

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman Gene Thayer, on January 25,  
1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer,  
Senator Boylan, Senator Noble, Senator Williams,  
Senator Hager, Senator McLane, Senator Weeding, Senator  
Lynch.

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON SENATE BILL 175

Presentation and Opening Statement by Sponsor: Senator  
Beck, Senate District 24, stated SB 175 provided a  
procedure for people harmed by unlawful conduct of a  
licensed motor vehicle dealer, to take action against  
the dealer's acquired bonds. He said, licensed dealers  
are required to have a \$5,000 bond, insuring their  
compliance to law. He said situations had arisen where  
vehicles had been sold without a clear title, or lien,  
causing a financial loss to the purchaser. He said, "At  
the present time, the dealers bond runs to the state  
and is considered to be a punitive bond which does not  
provide financial relief to the injured party. This  
bill provides a method by which the injured party can  
recover a loss caused by the unlawful acts of a  
licensed dealer."

List of Testifying Proponents and What Group They Represent:

Peter Funk - Department of Justice  
Bud Shane - Motor Vehicle Division

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Peter Funk explained SB 175 as a procedural clarification of the existing statutes. He stated there were no changes of substance contained in the bill until page 4. He cited language at the bottom of page 4 which required any licensed dealer in the state of Montana to post a \$5,000 bond with the department. Mr. Funk stated, the language read, "The applicant shall conduct his business in accordance with the requirements of the law". He said several instances had arisen where an individual had been harmed by the unlawful act of a dealer, and they attempted to utilize the bond. He explained, under the existing statutory language, there was no direction or process by which the bond could be paid to an injured party. He stated they had drafted all of the clarifying language in subsection (b), starting at paragraph 4. He explained that if someone was harmed, in the manner described, he must obtain a judgment from a court of competent jurisdiction. He said the judgment had to state two things essentially, and they were contained in the last sentence of the proposed amendment.

The judgment must determine if there was a specific loss or damage, and if it was caused by the dealer's unlawful operation. He said, in the past, harmed individuals were the plaintiff, and both the department and the dealer were named in the suit. He explained that the department had no place being involved in the actual suit. He further explained, the purpose of the suit was to determine proof of harm being done, and who was responsible for the harm. He said that in the past, the department had expended a fairly substantial amount of resources through involvement in such actions. He stated it would be preferable to have the issue of damage and cause resolved, and the judgement made before the Department became involved. He stated there was also language contained in the paragraph which restricted the cost for the department had to fall within the amount of the bond.

Mr. Shane stated, on an average year, they received twelve to fifteen complaints from consumers, and nearly the same number from attorneys trying to

collect on the bonds. He said there were also nearly two dozed bonds cancelled each year.

Questions From Committee Members: Chairman Thayer asked if the dealers were used car dealers rather than new car dealerships? Mr. Shane replied, "There have been no claims, or cancelled bonds from a franchised dealer. Complaints have been on used car dealers, and traders who sell motor homes also."

Closing by Sponsor: Senator Beck expressed his appreciation for the committee's consideration, and urged their support.

#### DISPOSITION OF SENATE BILL 175

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch moved SB 175 Do Pass. Senator williams seconded the motion. The motion carried unanimously.

#### HEARING ON SENATE BILL 186

Presentation and Opening Statement by Sponsor: Senator Boylan, Senate District 39, addressed the committee by stating SB 186 was "An act requiring the sale of the State Workers' Compensation Insurance Plan Fund to the highest responsible bidder." He also stated, "There are about thirty states in the United States that do not have State Workers' Compensation."

He said that last session there had been an interim committee appointed to study workers' compensation. He stated, "Also there was a conference committee, on the bills, to try to make the workers' compensation better. I don't think workers' compensation improved any, I think that it is as bad as it was and maybe a little bit worse. The Governor, in his State of The State Message, said that there is a \$157,000,000 unfunded liability."

Senator Boylan then passed out a letter from one of his constituents (See Exhibit 1). He also supplied a copy of a Workers' Compensation Newsletter from California (See Exhibit #2).

List of Testifying Proponents and What Group They Represent:

Lorna Frank - Montana Farm Bureau Federation  
Laurie Shadoan - Bozeman Chamber of Commerce  
Lorraine Gillis - Self - Phillipsburg, Montana  
Bill Ogle - Kenyon Noble Lumber Company

List of Testifying Opponents and What Group They Represent:

Jim Murry - Montana State AFL-CIO  
Mike Sherwood - Montana Lawyers Association

Testimony: Lorna Frank said Senator Boylan's bill addressed the issue, and the Montana Farm Bureau endorsed SB 186 (See Exhibit #3).

Laurie Shadoan said she was a business person in Bozeman, and was insured by workers' compensation. She stated, "As an employer it is against state law to go without workers' compensation within the state of Montana." She further stated, "It is time that the legislature lives within the rules that they enact."

She said, "I believe this can be done by suggesting a Do Pass on SB 186. I believe the state has demonstrated with years of history, that they can not run the division as a business. I was appalled to learn the Workers' Compensation Division was in the red as far back as 1979. As a business owner, if I ran my business as the division has been run, I would not be in business. I contend that SB 186 addresses this problem and would put the insurance division into capable hands." (See Exhibit #4)

Lorraine Gillis said, "As a rancher, we have long advocated that we need to get the state out of the business of insurance." She further stated, "Our county is dependant on logging, agriculture and mining. There is no doubt that workers' composition is coming down hard on, for instance, logging persons and we need to have it out of the state."

Bill Ogle said, "We employ, seasonally, a maximum of seventy people in the building material business...." We compete in a three state area....we are incorporated in Idaho on a proposal to do business. We have been in contact with their Wokers' Compensation Division. In addition to that, we recently were competing for some work for on some mines in southwestern Montana. We lost the project work by a very slim margin. It occurred to me that our effective payroll rate in Idaho was about six

percent. The effective Montana rate, for our business,... right now is about eight percent. While that is not a significant difference on the whole, the comparative difference is twenty-five percent.....In our our case, when you are dealing with a payroll,...on this particular job, it would amount to in the neighborhood of \$100,000, you are only talking \$2,000 to \$3,000 difference. However, when that equates to the volume of work, it does make a dollar and sense difference to the people we compete with. As it turns out, this particular job went to an Idaho firm....."

"A significant factor here is the workers' compensation rates do have an affect on our ability to compete.....It makes Montana a little less attractive, and certainly, the businessman in this state, a little less able to compete. (See Exhibit #5)

Jim Murry said, "I am here today to oppose the sale of the Workers' Compensation Insurance Fund." He stated, "A survey of premium rates, by the Workers' Compensation Division, last month showed that Montana's rates are about mid-level in the western states. The survey found that many privately run workers' compensation plans, including one surveyed right here in our state, have substantially higher rates. That proves one of our main points in response to complaints about high premium rates. That is, if you think they are high now, just wait until you turn the program over to the private companies."

He stated, "In addition to the state survey of premiums rates, the Montana State AFL-CIO conducted our own study of state run workers' compensation programs, and found three other states with funds having unfunded liabilities including one that was near three billion dollars."

He stated, "SB 186 doesn't serve the best interests of either Montana workers, or employers, and we ask you to vote against it." (See Exhibit #6)

Michael Sherwood stated, "With some reluctance, he stood in opposition to this bill. Fundamentally they support the notion that the fund should be separated from the division. It creates an inherent conflict of interest in the law. For the reasons set forth by Mr. Murry, the probability that a private carrier would up rates, beyond what Montana has experienced, led them to believe the wise course would be to separate the division from the fund rather than sell the fund to a

private carrier. If this motion surfaces, they would support it. He said selling the fund was too drastic of a measure for them to support."

Questions From Committee Members: Senator Lynch stated, "I have supported legislation of this type before, but I question the word `requiring' rather than `allowing'. Would you, Senator Boylan, object to removing `requiring' and inserting `allowing'?" Senator Boylan stated, "I would not be against making it permissive instead of required."

Senator Lynch, addressing Mrs. Gillis, asked, "Are you aware of the fact, workers' compensation is protection for the employer, not the employees, and are you aware of a, probable, significant increase of rates if workers' compensation were sold to a private corporation? She said, "I would rather take my chances with a private company and not have the state in the insurance business."

Senator Williams wondered, " Mrs. Gillis do you realize companies sell compensation insurance now, and you didn't have to buy from the state fund?" She answered, "It's just a matter of principal."

Lorna Frank, told Senator Williams, "Our policy, and the feeling of our members, is that with the mandatory requirement for everyone to participate in the state workers' compensation program, the state has a monopoly."

Senator Weeding asked Mrs. Frank, "Do you see anything in SB 186 to relieve the mandatory requirement?" He said, "Universally, everyone has to carry workers' compensation." She said, "I agree, but feel the private sector should handle it."

Chairman Thayer said he had requested Bill Palmer, acting director of the Workers' Compensation Division, to attend the hearing for the purpose of answering questions. He asked, "Mr. Palmer to explain the three plans in existence in the state of Montana. Mr. Palmer said, "With sufficient assets corporations or others could apply and receive permission to self insure. Montanans could insure with one of the two hundred private carriers, or they could insure with the state fund. Historically private carriers had the option of accepting or rejecting the coverage of their applicants, but the state fund must insure all

applicants. The state fund policy does not reject anyone because of unusual risk."

Mr Palmer explained, "Legislation was passed in 1983 or 1985, I think, enabling groups to form for the purpose of insuring under a group plan."

Mr. Olge informed Senator Williams, "The high workers' compensation rate in his business was 8.11% and the low end, for clerical workers, was .52%. I don't know what the modification factor is". Senator Williams said, "That factor makes a world of difference in the rates." One example he related, was in the logging business. He said, "One employer was paying 90% more than his competitor because of his modification factor. The modification factor is based upon the number of accidents workers' compensation has settled."

Senator Lynch said, "I wonder if going to a private insurer would result in higher or lower rates?" Mr. Olge said, "My company was insured through a group plan, Lumberman's Underwriters. They supplied our business with very competitive rates, and offered a refund plan through a cooperative association. Two years ago, Lumberman's Underwriters opted to leave the state, so they solicited other private firms to cover our business, but were unsuccessful. The size the business ruled out self-insurance so we insured with the state fund, which was very competitive at that time."

Senator Lynch explained, "If the state fund were sold, one more choice would be eliminated for employers in our state. Then your choices would be self-insurer, or private insurer. Why would employers want to eliminate the third option of the state plan?" Mr. Ogle stated, "As a small business man, and having been personally involved in an attempt to deal with .....and explain the problems,.....to see a government bureau allow themselves to become \$157,000,000 in debt, my reaction to this is one of anger. These people don't deserve to be operating the fund. I would rather take my chances with private companies."

Chairman Thayer clarified, "The findings on Mr. Murry's comparison report were not always as they are now. During the time the Governor's Advisory Council was studying the problems, the deficit grew from an estimated \$15,000,000 to \$149,000,000 in a three year period, which probably explained Mr. Olge's anger. "Mr. Murry said, "They wanted people to understand where the rate of comparisons are right now. The other point we hoped people would understand, is that there is an

unfunded liability that angers everyone, but the reason the deficit came about was because the fund subsidized employers in the state of Montana, because of political pressure, rather than raising the rates to cover expenditures. It wasn't because they gave money to workers, it was a direct subsidy to employers. These are facts to keep in mind."

Chairman Thayer stated, "The liberal construction clause that indicated, throughout the courts, that the fund had to rule in favor of the injured worker. Considering the huge awards given at that time, are you suggesting they did not contribute to the overall situation?" Mr. Murry said, "That situation could be discussed at length, and has been in the past. Last session changes were discussed, and workers lost about 30% in benefits in order to make the program more solvent. After hearing the testimony, maybe the legislation they should be discussing is a bill to repeal the law altogether, and let workers go to court for any regress they might have."

Senator Williams inquired, "Is the Wyoming Workers' Fund subsidized by their coal fund?" Mr. Murphy, of the Jim Murphy, of the Montana Workers' Compensation Division, said "I think that's true, but I don't know to what extent."

Senator Williams asked, "Mr. Murphy, will you explain the affects SB 315, from two years ago, had in regard to the average settlement in workers' compensation?" Mr. Murphy said, "All indications are that the result of SB 315 was a twenty to twenty-five percent reduction in cost. In terms of settlements, they were controlled by that legislation also."

Senator Lynch asked, "How many states require employees to subsidize employers insurance?" Mr. Murphy said, "Washington is the only one I am aware of. There are no states, including Canada, and Puerto Rico that didn't have a workers' compensation fund though."

Senator Thayer asked Mr. Murphy, "Does the division's survey covered benefits as well as rate comparisons." Mr. Murphy said, "The benefits also are about average also."

Chairman Thayer asked, "Senator Boylan, has there been any interest shown, by the public sector, in purchasing the Workers' Compensation Fund?" Senator Boylan replied, "There was some interest, more then two years ago when a similar bill was proposed."



Senator Weeding pointed out, "Through out the bill there were a lot of housekeeping corrections. Was that part of the clean-up of the bill?" Senator Boylan said, "The changes were for language clean up, and for the sale of the fund. We left a lot of things in place that any buyer would have to abide by. The requirement to carry workers' compensation in the state of Montana would still be there."

Chairman Thayer stated, "Since the state fund is the only insurer who takes all applicants, if the fund becomes privately owned, there should be some way of guaranteeing coverage. If the risk becomes too high the companies would avoid coverage. He thought Senator Boylan's bill contained an assigned risk provision, and asked him to explain how that works."

Senator Boylan explained, "The state of Montana requires everyone to carry Workers' compensation, just as the state requires automobile insurance. If they couldn't keep the insurance companies in business in the state, then the assigned risk provision would take over."

Closing by Sponsor: Senator Boylan, said "I have two people here from the same type of business. One carries state workers' compensation, and the other is privately insured. The private carrier rates are a little higher and the state is making him pay three percent in addition for employment liability. I think a comparison would answer some of the Senator Lynch's questions. Some companies in Montana would rather pay more, and keep insurance private. The low risk jobs are often carrying private coverage, leaving the state fund with a lot of high risk coverage. Schools and the university system are trying to get self-insurance. They are the low risk people, and change will leave the fund in worse shape than it is now. Some of the people leaving the state fund will leave their accumulated liability of past years. That will have to be picked up. I feel the committee should take these facts into consideration.

Senator Boylan said, "The workers' compensation cost to the university system was estimated at \$441,000 annually. To eliminate, or reduce that figure could save state education funds, or educate a few more students. The Montana School Board Association estimated \$935,000 workers' compensation cost. That is taking quite a little out of the teachers wages, right off the top.

"I would like to ask the committee to support SB 186.....It's worth a gamble, even if we don't get any extra money, just to get the \$157,000,000 unfunded liability off the state of Montana's hands. I think that would be quite a plus."

DISPOSITION OF SENATE BILL 186

Executive action will be taken at a later date.

DISPOSITION OF SENATE BILL 153

Discussion: Chairman Thayer said, "This bill was held at the request of Senator Lynch. There were also some question raised concerning amendments, and fiscal note." Written testimony received since the hearing on SB 153 was presented. (See Exhibit #9)

Senator Williams said he had asked Stan Bradshaw for some information concerning the wide variation of rates, on some of the outfitters. He said, "I appreciate his bringing them. The rate for the outfitters, guides, and drivers is \$27.17 a hundred. The rate for the summer outfitter and guides, the ones that are just fishing guides,....get by for \$10.82." (See Exhibit #8)

Senator Lynch said "I don't think any amendments are necessary."

Recommendation and Vote: Senator Lynch made a motion SB 153 DO PASS Senator Weeding seconded it.

Discussion: Mary McCue said, "One of the outfitters had raised a question concerning a technical problem. At one point we talk about 'board' and one place we talk about 'council'. It will become a council ,by law, in 1991, so that doesn't present a problem."

Senator Weeding said, I think the problem had arisen came about when the Workers' Compensation Division's interpreted the law. When they said a guide was an employee."

Senator Thayer stated, "I think some guides, in the past, have worked as contract labor. Now, because of changes in the law, they are considered employees."

Mary McCue explained, "The law has been transferred to Title 37 of the Department of Commerce. However, I don't think the language was changed. The word 'employee' has been there all the time, but just hadn't been applied in quite that manner."

Chairman Weeding said, "I think they picked up on the language on page 6, and used it in determining the employee status."

Chairman Thayer asked Mr. Bradshaw, "Why was the word 'retained' used? I would think the word 'contracted' would be better. Will this create a problem. The purpose of the amendment wasn't to opt out all employees, just the independent contractors."

Mr. Bradshaw said, "I don't think it would. The thought, I think, was that 'retained' implies more than simply having hired somebody as an employee. To retain a contract seemed more encompassing."

Senator Weeding said, "I think the word 'retained' probably does encompass part time contracted help." contracted help.

Mary McCue said, "I agree, and I think that wherever 'retained' is used, we should expand the language to include 'employed or retained as an independent contractor'."

Senator Lynch said, "I withdraw my motion." Senator Weeding added, "I'll withdraw my second."

Amendments and Votes: Senator Weeding Moved the Amendment. Senator Lynch seconded the motion. The Amendment Carried Unanimously. (See Exhibit #7)

Recommendation and Vote: Senator Lynch moved SB 153 DO PASS AS AMENDED. Senator Weeding seconded the motion. The motion Carried, with Senator Williams opposing.

#### DISPOSITION OF SENATE BILL 191

Discussion: Chairman Thayer said he was not satisfied with the bill when it was passed out of committee. "We didn't really solve the problem created when somebody does assume someone else's business name. Even with the passage of this bill, if that happens again, the Secretary of State's Office still cannot do anything

about it. It still would have to be settled in the courts."

"The essence of the proponents testimony was that SB 191 would prevent most of the problem. I called Florence Armagost at the Secretary of State's Office this morning, and she estimated this would involve approximately twenty-five hundred people. As the renewals keep coming in over a five year period, I think it is probably going to be somewhere in that area. She said there are somewhere just over eleven thousand names, and that number remains pretty constant. I thought the bill should either have some teeth put into it, or it shouldn't pass. I was told any additional work requirements would take some FTEs. I am unhappy about casting the swing vote to pass the bill out of here when I don't think it is going to accomplish anything. I don't want to create more problems for the Ma and Pa businesses."

Recommendation and Vote: Senator Lynch made a motion to DO  
PASS SB 191

Further discussion, concerning some way to make the bill work, led Senator Lynch to withdraw his motion. He said that maybe something could be worked out if the bill was held for a day or so.

The committee will Re-schedule the bill Executive Action.

ADJOURNMENT

Adjournment At: 11:38 a.m.

  
Gene Thayer, Chairman

GT/ct

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/25/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DARRYL MEYER	✓		
SENATOR PAUL BOYLAN	✓		
SENATOR JERRY NOBLE	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM HAGER	✓		
SENATOR HARRY MC LANE	✓		
SENATOR CECIL WEEDING	✓		
SENATOR JOHN "J.D." LYNCH	✓		
SENATOR GENE THAYER	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

January 25, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 175 (first reading copy -- white), respectfully report that SB 175 do pass.

DO PASS

Signed: \_\_\_\_\_  
Gen. Thayer, Chairman

*H.C.  
1/26/89  
9:27  
a.m.*

SENATE STANDING COMMITTEE REPORT

January 25, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 153 (first reading copy -- white), respectfully report that SB 153 be amended and as so amended do pass:

1. Page 6, line 10.

Following: "retained"

Insert: "as an independent contractor"

2. Page 6, line 12.

Following: "retained"

Insert: "as an independent contractor"

3. Page 7, line 25.

Following: "retained"

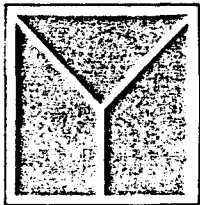
Insert: "as an independent contractor"

AND AS AMENDED DO PASS

Signed: \_\_\_\_\_

Gene Thayer, Chairman

H.C.  
1/26/89  
9:27  
a.m.



# MARTEL CONSTRUCTION, INC.

1203 S. CHURCH AVENUE • P.O. BOX 308  
BOZEMAN, MONTANA 59771-0308  
PHONE (406) 586-8585 • FAX (406) 586-8646

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 1/25/89

BILL NO. SB 186

*Paul Boylan*

December 27, 1988

Mr. Paul Boylan  
3747 South 19th Road  
Bozeman, Montana 59715

Dear Paul,

Since you are aware of our workmens' compensation disaster and desperately attempted to do something about it. I thought you might be interested in how in the Hell can California return \$227,000,000.00 and Montana accumulate a \$100,000,000.00 deficit. I think we should sell ours to them, it would just cut their dividend in half. They would hardly miss it.

Good Luck,

*William Martel*  
William Martel

WM/pl

enclosure





# Workers' Compensation Newsletter

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 1/25/89

BILL NO. SB 186

*Paul Boylan*

Fourth Quarter 1988

*Workers' Compensation Newsletter is published quarterly for State Fund policyholders to provide them with information about current developments in workers' compensation.*

## SPECIAL REPORT

### DIVIDENDS, RATES, REFORM, AND THE MINIMUM RATE LAW

This September the State Fund Board of Directors, which is composed of policyholders and represents policyholders, approved a dividend distribution plan for policies issued during 1987. The plan is designed to distribute an estimated \$227,880,000 in dividends, the fourth year that State Fund has returned over \$200,000,000 in dividends to its policyholders.\*

*An estimated \$227,880,000 in dividends will be distributed, the fourth year of over \$200,000,000 in dividends.*

Dividends are again being calculated at only ten months after policy expiration, with actual dividend payments having begun this November 1, 1988 for accounts with inception dates in January 1987. Most other insurers do not pay dividends until fifteen or eighteen months after policy expiration, or even longer. There is a time value to money, which we recognize, and the earlier a dividend is paid the better off you are financially. Additionally, our plan guarantees a recalculation of a dividend a year after the first calculation, in the event that any claims have closed for less than the original estimate. Few dividend plans offer this added protection.

State Fund's 1987 policy year dividend is expected to return 14 percent of premiums on

average, with individual policyholder dividends varying widely from this average according to individual losses and premium size. This dividend return will compare quite favorably with the 10.4 percent returned during 1987 by the rest of the insurance industry on earlier policy years. Because few if any other insurers declare dividends at ten months - - and most don't do so until 15 to 18 months - - State Fund is one of the only insurers to have issued its 1987 dividend plan.

State Fund's 1987 policy year dividend will — on average — return less to our policyholders than was returned on the 1986 policy year. This, plus the fact that our dividend declaration is made much earlier than other insurers and has no equivalent against which to compare, has resulted in cases of misinformation being spread by some of our more zealous competitors. In one case, an insurance executive was quoted in an insurance news publication as charging State Fund with stealing from its policyholders by declaring a lower dividend, a charge later retracted by the executive and the publication, with apologies.

The main reason State Fund's 1987 policy year dividend declaration was lower than its 1986 declaration was the Fund's need to maintain an adequate level of policyholders' surplus. National insurance financial guidelines require that all insurers maintain a premium-to-surplus ratio of no more than 3 to 1. In other words, for every three dollars of premium income an insurer must retain at least one dollar in policyholders' surplus. With State Fund's substantial growth in premium income over recent years, our premium-to-surplus

\*Under California Law, it is unlawful for an insurer to promise future payment of dividends under an unexpired workers' compensation policy or to misrepresent the conditions for dividend payment. Dividends are payable only pursuant to conditions determined by the Board of Directors or other governing board of the Company following policy expiration. It is a misdemeanor for any insurer or officer or agent thereof, or any insurance broker or solicitor, to promise the payment of future workers' compensation dividends. Past dividend performance is no guarantee of an insurer's future dividend performance.



**MONTANA FARM BUREAU FEDERATION**

502 South 19th • Bozeman, Montana 59715  
Phone: (406) 587-3153

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 1/25/89

SB 186

*Lorna Frank*

BILL # SB 186 ; TESTIMONY BY: Lorna Frank  
DATE 1/25/89 ; SUPPORT SUPPORT ; OPPOSE \_\_\_\_\_

Mr. Chairman, Members of the Committee:

For the record, my name is Lorna Frank, and I represent 3600 Montana Farm Bureau members.

Montana Farm Bureau goes on record in support of SB 186. We have long advocated removing the Worker's Compensation Program from the State Monopoly.

Senator Boylan's bill addresses the issue, and we endorse SB 186.

SIGNED: *Lorna Frank*

== FARMERS AND RANCHERS UNITED ==

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 1/25/89

BILL NO. SB 186



BUSINESS AND INDUSTRY COMMITTEE  
Gene Thayer, Chairman

Chairman Thayer and members of the committee:

My name is Laurie Shadoan. I own a business in Bozeman and am insured by the State Division of Workers' Compensation.

I appreciate this opportunity to testify on behalf of SB186 to sell the State Workers' Compensation Insurance Fund.

As an employer it is against state law to go without workers' compensation insurance and yet the state division has virtually run off all competition within the State of Montana. I realize this problem was not all the fault of the Division, but also the legislature in setting policy for which the Division is to follow. Current law states that a business owner not carrying Workers' Compensation can be fined up to \$50,000.00 or be imprisoned, or both. Yet you as the legislative body governing the Workers' Compensation Division continue to expose employers to the huge liability of the deficit that exists within the program, I suggest that this is a double standard. It is time that the legislature lives within the rules that they enact.

I believe this can be done by suggesting a DO PASS on SB186. I believe the state has demonstrated with years of history, that they can not run the division as a business. I was appalled to learn that the Workers' Compensation Division was in the red as far back as 1979. As a business owner, if I ran my business as the division has been run, I would not be in business. I content that SB186 addresses this problem and would put the insurance division into capable hands.

NAME: Bill Cagle

DATE: 1/25/89  
BILL NO. SB 186

ADDRESS: P.O. Box 1387

PHONE: 406 - 586 - 2397

REPRESENTING WHOM? KENYON - NOBLE LBR CO

APPEARING ON WHICH PROPOSAL: SB 186

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: Bill will get us headed in the direction  
of correcting deficit - our firm's experience  
has been negative when competing against  
on Idaho firms having more comp. w/c duties  
I also feel the division's effectiveness is  
shown by the loss they are carrying. Any  
change away from State control would be  
an improvement

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



JAMES W. MURRY  
EXECUTIVE SECRETARY

110 WEST 13TH STREET  
P.O. BOX 1176  
HELENA, MONTANA 59624

*Jim Murry*  
(406) 442-1708

STATEMENT OF JIM MURRY ON SENATE BILL 186, BEFORE THE SENATE LABOR AND  
EMPLOYMENT RELATIONS COMMITTEE, JANUARY 25, 1989

Mr. Chairman, for the record I am Jim Murry, executive secretary of the Montana State AFL-CIO, and I'm here today to oppose the sale of the workers' compensation insurance fund.

I'd like to begin today by exploding a few myths about our much-maligned state workers' compensation fund.

Critics will tell you that the Montana state fund has the highest insurance premium rates in the nation, or that we have the highest loss rate in the nation. Our new governor even said that the problems with workers' compensation are a Montana problem, suggesting that somehow our financial difficulties are unique in the nation.

And yet, none of those statements are accurate.

A survey of premium rates by the Workers' Compensation Division last month showed that Montana's rates are about mid-level in the western United States. The survey found that many privately run workers' compensation plans -- including one surveyed in Montana -- have substantially higher rates.

That proves one of organized labor's main points in response to complaints about high premium rates: if you think they're high now, just wait until you turn it over to a private company -- statistics indicate some of the rates could double or triple.

In addition to the state's survey of premium rates, the Montana State AFL-CIO conducted its own study of state-run workers' compensation programs to see what's different about other plans ... to see if Montana's problems really are unique. We studied the 1987 operating statements of the 20 state-run workers' compensation plans, as provided by the American Association of State Compensation Insurance Funds.

What we found is that three other state funds have unfunded liabilities, including one that is near \$3 billion. But, more revealing, we found that 16 of the 20 states had a net underwriting loss in 1987 ... 16 of the states paid out more in loss costs than they collected in premiums. Put simply, our study showed that nearly every state fund is charging rates that are not high enough to cover losses, and in many cases, the too-low rates are seriously low compared with losses.

Ex. #6  
1/25/89  
SB 186

TESTIMONY OF JIM MURRY  
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And if you think Montana's rates are high, just look at some of the other state funds, most of which still have underwriting losses. Look at Colorado, where the rates for log truck drivers are four times what they are in Montana. Or Washington and Oregon, where store clerks' rates are two and three times higher.

Those higher rates bring me back to a point that has been made before about Montana's workers' compensation fund: a political decision was made to keep premium rates down a few years ago because of complaints by some employers. Keeping those rates down for political reasons when actuarial tables demanded a rate increase is the root cause of the current unfunded liability or deficit.

In our study of other state plans, we dug a little deeper, asking the question: how are other states covering their serious underwriting losses?

We found two basic answers: prior year surpluses and investment income.

We found that Montana ranks last in the nation in the percentage of income it raises for workers' compensation outside of premiums. Income for the 20 state funds from bonds, mortgages and other investments averaged \$97 million in 1987, or about 35 percent of what was raised via premiums. In Montana, our low investment income was only \$6.7 million, or 9.6 percent of that raised by premiums.

Our study, coupled with the state's rate survey, painted for us a pretty clear picture of what's happening in state workers' compensation funds.

Funds with high underwriting losses have covered them with investment income that Montana doesn't have, or with prior year surpluses that are being eaten away. They're able to avoid drastic rate increases by continuing to rely on investment income via large pools of resources put together in prior years. The other funds that are in poor shape, such as Wyoming's, are very similar to Montana: they have serious underwriting losses, small non-premium incomes and little or no prior year surpluses.

So it's clear that Montana's fund is not the worst in the country, doesn't have the highest rates in the country, and isn't alone in wrestling with underwriting losses.

With that assessment, does it follow that we should run out and sell the state fund to the highest responsible bidder in order to rid ourselves of this unique burden? We certainly don't think so. Montana's situation is not unique. Selling our state workers' compensation insurance plan does not solve our problems.

Selling it to private industry very likely will bring about higher rate increases than would happen under state control.

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We believe that the state fund serves as a buffer for services, in addition to providing lower rates. History has shown that private insurance companies come and go. Montana's workers and employers deserve the stability offered by a state-run plan.

Private firms desire to make a profit, which the state fund is not currently doing. There are only two ways to change that: raise premium rates or reduce benefits. Benefits to workers have already been severely cut. Raising rates is necessary, but raising them high enough to cover a private company's profit margin is not necessary.

Mr. Chairman, we're especially concerned about the possibility of potentially higher premium rates pushing some employers to simply not get coverage. If rates under a privately run plan go too high, as we fear they will, some employers might very well choose no coverage and leave themselves and their workers exposed to great harm, all in the name of private profits at the expense of public good.

We believe that SB 186 does not serve the best interests of either Montana workers or employers, and we ask you to vote against it.

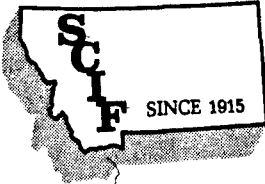
Amendments to Senate Bill No. 153  
First Reading Copy

For the Committee on Business & Industry

January 25, 1989  
Prepared by Mary McCue

1. Page 6, line 10.  
Following: "retained"  
Insert: "as an independent contractor"
  
2. Page 6, line 12.  
Following: "retained"  
Insert: "as an independent contractor"
  
3. Page 7, line 25.  
Following: "retained"  
Insert: "as an independent contractor"





STATE COMPENSATION INSURANCE FUND  
DIVISION OF WORKERS' COMPENSATION  
P.O. BOX 4759  
HELENA, MONTANA 59604-4759

SENATE BUSINESS & INDUSTRY  
EXHIBIT NO. 8  
DATE 1/25/89  
BILL NO. SB 153

POLICY SERVICES: (406) 444-6440

CLAIMS: (406) 444-6500

MEDICAL PAYMENTS: (406) 444-6460  
*Stan Brooks*

153

January 23, 1989

SCIF Rates for Guides

Code 8279 - Outfitters and Guides and Drivers

07/01/86	Rate	\$ 17.96 per \$100
01/01/87	Rate	\$ 27.17 per \$100
07/01/87	Rate	\$ 27.17 per \$100

07/01/88 established separate codes.

Code 8280 - Outfitters and Guides

07/01/88 Rate \$ 27.17 per \$100  
Applies to all types of hunting guides and outfitters.

Code 9180 - Amusement Device Operation NOC

07/01/88 Rate \$ 10.82 per \$100  
Applies to fishing guides on streams or lakes.

Businesses involved in both hunting and fishing guides operations would be assigned Code 8280 only.



# High Plains Outfitters

MIKE BAY • 31 DIVISION ST. • HELENA, MONTANA 59601 • (406) 442-9671

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 9

DATE 1/25/89

BILL NO. SB 153

January 25, 1989  
SB 153

TO: Business and Industry Committee

I am writing this testimony in support of SB 153 introduced by Tom Rasmussen.

In 1982, I started my outfitting business. My first wages were paid out in 1983. I paid my help as independent contractors as I had been paid as a guide. In 1985, I was contacted by Worker's Compensation and after much to do, was ordered by pay insurance on all back wages, including penalties and interest. It nearly broke my young business. For 1986, everyone was treated as an employee. My insurance agent informed me in 1987 that Worker's Compensation had two different class codes for outfitter's employees; one for hunting guides and the other for "amusement device operators" which included fishing guides. I contacted Worker's Compensation and was given credit for the approximate 15% overcharge ... no penalties or interest.

Presently, I have two types of guides; those who are employees and independent contractors who are also outfitters. Each of these guides carry out the same duties. Because of my extra expense, employee guides have a take home check approximately 35% smaller than the independent contractor.

I feel it is unfair for the guide who provides his own equipment and has legitimate business expenses to be treated as an employee. Many guides work for different outfitters. Outfitters do not supply guides with a place to work. Clients are placed in the hands of the guide who can start fishing when and where he sees fit. The outfitter has no control over the guide after they are assigned their fishermen. These people are true independent contractors.

Please pass this bill, as it would be a positive step in bringing guide's salaries in line with their capital outlay.

Thank you

Mike Bay

DATE 1/25/89

COMMITTEE ON Business of Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Bud Schoen	Motor Vehicle Div	SB 175	✓	
Jim Barchardt	Mont. Dns Dept	SB 186		
Steve Turkiewicz	Mt Auto Dealers Assn	SB 175		
Mike Sherwood	M T L A	SB 186		
Lorna Frank	Farm Bureau	SB 186	✓	
John & Gillis	1500 Post Creek Rd	SB 186	✓	
Peter Funk	Dept. of Justice	SB 175	✓	
Laurie Jackson	Business Chamber	SB 186	✓	
Riley Johnson	NFIB	SB 186	✓	
Bill Cofe	Kennon Noble Lbr Co	SB 186	✓	
Mike Keltch	Self	SB 186	<del>✓</del>	
Tom Simkins	Simkins Hall	SB 186	✓	
Jim Murphy	Mont. State AF 4156			✓
Bill Penner	DNC	SB 186		
Jim Murphy	DNC	SB 186		

(Please leave prepared statement with Secretary)