

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on February 14, 1989, at
3:00 P.M.

ROLL CALL

Members Present: Fifteen members.

Members Excused: None.

Members Absent: Fred Thomas.

Staff Present: Eddy McClure, Staff Attorney.

Announcements/Discussion: None.

HEARING ON HB 628

Presentation and Opening Statement by Sponsor:

REP. SIMON presented his bill: "An act to exclude outside salesmen from coverage under the state overtime compensation laws; and amending Section 39-3-406, MCA."

Testifying Proponents and Who They Represent:

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

CHARLES BROOKS, Montana Retail Association.

BARRY HJORT, US West Communications.

JAMES TUTWILER, Montana Chamber of Commerce.

DEAN ROBERTS, Myre Advertising.

LOREN DAVIS, Montana Office Machine Dealers Association.

KAY FOSTER, Billings Chamber of Commerce.

RICH McLAUGHLIN, Don's Office Machine Company.

Proponent Testimony:

MIKE MICONE. Proponent. We support HB 628 because we believe it really seeks to conform with the Federal Fair Labor Standards Act in the compensation of outside salespeople. There are a number of individuals in the state of Montana

who are currently covered under this provision. We think it will standardize the issue of outside salespeople and we would hope for your concurrence in this bill. Fact sheet attached hereto as Exhibit #1.

CHARLES BROOKS. Proponent. He read from a written statement, a copy of which is attached hereto as Exhibit #2.

BARRY HJORT. Proponent. Appeared on behalf of US West Communications, specifically US West Direct, the publisher of the telephone directory and the yellow pages associated with the directory.

US West Direct employs in Montana a number of outside sales people on an annual basis and frequently those people are not necessarily residents of Montana. They come into Montana in order to sell advertising and, given the current state of the law with respect to the question about overtime compensation entitlements for outside salespeople, we think it only appropriate that Montana conform its overtime compensation act to that of the Fair Labor Standards Act. This bill would do that and we support HB 628 as written.

JAMES TUTWILER. Proponent. We support HB 628 for the reasons that have already been presented in testimony. We feel this measure is needed. We believe it will promote private enterprise initiative as well.

DEAN ROBERTS. Proponent. We support HB 628. Outside sales by its nature means selling when the customer is ready to buy. A highly motivated salesperson may need more than eight hours in one day, or 40 hours in one week, to make that sale. They don't want to be limited to an 8-hour day or 40-hour week, nor should they have to be. Therefore, for these and other reasons we support HB 628 and ask for a do pass.

LOREN DAVIS. Proponent. We are in favor of this bill which would also eliminate all of the exclusions you have that do not include us. Over the 31 years that I have been in this business, I know of no salespeople who can put in 40 hours a week and still be successful in this business. With the high technology they have to learn, they have to get ready for it and prepare for it. We are very much in favor of HB 628. He presented written testimony, attached hereto as Exhibit #3.

KAY FOSTER. Proponent. Billings is a retail center and there are numerous sales people who are employed in Billings and travel throughout the state, not just in our county. We would appreciate your passage of HB 628 to include these outside salespeople in with the other exemptions to this law. We would appreciate your passage of this bill.

RICH McLAUGHLIN. Proponent. I am the owner of Don's Office Machine Company in Butte and am also a member of the Office Machine Dealers Association.

The past laws have been very restrictive with reference to outside sales representatives in that they have limited their abilities. We hope you will consider a do passage of HB 628 so these people can get to their full potential, both educationally and economically.

Testifying Opponents and Who They Represent:

DON JUDGE, Montana State AFL-CIO.

Opponent Testimony:

DON JUDGE. Opponent. We are opposed to HB 628 for what may seem to be some not-so-obvious reasons to the proponents of this legislation. A couple of years ago the amendment that is being stricken out on page 3 (d), line 12, was put into law and at that time we told the committee that this was just the beginning of an attempt to make additional exclusions under Montana's minimum wage and overtime protections. Prior to 1987, we did not even exclude outside advertising salespeople for newspapers from the coverage of the Montana Overtime Minimum Wage Act. Today we are finding not only HB 628, but we have a bill to extend the work day for mine workers and smelter workers; a bill to exclude overtime protections for entertainment and recreational workers, coming from the Senate. We've had bills introduced to cut the wages for tipped employees. It seems like whenever the federal laws provide a direction to go that would exclude workers from protections, we all want to leap on the bandwagon, but when we talk about maybe tying the Montana Minimum Wage Act into the Federal Minimum Wage Act so that when that act goes up our act would go up as well, these same people come in and say they don't want that.

Our position is that we don't want this legislature to be forcing workers more and more into poverty, putting people in positions where they are required to work more and more hours, especially people like outside salespeople. We feel this bill sets a bad precedent. We know it is not the only bill that this committee is going to be addressing that is going to deal with excluding additional workers from the overtime protection laws in Montana and we think the bill ought to be killed.

Questions From Committee Members:

None.

Closing by Sponsor:

REP. SIMON: There are a number of exclusions from the overtime

provisions and you can look down through this bill and see them. People who are employed as outside buyers of poultry, eggs, cream, milk, it goes on and on. We have a number of exemptions. This exemption merely complies with the federal statutes. A salesperson might be having lunch with somebody and making a sales pitch at the same time. Maybe he is on the golf course playing golf, but he has a couple of clients along with him and he is making a pitch at that time. The people who would come under this bill are the kind of people who want the opportunity to sell as much as they can sell. If they wish to work more than 40 hours and can use that time to improve themselves and to increase the amount they are bringing home in their paycheck, I think they should be allowed to do that. It allows that employee to set his own pace and determine his own fate as far as the amount of money he can make.

I urge the committee a DO PASS recommendation.

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HEARING ON HB 639

Presentation and Opening Statement by Sponsor:

DRISCOLL: HB 639 changes the formula of how many weeks you would be eligible for under the unemployment insurance law. These weeks are exactly the same as they were in 1978. Under the present system unless you work in every quarter you cannot qualify for 26 weeks of benefits. The stricken language on page 2, line a, the total base period earnings to your high quarter must be 3 1/4 times in order to qualify for 26 weeks. That almost assures seasonal employees that they will never be eligible for 26 weeks of unemployment no matter how good they are. You also have to understand that people who are seasonal workers, construction workers and some loggers work for more than one employer in the season. Normally most of their wages are subject to taxes -- the employer pays them, not the employee. In the construction industry you might work for two or three different contractors during the work season and each employer must pay the tax up to the first \$12,600. So those employers are paying in quite a bit more than the employee takes out. The formula would only make it fair for places like Trident who close down for the winter. Those people, if they didn't work January, February and March, would lose that quarter. There is no way on earth that they could possibly qualify for maximum benefits.

I don't know if the Department of Labor has a fiscal note on this or not. We talked to them earlier before the session. Most people who qualify for 26 weeks do not draw 26 weeks. I think the average is about 13 weeks that anybody draws. As a matter of pride, if you work and you do your job well, you may not qualify for as many weeks as the

person next to you who isn't showing up every day. It is basically an issue of fairness. The good employees under the present law are getting excluded from the 26 weeks of compensation and those people who slough off can get 26 weeks of unemployment and I don't think that is fair.

Testifying Proponents and Who They Represent:

DON JUDGE, Montana State AFL-CIO.

Proponent Testimony:

DON JUDGE, Proponent. I think Rep. Driscoll has adequately explained this legislation. Both Rep. Driscoll and I serve as members of the unemployment advisory council, along with Rep. Smith. This was not a council bill, it was not excluded by the council or adopted by the council, but it is a problem that we have been addressing and discussing, at least those of us in organized labor, for a number of years now. We would like to have this legislation changed so that those workers who work hard are rewarded for that work when they are laid off and they don't have to suffer the added embarrassment of not being qualified for the additional weeks, while those who refuse to work and provide a good day's work are eligible for those weeks. We strongly support the passage of HB 639.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

O'KEEFE: Question of Rep. Driscoll. Jerry, does this mean that the minimum number of weeks of benefits would go from 8 to 12?

DRISCOLL: Yes, and it could possibly exclude some people. They would not be attached to the labor market in my opinion. Anybody whose high quarter ratio was 1 to 1.75 would be the only people who would qualify. With a ratio less than that you wouldn't qualify for any weeks. So, for instance, if you had a \$10,000 quarter you would have to make \$17,500 in your base unit to qualify for benefits. Under the present law if you made a \$10,000 quota you would make \$12,500 in your base unit to qualify for 8 weeks. If you made \$10,000 in your high quarter, what were you doing with the rest of the time if you only made \$2,500.

Closing by Sponsor: Driscoll closed.

HEARING ON HB 677

Presentation and Opening Statement by Sponsor:

DRISCOLL: HB 677 is the committee bill we voted to have drafted. On page 2 is the only change and it says that the interest income would also be transferred to the unemployment trust account. There is a very good possibility that if this bill passes the mechanism that determines the employers taxes, right now its at schedule 6, there are 10 schedules, we could go down to 4. If this bill does not pass we will not be in 4, we would probably be in 5. We may be in 5 anyway. We will at least get to schedule 5 which would be about a 9% reduction in the rates for employers, but if this \$417,000 stays in the unemployment trust account, that's where it is now, then we could possibly go down to schedule 4 which would be 18.8 or 18% reduction in employers taxes. If we don't pass this bill it will just keep going on year after year. We will be using the interest income from the administrative fund of the unemployment insurance account to subsidize the general fund. I don't think that was ever the intent, I think it was just an oversight.

Testifying Proponents and Who They Represent:

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

Proponent Testimony:

MIKE MICONE, Proponent. I thank the committee for accepting this proposal and proposing the bill and hope that you concur with Rep. Driscoll. This was a problem we encountered with the legislative auditor. They believe the interest should be going into the general fund. The employers at the time of accepting this tax, thought that all monies would flow into the trust fund. To comply with that provision, we then came to the committee and asked for your concurrence to accept this bill, so we hope you will concur with the proposal.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

None.

Closing by Sponsor: Rep. Driscoll closed.

DISPOSITION OF HB 427

Report from Subcommittee:

McCORMICK: The committee has recommended that we kill this bill. Pine Hills School in Miles City and Mountain View, the Helena Girls' School are in the same group and state law says if you don't sign a contract you cannot pay back wages or benefits. They are holding the Helena Girls' School and the Miles City school as hostages over the Blind and Deaf School.

We recommend DO NOT PASS.

Motion:

McCORMICK: Motion to DO NOT PASS HB 427.

Discussion:

SIMPKINS: Bill Prickett at the Deaf and Blind School has called numerous times on this and he stresses that this is very important to the deaf and blind. Is there any way to save this bill and apply it only to the School for the Deaf and Blind?

McCORMICK: There is no contract. The state law says that you are supposed to negotiate, it does not say you will, you shall, or anything else. For example, Great Falls wants to settle and then Helena and Miles City can sit there forever and the state will never settle. They are under contract, it just isn't signed. He never said he negotiated a contract did he?

RUSSELL: We have a DO NOT PASS motion on this bill, are there other questions or discussion from the committee?

None.

Vote: Thirteen voted in favor of the motion, three against (Simpkins, Lee and Smith).

Voted DO NOT PASS HB 427.

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DISPOSITION OF HB 628

Motion:

REP. SMITH made a motion to DO PASS HB 628.

Discussion:

KILPATRICK: On page 3 the term "outside salesman" -- what is the definition of an outside salesman? What is a driver salesman?

SMITH: An outside salesman is one who is not working in an office, he is not under control of his employer.

KILPATRICK: Are these people on salary? Do they have a salary coming in or are they paid only through commissions?

SMITH: Both. Sometimes it is straight commission. Sometimes it is salary plus commissions.

MCCORMICK: To answer your question on what is a driver salesman. If you read that bill, it's anybody who peddles beer, bread, milk, anything you want, and they are exempt -- anybody who is outside.

SMITH: I think mainly what they are making reference to here is, for example, they are selling office machines. Maybe they are selling machinery. They do it on their own time and they call on customers. They may do it on the golf course, they may do it at the dinner table, they might do it in a bar, but they are out away from the owner's place of business, they are not working by a clock and they are dealing mostly with the customer at the convenience of the customer.

PAVLOVICH: As Mr. Judge said, last session we did put in subsection (d) on line 12, page 3, exemption of an outside salesman who is on a commission or contract basis who is primarily employed in selling advertising for a newspaper. Now if we just keep changing and changing this, year after year, pretty soon we won't have anybody.

MCCORMICK: Just like Rep. Smith said, they sell machinery. That part is fine, but this bill takes in everybody who sells anything, just read the bill, any truck driver, helper. That takes in everything you handle outside.

MICONE: A driver salesman is someone who is employed as a driver or driver's helper, making local deliveries, who is compensated for such on the basis of truck rates or other delivery payment. Driver salesmen are currently exempt from the law. Any labor agreements that are in force today would continue to be in force. I think what this primarily is attempting to address are people who are in equipment sales and auto sales. That's my understanding of the bill.

SIMPKINS: If you go down further in the bill, it is talking about servicing of mechanics, sales of automobiles, trucks, mobile homes, recreational vehicles, so it is limited to

those activities. Now we're talking about service industry type of sales. Two qualifiers there, primarily engaged in and the selling of service automobiles. When you get into (d) it is necessary to say those sales people who are engaged in service industries.

KILPATRICK: According to Mr. Micone, he said he thought the term "outside salesman" was basically aimed at automobile salesmen. I would like to know just who are the outside salesmen.

(About four people were all talking at once, no one with their microphones on and nothing was understood.)

GLASER: I wasn't here when this was heard, but what I think they are talking about is the guy who comes to my place of business at 4:30 in the afternoon, visits with me for an hour, then takes me out to dinner, and he hopes that I buy a lot of stuff from him. Isn't that the guy we're talking about?

SMITH: These people are the ones who make their living on commissions. When you are talking about selling machines that run anywhere from \$100,000 to \$300,000 those commissions are high and they spend a lot of time at it. These are the people this is referring to.

KILPATRICK: It is obvious that it is the yellow pages, people with office machines, these are the things it is aimed at. I would assume if a guy sells 100 yellow page ads he is making more money because he is on a commission. The only thing that bothers me about this is are we opening it up to something else. We've had trouble trying to figure out what an outside salesman is right now and there have been a lot of questions and comments. Are we going to get to the point where there will be some people who will lose out on it? I really don't like this bill.

SIMPKINS: This is where we find ourselves today -- we have been asked to make this exemption and we tried to define the broad category and I think it has been a fair hearing on it.

PAVLOVICH: People seem to be worried that we're going to put a bigger crack in the dam.

I make a substitute motion to TABLE HB 628.

Vote: Ten for the motion to TABLE the bill; six against (Compton, Rice, Simpkins, Smith, Lee and Glaser).

TABLING motion prevails.

DISPOSITION OF HB 677

Motion: REP. DRISCOLL moves a DO PASS.

Discussion: None.

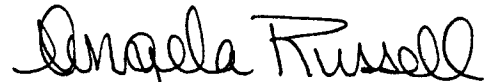
Vote: Unanimous in favor of the DO PASS motion.

HB 677 has PASSED House Labor Committee.

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ADJOURNMENT

Adjournment At: 4:12 P.M.



REP. ANGELA RUSSELL, Chairman

AR/mo

3809.MIN

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2-14-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Angela Russell, Chairman	✓		
Rep. Lloyd "Mac" McCormick, VC	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Duane Compton	✓		
Rep. Jerry Driscoll	✓		
Rep. Bob Paulevich	✓		
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	✓		

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STANDING COMMITTEE REPORT

February 15, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House
Bill 427 (first reading copy -- white) do not pass .

Signed: _____
Angela Russell, Chairman

STANDING COMMITTEE REPORT

February 15, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House
Bill 677 (first reading copy -- white) do pass.

Signed: _____
Angela Russell, Chairman

FACT SHEET

House Bill 628 would exclude outside salesmen from the overtime compensation requirements of the state wage laws.

1. Presently, a variety of occupations are excluded from the overtime compensation requirements. Those occupations include: Executives, administrators or professionals as defined by the commissioner; outside buyers of poultry, eggs, cream or milk; vehicle salesmen, partsmen or mechanics paid on a commission or contract basis; trailer, boat or aircraft salesmen, delivery drivers; farm employees; taxi drivers; real estate sales people to name a few.

2. HB628 seeks stae conformity with the federal Fair Labor Standards Act in the compensation of outside sales people.

3. The Fair Labor Standards Act exempts outside sales people if they spend 80 percent or more of their time selling outside the office.

4. The federal law treats outside sales people as entrepreneurs, setting them free to work as they wish, thereby allowing them to realize their full potential, professionally and financially.

5. When out outside sales person is subject to the overtime provisions, the employer controls the hours worked, and thus, the sales person is limited in his or her ability to realize their full potential. In many cases, the sales person is limited to a base wage, plus whatever commission commission can be earned within a 40 hour work week.

6. Highly motivated outside sales people desire freedom to perform up to their potential by being excluded from the overtime provisions of the state wage laws.

7. HB628 would avoid the "piece-mealing" approach by bringing state law into conformity with the Fair Labor Standards Act for sales people in numerous occupations throughout Montana.



EXHIBIT #2
DATE 2-14-89
HB 628

Executive Office
318 N. Last Chance Gulch
P.O. Box 440
Helena, MT 59624
Phone (406) 442-3388

February 14, 1989

TESTIMONY

HB 628

Madam Chairman and Members of the Committee:

For the record, I am Charles Brooks, representing the Montana Retail Association. I am here today in SUPPORT of HB 628.

We count among our membership a number of retail establishments that employ outside salesman on strictly a commission basis, which it appears are not excluded from the overtime compensation laws, Section 39-3-406, MCA.

When an outside sales person is subject to the overtime provisions, the employer controls the hours worked and thus, the salesperson is limited in his or her abilities to realize their full potential. In many cases, the sales person is limited to a base wage plus whatever commission can be earned in a 40 hour work week.

Highly motivated outside sales people desire freedom to perform up to their potential by being excluded from overtime provisions of the state wage laws.

HB 628 would avoid the "piece meal" approach by bringing state law into conformity with the Fair Labor Standards Act for sales people in numerous occupations throughout Montana who spend 80% or more of their time selling outside of the office.

Thank you for the opportunity to appear before you today.

We ask your SUPPORT on this bill with a "Do Pass" from the Committee.



DAVIS BUSINESS MACHINES,
INC.

EXHIBIT #3
DATE 2-14-89
HB 628

1429 HELENA AVENUE
PHONE 406/442-9810
HELENA, MONTANA 59601

February 14, 1989

SUBJECT: House Bill 628

Testimony of Loren Davis: Owner

I am in favor of House Bill 628 because it would conform Montanas Laws with the Federal Fair Labor Standards Act in the compensation of outside sales people.

In the Office Machine industry especially, the continual training and education of high tech products is very time consuming, and the dealers facility has to be available to the sales personnel at all times for their betterment. With 31 years of experience with commission sales people the truly successful ones are the person that prepares themselves and the product so that the eight business hours is spent in the customers office demonstrating and selling products. By forcing the commission sales person to a 40 hour work week they will never realize their full potential, professionally and financially.

The successfull sales person moves product, which builds businesses and keeps manufactures in production. I ask that you do not restrict good sales people and protect the business owner by approving House Bill 628.

Loren Davis

Loren Davis

VISITORS' REGISTER

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

BILL NO. 628

DATE 2-14-89

SPONSOR Simon

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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VISITORS' REGISTER
HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

BILL NO. 639

DATE 2-14-89

SPONSOR Driscoll

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Don Judge	MT STATE AFL-CIO	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.