

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on March 14, 1989, at 4:10 P.M.

ROLL CALL

Members Present: Fifteen

Members Excused: None

Members Absent: Rep. Bill Glaser

Staff Present: Eddy McClure, Staff Attorney

Announcements/Discussion:

CHAIRMAN RUSSELL: You need to know that we will be having an evening meeting on March 21 to finish up all the bills that we have.

HEARING ON SB 285

Presentation and Opening Statement by Sponsor:

SEN. HALLIGAN: This bill comes before you as the result of the Montana Association of Counties resolution. They already have authority under existing law to form bond pools for their self-insurance fund for property and casualty. The MACo board of trustees administers that pool fund. What this bill attempts to do is deal with the extra costs that they incur from having to buy reinsurance from Lloyds of London, or anybody else who is providing. Also, the bill allows for bonding authority to have their own reinsurance. This is a simple explanation of the bill.

Testifying Proponents and Who They Represent:

DAVE FULLER, Chairman of the Lewis and Clark County Commission.

GORDON MORRIS, Executive Director of the Montana Association of Counties.

MICHAEL SHERWOOD, Montana Trial Lawyers Association.

STAN KALEZYC, Legal Counsel to the Montana Municipal Insurance Authority, which is the self-insured pool for the League of Cities and Towns in Montana.

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

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

Proponent Testimony:

DAVE FULLER, proponent. I appear before you today as a member of the executive board of MACo. Our executive board serves as trustee for our joint powers council for our insurance pool. Sen. Halligan essentially has given the basics. Our purpose here is to do under workers' comp what we did in the 1986 special session for property casualty. Bonding should result in reducing premiums, or at least stabilizing workers' comp premiums. That is of interest to taxpayers and counties and I need to assure you that this particular bill has nothing to do with the state fund or the unfunded liability of the workers' comp state fund.

GORDON MORRIS, proponent. The trustees of the association are in the process now of considering a bond approach as an alternative to reinsurance for our workers' compensation fund. We have retained a bond counsel, Dorsey & Whitney of Minneapolis and Missoula. The recommendation of bond counsel, Mae Nan Ellingson, is that we lack the specific bonding authority. Consequently, the bill you have before you, SB 285, is specifically at the suggestion of the retained bond counsel for the association. I would be glad to answer any questions. We request your favorable consideration of SB 285.

MICHAEL SHERWOOD, proponent. We support this bill.

STAN KALEZYC, proponent. We support this bill for the liability program of the Montana Municipal Insurance Authority. We utilize the liability bonding mechanism in state law. It has worked extremely well in presenting a fiscally sound program, and we would like to be able to consider that in the future for the workers' compensation program. We will have paid over \$1 million within the near future in excess insurance premiums which are required under state law. Those premiums are exported out of Montana, and we have never touched the excess insurance policies. We would like to have the option of bonding because most of the bonds we have found are bought in state, and benefit in-state residents, and retain a sound program.

JIM MURRY, proponent. We go on record in support of SB 285.

BILL PALMER, proponent. As the regulator in workers' compensation we met with representatives of MACo, and reviewed the provisions of this bill with them prior to introduction. We concur with its provisions.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

None.

Closing by Sponsor:

SEN. HALLIGAN: One of the things that Gordon Morris and I were going to talk about is an effective date. The effective date was stricken in the Senate because they are working on a bonding program that would probably take effect July 1, 1989. We would like to have passage and approval for immediate effective date on the bill if we could. That is the only thing I say in closing.

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DISPOSAL OF SB 285

Motion:

SMITH: I move a DO PASS and an immediate effective date.

Discussion:

SIMPKINS: Would there be any reason why we couldn't make that July 1, 1989, because that is the beginning of your fiscal year?

McCLURE: If you don't put anything on the bill, it is October. If you want it to be July 1, we do them up on passage and approval. That is up to Sen. Halligan on when that would be. I checked with Gregg Pettish just a few minutes before this meeting and he said that putting an immediate effective date causes costs in the code or something like this. It causes us no problems as far as costs in the code. The only thing is that some people may not have noticed since it is exactly on passage and approval. The legislative council does not have a policy preventing passage and approval effective dates.

RUSSELL: Eddy, do we need that as an amendment to this?

McCLURE: Yes.

Motion: Smith moved to PASS on the immediate effective date.

Discussion: None.

Vote: Unanimous vote DO PASS on the immediate effective date of the bill.

Motion: Smith moved the bill as amended.

Vote: Unanimous vote DO CONCUR IN SB 285, as amended.

Rep. Smith will carry this bill on the House floor.

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HEARING ON SB 315

Presentation and Opening Statement by Sponsor:

SEN. RAPP-SVRCEK: SB 315 may be familiar to you. You may recall that SB 315 was the major workers' comp bill of last session. It is my hope that this session's version will meet a similar fate and be passed by the legislature. SB 315 sets up a program of deductibility, or what is commonly called co-insurance in the state workers' comp fund. I want to go through the bill briefly.

The first portion of significance starts at the bottom of page 1 and goes through page 2. This is the area in which we set up the levels of deductibility. As it was introduced in the House, we had one level of \$500. Testimony indicated that there are some employers who are capable of handling more deductibility than that so we have made it in \$500 increments between \$500 and \$2,500. It will be up to the insurer and the employer to negotiate whatever level both are comfortable with.

On page 2, this is how we would set up the deductibility. As the bill was originally introduced, we had two options: (1) to allow the employer to pay the deductible outright (2) to have the insurer pay the deductible and then bill the employer back for that. In the Senate we struck the employer paying directly and there are a couple of problems with that. First of all, verification of the nature of the injury and whether it is a coverable injury is difficult. Secondly, verification of acceptable and coverable treatment is often difficult. There is also a question of whether payment directly creates a liability for the insurer to pay future costs. The committee in the Senate likes the idea of an employer paying the provider directly. Since this is a new idea, they weren't comfortable with jumping in with both feet. They would rather be cautious, so we opted to set the system in place and let the division work with it. Perhaps two or four years down the line we can look at direct payments from the employer to the provider.

Pages 3 and 4 indicate that money paid out under various sections of the law up to the deductible amount does not go

against the employer's rate, nor does it affect the experience MOD.

To explain a little bit about the fiscal impact of the bill I am going to use the number of claims we had in 1987 -- 18,000 claims. For ease of explanation, I broke that 18,000 into three different areas. If employers took \$500 deductible at 6,000, claims that would save the division about \$3 million. If employers took \$1,500 deductible at 6,000 claims that would save the fund about \$9 million, and at the maximum of \$2,500 per claim, 6,000 claims would save the fund about \$15 million. Under this scenario that would save the fund about \$27 million per year. The fiscal note has some administrative assumptions for placing this into effect. I believe it is \$187,000 the first year, \$83,000 the second year. Assuming that it is \$200,000 a year, it is still a savings of nearly \$27 million per year to the fund. If every employer in the state chose the lowest claim, \$500, we estimate that it would save the state fund about \$9 million a year. As the bill was originally introduced, we estimated the savings in administrative costs to be between \$9 and \$14 million for Montana employers. I am not certain since the insurer is now paying the provider. We do provide for reimbursement only for related services and no administration fee to the deductible amount.

You will note that the report of the injury is still filed with the division. This is to provide protection for both the worker and the employer. We certainly can't guarantee that this bill would reduce rates, but we do know that having a deductible system in the private sector can reduce insurance rates.

Establishing a deductibility system in workers' comp is the No. 1 priority for the National Federation of Independent Business. They represent approximately 6,000 Montana businesses. This system has been successful in Hawaii and, in fact, they recently upped the deductible claims in Hawaii they have had so much success there.

Testifying Proponents and Who They Represent:

RILEY JOHNSON, National Federation of Independent Business.

JOHN FITZPATRICK, Director of Community and Regulatory Affairs for Pegasus Gold Corporation.

JAMES TUTWILER, Montana Chamber of Commerce.

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

DIANA MCKIVEN, Helena Small Business Round Table.

Proponent Testimony:

RILEY JOHNSON, proponent. We strongly endorse this bill as a national priority in all of our states. We conducted a study in 1987. We hired the National Association for Unemployment and Workers' Compensation Funding to study the problems of funding of these two areas. One of the strong areas they brought out in workers' compensation was that deductible was a wave of the future and was something that should be looked at by every workers' compensation program in the country.

This bill will not help someone who has a high frequency of accidents. Also, this will not help the one-man business that is only paying \$100 or \$150 or \$200 a year total workers' comp. What this is designed for is two things, (1) for the employer who has a number of employees that has a very infrequent accident rate, but occasionally will have three or four minor \$100 cases and what happens is when those cases go into the workers' comp his MOD factor goes up, his rate goes up, and yet one employer who will have a catastrophic accident one time, not necessarily will that MOD factor go up. So this is why we are saying the deductible will not count against the MOD factor. (2) It is going to help a lot of businesses out who have never had a claim, and there are a lot of them out there, who have never had a claim. This gives you the basic major accident or major medical policy and allow them to also be pulled within the system. When an employer gets involved in having to pay out of their own pocket every month or every quarter, they are going to look after those safety programs themselves and get involved in the process.

For these reasons NFIB strongly supports SB 315.

JOHN FITZPATRICK, proponent. We have very few accidents in our mining operations and we have comparatively few workers' compensation claims. Over the past six years the company has paid about \$800,000 in workers' comp premiums, but we have only incurred about \$60,000 worth of liabilities from industrial accidents and illnesses.

He explained what their company does regarding safety and paying part of claims directly to keep their rates down.

JAMES TUTWILER, proponent. We support this bill.

JIM MURRY, proponent. We are in support of SB 315. We are pleased with the provisions for the verification of injury so that workers who are injured and the deductible is being taken advantage of that there is clearly a verification of that injury and we don't have to worry about a worker being injured and then having repercussions or problems later on and not having a record of that injury. Our only concern is that we hope that it is clearly the intent of the sponsor

that none of the deductibles are to be passed through, under any circumstance, to the injured worker.

DIANA McKIVEN, proponent. We are for SB 315.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

DRISCOLL: Question for Sen. Rapp-Svrcek. Is there anything in the bill that prevents the employer from making the employee pay the first \$500 or having it paid out of the employee's health insurance program?

RAPP-SVRCEK: There is nothing in the bill that prevents it but there is certainly nothing in the bill that allows it either. There is no mechanism for that to take place and I would concur with Mr. Murry that certainly is not my intention.

DRISCOLL: Question for Riley Johnson. If I heard you correctly, you said this will help employers who have never had a claim. How is this going to help those people?

JOHNSON: If the program is put together properly and is feasible according to the insurers, it will lower their premiums. If you as an employer had 15 accidents last year and I had none and we were comparable types, we're both paying the same amount, where this allows me to have the option to take the deductible gamble and be rewarded by a lower premium.

DRISCOLL: Isn't that what the modification factor is supposed to do?

JOHNSON: Yes, except that everybody knows that tomorrow you may have an accident and one of the factors is that if you have three or four minor \$50 accidents those count against your MOD factor and can keep it up and raise it and we are wanting the opportunity to be able to handle those little minor accidents and keep them off our MOD factor.

DRISCOLL: Question for Bill Palmer. There is a section of the law that says that the employee can never be charged for the bill. If the doctor charges more than what your schedules pay, you cannot back charge the worker. Do you know what section that is and would that also pertain to this?

PALMER: Yes it would. There are two sections you are thinking about. One says that no part of the premium shall be borne

by the employee. The other part says that the insurer shall pay medical costs according to a schedule and that is still in place. There is also a rule that says once the medical provider accepts the claim or accepts treatment they also accept payment in accordance with the schedule.

SMITH: Question for Bill Palmer. My problem with this is because we have made this medical only and I am having trouble envisioning \$2,500 in medical costs without a time loss accident. I really don't see where that fits very well.

PALMER: It is really up to the insurance company and the employer to negotiate this level. What we envision is that there is different schedules of rates involved. The plan is the same in all cases, but the employer picks up more of the front-end costs. Bear in mind this is new kind of legislation. The former administrator and I attended a meeting in Seattle last fall and one of the gurus of workers' compensation was talking about these kinds of things that could do two things. It could lower an employer's cost of workers' compensation, but it also could put the employer more involved in the system. A medical deductible was just a start. I see other things like a co-insurance plan, a wage loss kind of sharing where the employer pays some of that loss up front rather than giving it to the insurer, and this gets the employer more involved with the plan. It has to be something between the employer and the insurance company.

SMITH: Bill, we're talking \$2,500 deductible. I have a guy hurt, he's off work for three weeks, the medical is \$800 and yet if we are going to make this a medical only deductible I still haven't picked up the tab on that claim so I'm still coming under where it is going to effect my experience modification. This is what I am getting at. If it is truly a \$2,500 deductible I should pay the full amount up to \$2,500. This is my feeling on it. I would like to have you respond to that.

PALMER: What you are talking about is including the wage loss part of it and I think that is possible, but this is kind of a pilot program. I think in other sessions you are going to see that kind of a program.

WHALEN: I noticed in the bill that there are two ways the deductible could be handled, (1) that the insurer can go ahead and pay the medical bill and then the employer can reimburse the insurer, or (2) it can be done the other way, the employer pays directly the deductible amount and then the insurer kicks in. I have two questions with regard to that. (1) If it is handled the latter way where the employer pays the deductible and then the insurer picks up the excess, is he required to be bonded so that there is insurance that the employer is going to pay that deductible,

and (2) under those circumstances, who adjusts the claim, the adjuster for the employer or the adjuster for the insurance company?

PALMER: If you look on page 2, that was taken out of the bill. That was the initial part of the bill where the employer could pay for the medical and then report it to the insurer, but I think in (3)(a) section 2, line 7 or 8, that was taken out and now the insurer would pay for the whole thing and then bill the employer.

WHALEN: Who is going to adjust these medical claims? This is what concerns me about this bill.

PALMER: It still will be the responsibility of the insurance company to accept liability and to pay the medical. That part of the process hasn't changed any. The only part of the process that has changed is the insurance carrier recovering directly from the employer the amount of the deductible on each claim. So the employer is not going to adjust the claim, but the insurance company is going to carry on their own responsibility and collect from the employer.

WHALEN: So the employer won't be involved at all?

PALMER: No.

LEE: Bill, if there is a company out here that has had some minor accidents and their rates have now gone up, when this goes into effect and if they choose to go the deductible route will their rate go back down then?

PALMER: Yes. What we see is getting the actuaries to put together different schedules of rates depending on the level of deductible chosen.

LEE: Would he come back down to a no-accident level if his accident activity would have been under the level of the deductible? Would he come back down to the very lowest rate for his industry if he elected the deductible?

PALMER: The employer would get the rate for the deductible that he chose at the time. Once they got up to that deductible would not reflect on any experience modification, but the rate would be in effect at the time and I don't think the rate would be affected by the deductible they chose. You are talking about safe accident experience and what we are talking about is sharing the cost of claims up front.

SIMPKINS: Bill, don't you think to make it really a \$2,500 deductible to the employer shouldn't we have in there loss of time? The total cost of the workers' comp, otherwise we are not giving the advantage of this front end payment.

PALMER: You are right, if you want to do that. If you want to include wage loss benefits as part of the deductible.

SIMPKINS: Question for Riley Johnson. Wouldn't it be more to the advantage of the employer to have the worker's loss of time included in that front end deductible of \$2,500?

JOHNSON: Yes. Our problem in putting the bill together was that we wanted to keep it simple for the first step, then come back maybe in two years to try to change it. We felt it would be more simple to take medical first, then move on.

SMITH: Question for the bill sponsor. Paul, if we pursued this avenue a little bit would it upset you?

RAPP-SVRCEK: I appreciate that question. I am uncomfortable with this line of questioning. As has been indicated, this is a new program. If you want to address this question I think the more conservative way would be to lower the top end to perhaps \$1,500. My intent is to cover medical only and if you feel that someone would get taken by having a medical injury that isn't covered by the deductible, I think I would rather that you lowered the top end.

SMITH: Thank you Paul. My feeling was that I couldn't envision a \$2,500 accident without lost time.

DRISCOLL: Question for Palmer. I think you testified that there are 3,000 people eligible for a modification factor, is that correct?

PALMER: With the state fund.

DRISCOLL: In the fiscal note it says that 10,000 people will take advantage of this deductible option. Why would somebody without a MOD factor take advantage of this? If they don't have \$2,500 in premiums, they can't get a MOD factor. Why would they even go for a deductible if there is no way you can change their MOD factor because they are too small?

PALMER: Mainly because if they took a deductible, which means they are paying the front end cost, let me give an example: instead of paying maybe \$5 a hundred as a rate they might, if they took a \$500 deductible and agreed to pay that first \$500 of a medical claim, they could possibly get that rate for \$4.50 a hundred without having anything to do with experience modification. If they took \$1,000 deductible contract then maybe the rate would go down to \$4 versus \$5, so they are getting that money up front and that is why they would do it.

DRISCOLL: I'll give you an example, bartenders. They are about \$2.50 a hundred now. Unless you had \$100,000 worth of payroll you wouldn't be eligible for a MOD factor.

PALMER: No. You are looking at a different schedule of rates.

DRISCOLL: It will be done on actual assumptions and there will be no forcing people into taking deductibles by raising rates for those people who are not eligible for a MOD factor?

PALMER: I don't see that.

PAVLOVICH: I forgot what my question was but the other gentleman from the department was going to answer it.

JIM MURPHY: I am the bureau chief of the state fund. We had a concern with the bill at the start with the employer paying the deductible up front. In this bill the insurer is paying the bills and will bill to get reimbursed from any employer that chooses, leaving the insurer in control, which is where it should be. They are the ones responsible for adjusting the claim; they are the ones responsible for paying the bills and an employer would not be able then to charge the health and accident or charge the employee.

In workers' comp you think of medical only claims and lost time claims. Both of those kinds of claims would apply to this bill and the medical portion is the deductible portion. I think somebody mentioned about the \$2,500 and \$1,000 wages but the \$800 bill. The \$800 medical bill is all the employer is going to pay. He isn't going to pay \$2,500 if the bill is only \$800.

Regarding rates, I can't tell you that a reduced rate is going to offset what an employer may be paying in a deductible, you would have to look at that on each individual case.

WHALEN: The whole idea behind insurance is to spread risk. Right now we are not effectively doing that by having the three plans. We take out the strongest employers in Plan 1, self insured. The second strongest employers are able to go out in the market and get insurance from private insurance companies and the high risk employers, with the state fund. Now as it applies to the state fund, we take out the frequent claims of small amount, further concentrating the worst risk in the state fund and consequently their rates. The employers who have to go to the state fund and have numerous claims, but are all under this \$2,500 floor, and can pay their own claims, that will help them with their rates. This leaves the high risk employer further concentrated out there, rather than having his risk spread. I am concerned about that employer's ability to get affordable rates if we further concentrate things like we appear to be doing with this bill rather than throwing them into a pool where we can spread them out and have their rates subsidized. The worst case scenario is that you have

no insurance, everybody just pays their own claims, but the idea behind insurance is to spread the risk, so there is a subsidization effect going on there. This seems to be working in the opposite direction. I am concerned, since you are the one who looks over these employers that have to buy insurance from your fund, what impact this is going to have on the types of people that you have to insure as far as their rates are concerned.

MURPHY: If you carry your discussion to the extent where you have a given class code with a number of employers in that class code that opt for a deductible, and actuarially that deductible is determined to reduce the rate by so much, and you leave high risk employers in the other part of the code, you are in fact breaking up the sharing. I think you are absolutely correct. That is exactly what it is doing and it is taking the employers who have the least accidents and are going to pay less in premium and the employers who do not take the deductible but have extreme accidents or high risk areas and their premium could very easily go up. I don't think I could argue with you on that.

WHALEN: Do you think that might force some of them to go naked so that there wouldn't be any coverage. This concerns me.

MURPHY: It concerns me too. Any time rates are raised you have the fear of an employer running bare and there is not much question based on the activity in our uninsured program in the division that there are employers who run bare.

SIMPKINS: I think Rep. Whalen's question should be clarified on this business of spreading the insurance costs because I think we left it hanging.

Jim, in Rep. Whalen's question, technically the MOD factor penalizes these high risk people who have continuous accidents. Now we are talking about offering a discount if the person who feels he doesn't have bad accidents on the front end, but anything over that \$2,500 is still in the big pool as far as the large cost type cost sharing. What you are doing is giving a discount off his normal premium to be in the whole program to spread the cost over everything if he will take care of this small front end deductible. You can confirm that for me, but I don't see where we are threatening programs as such by spreading the cost because the cost will still be spread.

MURPHY: The only way we see this thing working is through what we term a credible class code, where you can deal with a rate reduction. A rate of impact by this bill is to have a double rate so that people in that particular class code, that selected say \$500 deductible, people who selected that \$500 deductible option based on the past history of that class code and how many accidents got to \$500 and how many got to \$20, how many got to \$20,000, that rate would change.

You may be able to hold the second part of that rate for the first or second year, but sooner or later that actuary is going to look at those two and start seeing the impact.

Closing by Sponsor:

RAPP-SVRCEK: I do appreciate the questions that have been asked. I think they have all been good and I don't see any of them as hostile. The better we understand this system the better we can work with it in future years.

SB 315 has the potential to provide significant savings to the state fund and that is important both to employers and to us as legislators who are trying to deal with that issue. While there is no guarantee that this will effect rates, we do know that deductibles do have a positive effect on rates in the private sector and I think we can assume that will happen eventually here. I think it is also significant that there were no opponents to this bill. Both the AFL-CIO and the Chamber of Commerce were on the same side of a workers' comp bill and I appreciate the testimony given by both those entities.

I remind the committee that this is optional. Should this go into effect, the employer could still choose the option of having the fund cover their accidents entirely. I also remind the committee that going without workers' compensation is against the law.

SB 315 gives us the opportunity to become a leader in workers' compensation.

Should the committee act favorably on this bill, Rep. Smith has agreed to carry the bill on the floor.

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HEARING ON SB 348

Presentation and Opening Statement by Sponsor:

SEN. NATHE: In 1983 a restaurant wage protection act was put through. It required that anyone who owns a bar, restaurant or a tavern to post a bond double the semi-monthly payroll for their employees. This bill seeks to exempt from that act those bars, taverns and restaurants that are family owned and operated and their own family members.

I have an amendment which specifically refers to those who own and operate their own bar, tavern or restaurant. (Attached hereto as Exhibit #1). You will find on the top of page 2, line 3, what immediate family means. It is spouse, parents, children, grandchildren, brothers or sisters of a person operating a business as a restaurant, bar or tavern.

Then if you go to the back on page 4, line 9, is where the amendment fits in and it would read "a person who owns and operates a restaurant, bar or tavern is exempt from the provisions of 39-3-604 to the extent, etc." It just applies to family owned businesses.

Testifying Proponents and Who They Represent:

LEON STALCUP, Montana Restaurant Association.

Proponent Testimony:

LEON STALCUP, proponent. We support this bill.

Testifying Opponents and Who They Represent:

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

Opponent Testimony:

JIM MURRY, opponent. This law contains an important bonding provision that guarantees that employees are paid their wages and the state receives unemployment insurance and workers' compensation taxes in the event the operation of the business ceases. We feel very strongly that family members deserve this protection as much as any other workers. When they are employed by the business, why should they be required to give up the same protection that other workers are entitled to. The protection offered by the Restaurant, Bar and Tavern Protection Act has proven important for workers time and time again. Cashing of the bond required by this act have shown an increase over the past few years. Only one bond was cashed to pay wages and taxes in the fiscal years 1986-87, in 1988 there were six bonds that were redeemed for this purpose and three have already been cashed in this fiscal year. The restaurant and tavern business is obviously suffering from an increased failure rate and now is not the time to restrict these important protections through workers, no matter who those workers are.

Questions From Committee Members:

PAVLOVICH: Question for Mr. Murry. Jim, how does this effect me when half of my help is my family?

MURRY: Under the present law you would have to treat everybody the same.

WHALEN: Question for whoever can answer it. I don't know what the Restaurant, Bar and Tavern Wage Protection Act is so whoever can explain that to me.

NATHE: It is in this bill as far as posting of the bond.

WHALEN: What does it do, the Act?

NATHE: It merely requires that the person who is operating the business as a restaurant, bar or tavern to file a bond equal to at least double the amount of the projected semi-monthly payroll with the Commissioner of Labor.

WHALEN: What does it do as far as the employee is concerned?

NATHE: That means if they go broke then their wages are paid at least a month forward and so is the workers' comp and all that.

WHALEN: So this applies to wages as well as workers' comp?

NATHE: Right. That's what the bond covers. That is to pay the unpaid workers' comp and the unpaid wages after they go broke. Keep in mind that this is the only industry that we require this of in the state.

WHALEN: If families are exempted from this and it turns out that workers' compensation isn't paid, do you know then whether or not they would then have a right to sue their family for any injury that occurred on the job?

MURRY: When a worker is entitled to bring a lawsuit to seek recovery, so many times there isn't anything to recover because there isn't anything there. The bond is placed to give that protection and to give that assurance to those workers whether they are family members or not. The problem that we have run into is where workers are being excluded especially from workers' comp coverage and there seems to be a clear understanding that they are not to be covered, but then when they receive an injury we find that they are filing for workers' compensation benefits under the law.

These are low paid workers. The U.S. Department of Labor announced that there was a 318% increase in wages recovered because of wage and hour violations by Montana employers for the fiscal year 1988 over 1987. That is a dramatic increase. What that is showing is that the state of the economy is being reflected on the employers and employers are cutting some corners. The result of that is that the workers need those protections more than ever before and particularly in the service and retail trades.

WHALEN: Do you know how this Restaurant, Bar and Tavern Wage Protection Act is enforced?

MURRY: It is enforced through the Montana Department of Labor.

WHALEN: Do they just wait until a violation has been brought to their attention or what?

MURRY: The Department of Labor does not have the staff to go out and make independent investigations. It is usually in response to a claim by a worker or grievance that is filed with the Department of Labor.

PAVLOVICH: What is the going rate for bartenders in Montana?

MURRY: I can't tell you exactly what that scale is but I guess what I am referring to is the kind of jobss that pay less than \$7,000 a year.

PAVLOVICH: How many of the major cities in Montana have a contract?

MURRY: Most of the major cities have contracts but I should point out that those contracts don't cover every bartender or waitress in the community. There are many employers, who are good employers. They have a concern about their workers and about the families of those workers and they do everything they can to treat them fairly. The vast majority of employers in Montana come into that category.

THOMAS: Does this bill have anything to do with workers' comp?

NATHE: No it doesn't.

SIMPKINS: The statistics that I read from the Department of Commerce showed that we have gone into something like 29,000 self-employed people here in the last year. People have started their own businesses. Wouldn't that indicate that we have started a lot of small business that are just family members?

MURRY: That is certainly the case. The growth of jobs is primarily in that category. In service and retail trade many of those jobs fall in that very category that you are talking about.

Closing by Sponsor:

NATHE: Very briefly, it is just to exempt immediate family members from this bond requirement. If they employ others they still have to post a bond in that same establishment for those others who are not immediate family members.

He will get back to us about who will carry this bill on the House floor.

- - - - -

HEARING ON SENATE BILL 420

Presentation and Opening Statement by Sponsor:

SEN. AKLESTAD: SB 420 puts us in line with the federal

requirement that Judge Battin made a ruling on approximately a year ago concerning strikes and unemployment pay.

I want to make sure striking employees can draw unemployment because the feds say they are entitled to it and that is what the amended language is to make sure they can draw unemployment if the feds say they are entitled to it when it is under federal jurisdiction.

List of Testifying Proponents and What Group They Represent:

None.

Proponent Testimony:

None.

List of Testifying Opponents and What Group They Represent:

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

Opponent Testimony:

JIM MURRY, opponent. I commend the Senate for the amendment to the original bill and Sen. Aklestad is right, the amendment does clarify this bill and takes care of many of the objections that we testified to when it was before the Senate Labor Committee.

This bill comes from the case involving the Decker Coal Company in a very long strike by the United Mine Workers of America during which an unfair labor charge was filed against the company by the Union. The Montana Department of Labor made a judgment on that unfair labor charge and held that the company had been guilty of the unfair labor charge and granted unemployment compensation benefits. That case was then appealed to the federal courts and Judge Battin's decision was that the state cannot make a ruling based on violation of federal law that that takes action in a federal court. In the meantime, the National Labor Relations Board acted on the original charge that had been brought by those workers in the coal fields in Decker and the NLRB agreed with the Montana Department of Labor that there had been an unfair labor charge on the part of the employer and the workers received their benefits. They were not asked to pay those benefits back.

We have a concern about this and we thought that Judge Battin's decision was going to be appealed and because the benefits that had been granted that was not the case. The United Mine Workers did not take that case to court. We couldn't do anything about it because we didn't feel we had standing to pursue it. Our concern about this is that if the intent of the legislature is to take this away from the Montana Department of Labor. In many instances we are going

to find workers who really need unemployment compensation benefits and in this case they are clearly entitled to them, who are going to be without those benefits, and being able to take care of his family.

What we would rather see is the Montana Department of Labor take care of this particular problem through the rules but we would like to be in a position to be able to pursue it. I know that is a rather complicated theory that I have just given to the committee, but we still feel we have to go on record in opposition to this legislation.

Questions From Committee Members:

SIMPKINS: Question of Jim Murry. From what I understand, our law is not in compliance with the federal ruling. We do have to make a change. We are stuck until somebody appeals it to the supreme court to have it overturned.

MURRY: That's right. The Montana labor movement would like to be in a position to appeal a decision like that to a higher court to see if the state does have the right to make a decision in cases like this. This is not the first case that the state had ruled.

DRISCOLL: I don't see where the Senate amendment is such a good deal. I think it would be better without that amendment. Explain to me in subsection (3) on page 3 where this gives the federal NLRB jurisdiction instead of the state. I can't understand from the words that are in subsection (3) where it says "Battin's ruling stands."

MURRY: It comes under the section 39-51-2305 on page 2 under disqualification when unemployment is due to a strike. The original bill denied unemployment benefits to workers from the federal government when the federal government decides that a strike is the result of unfair labor charges. Even if the federal government decided that the strike was the result of unfair labor practice, those workers would still be disqualified from receiving unemployment compensation benefits. That was the amendment Sen. Aklestad was talking about.

Closing by Sponsor:

AKLESTAD: This puts us in compliance with the federal law. When these unemployment funds are paid out to someone it is very hard to get them back when you have paid out on unemployment and they have spent the money. I don't think we probably should try because they are depending on that money and have planned on it.

We are just going to comply with the federal law and we are not trying to take anything away from anybody who isn't deserving of it and that is why we put the amendment in.

It wasn't clear in the bill and that is why we amended it in. I am very sympathetic toward the amendment. I think it should be there because after there has been a dispute and it is found that those companies were not living up to their bargaining agreement, I believe the individual should be able to draw unemployment.

Rep. Thomas has agreed to carry this bill on the House floor.

- - - - -

HEARING ON HOUSE BILL 421

Presentation and Opening Statement by Sponsor:

SEN. AKELSTAD: SB 421 will take care of a situation that we have between us and Canada concerning workers' comp in this case. The situation that we have concerns truckers, but there are other occupations who have this problem too, whether it is a farmer, a logger, or anybody who is working some across the border. They are paying workers' comp now to their employees in the United States, but when they go into Canada, in most provinces, they have to also take out workers' comp for those employees up in Canada. We have a verbal agreement with the Province of Alberta, but in other provinces our employers are having to pay double. They pay for their employees in the United States and then go across the border and pay again.

What this bill will do is give the governor six months to enter into an agreement with the Canadian provinces and come up with a reciprocal agreement with them. We are just trying to make a fairness issue out of it. We are not trying to reduce workers' comp, but we are trying to get rid of that double compliance where they actually have to carry double workers' comp on their employees and that is the bill.

List of Testifying Proponents and What Group They Represent:

BEN HAVDAHL, Montana Motor Carriers Association.

JIM MURRY, Administrative Secretary of Montana state AFL-CIO.

JAMES TUTWILER, Montana State Chamber of Commerce and by request the Montana Self Insurers.

Proponent Testimony:

BEN HAVDAHL, proponent. We wish to go on record in support of SB 421. Sen. Akelstad has pretty well laid out the problem. To my knowledge the Canadian provinces of Manitoba, British Columbia and Alberta all require a Montana based motor carrier to provide a fully paid workers' comp policy issued by those provinces on any workers who may be temporarily

employed up there. The result is that the carrier ends up paying double premium -- in Montana and in Canada. In fact, he may end up paying a premium three times or more if he operates the same employee in more than one province. Under the current situation, Montana does not require a Canadian trucker operating in Montana to have a fully paid up workers' comp policy in effect before he can operate here. SB 421 provides a mechanism for a reciprocity agreement between Montana and those Canadian provinces, as has been pointed out.

JIM MURRY, proponent. We would like to testify in support of SB 421. In the Senate Labor Committee hearing we simply brought up that perhaps the committee should consider an amendment and this is not to kill the bill. We are talking about coverage as provided under the laws of this state. We thought the committee should give some consideration to maybe upgrading that and talk about coverage provided under the laws of Canada or the provincial governments of that country. The reason we raise that is because premium costs treat employers better in Canada because they are highly subsidized by the government. The workers' comp benefits for injured workers are considerably better in Canada so if a worker is hurt up there they should have the advantage of having the higher benefits. By the same token, when we negotiate a reciprocal agreement with Canada, we should try to take advantage of the lower premium cost for Montana employers as well.

JAMES TUTWILER, proponent. We want to be included in support of this bill.

List of Testifying Opponents and What Group They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

None.

Closing by Sponsor:

AKELSTAD: I just want to emphasize that right now they are paying double and I would not like to see the bill amended because I think it would create problems and it might create the most problems for the employees. When they get up there the United States workers' comp wouldn't cover them, they would be covered under theirs. I think it would be a paperwork mess to cover that and I am really concerned that if an employee gets up there and gets hurt, then you are

under their jurisdiction. We know what we are getting under our law, but not under their law. I don't think we should put the employee in that situation of having to go under the guidelines of Canadian workers' comp. I think it would cause problems for the employee.

I think it is a good clean bill. It still maintains that there is workers' comp for every employee, it just cuts out the double application. Hopefully we can get something done.

Should this pass the committee Rep. Smith will carry this bill on the House floor.

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DISPOSITION OF SENATE BILL 421

Motion:

Rep. Lee moved DO CONCUR.

Discussion:

SMITH: I understand where Jim was coming from with that amendment but I think we would run into some horrible problems with it. I think we had better leave well enough alone.

DRISCOLL: If and when this is negotiated I hope they will say that if the Canadians are here for more than thirty days they have to comply with our laws. I guess there is no reason to amend the bill, but if they don't negotiate that into the agreement, then in the future they will be back here asking us to change this law just like they did with Idaho and the loggers.

SMITH: I think that is already covered in the present law that thirty day bit, isn't it?

DRISCOLL: I think that was done through the administrative rules. The commissioner of workers' comp or of labor already has the power to negotiate with other states for reciprocal agreements. In the rules that the department adopted they said that anybody who is in Montana for thirty days or longer had to pay Montana premium to comply with our laws.

RUSSELL: Do any other states in the northwest have this kind of arrangement with Canada?

SMITH: I don't know about Canada, but I know we have it with other states, so I don't see why it wouldn't work with Canada.

Vote: Unanimous vote DO CONCUR on SB 421.

DISPOSITION OF SB 420

Discussion:

WHALEN: SB 420 apparently attempts to codify a decision of Judge Battin with regard to the strike at Decker. I understand the bill is attempting to move jurisdiction away from the state courts into the federal courts with regards to a determination of what is an unfair labor practice and whether or not employees who are out on strike are ultimately entitled to unemployment insurance benefits.

I think that is a dangerous move. I think that working men and women would be better served if that decision is made by the Department of Labor and Industry here in Montana rather than a state or federal court and if that is appealed, a federal circuit court out in California somewhere.

Based upon that, I would make the motion to table, but before I make the motion I would leave it up for the discussion of the committee.

SMITH: I might disagree a little with Tim on this. I think if it is under federal jurisdiction and it is a federal court order it should also apply to the laws of the state of Montana.

Motion:

WHALEN: I move that we TABLE SB 420.

SIMPKINS: I make a substitute motion that we DO CONCUR with SB 420.

RUSSELL: We have a substitute motion to DO CONCUR, do we have any discussion?

SIMPKINS: I'm looking at this and I understand what Tim is saying, but the way I understand the due process, if you are in violation of a federal law you go to federal court; if you are in violation of a state law you go to state court, so if we want to approach this properly then we should enact the law as a state law that parallels the federal law then we could have the state courts or the state department of labor make the jurisdiction.

This is not the first time that we have had to modify our laws to comply with federal court decisions. I do feel that this was presented to us as correcting a law in accordance with federal court jurisdiction that was made bringing the

state in compliance with the federal law, so we should go ahead and pass this.

DRISCOLL: In interest of saving time, I think that since the motion to table is not debateable it should be withdrawn until people are finished making their arguments for or against the bill. That is what we have agreed on in other committees that a motion to table will not be made until everybody has had their say.

RUSSELL: Just to speed things along, Rep. Whalen would you withdraw your motion to TABLE.

WHALEN: I wonder if I can do that since a substitute motion has been made.

RUSSELL: Rep. Simpkins, why don't you withdraw your motion and if you will do the same Rep. Whalen, let's start over.

WHALEN: I withdraw my motion.

SIMPKINS: I withdraw my motion.

WHALEN: I want to respond to a statement that Rep. Simpkins made. It doesn't necessarily follow that just because the feds have passed laws in a particular area that preemption applies. There are a lot of complicated rules that determine whether or not there is going to be federal preemption or not. Without getting into all of those, essentially what it boils down to is the states can pass laws and make rules in an area where the feds have also passed laws and made rules, so long as they do not conflict with the federal laws and rules. In addition, with regard to jurisdiction, if you are taking a federal law, but applying it for the purpose of interpreting a state law, which unemployment insurance laws are state laws and there is a federal preemption so I guess for clarification of the committee there isn't a preemption problem in my estimation with regard to having a state department of labor and industry determine for the purpose of applying the state unemployment insurance laws what is an unfair labor practice insofar as determining whether or not UI benefits are appropriate.

SIMPKINS: The appeal was not based upon a labor dispute based upon state law, but we are talking about appeals based on a violation of federal law. So, therefore, the appeal is not being filed with our department of labor based upon state law, but based upon federal law. Our laws for unemployment insurance are supposed to comply with the federal law.

WHALEN: There was no appeal in this case. My understanding is that the NLRB in this particular case determined that there was an unfair labor practice and then based upon that the state granted unemployment insurance benefits to the workers

at Decker. Battin's decision was never appealed out of the federal district court and it could have been appealed to the ninth circuit, and then the ninth circuit could have either agreed or disagreed with this decision and it could have been appealed even further. I don't know whether or not that would necessarily have been controlling insofar as determination at the state level by the state Department of Labor and Industry whether unemployment insurance benefits were appropriately awarded or not awarded in this case.

RUSSELL: I think to be proper about this we probably need a motion that is other than a tabling motion to continue this discussion.

Motion:

WHALEN: I move we TABLE SB 420.

RUSSELL: Non-debateable motion.

Vote:

PASSED 10 to 4 in favor of TABLING SB 420.

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DISPOSITION OF SB 348

Motion:

PAVLOVICH: Moved DO PASS the amendment to SB 348.

RUSSELL: You are moving the amendment. Which amendment are we talking about.

PAVLOVICH. We are talking about Sen. Nathe's amendment.

Vote:

Unanimous vote to PASS the amendment.

Motion:

PAVLOVICH: Moved to PASS SB 348 AS AMENDED.

Vote:

Ten to six in favor to PASS SB 348 AS AMENDED. Those voting against it were Whalen, Squires, Cocchiarella, O'Keefe, Driscoll and Kilpatrick.

Rep. Pavlovich will carry this bill on the House floor.

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DISPOSITION OF SB 315

Motion:

THOMAS: I move that SB 315 BE CONCURRED IN.

Discussion:

WHALEN: This bill concerns me because we are fragmenting the pooling effect that exists under insurance. I think we might unintentionally be creating a situation where the employer who has medical claims are in excess of the deductible amount, we might further be concentrating those high risk employers and not satisfactorily spreading the risk. We might be unintentionally driving the rates up for the very people we don't want to drive the rates up and that is the marginal employer and the more high risk employer. I think that would apply not only to the state fund, but also to Plan 2 carriers. I don't think this bill would effect Plan 1 carriers one way or the other.

I am concerned if we pass this bill, as laudable as the intent behind the bill is, we might be creating a situation where we are increasing the premiums that have to be paid under Plan 2 and Plan 3 on those employers who we actually want to subsidize so that their rates come down and that they are able to obtain workers' comp at an affordable level.

SMITH: I realize what Tim is saying and he is at least partially right. I think one of the places that we have been coming from on this workers' compensation is making a lot safer work place and maybe that is a way to make them clean up their act. I think it is a good bill just the way it is.

THOMAS: I concur with Rep. Smith. I would like to discuss the fragmenting of the pool developed by insurance premiums in that aspect. I think the thing we may not be following here is that a deductible does not fragment your risk. All you are doing there is you are transferring less of the risk to the workers' compensation policy and that is the same thing you do with any other insurance policy, whether it be auto insurance or any other. You are keeping part of the risk with yourself and in this case the workers' compensation policy not only covers the employee for injuries but it covers the employer for being financially responsible for those injuries. So in this case the employer, should he decide to keep part of the deductible, he is keeping part of the direct responsibility for these claims to be paid. The higher the deductible the more responsibility he is holding for himself and that's why you get a lower rate to be paid into the pool because there is less risk in the pool now. Let's vote on it, it's a good bill.

WHALEN: My question isn't less risk, it is less risk to whom. If you take away the less risky employers out of the pool, that saves them money but it doesn't save the high risk employer any money. How do these experience factors work? I can see that there is a tradeoff. If an employer has to bear the full brunt of his work place accidents that will give him the incentive to make him a safer employer. What I need to know is how do those risk factors work? Do they work in direct proportion to the injury that a worker sustains as far as the premium that an employer is going to have to pay for a workplace accident?

SMITH: I believe that you are speaking of experience modification. Let's assume that I am a new employer and I start working the first of July of this year. I don't even have an experience modification for two years because it is the first three of the last four previous years. During that period of time I could run up a bunch of accidents at terrible cost. When you assume a deductible, it is just like a health plan, the larger the deductible the cheaper the premium because you are absorbing part of the risk. I think when an employer is absorbing part of the risk himself he is going to watch more closely. Say a guy picks up a chain saw and goes out to limb a tree and he hasn't got his chaps on. That employer is going to think that he is apt to cut himself and it would cost him some bucks. This is where the difference lies. I think it is going to create an incentive for people to be more conscious of it and the guy who is paying the bill on it is going to make sure that guy isn't going to go out there and saw his leg or chop his foot or cut his arm, etc.

DRISCOLL: I don't think the bill is broad enough but the sponsor doesn't want it broadened. The questioning during the hearing by Rep. Smith about how could you have an injury without any lost time that was worth more than \$500 or \$600 and I can't envision any medical only where there was no lost time. I think the people who are going to buy these deductibles are going to have to be pretty sophisticated because if they take a \$2,500 deductible and there is lost time on that accident then it is still going to be charged against him. The biggest thing that is the matter with the MOD factor is that frequency has more weight than severity. If you have five little accidents you get a bad MOD factor. Maybe it only cost \$3,000 for all five of them and you have one that has \$85,000. For purposes of just the MOD factor, it is better to have one that cost \$85,000 than five that cost \$500 each. The MOD factor that we have is ridiculous but, like Rep. Smith said, maybe when a person has to start taking the money out of his pocket, in addition to premium payments they will see the cost, and then maybe that will put some safety on the job. If we get one more safe employer, one who is more safety conscience, I believe it is worth it and I think it is a good bill and think we should give it a try. Maybe they will broaden it to lost time in

the next session.

WHALEN: If my modification factor as an employer changes because of the frequency and it doesn't go up for two years, then I guess if I were a shrewd employer I would let the state fund, or Plan 2 private insurance carrier pick it up rather than me picking it up in the way of a deductible. I am wondering how this legislation is going to make an employer feel financially the brunt of an injury to his worker.

SMITH: I would like to respond to that. To begin with, under the scenario you painted for us, God help you if you figure on staying in business over two years because it will break you. That experience modification will really catch up with you. Here is another thing, when you start out in business, you start at one, 100% of the rate. The only way that you might get a little discount on that when you are starting in business is to go with the deductible plan. I don't know what the actuaries are going to do with all this but I am sure there is going to be a rate reduction if you are going to absorb part of the risk. I think we ought to play with this for two years and then take another look at it.

Vote: Supporting Rep. Thomas's DO CONCUR motion.

Unanimous vote to DO CONCUR IN SB 315.

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DISPOSITION OF SB 186

Motion:

WHALEN: I move DO CONCUR on SB 186.

I also wish to move an amendment and that amendment would be to put the assigned risk pool back in the bill, which I understand was taken out by Sen. Thayer. Page 1, line 10, also on page 4, lines 9 through 13 you have to strike everything following Montana. I have a copy of the amendment here from Eddy McClure.

RUSSELL: Eddy would you just go over that quickly for us.

McCLURE: The first two amendments that Rep. Whalen was talking about were technical changes to the title, but to put the assigned risk plan back in on page 5, line 9, following line 8 you would put a new section, Section 2, Assigned Risk Plan, and you put back the language that was struck, renumber the sections, that would also cause to change the codification instruction because there are some numbers that would have to be changed. The rest would be technical amendments to change the codification, to change some internal references.

WHALEN: The reason I am offering this is I like the assigned risk plan because it allows the state fund to apportion out some of that risk to Plan 1 and Plan 2 carriers. I think the only way we could sell it is if we apportion out some of that risk to the stronger carriers. I have always felt that part of the problem with the rates of the state fund is the fact that they end up with all the dogs and cats. Under an assigned risk plan those who are given the privilege to obtain insurance through Plan 1 or Plan 2 have to pick up some of the risk associated with the Plan 3 pool.

SMITH: I met with a group of insurance people, work comp carriers, in the state of Montana. To get out from under this liability you have to have somewhere between \$220 and \$250 million just for them to take the liability order.. There is no way that anybody is going to buy this state fund.

DRISCOLL: If you want to vote on an assigned risk pool, that is coming in the governor's bill to separate the fund from the division.

MCCORMICK: I make a motion to TABLE SB 186.

Vote:

Vote to TABLE SB 186 passed 14 to 2. Those voting against tabling the bill were Pavlovich and Whalen.

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DISPOSITION OF SB 160

Motion:

PAVLOVICH made a motion DO CONCUR.

Amendments:

COMPTON: I have an amendment I wish to offer. This comes from the Montana Restaurant Association. (Here he handed a copy of the amendment out to committee members, copy of which is attached hereto as Exhibit #2).

RUSSELL: You are moving that amendment, Rep. Compton? (He replied yes). Can you tell us a little bit about the amendment?

COMPTON: (Here he read the amendment).

Discussion on Amendment:

SIMPKINS: One of the primary reasons that this amendment was put in there is because the state of Montana does not require them for income tax purposes. They do for the federal

government so the Restaurant Association felt that inasmuch as it is not income, as far as the state of Montana is concerned, they should not have to pay unemployment or workers' comp on these tips. I think that sort of explains it, doesn't it?

DRISCOLL: Tips in this state are not taxed for income taxes. After what the federal government did in 1985 they said that the waiters, waitresses and bartenders would have to report 8% of the gross of the restaurant as tips, whether they made it or not. When that federal law passed, I put in a bill to exempt tips in this state from Montana income tax until the federal government repeals their 8% law. If they ever do repeal that 8% law the Montana waiters, waitresses and bartenders will have to start paying Montana income tax. The issue was that a lot of people came in and they were assigned 8% by the federal law. If you worked in one of these small restaurants where tips were not normal, like some of these fast food places, not fast food like a hamburger joint but a franchise steak place where tips are not normal, they were coming in here and showing us their check stubs and they weren't taking any money home. So that is why we repealed the income tax for Montana on their tips. But the effect of the amendment is that if these people get laid off, their unemployment would be lower. Presently the restaurant has to pay unemployment tax on the tips, FICA and workers' comp. This is the smallest tax of the three. It will lower the benefits to the laid off person.

COMPTON: I think there are very, very few waitresses who receive workers' comp. They are college gals and boys who work during the season and when they go back to school they can't draw unemployment. There are very few regular waitresses who quit. That's their job and that's the only job they know. Many places there just aren't any other jobs, so they just don't ever draw any unemployment. They stay on the job.

COCCHIARELLA: I was a housewife working as a waitress who got laid off in October, at the end of the tourist season. That was our only income, and I did collect unemployment. I know there were other people who used that as their main source of income. They were not college people. Lots of people in Montana work under those conditions in restaurants.

SIMPKINS: We took away the tip credits here in Montana. I have listened to Jim Murry mention down here that restaurants are having a tough time. What we are doing here is saying if it is not going to be technically income and taxes being paid on it, then you shouldn't have to pay this other part which would be the unemployment insurance portion of it, unless maybe the restaurants get some benefit out of the tips.

What benefits do the restaurants get out of the tips? All they have to do is pay the extra premiums on it, it doesn't

quite make sense.

Vote:

On the amendment. Roll call vote taken and AMENDMENT DEFEATED by a 9 to 7 vote.

Amendment:

PAVLOVICH: Presented amendment attached hereto as Exhibit # 4.

Vote:

The amendment presented by Rep. Pavlovich has PASSED.

Motion:

PAVLOVICH: Moved the bill BE CONCURRED IN AS AMENDED.

Vote: 15 to 1 in favor of SB 160 CONCURRED IN AS AMENDED. Rep. Smith entered a no vote.

Rep. Driscoll will carry the bill in the House.

ADJOURNMENT

Adjournment At: 6:55 P.M.



ANGELA RUSSELL, Chairman

AR/mo

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-14-89

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

ROLL CALL VOTE

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

DATE 3-14-89 BILL NO. 420160 TIME _____

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

7 9

Maureen O'Hara
Secretary

Chairman

MOTION: _____

Amendments to Senate Bill No. 348
Third Reading Copy

Requested by Senator Dennis Nathe
For the House Labor Committee

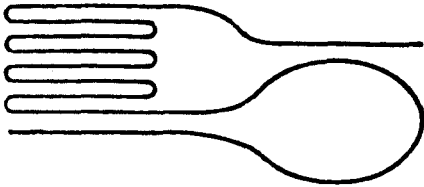
Prepared by Tom Gomez, Staff Researcher
March 14, 1989

1. Page 4, line 9.
Following: "person"
Strike: "operating"
Insert: "who owns and operates"

2. Page 4, line 13.
Following: "person"
Strike: "operating"
Insert: "who owns and operates"

Montana Restaurant Association

Legislative Committee
P.O. Box 7369
Missoula, Montana 59807



proposed amendment to SB 160

page 7 lines 15 & 16 insert new

- 12 (ii) remuneration paid by any county welfare office
13 from public assistance funds for services preformed at the
14 direction and request of such county welfare office.
15 (iii) tips and other gratuities received by the -
16 employee.
17 (19) "Week" means a period of 7 consecutive calandar
18 days ending at midnight on Saturday.

1. Title, line 8.

Following: "SERVICES;"

Insert: "TO EXCLUDE FROM THE DEFINITION OF EMPLOYMENT THE
SERVICES PERFORMED BY INSTALLERS OF FLOOR COVERINGS;"

2. Title, line 15.

Strike: "39-51-203"

Insert: "39-51-204"

3. Page 14

Following: line 7.

Insert: "Section 4. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment.

(1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such

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act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment,

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skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop shall not be construed as a lack of freedom from control or direction under this subsection); or

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing

remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution.

Renumber: subsequent sections.

VISITORS' REGISTER

House Labor

COMMITTEE

BILL NO. SB 285

DATE 3-14-89

SPONSOR Halligan

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

House Labor

BILL NO. SB 315

DATE 3-14-89

SPONSOR Rapp-Soren

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

March 15, 1989

Page 1 of 4

Mr. Speaker: We, the committee on Labor and Employment Relations report that SENATE BILL 160 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Angela Russell, Chairman

[REP. DRISCOLL WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 8.

Following: "SERVICE;"

Insert: "TO EXCLUDE FROM THE DEFINITION OF EMPLOYMENT THE SERVICES PERFORMED BY INSTALLERS OF FLOOR COVERINGS;"

2. Title, line 15.

Following: "THROUGH"

Strike: "39-51-203"

Insert: "39-51-204"

3. Page 14, line 7.

Following: line 7

Insert: "Section 4. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1)

The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or

its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop shall not be construed as a lack of freedom from control or direction under this subsection); or

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

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(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for

religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Renumber: subsequent sections

4. Page 22, line 7.

Strike: "10"

Insert: "'11"

5. Page 22, line 9.

Strike: "9"

Insert: "10"

STANDING COMMITTEE REPORT

March 15, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that SENATE BILL 285 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Angela Russell, Chairman

[REP. SMITH WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 8.
Following: "NOTES,"
Strike: "AND"

2. Title, line 9.
Following: "DATE"
Insert: ";AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 4.
Following: line 25
Insert: "NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval."

STANDING COMMITTEE REPORT

March 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 315 (third reading copy -- blue) be concurred in .

Signed: Angela Russell
Angela Russell, Chairman

[REP. CLYDE SMITH WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 15, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that SENATE BILL 348 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Angela Russell, Chairman

[REP. PAVLOVICH WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 4, line 9.
Following: "person"
Strike: "operating"
Insert: "who owns and operates"

2. Page 4, line 13.
Following: "person"
Strike: "operating"
Insert: "who owns and operates"

STANDING COMMITTEE REPORT

March 15, 1989

Page 1 of/

Mr. Speaker: We, the committee on Labor and Employment Relations report that SENATE BILL 421 (third reading copy -- blue) be concurred in.

Signed: _____
Angela Russell, Chairman

[REP. SMITH WILL CARRY THIS BILL ON THE HOUSE FLOOR]

VISITORS' REGISTER

House Labor

COMMITTEE

BILL NO. S. B. 348

DATE 3-14-89

SPONSOR Nathe

[illegible]

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VISITOR'S REGISTER

House Labor SUBCOMMITTEE
AGENCY(S) Bill No. 513420 DATE 3-14-89
DEPARTMENT anlected
Sponsor

NAME	REPRESENTING	SUP- PORT	OP- POSE
Jim Murry	Mont. AFL-CIO		X

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IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.

VISITORS' REGISTER

House Labor

COMMITTEE

BILL NO. SB 421DATE 3-11-89SPONSOR Arnstad

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Kay Foster	Billings Chamber	X	
CAL CUMIN	YELLOWSTONE CO	X	
Ben Hurdall	MT Motor Carriers Assn	X	
Maywood	MT. Self Insurance Assn	X	
Bill Gannon	DWE	-	
Jim Twissel	MT CHAMBER	✓	
Charles Brooks	MT Retail Assoc	✓	
Jim Klurry	Mont. AFL-CIO	✓	

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