were four years ago.

RUSSELL: We are discussing the subcommittee recommendation on HB 28. Rep. Squires moved that HB 28 with amendments pass.

DISPOSITION OF HB 28 AND 49

Vote:

Unanimous vote to DO PASS HB 28.

HB 28 with amendments passed the House Labor Committee.

Discussion:

THOMAS: I would like to see if we could further amend this bill, can we do that?

RUSSELL: Rep. Thomas, do you have a further amendment you want to add to that?

THOMAS: The only thing I wanted to bring up was the teenage section in HB 49. Will the subcommittee chairman please address this.

SQUIRES: I apologize for not addressing that particular issue but it was again a unanimous vote on that to delete that portion of the bill and to maintain the minimum wage at these levels for all folks who are participating in employment.

THOMAS: I appreciate that but I would like to offer an amendment to the bill, if I might. I would move that we insert into the proper place in the bill (HB 28), the teenage language that is in HB 49, which is on page 8, lines 27 through 24. If this amendment were successful, then I would move to insert a minimum wage floor into that language.

(part of the tape erased here and I did not get it all down in the notes, but he was talking about having a subminimum wage for teenagers)

... we all don't know exactly what will happen, but to me the number of jobs for high school students trying to earn a living so they can go to college is very important. I hate to see us eliminate some of those jobs

and we know we will by passing this bill. We will probably eliminate more teenage jobs than not. What we are saying to those kids is that we are not only going to eliminate jobs in the future but we are going to eliminate jobs now, possibly.

RUSSELL: Rep. Thomas, you are referring to HB 49, page 8, line 27 through 24, is that correct?

DRISCOLL: I think for years people have been trying to do something about a subminimum wage, but if you put the age 18, then on the 19th year, on their birthday, there is a 65-cent difference per hour. Then the 19 year old gets laid off and an 18 year old gets his job. There is an employer in Billings who has expressed his concern about just that. He has ten college kids working summers and for 65 cents per hour he would probably try to find high school kids. Also, even the McDonald's restaurant sent us a letter opposing the subminimum wage and I think it would just create havoc in the work force.

SIMPKINS: Some of my constituents were concerned about putting this back in as far as the teenage provision, but Rep. Driscoll does make a strong argument. I do feel that those students who are 16 years old who are legally hired, their value to the business at \$4.00 an hour may preclude any of those teenagers from ever being hired. In other words, it is just the reverse as well, that when you state \$4.00 an hour they will avoid hiring those young people even on a part-time basis. So I would be in favor of an 18 year old type clause.

COCCHIARELLA: It seems to me that the message we are giving to kids is that they don't deserve the same pay for the same work.

KILPATRICK: I wish that I had the exact figures, but I was quoted a group, and I believe it was 40%, of all the people under 18 who are on a minimum wage job are the only wage earner in the family. I'm not sure that this is right, but we know there are a great many of them and there is no question that they are the only wage earner. I think we are punishing them and we are hurting them.

RUSSELL: The question has been called for Rep. Thomas's amendment to include that portion from HB 49 as noted.

Vote:

Twelve against the amendment and four in favor of the amendment. The amendment has FAILED.

RUSSELL: Rep. Squires, did you have a motion to table HB 49?

SQUIRES: Yes, we did in the committee. So Rep. Cohen's bill would be tabled, and I make that motion here as well.

I move that we TABLE HB 49, Rep. Cohen's bill.

Vote:

Unanimous vote to TABLE HB 49.

HB 28 with amendments has PASSED House Labor Committee, and HB 49 has been TABLED.

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HEARING ON 249

Presentation and Opening Statement by Sponsor:

BILL GLASER: This section of the unemployment insurance code deals with the method the division uses to resolve tax appeals. The section has been revised in both the past two sessions. In 1985 the section was amended to state that tax appeal hearings would be heard under the Montana Administrative Procedures Act. Under this Act tax appeals were held as contested case hearings which were more formal than the prior hearings and generally required an individual to be represented by an attorney.

In 1987 the section was amended to eliminate the requirements that hearings be held according to MAPA, so the hearings could be less formal and the employers and claimants alike could represent themselves, if they so desired. Additionally, this section referred to the appeals process and the benefit portion of the law with a goal of making the tax appeal process and benefit appeal process the same.

In 1987 the amendment did not clarify the tax appeal hearings would not be held under the rules of evidence, as is the case in benefit appeals process. This bill is designed to provide that clarification. Under the amendment proposed by this bill, both tax and benefit appeals hearings would be conducted in the same manner allowing individuals to represent themselves in an informal appeal. Although either an employer or a claimant could be represented by the council if that was their desire. Statutory rules of evidence would not apply to either type of hearing and should either party to the hearing wish a more formal proceeding the administrative rules relating to the unemployment

insurance provided for that. This bill came as a result of the Employment Security Advisory Council which is comprised of leaders from business, labor, the legislative committee and Rep. Driscoll; so both the past governor and the current governor's people said that this is a good bill. If you notice, the bill has been signed by both myself and Rep. Driscoll.

List of Testifying Proponents and What Group They Represent:

CHUCK HUNTER, Administrator of the Unemployment Insurance Division.

JIM MURRY, Executive Secretary of the Montana State AFL-CIO.

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

CHUCK HUNTER. This bill was introduced at department request. Representative Glaser has already given a good overview and I am prepared to answer questions of the committee if they have them. With me is Bob Jensen who is the administrator of the division that handles the tax appeal and benefit appeal process for us. He will also be available to answer questions.

JIM MURRY. We want to go on record as being in support of HB 249.

Questions From Committee Members:

None.

Closing by Sponsor: Driscoll. None.

DISPOSITION OF HB 249

Motion: Motion by Rep. Driscoll for DO PASS of HB 249.

Discussion: None.

Amendments and Votes: None

Vote:

Unanimous vote to DO PASS HB 249.

HEARING ON HB 214

Presentation and Opening Statement by Sponsor:

CLYDE SMITH: This is an act for appointment of a representative payee to apply for and receive silicosis payment on behalf of a person eligible for such payments and his beneficiary. The silicosis benefit program was created in 1951 to provide benefits to silicosis victims and 101 widows. The claimants received \$200 per month and the widows receive \$100 per month. Ninety percent of the beneficiaries are over the age of 70 and 10% were unable to complete and sign the division's annual review form which asks the beneficiary status each year. Presently the claimant could be protected through court appointment of a conservator but such has not been pursued. The Division of Workers' Compensation which administers the benefit program is faced with the alternative of suspending benefits until a conservator is appointed. This is a lengthy procedure which could result in claimant temporarily being without benefits. There is a great need for alternative methods to protect these beneficiaries, since at the present time only one of the 35 problem beneficiaries have a court appointed conservator.

HB 214 enables the division to appoint a representative payee. This would include a nursing home or extended care facility to receive and administer monthly benefits on behalf of these beneficiaries. Bill Palmer is here from the division to explain this a little further.

List of Testifying Proponents and What Group They Represent:

BILL PALMER: Interim Administrator of the Division of Workers' Compensation.

MICHAEL SHERWOOD, Montana Trial Lawyers Association.

JIM MURRAY, Executive Secretary of the Montana State AFL-CIO.

List of Testifying Opponents and What Group They Represent:

None.

Testimony of Proponents:

BILL PALMER, proponent. This bill is being introduced at the request of the division. It affords a reasonable and necessary protection for silicosis beneficiaries who have

no form of protection of potential misuse or even theft of their benefits. The Division of Workers' Compensation is concerned about receiving unendorsed warrants, warrants that are deposited into joint accounts, or being informed that the beneficiary has endorsed the warrant without really having been aware that he did so. If HB 214 is adopted, the division would essentially follow the same kind of procedures that the social security administration uses in identifying a representative payee and in monitoring the representative to make sure that the person thus appointed is performing in an appropriate manner. Procedures would include determining the legal, mental or physical competence of the beneficiary, establishing criteria for the selection of a representative payee, assuring due process, detailing the duties of the representative payee and obtaining a complete accounting of the representative's management of the benefits. Essentially, it is a mechanism to make sure that the people who are indigent, primarily in rest homes, are getting the benefits from these silicosis benefits provided in the act.

MICHAEL SHERWOOD, proponent. Submitted written testimony, attached hereto as Exhibit #2.

JIM MURRAY, proponent. They wish to go on record in support of HB 214.

Questions From Committee Members:

DRISCOLL: For Bill Palmer. In your administrative rules, if a person was in a nursing home and they had a son or daughter who was still alive and in good mind, would you tend to agree more that they should make the son or daughter the person taking care of it, or the nursing home. Who do you think would get the money?

PALMER: I think probably what we would do is, first of all, make sure that the son or daughter is competent to administer the funds. That's why the bill addresses that kind of thing. They would have to demonstrate that they were serving in the best interest of the person who is in the rest home.

PAVLOVICH: When is the last time they had a raise in the silicosis benefits?

PALMER: It has been at least ten years, I guess.

PAVLOVICH: How many recipients are there left?

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PALMER: There are probably about 180 or so silicotics and a little over 100 widows.

WHALEN: Question for Mike Sherwood. I am looking at this legislation and I am wondering how this is going to interact where you have an incapacitated person for whom a guardianship has been created, and then you give the division of Workers' Compensation the power to designate who they are going to be sending the silicosis benefits to. It seems to me that undercuts any guardianship which may have been created to handle the rest of the assets of this individual's estate. Have you given any thought to that? How is this legislation going to work if there is a guardianship already, do you know?

SHERWOOD: I assume, and I may be wrong, but the judicial appointment of a guardian or conservator would override this legislation. Based on discussions with the department, I am led to believe that they have a problem and they want to resolve it. If, indeed, there has already been a guardian or conservator appointed on behalf of a recipient, then this is just an administrative move that they would make.

WHALEN: I would like to ask the same question of Mr. Palmer, what his understanding is if there was a guardianship already created. Would it be the intent of the division to go ahead and defy the existing guardianship?

PALMER: I think the division's intention here is certainly not to override any appointed legal guardian of the people involved now. It has found that in many cases there are no people to look after or to act in the behalf of people who are in their eighties and on up in these rest homes. What we want is some kind of authority to act in the best interests of the individuals and certainly if there is a conservator or a guardian who is legally appointed, then we would accept that individual to handle the warrants and the finances of that person.

Closing by Sponsor:

SMITH: I believe that in the opening I stated that there were 35 problem beneficiaries who do not have a court appointed conservator. This is what this bill addresses -- it is not the ones who do have a court appointed conservator. With that I close.

DISPOSITION OF HB 214.

Motion: REP. PAVLOVICH made a motion to DO PASS HB 214.

Discussion: REP. PAVLOVICH wanted to make a comment on the silicosis benefit. The last time they had a raise was in 1981. We tried to get an increase in 1983 and had no luck and we have had no luck since then. Each year the number with silicosis drops. We started out in 1981 and there were over 200, now it is about 180. Most of these people come from the Butte-Silverbow area where they worked in the mines.

Amendments and Votes: None.

Vote:

Unanimous vote to DO PASS HB 214.

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HB 184

RUSSELL: This is just an informal hearing on HB 184. I have asked Rep. Whalen to address us about a bill that was scheduled to be heard today. I think he has some other plans. Rep. Whalen would you clarify that?

WHALEN: HB 184 is a bill that I was asked to introduce and carry at the request of a friend who is actively involved in mental health issues. The bill would require mental health facilities, when they have patients who are performing labor, to comply with the wage and hour laws that are already in effect in this state. It is my understanding they are not. It is also my understanding that there are presently negotiations going on to work out some kind of a compromise with those mental health facilities and that there has been some type of arrangement reached. With that in mind, I would request that the committee table this bill and we will make sure that the negotiations hold.

Motion:

PAVLOVICH: I move that we TABLE HB 184.

Vote:

Unanimous vote to TABLE HB 184.

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ADJOURNMENT

Adjournment At: 4:00 p.m.


ANGELA RUSSELL, Chairman

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DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date _____

1-24-89

HB 184, 214, 249

[illegible]

STANDING COMMITTEE REPORT

January 25, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Labor report that HOUSE BILL 28 (first reading copy -- white) do pass as amended.

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Title, lines 5 and 6.

Following: "WAGE" on line 5

Strike: the remainder of line 5 through "1990" on line 6

2. Title, lines 7 through 9.

Following: "WORKERS" on line 7

Strike: the remainder of line 7 through "INDEX" on line 9

3. Page 1, line 21.

Following: "least"

Strike: "\$4.25"

Insert: "\$3.75"

Following: "1989,"

Insert: "and"

4. Page 1, line 22.

Following: "least"

Strike: "\$4.65"

Insert: "\$4.00"

Following: "after"

Strike: "November 30, 1989,"

Insert: "September 30, 1990"

5. Page 1, line 23 through page 2, line 11.

Following: line 22

Strike: "and" on line 23 through "workers" on page 2, line 11.

6. Page 3, line 5.

Following: "\$575"

Strike: "\$849.63"

Insert: "\$735"

7. Page 3, lines 4 and 5.

Following: "than" on line 4.

Strike: "the" through "(i)" on line 5

8. Page 3, line 6.

Following: "after"

Strike: "December 30"

Insert: "September 30"

Following: "1989"

Strike: ",and"

9. Page 3, lines 7 through 15.

Following: line 6

Strike: subsection (ii) through "index" on line 15

STANDING COMMITTEE REPORT

January 25, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that HOUSE
BILL 49 (first reading copy -- white) be TABLED .

Signed: _____
Angela Russell, Chairman

STANDING COMMITTEE REPORT

January 25, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that HOUSE
BILL 184 (first reading copy -- white) be TABLED .

Signed: Angela Russell
Angela Russell, Chairman

STANDING COMMITTEE REPORT

January 24, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that HOUSE
BILL 214 (first reading copy -- white) do pass.

Signed: Angela Russell
Angela Russell, Chairman

1-25-89
11:35
J. Q.

STANDING COMMITTEE REPORT

January 24, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that HOUSE
BILL 249 (first reading copy -- white) do pass.

Signed: Angela Russell
Angela Russell, Chairman

Amendments to House Bill No. 28
First Reading Copy

Requested by House Labor and Employee Relations Subcommittee
For the Committee on House Labor and Employee Relations

Prepared by Eddy McClure
January 23, 1989

1. Title, lines 5 and 6.

Following: "WAGE" on line 5

Strike: the remainder of line 5 through "1990" on line 6

2. Title, lines 7 through 9.

Following: "WORKERS" on line 7

Strike: the remainder of line 7 through "INDEX" on line 9

3. Page 1, line 21.

Following: "least"

Strike: "\$4.25"

Insert: "\$3.75"

Following: "1989;"

Insert: "and"

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Following: "least"

Strike: "\$4.65"

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Strike: "November 30, 1989;"

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5. Page 1, line 23 through page 2, line 11.

Following: line 22

Strike: "and" on line 23 through "workers" on page 2, line 11.

6. Page 3, line 5.

Following: "\$575"

Strike: "\$849.63"

Insert: "\$735"

7. Page 3, lines 4 and 5.

Following: "than" on line 4.

Strike: "the" through "(i)" on line 5

EXHIBIT #1

DATE 1-24-89

HB 28

8. Page 3, line 6.
Following: "after"
Strike: "December 30"
Insert: "September 30"
Following: "1989"
Strike: ";and"

9. Page 3, lines 7 through 15.
Following: line 6
Strike: subsection (ii) through "index" on line 15

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3 MS
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House Bill 214: Representative Payee for Silicosis Beneficiaries

Department Testimony

The Department supports House Bill 214 because it affords reasonable and necessary protection for silicosis beneficiaries who now have no formal protection against potential misuse or even theft of their benefits.

The Division of Workers' Compensation is naturally concerned about a lack of representation for beneficiaries when receiving unendorsed warrants deposited into joint accounts or when being informed the endorser has endorsed a warrant without really being aware of having done so.

If House Bill 214 is adopted, the Division would follow procedures similar to the Social Security Administration in identifying a representative payee and monitoring the representative to make sure the person is performing in an appropriate manner. Such procedures include:

- investigating the legal, mental or physical competence of the beneficiary
- establishing criteria for selection of a representative payee
- assuring due process (providing notice of all actions)
- detailing the duties of a representative payee
- obtaining a complete accounting of the representative's management of benefits

William R Palmer
Interim Administrator DWS

tabled

COMMITTEE

DATE 1-24-89

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Journal

COMMITTEE

DATE 1-24-89

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

