

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Angela Russell, on January 31,
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: Chairman Russell announced that
there are four bills to be heard this afternoon and
they will be taken chronologically.

HEARING ON HB 323

Presentation and Opening Statement by Sponsor:

REP. DRISCOLL: HB 323 defines "employer" in the human
rights statute. The present human rights statute seems
to discriminate against independent contractors. The
bill states that independent contractors may not be
discriminated against based on race, sex, age,
handicap, marital status or religion.

List of Testifying Proponents and What Group They Represent:

ANN MacINTYRE, Administrator of the Human Rights Division.

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

ANN MacINTYRE, proponent. She read verbatim the written
material attached hereto as Exhibit #1.

Questions From Committee Members:

None.

Closing by Sponsor:

DRISCOLL: I don't know what happened. There are some opponents in the hallway and I guess I will have to talk to them later. There are some people who do not like this bill, so I think we will probably have to hold it for awhile and try to fix it if we can.

Concludes hearing on HB 323.

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HEARING ON HB 339

Presentation and Opening Statement by Sponsor:

REP. THOMAS: HB 339 is at the request of the Division of Workers' Comp. It is an act to provide for payment of domiciliary care services as a benefit of workers' comp insurance. This is brought about partially by a court decision which is named Larsen vs. Industrial Indemnity which was affirmed by the supreme court. In that case the decision of the court ordered the company insuring the employer to pay \$7.00 an hour, or \$139.00 a week to the spouse taking care of the injured worker at home. They were paying for personal care attendant at home for the hours remaining in the day that the injured worker was not in the care of a professional. That amounted up to \$50,000 a year to the spouse of the injured worker. In addition, in the Larsen case, the court ordered them to pay back pay from the date of the decision of \$7.00 an hour to the spouse, to the date of the release from the hospital, and that amounted to \$161,000. What that did was create a problem as to how much should be paid for the service of this domiciliary care.

This bill sets up a maximum per month of \$1,500. The department investigated what it would cost outside the home for such health care services. They checked with several establishments; two in Missoula, one in Butte and one in Great Falls. The services of a nursing home could be used if it was felt to be best in the case of the injured worker. In the specific situation of Mr. Larsen, he was in an auto accident while he was working and he had a head injury, resulting in brain damage. The bill establishes on page 1 that domiciliary care can be provided. In the new language on page 3, it goes into the procedure for establishing the necessity of that. On page 4, it limits it to \$1,500 a month. I do have copies here supplied by the department of the judicial transactions in this particular case.

What we would like to do is consider establishing domiciliary care as a service that can be paid for and try to limit it in order to control costs. I believe Bill Palmer from the division is here and he and I will try to answer any questions.

List of Testifying Proponents and What Group They Represent:

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

GEORGE WOOD, Executive Secretary of the Montana Self Insurers Association.

JAMES TUTWILER, Public Affairs Manager of the Montana Chamber of Commerce.

OLIVER GOE, Attorney, Montana Municipal Insurance Authority Coalition of approximately 100 cities and towns providing liability and workers' compensation coverage.

BEVERLY GIBSON, Montana Association of Counties.

List of Testifying Opponents and What Group They Represent:

MICHAEL SHERWOOD, Montana Trial Lawyers Association.

DON JUDGE: Montana AFL-CIO.

Proponent Testimony:

BILL PALMER, proponent. Here he read verbatim a written statement which is attached hereto as Exhibit #2.

GEORGE WOOD, proponent. I support this legislation. This is a reasonable cap on the fee paid for this type of care. It isn't intended for the severely injured, nor for the minor injured. It is for the inbetween that can be defined by the restrictions in here.

JAMES TUTWILER, proponent. We support HB 339. I wish to reinforce the testimony that has already been given on this particular bill and to make one additional point. As one of the business representatives of the state of Montana, we know for sure that businesses from throughout Montana are vitally concerned about our workers' compensation system.

We believe that cost containment is an important consideration before this legislature and this committee. HB 339 is a reasonable and sensible

approach to providing a reasonable and fair service to injured workers and at the same time providing for necessary cost containments that are vital to the preservation of the fund itself.

OLIVER GOE, proponent. I believe this bill provides for reasonable compensation for care provided in the home for the seriously injured worker. We support this bill.

BEVERLY GIBSON, proponent. We have a self insurance fund and we are concerned about costs. This bill will cap the cost on domiciliary care and we support the bill.

Opponent Testimony:

MICHAEL SHERWOOD, opponent. We oppose this, and we oppose it vehemently. I think that foremost in the minds of this committee we should realize in the history of workers' compensation, employees have been forced to give up in support of a position or in support of a system that helps employers to continue and keep their costs down. Employees have given up pain and suffering and change of life style, loss of consortium, loss of actual wages in this system and the surrender of all these was because there was going to be one sacrosanct concession and that would be that the insurer would furnish medical care without limitation as to length of time or for dollar amount of the treatment. That language is found specifically in the bill which is now being proposed to be amended so that a cap be placed on medical care.

The work comp court and the supreme court in the Larsen decision, you have copies available, follow the majority of jurisdictions ruling clearly that domiciliary care is medical care. In the Larsen case I think it is very important for you to understand the facts of the situation here. We did not have someone who was barely ambulatory and getting along in age. We had a 27 year old male who was fully active but was suffering from severe brain damage. He was a handful to deal with -- he is still a handful to deal with. A nursing home was found to be an inappropriate place. We're not talking about \$1,500-\$1,700 a month nursing home care here, we're talking about out-of-state facilities, because none are available in Montana. The sort of care required for this individual would be somewhere between \$7,000 and \$15,000 a year in a special brain injury clinic. The main reason being, because these people are physically well, and specifically Mr. Larsen, they are really worse to care

for because they absorb a tremendous amount of time and energy. I checked yesterday with one of the nearest facilities, in Lakewood, Colorado, and they are currently charging \$13,000 a year for this type of care.

The court noted in its decision that Gary Larsen, and I believe brain injured people generally, experience memory loss, distortion, vision problems, emotional instability, irritability, poor and erratic judgment. It is very difficult, even for a loved one, to cope with this situation day in and day out, year in and year out. Placing a cap on this sort of damages I think is a violation of the spirit of workers' compensation. I believe it will drive the costs up because peoples' loved ones will simply give up and commit them to these facilities. Beyond that, it will break up the family because there are no facilities in Montana, they are all out of state.

I disagree with Mr. Palmer about the provisions of this bill being consistent with the holding in Larsen. You have the language in front of you, also you have the bill. Section 2, sub 1(a) of the bill is inconsistent with the holding in Larsen and requires a specific notification and that was a big issue in Larsen. In Larsen the insurer felt that they should not have to pay any compensation until such time as they were actually notified. The court held that once they had notice, whether constructive or actual, their obligation began. The requirements set forth in Section 2, sub 1(a) requires that an affirmative notice be sent by the person who is having to bear the brunt of this sort of intensive care. Someone, if they don't have an attorney, probably isn't going to know they have the right to some kind of compensation for this duty. As I have said before, this is a limitation on medical expenses and it is contrary to the general language found in 39-71-704 1(a) and it is contrary to the spirit of workers' compensation laws.

We do not support a higher cap because we believe that medical damages should be determined by the fact finder in a hearing, or be agreed upon by the insurer and the claimant. For that reason we are opposed to the bill completely and we urge that you do not pass this bill.

DON JUDGE, opponent. I am not an attorney and I don't want to be redundant in what I say, but I would like to make clear a couple of things about this particular legislation. One of the things is that the workers' compensation system was created not so much for the

protection and benefit of workers as it was for the employers. It provides a limited liability to employers when workers have accidents caused by employer negligence on that work spot. Employees give up the right to sue in order to be compensated for the injuries that occur and the medical costs associated with those injuries. Regarding this legislation, if you will look on page 1, lines 17, 18 and 19, "and after the happening of the injury the insurer shall furnish, without limitation as to the length of time or dollar amount, (1) reasonable services by a physician or surgeon, (2) reasonable services by hospitals and medicines when needed, (3) new language, domiciliary care as provided for herein."

Now if you turn the page you will notice that domiciliary care as on page 4, lines 5 through 7, is limited to a maximum of \$1,500 per month. I'm no mathematician, but if you divide 30 days per month into the \$1,500, you have \$50 per day. I want to point out that the least capable of defending themselves are the ones who are limited under this legislation. There is no limitation applied to the services of a physician or a surgeon. There is no limitation applied to reasonable hospital services and medicines. The only limitation is upon those people who are least able to defend themselves in the system -- the injured worker and the family, the spouse of that worker. We're not just talking about the spouses here.

According to this legislation, the domiciliary care services can be performed by a member of the claimant's family, a home health care attendant, or other providers. How many health care providers or home health care attendants are going to be working for less than \$50 per day? The legislation is simply too restrictive. We would like to see this legislation, if it is passed, exclude the language that would limit the payments on page 4, lines 5 through 7, and simply provide as per the language that is already contained in the law regarding reasonable services by physicians or surgeons, reasonable services by hospitals and medicines where needed, to say "reasonable domiciliary health care services." This seems to be more odorous upon those injured claimants by forcing them on page 3, lines 16 and 17, to present a written demand upon the insurer, something that is not necessarily now done by the other claimants. Again, we ask you to think about the injured worker, think about what they are giving up, and to allow the bill to provide reasonable care, not limited care.

Questions From Committee Members:

DRISCOLL: For somebody from the division, probably Bill Palmer. In the Larsen case if Mrs. Larsen would not have taken care of her husband, what would have happened to Mr. Larsen? Would he have gone to a state institution, or what?

PALMER: I have some people who dealt with that case and with your permission, Madam Chairman, I will direct that question to Jim Murphy.

MURPHY: My name is Jim Murphy. I am Bureau Chief for the state fund. That wasn't our case, just so you will know that. It was Industrial Indemnity and the individual who represented Industrial Indemnity is also from Great Falls. Rep. Driscoll, I don't know enough about the facts of the case to specifically answer your question, except to say that if the injured worker was injured to the extent that he needed some sort of institutionalized care, it would then depend upon what the medical people would recommend. It could be a nursing home, it could be an extended care facility, I just don't know.

DRISCOLL: There is nothing in the present laws about this type of care and I would presume that when Mr. Larsen was released from the hospital his wife took him home. If he was not married would the doctor have released him from the hospital, in your opinion, or would he simply have left him in there and cost you a heck of a lot more than what it did cost.

MURPHY: I can't speak for the doctor. My guess would be that he would release him to a nursing home. I don't think they would keep him in the hospital because apparently the medical problem was cleared up. We are talking, in Mr. Larsen's case, of some psychological problems, some loss of memory problems.

SIMPKINS: Question for Mr. Palmer. The \$1,500 limitation, I assume, was strictly for the nursing home or the domiciliary care facility and did not include any medical costs. Medical costs would be beyond that.

PALMER: Yes, this is just to pay, in this case, the spouse or that individual that has to give a person care at home. If the individual would have to go to some type of therapy, that would be in addition. It does not preclude the individual from going to an extended care facility or for going someplace else where they can get more direct care. This is just a cap on the

individuals providing that care in the home. There is nothing sacred about \$1,500. What we found is that is approximately what is reasonable and we bring it before the legislature in order for you to say yes, this is reasonable, or it is not reasonable, or the whole bill is reasonable, the whole bill is not reasonable. This is what we found to be reasonable, in our opinion, and that is why we put it in bill form.

SIMPKINS: If the person in domiciliary care required the services of a psychiatrist or another medical profession, all those expenses billed by the psychiatrist or other medical doctor would be in addition to this cap that we are talking about, so we are not limited in that area.

PALMER: That is correct.

KILPATRICK: If he had been sent to just a care unit, a local one, what would it cost, do you know?

PALMER: In discussing this very briefly with some of our people, it would have cost considerably more than the \$1,500 here. The \$1,500 that we are looking at is simply a cap for home care. If they would have to go to an extended care facility my guess is that the cost would be considerably more. The insurer has no problem paying for that because there you are dealing with registered professionals and they would pay that cost as reasonable medical expense.

KILPATRICK: In other words, \$50 a day is not even a drop in the bucket when you consider 24 hours in an extended care place.

PALMER: I don't think you would get any extended care for \$50 a day.

RICE: Do you have any additional information on how the \$1,500 figure was arrived at for this in-home care?

MURPHY: Maybe I can clear up a couple of the previous questions too. We called some nursing homes in the area -- Great Falls, Billings, and Missoula. The care in a nursing home, per month, standard basic care runs from \$2,000 to \$4,000. The \$4,000 one is in Great Falls which is a skilled nursing home, which is apparently a little higher level. The other three ran \$2,000, \$2,400 and \$2,000. That was care in a nursing home.

The home health care services, and this is based on 40 hours so it isn't based on the \$50 per day, the home health care in four places we called runs from approximately \$1,100 to about \$1,500 a month, for home health care attendants. We have about 10 or 11 cases in the state fund where we are paying domiciliary care to the spouse, to the brother, or the sister-in-law, those presently are negotiated based on what care they think is needed at the time. The highest one we pay for is \$1,600 and the lowest is \$200 per month, so we pay the ranges in between.

O'KEEFE: In this case the wife put 139 hours a week into home health care?

MURPHY: No, the court awarded 139 hours a week for home health care and the remaining 29 -- whatever it takes to get the full 24 hours per day -- per week to home health care attendant, so they split it. They indicated that the wife should be paid for 139 hours a week and to relieve her, 28 for the home health care attendant. As you read that case you will note that it isn't every second, every minute, every hour, having to be there. It's having to be there in case something goes wrong. I understand this individual fished, hunted and did a lot of the normal things. He just had problems with the injury as far as the memory or loss thereof and that type of thing.

Closing by Sponsor:

THOMAS: I think we are getting a better idea of what we are looking at in this case. Domiciliary care is not meant to be a replacement for necessary nursing or necessary medical care. The idea is to try to find a reasonable agreement on what we can do in that area. How much should a spouse be paid for this service that is necessary in many cases, and how much can we afford.

RUSSELL: This closes the hearing on HB 339.

HEARING ON HB 347

Presentation and Opening Statement by Sponsor:

SMITH: HB 347 generally revises various sections of the laws relating to workers' compensation. The sections include some housekeeping changes, language clarification, and changes which will allow the system to work more effectively. None of the sections

seriously impact the coverage or benefit sections of the current law. The division will briefly explain the individual sections included in the bill. I have several amendments which I am requesting the committee to consider. I understand that these amendments have been worked out by all the interested parties, including the division, state fund, trial lawyers, labor and self insurers. Based on this agreement, we are requesting our committee to delete from the bill Sections 6, 15 and 16 because we believe it would be in the best interests of the system. The other wording and language changes add clarification as to the intent of the sections. Many people have worked extremely hard to present an acceptable bill to this committee and I ask that you give it a DO PASS as amended. (Amendments attached as Exhibit #3).

List of Testifying Proponents and What Group They Represent:

MIKE MICONE, Commissioner of the Department of Labor and Industry.

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

MICHAEL SHERWOOD, Montana Trial Lawyers Association.

GEORGE WOOD, Executive Secretary of the Montana Self Insurers Association.

DON JUDGE, Montana AFL-CIO.

NORM GROSFIELD, Attorney.

List of Testifying Opponents and What Group They Represent:

None.

Testimony.

MIKE MICONE, proponent. When the bill was drafted we brought together a number of representatives not only from the division, but from labor, legislative body, private insurance sector and a couple of employers. It was our hope that we could work out all of the problems within that bill prior to coming before you. I think the amendments that have been presented to you by Rep. Smith have accomplished that. We think it will clean up a number of matters that were in conflict as a result of the passage of SB 315 (two years ago), and we think it is going to answer some of the concerns of the court. We ask that you support HB 347.

BILL PALMER, proponent. Just for your information I would like to take you through the bill and explain what each of the sections mean because there is a lot of material in there that doesn't just address the state fund, or it doesn't just address the insurance compliance. There are a number of things that affect the Montana Workers' Compensation system. (Read from written text, attached hereto as Exhibit #4).

MICHAEL SHERWOOD, proponent. Specifically, we support this bill as amended. We encourage you to adopt the amendments as proposed. These are amendments we have worked out over the past ten days. The Trial Lawyers representing injured victims want these amendments:

CHARLES WOOD, proponent. This is an agreed upon package. Neither Mr. Sherwood nor I agree that everything in this bill as amended is perfect for us but it was a matter of give and take in order to come up with the amendments we felt were necessary. We support this legislation as amended.

DON JUDGE, proponent. The AFL-CIO in general supports this bill. It is not perfect legislation, we understand that, but it is intended to compromise the issues that are important to workers. There is one section that we do have some trouble with, that section is current law. This bill would have amended that section, it is returning to current law that we have some difficulties with.

Amendment number 3, proposing to amend page 8, lines 9-23, striking the amendments that were made in subsection 6, I would like to point out that our difficulty is not so much in the language of the law but in the interpretation of the division in that law. It was always our understanding that when an individual was injured they would be off work for six work days, for most people that would mean 48 hours lost pay before they are entitled to draw the benefits under that provision. Unfortunately, we have situations in Montana where workers are working three 12-hour schedules. The way the division has interpreted this language those individuals will be off for a total of 72 hours lost wages before they are entitled to draw benefits. If you have an individual working four 10-hour days they would lose a total of 60 hours wages before they would be entitled to those benefits. If there is some way that the committee could clarify that language we would appreciate it.

NORM GROSFIELD, proponent. I am an attorney in Helena, Montana and my practice involves both claimants and defense work. I was involved in the group that came to the agreements on this bill and I support the bill as amended.

No Opponents.

Questions From Committee Members:

DRISCOLL: For Bill Palmer. On present law Section 39-71-736 which is section 6 of the bill, did you adopt rules for that section, do you know?

PALMER: No.

DRISCOLL: I know what the division does, they say six days lost wages. Now a person who is working four 10's or three 12-hour shifts, will lose three weeks of wages if they are hurt on the last day of their work week. Before, if they were working three 12's they would be into the third week before they would receive any benefits. A person working four 10's would be into the third day of the third week before they would receive benefits. In the study committee that put SB 315 in it was not the intent that people would lose three weeks of wages before they would start to receive compensation. Without adopting rules, how did you interpret that to mean that it wasn't loss of 40 hours of work?

PALMER: I think that the interpretation hinges on the word days -- days of lost wages. We are not talking about so many hours per day whether they work 12 or 14 or 10, we are talking about a day of lost wages. If the earnings that day represent 12 hours, then it is one day's wages. We did not acquaint that to particular hours in a work day, nor to eight hours, so we are making a very literal interpretation of the word days.

DRISCOLL: On page 21 of the bill, new section C, lines 15-20, if a person has two jobs you would take the aggregate. If a person was self employed and had elected coverage you couldn't use the aggregate of those hours, as stated in line 18, page 21, "except self employment as a sole proprietor or partner, from which the employee is disabled by the injury." I guess I could see it if they elected not to have coverage, but if that person elected coverage under the act why couldn't they have aggregate earnings -- they have paid the premium.

PALMER: My guess is that they would. (here he read over the same section that Rep. Driscoll was referring to and then asked for some help interpreting it).

JIM MURPHY: The language is in line with the court decision. When the court decisions talk about aggregating wages, the one thing that the court decisions have left out is any wages earned through a sole proprietor operation, so we just took the same type of aggregation that appears in court decisions, and left out self employment. That is why it is there.

DRISCOLL: Did the court decision determine whether or not the person had elected coverage and if they had elected coverage under the act and paid the premium, why should they be penalized by not being able to aggregate the hours?

MURPHY: I think that is an amendment you can certainly put in. I'm just saying that's the reason it is there, because of the court decisions. I can't tell you for sure that they were elected coverage or not. When they tell you to aggregate wages they just exclude any earnings an individual might have gotten from a sole proprietorship operation.

SIMPKINS: For Mr. Palmer. Going back on section 1, we're talking about a penalty for a person if he doesn't notify you twenty days in advance. I have a problem with one constituent and this makes it sort of interesting to me because a self-employed person is not required to be covered under the program, but if he elects to be covered and then decides not to pay his premiums, there are two things that happen here -- please correct me if I am wrong -- (1) he has got to give you 20 days notice or you are going to penalize him because he just dropped his plan, and (2) for some reason he has to prove to you that he has another type of coverage, which he never had to have in the first place.

PALMER: I think you maybe misunderstood this section. This particular penalty is against the insurance company for not notifying the division that they have changed coverage on a particular employer. The division monitors the three plans -- self insurers, private carriers and an insured's companies. Insurance companies have to file a document with us which tells us what employers they have covered. What we are finding is that an insurance company on occasion will neglect to do that, when we get a medical bill or something and we can't find coverage, where that bill

has to go, or where to send a particular claim because that insurer has not given us that information. This is a way to encourage them to give us that information so we can direct that paper flow that comes in.

Closing by Sponsor:

SMITH: I did get a copy of the fiscal note for \$14,700. What it is for is the cost of computer programing and I will urge a yes vote on this bill.

RUSSELL: This concludes the hearing on HB 347.

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HEARING ON HB 348

Presentation and Opening Statement by Sponsor:

REP. MARKS: This is a bill by the request of workers' comp division. I have handed to the committee members some proposed amendments that have been worked out by the respective parties. I presume that there is support for the bill as amended and I will speak to the bill as if it were amended. (Proposed amendments attached hereto as Exhibit #5).

This is a bill that clarifies the appointment of appeals panels to determine qualifications under the Occupational Disease Act. It clarifies how the panel of physicians is used when the insurer denies liability for an occupational disease. The division orders the examination to be made by the physician to determine if the disease exists and, if so, what percentage of it is attributed to the work place. In 1987 work comp amendments brought the definition of occupational disease to include new specialties not previously used. The old panels are no longer as appropriate as the new one that has been put together in this bill. It also clarifies how the panels are organized and includes some other housekeeping language to bring the panel process up to date.

One of the new sections that is not in the bill but is in the amendments is where it allows a statute to become retroactively effective so that those claims that have been filed previous to the enactment of this act will be able to have the panel operate just as if it had been in place before that.

Testifying Proponents and Who They Represent:

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

MICHAEL SHERWOOD, Montana Trial Lawyers Association.

DON JUDGE, Montana AFL-CIO.

NORM GROSFIELD, Attorney, Helena, Montana.

GEORGE WOOD, Executive Secretary of the Montana Self
Insurers Association.

Proponent Testimony:

BILL PALMER, proponent. HB 348 brings the existing law into line with the expansion of the occupational disease definition that was amended in 1987. Additional specialties such as neurology and orthopedics are now required for panels. The method of selecting panels currently in the law has not been used for some time, and the proposed method is more in line with the current practices. We use the board of medical examiners to help us select physicians for impairment ratings and the same procedure now will apply to the occupational disease panels. Also, our panels are not single groups of physicians, but change depending on specific disease or the case in question.

Section 39-72-602 allows different people to be chairmen for each selected case. It seems to me that this particular language allows us to do more in line with what was set up in 1987 in the general format. We request your support for this bill. (Written testimony also submitted and attached hereto as Exhibit #6).

MICHAEL SHERWOOD, proponent. This represents, as I understand it, the final bill that we have discussed regarding workers' comp. It has been urged to be introduced by the division. I have not been provided with a copy of the amendments, but I am confident they are in line with what we have discussed. I urge you to support this bill as amended.

DON JUDGE, proponent. We do have a copy of those amendments and with them our concerns about the legislation have been taken care of. We urge your support.

NORM GROSFIELD, proponent. I am involved with the group that worked out the amendments and I support the amendments.

GEORGE WOOD, proponent. I support this legislation as amended. I request that you report a do pass.

Questions from Committee Members:

None.

Closing by Sponsor:

REP. MARKS: I want to point out one of the changes in the amendments that is of some significance. I think it expresses the compromise best. I draw your attention to section 4 mainly on page 4 and the additional language that appears in the white bill which would indicate they want to add medical benefits.

RUSSELL: This closes the hearing on HB 348.

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DISPOSITION OF HB 348

Motion: Rep. Pavlovich, moved that HB 348 DO PASS.

Discussion: None.

Amendments and Votes: Rep. Pavlovich, moved that the amendments to HB 348 DO PASS.

Recommendation and Vote: Vote taken and unanimous decision for DO PASS as amended.

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DISPOSITION OF HB 347

Motion: Rep. Kilpatrick, moved that HB 347 DO PASS.

Discussion:

DRISCOLL: The intent of the bill last session was not loss of wages. During the 18 months I sat on that committee to study workers' comp, it was never intended for a person to lose three weeks of wages before they got compensation. The intent was 48 hours. The way the bill was written last time and the interpretation of the division, a person working three 12-hour shifts a week loses a lot more than 48 hours of wages before they get any compensation and it is getting very common in this state for people to work four 10's and those people lose a lot more than 48 hours wages before they

receive any compensation. I guess they had a meeting and they decided they would strike section 6 out of the bill and leave it as is so those people would still lose three weeks or two and a half weeks, but it isn't right.

In Section 12, Line 21, states that if a self-employed person who elects coverage and pays the compensation insurance, has a second job, and he gets hurt, he can't collect benefits. I don't know what the court said on those particular cases, but why would they say you paid the premium but you still can't collect benefits.

My guess is the person had elected not to have the coverage, therefore they could not put those hours in to figure aggregate. If they did pay the premium, they sure ought to be able to collect the benefits. I would rather that we hold this bill for awhile so I could check that case and see if that person paid the premium or not.

KILPATRICK: I withdraw my motion, I didn't realize that.

RUSSELL: The motion is withdrawn.

Does it appear on HB 347 it might be helpful to set up a subcommittee on it so we can get it moving?

SIMPKINS: Maybe we should act on this right now because we have a group of people here who have agreed in total on the amendments and this bill as such. If we make modifications we will be out of the agreement. It doesn't seem like it would be too much to make a modification and I agree with Rep. Driscoll that no person should be extended six days if they have put in their 48 hours. It seems like if we dink around with this bill too much we are out of that agreement.

SMITH: This is true, however I just happen to agree with Jerry on this issue. This was a package that was agreed to on by all parties and I pretty well have to stay with it.

GLASER: Jerry, if this bill would go out of here like it is now and the minutes of the subcommittee of two years ago showed that the 48 hours were as you described, then I would support an amendment on the floor.

RUSSELL: Members of the committee, it appears as though we really do have to do some cleanup work on some of your concerns here so I am going to go ahead and put it into a subcommittee. I would like the following three

representatives to work on the concerns that you have expressed right now and bring it back to us on Thursday so we can act on it. I recommend Rep. Driscoll, Rep. Kilpatrick and Rep. Glaser. Would you be able to get your concerns ironed out and brought back to committee on Thursday?

DRISCOLL: Yes.

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DISPOSITION OF HB 323

Holding on this bill for more information.

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DISPOSITION OF HB 156

Motion:

O'KEEFE: I move DO NOT PASS.

Discussion:

SIMPKINS: There is one thing that I noticed in the other Montana codes and I was just wondering whether the committee could either modify this to an extent or possibly come up with a committee bill changing the section that says "ten years experience" and drop it to five years experience to give the department a little bit more leniency in hiring people. to eliminate that.

O'KEEFE: I think in the stricken language in Section 2, subsection 2, page 2, currently it is five years.

SIMPKINS: That's the coal miners, not the boilers.

O'KEEFE: I guess from what the testimony was from the department, the boiler inspectors weren't the people having the problem, it was the coal inspectors. I would think that we would leave that.

RUSSELL: Is there further discussion on the DO NOT PASS motion?

Recommendation and Vote: The question resulted in dissention on the vote. A roll call vote was called on the DO NOT PASS motion on HB 156: Results were 10 yes votes, 6 no votes. See attached roll call vote sheet.

The DO NOT PASS motion passed 10 to 6.

ADJOURNMENT

Adjournment At: 4:30 P.M.

A handwritten signature in cursive script that reads "Angela Russell". The signature is written in dark ink and is positioned above a horizontal line.

REP. ANGELA RUSSELL, Chairman

AR/mo

2609.MIN

ROLL CALL VOTE

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

DATE 1-31-89 BILL NO. 156 TIME 4:28

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

TALLY

10 6

Maureen O'Leary
Secretary

Angela Russell
Chairman

MOTION: _____

12:33 pm
2/01/89
JR

STANDING COMMITTEE REPORT

February 1, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Labor report that HOUSE BILL 348 (first reading copy -- white) do pass as amended .

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Title, line 7.
Following: ";"
Strike: "AND"

2. Title, line 9.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE AND SOME RETROACTIVE APPLICATION"

3. Page 2, line 17.
Following: "(2)"
Insert: "The division shall select a panel physician to examine a claimant as required."
Following: "The"
Strike: "panel members"
Insert: "division"

4. Page 2, line 22.
Following: "and"
Strike: "panel"

5. Page 4, line 20.
Following: "compensation"
Strike: "and medical benefits"

6. Page 4, lines 22 and 23.
Following: "compensation"

12:33 pm
2/01/89
J

February 1, 1989
Page 2 of 2

Strike: "and medical benefits"

7. Page 5, line 13

Following: line 12

Insert: "NEW SECTION. Section 6. Effective date -- retroactive applicability. (1) [This act] is effective July 1, 1989.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to all occupational disease claims pending before the division."

1/22/89
2/1/89
ra

STANDING COMMITTEE REPORT

February 1, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that HOUSE
BILL 156 (first reading copy -- white) do NOT pass .

Signed: _____
Angela Russell, Chairman

House Labor and Employment Relations Committee
January 31, 1989

1082

Testimony in support of House Bill 323
Anne L. MacIntyre, Administrator
Human Rights Division

The Human Rights Commission and Division have requested this bill in order to correct what appears to be a significant omission from the provisions of the Human Rights Act. The act presently prohibits discrimination in employment and most other civil contracting situations which affect the average person, such as housing, financing and credit transactions, and public accommodations. Because of the definition of the term "employer," the act does not cover the situation where a business might refuse to employ an independent contractor because of race, sex, age, handicap, marital status, or religion, however.

We have encountered specific instances where we lacked jurisdiction of cases of alleged discrimination because of this. In one, an Indian architect claimed a business would not contract with him because of his race. In another, an insurance company cancelled its contract with a long-time independent agent, who maintained the cancellation was because of his age. This bill would broaden the definition of "employer" to insure that independent contracting relationships are covered by the act.

The Commission and its staff believe the legislature did not intentionally omit this situation from the coverage of the Human Rights Act. Although a person with a claim of discrimination in a contracting situation may now be able to bring a lawsuit in district court claiming a violation of the constitution, using the administrative forum is preferable for several reasons. The Human Rights Act provides specific procedures and remedies addressing complaints of discrimination and is initially more accessible to complainants, who can file a complainant and get an initial determination regarding the merits of their claim without having to have a lawyer.

After the bill was introduced, some concern was expressed that we were attempting to have the legislature extend the coverage of the act so that businesses would be responsible for the discriminatory acts of contractors or other agents for whom they would not normally be liable under the legal principles of vicarious liability. This was not our intent, but the bill as drafted is somewhat confusing and might give rise to such an interpretation. We have therefore prepared some amendments which we think will solve this problem.

Thank you for your consideration and I hope you will give HB323 a do pass recommendation.

EXHIBIT 1

DATE 1-31-89

HB 323

2 of 2

Amend HB 323 (introduced bill) as follows:

Page 1, line 17

Following: "agents"
Strike : ", "
Insert: "and"
Following: "contractors"
Strike: ", successors, and assigns"

Page 3, lines 13-14

Strike: "(including agents, contractors, successors, and assigns), and those under its direction or control,"

EXHIBIT #2
DATE 1-31-89
HB 339

Bill Palmer

TESTIMONY BY
THE DIVISION
HOUSE BILL 339

HOUSE BILL 339 IS PRESENTED FOR YOUR CONSIDERATION TO DETERMINE THE EXTENT TO WHICH THE WORKERS' COMPENSATION SYSTEM SHOULD PAY FOR DOMICILIARY CARE.

IN CERTAIN CASES THE INJURED WORKER NEEDS ASSISTANCE IN THE HOME BECAUSE OF THE NATURE OF THE INJURY. SECTION 2(1) SETS FORTH THE CRITERIA AND PROCEDURES FOR OBTAINING SUCH SERVICES AND ARE IN FACT THE SAME CRITERIA USED BY THE SUPREME COURT IN REVIEW OF SUCH CASES.

1. THE CLAIMANT MUST REQUEST THE SERVICES IN WRITING.
2. THE NECESSITY OF THE SERVICES MUST BE SUPPORTED BY MEDICAL EVIDENCE AND UNDER THE DIRECTION OF A PHYSICIAN.
3. THE SERVICES ARE THOSE OF A TRAINED ATTENDANT.
4. AND YOU NEED TO BE ABLE TO DETERMINE THE ACTUAL VALUE OF THE SERVICES.

THE \$1,500 PER MONTH CAP IS OBVIOUSLY PLACED IN THE LAW SO AS TO CONTROL THE COSTS, IDENTIFY THE MAXIMUM FOR BOTH THE CLAIMANT AND THE INSURER AND ALLOW THE INSURER TO AT LEAST KNOW THE MAXIMUM EXPOSURE AND RISK. THE \$1,500 CEILING IS WITHIN THE AMOUNTS THE STATE COMPENSATION INSURANCE FUND IS PRESENTLY PAYING ON ITS CLAIMS AND WE BELIEVE IT IS WITHIN THE AMOUNTS NORMALLY CHARGED BY FACILITIES OFFERING HOME HEALTH CARE SERVICES.

William R Palmer
Interim Administrator, DMC
1/31/89

PROPOSED AMENDMENT TO HOUSE BILL NO. 347

1052

1. Page 6, line 14.

Following: "treatment of an injury"

Insert: "pursuant to rules adopted by the division."

2. Page 8, line 6.

Following: "and the division."

Insert: "For injuries occurring prior to July 1, 1987, an insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial."

3. Page 8, lines 9-23.

Strike: [Section 6].

4. Page 21, line 9.

Following: "average actual"

Strike: "earnings"

Insert: "wages"

5. Page 21, line 12.

Following: "average actual"

Strike: "earnings"

Insert: "wages"

6. Page 21, line 17.

Following: "average actual"

Strike: "earnings"

Insert: "wages"

- 7. Page 22, line 25.
Following: "the claimant is"
Strike: "entitled to"
Insert: "claiming"

- 8. Page 24, lines 2-21.
Strike: [Section 15].

- 9. Page 24, line 22, to page 25, line 17.
Strike: [Section 16].

- 10. Page 25, line 23.
Following: "Sections 13"
Strike: "and 15 through"
Insert: " , 17 and"

- 11. Page 25, line 24.
Following: "passage and approval"
Insert: "All other sections of this act are effective July 1, 1989."

- 12. Page 26, lines 3-6.
Strike: [Subsection (2)(b)].

EXHIBIT #4
DATE 1-31-89
HB 347

DIVISION TESTIMONY

HB 347

pg 1 of 7

Generally Revise Workers' Compensation Laws

Section 1

Notice of Cancellation Penalty

Existing statutes require insurers to notify the Division 20 days prior to the date they intend to cancel a workers' compensation insurance policy. This allows the Division's records to accurately reflect the insurer responsible for the payment of claims when submitted to the Division. The current law provides no penalty if the insurer fails to notify the Division of the cancellation. The proposed legislation allows the Division to assess a penalty of no more than \$200, and the insurer has the right to contest the assessment of such a penalty.

Section 2

Job Pool and Rehabilitation

The current definition of job pool as adopted in the 1987 Reform is not as clear as it could be and, in some cases, is not applicable. The proposed legislation is merely a change in the definition in order to make the system more workable. It also clarifies when total rehabilitation benefits begin.

EXHIBIT 4
DATE 1-31-89
HB 347
2057

Section 3

Total Rehabilitation Benefits

Temporary Total Disability benefits terminate on the date maximum medical improvement (MMI) is reached, but current law (39-71-1023) does not allow Total Rehabilitation benefits to begin until both MMI and designation of a rehabilitation provider occurs, thus leaving a possible gap. The insurer is supposed to designate a rehabilitation panel as soon as the disabled worker reaches MMI, but if a delay occurs, the worker could technically be without benefits for a period of time.

The amendment automatically begins Total Rehabilitation benefits at MMI whether or not a rehabilitation provider has been designated. The 26-week rehabilitation period does not begin until the Division is notified a provider has been designated.)

Section 4

Travel Expenses for Medical Care

Insurers have normally paid travel expenses incurred by the claimant for travel to obtain medical care. The statutes have never expressed the amount which should be paid for reasonable travel expenses. The proposed legislation sets the amount at the same rates which would be allowed for reimbursement of travel by state employees.

EXHIBIT 4
DATE 1-31-89
HB 347

3047

Section 5

No Notice for Benefits Reduction

The present statutes, which require insurers to provide a 14-day notice upon termination of benefits, somewhat conflict with the new reform legislation in that under the new legislation, the insurer may continue to pay biweekly benefits, but the type of benefit category changes. For example, a claimant, under the new law, can be switched from Temporary Total benefits to Total Rehabilitation benefits, and the rate of pay is exactly the same. Technically, such a change would require a 14-day notice under the existing statutes. The purpose of the proposed legislation is to clarify the point that the insurer only provide(s) the 14-day notice when all biweekly benefits are terminated. The law allows the right of appeal in other situations where the biweekly benefits of the injured worker are changed from one category to another.

Section 6

Amendment to Delete

EXHIBIT 4
DATE 1-31-89
HB 347
4 of 7

Section 7, 8, and 9

Payroll Definition

The terms wages and payroll are used in workers' compensation to both determine the amount of premium paid and to determine the amount of compensation paid in the case of a claim. The definitions in the Act of these two terms do not necessarily coincide; and therefore, the purpose of the legislation is to make sure the definition of wages and payroll are uniform.

Section 10

Limit Premium Collection

The purpose of this amendment is to place reasonable time frames on the number of years the Division can go back and assess premium or issue refunds through audit or other types of adjustments. The selection of three years is in accordance with what Unemployment Insurance is allowed to do, and at least partially eliminates a burden on the employer in the case of a premium charge and on the State Compensation Insurance Fund in the case of premium refund.

EXHIBIT 4
DATE 1-31-89
HB 347
5057

Section 11

Partners/Proprietors' Coverage

Under the Workers' Compensation Act, sole proprietors and working partners may elect to provide coverage for themselves, and the purpose of the proposed legislation is to clarify the wage base to be used if a covered sole proprietor or working partner is injured on the job. The wage base to be used will be consistent with the wage base identified by the sole proprietor or partner at the time the election for coverage is made.

Section 12

Wages for Concurrent Employment

The purpose of this section is to clarify when wages from two different employments should be aggregated in order to calculate the claimant's compensation rate. This is, in part, a codification of case law. It should be noted that for Temporary Total the State Compensation Insurance Fund does aggregate wages.

Section 13

EXHIBIT 4
DATE 1-31-89
HB 347

6047

Release of Information

The Health Care Information Act enacted by the 1987 Legislature restricts the dissemination of health care information by health care providers. This restriction could require insurers to obtain written releases for health care information every 30 months--even though the injured worker signs a claim form which serves as a medical release so the treating physicians can provide information to the insurer. The medical information is obviously necessary in order to determine the compensation benefits due an injured worker. The proposed legislation in effect exempts the workers' compensation insurer from these restrictions as long as the insurer has a signed claim form.

Section 14

Failure to Submit Records Penalty

The present law requires insurers and adjusters to submit reports and information to the Insurance Compliance Bureau in order for them to effectively monitor claims. The proposed legislation subjects insurers and adjusters to a penalty of not less than \$200 and not more than \$500 for failing to submit the information required.

Section 15 and 16

Amendment to Delete

EXHIBIT 4
DATE 1-31-89
HB 347

7 of 7

Section 17

Extension of Rule Authority

Section 18

Effective Dates -- (7/1/89 Most Sections)

William R. Palmer

Interim Administrator

1/31/89

Amendments to House Bill No. 348
First Reading Copy

For the Committee on House Labor and Employee Relations

Prepared by Eddy McClure
January 31, 1989

1. Page 2, line 17.

Following: "(2)"

Insert: "The division shall select a panel physician to examine a claimant as required."

Following: "The"

Strike: "panel members"

Insert: "division"

2. Page 2, line 22.

Following: "and"

Strike: "panel"

3. Page 4, line 20.

Following: "compensation"

Strike: "and medical benefits"

4. Page 4, lines 22 and 23.

Following: "compensation"

Strike: "and medical benefits"

5. Page 5, line 13

Following: line 12

Insert: "NEW SECTION. Section 6. Effective date -- retroactive applicability. (1) [This act] is effective July 1, 1989.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to all occupational disease claims pending before the division."

Department Testimony:

HOUSE BILL 348: Occupational Disease Panels

House Bill 348 brings the current law in line with modern requirements, particularly with the expansion of the definition of occupational disease in 1987.

Since conditions such as carpal tunnel were moved to the Occupational Disease Act, additional specialities, such as neurology and orthopedics, are now required for panels. The method of selecting panels currently in the law has not been used for some time and the proposed method is more in line with current practice.

We use the Board of Medical Examiners to help us select physicians for impairment ratings. The same procedure would apply to Occupational Disease Panels.

Also, our panels are not single groups of physicians, but change depending on the specific disease or case in question. The section 39-72-602 amendment allows a different chairman to be selected for each case.

The other significant section amended is 39-72-706 which clarifies if compensation benefits are reduced proportionate to the percentage of occupational disease, medical benefits are included in that reduction.

William R. Palmer
Interim Administrator, DDC

VISITORS' REGISTER
RELATIONS
HOUSE LABOR AND EMPLOYMENT / COMMITTEE

BILL NO. 323

DATE January 31, 1989

SPONSOR DRISCOLL

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
<i>Anne MacIntyre</i>	<i>Human Right Division</i>	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

BILL NO. 339

DATE January 31, 1989

SPONSOR THOMAS

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Bill Gannon	DXC	✓	
Jim Murphy	✓	✓	
Deborah Gibson	Int. Assoc. of Counties	✓	
Greg Wood	Int. Self Insurers Assn	✓	
Mike Sherwood	MT LA		✓
Archie Lake	Int-ucop		
Oliver Lee (unclear)	MMIA	✓	
Don Judge	MT STATE AFL-CIO		✓
Jim Twissler	MT RETIREES ASSN	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE LABOR AND EMPLOYEE RELATIONS COMMITTEE

BILL NO. 347

DATE January 31, 1989

SPONSOR SMITH

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
<i>Bill Palmer</i>	<i>DXC</i>	<input checked="" type="checkbox"/>	
<i>Judd [unclear]</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>[unclear]</i>	<i>[unclear]</i>	<input checked="" type="checkbox"/>	
<i>George Wood</i>	<i>Int. Self Insurance Assoc</i>	<i>as amended</i>	
<i>Trui Cooper</i>	<i>Stone Container</i>	<i>as amended</i>	
<i>Mike Sherwood</i>	<i>MTLA</i>	<i>as amended</i>	
<i>Archie Lake</i>	<i>[unclear]</i>		
<i>Norm [unclear]</i>	<i>Attorney - Helong</i>	<i>as amended</i>	
<i>Robert [unclear]</i>	<i>" "</i>	<i>"</i>	
<i>Don Judge</i>	<i>MT STATE AFL-CIO</i>	<i>as amended</i>	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

