MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIR CAROLYN SQUIRES**, on February 12, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chair (D)
Tom Kilpatrick, Vice-Chairman (D)
Gary Beck (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
David Hoffman (R)
Royal Johnson (R)
Thomas Lee (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Dave Wanzenried (D)
Tim Whalen (D)

Members Absent:

Fred Thomas (R)

Staff Present: Eddye McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HJR 13

Presentation and Opening Statement by Sponsor:

MARY ELLEN CONNELLY, House District 8, Flathead County, stated HJR 13 expresses opposition of the legislature to a railroad corporation's participation in Montana's Workers' Compensation program. For the past two sessions, Congress has introduced legislation to allow Amtrak to participate in the state Workers' Compensation program. Railroad employees are presently covered by the Federal Employees Liability Act (FELA). Amtrak or railroad employees would have to get Workers' Compensation where

a railroad supervisor is located, so nonresidents could be covered under Montana's Workers' Compensation. According to a 1989 letter to the director of Workers' Compensation, the liabilities of a self-insurer, who has claimed bankruptcy, have been assumed by the state. The resources of Montana can't be exposed to that liability. Railroads are very dangerous. They carry toxic chemicals, nuclear waste, and hazardous materials, which create different situations than most businesses covered under Workers' Compensation. Montana's no-fault insurance was not designed for railroad workers. With the liability of about $200 million, Montana can't afford to include railroads in Workers' Compensation.

Proponents' Testimony:

James T. Mular, Chairman, Montana Joint Rail Labor Legislative Council, said FELA has been in existence for over 80 years. It is geared toward the needs and hazards of the railroad industry. In Congress it was stated that FELA promotes railroad safety by protecting railroad employees, passengers, and the communities trains travel through. FELA provides more equitable compensation to railroad employees who are disabled or killed on the job than would be available under Workers' Compensation. There is less litigation in FELA cases than in most Workers' Compensation programs. According to an in-house corporate Burlington Northern Newspaper, FELA should be changed not to put injured people under state Workers' Compensation plans, but to set up a new nationwide Workers' Compensation program negotiated with unions. The unions are working on the method. Sen. Baucus has stated FELA makes the railroads safety conscious because it is a fault system, so railroads try harder to keep communities safe.

Michael Sherwood, Montana Trial Lawyers' Association, said the railroad is a dangerous industry. Box cars weigh about 30 tons, if loaded they weigh 120 tons, and locomotives weigh 125 tons. Trains can weigh 8 to 12,000 tons and travel 65 miles per hour. When people get hurt, the injuries are severe. If private insurance were to be used, assigned risk pools would be forced. Only the State Fund would be able to cover it. The Fund is about $300 million in debt and wouldn't be able to stand the pressure. FELA provides better benefits.

Don Judge, Executive Secretary, AFL-CIO, presented written testimony. **EXHIBIT 1**

Dan Edwards, International Representative, Oil, Chemical & Atomic Workers Union (OCAW), stated his support for HJR 13.

Opponents' Testimony:

Fred Simpson, Vice President, Montana Rail Link, Missoula, said FELA is a negligent system and does not provide a "safety net" for injured workers. The negligent system was eliminated from other industrial workers about 50 years ago as being unfair. All

other industries have a no-fault Workers' Compensation program to assure that people injured on the job are compensated, and the industries pay money for that compensation. In previous testimony, it was stated that FELA promotes safety because it is a fault system. Safety is mandated by our own self interest. Customers demand a safe operation. Trains are the largest things that move on the earth. There are accidents and injured people need a safe and fair way to be compensated. FELA is unfair to both parties. If an injured worker files a suit and wins, a small railroad could be ruined with a large judgment. The employee is forced to prove the company is negligent, the company has to prove the employee was contributorily negligent, and in the end they can't work together. The worker could spend three to five years with no income and receive nothing if his case isn't proven. In the majority of cases the injured worker receives a settlement from the railroad, but over half of the money is paid to the lawyers. Employees in the railroad industry from 1981 to 1988 decreased from 459,000 to 268,000. Injuries decreased from 47,800 to 22,300, and the payments for FELA lawsuits rose from $398 million to $811 million per year. The Montana Rail Link doesn't question the fault of the injured worker in taking care of that individual. His paycheck continues, medical expenses are paid, insurance coverage is provided, family members receive $300,000 if a person is killed, or $75,000 if a limb is lost plus salary and medical expenses. The worker is returned to work as soon as possible and retrained for a new position if necessary. There is a need for Workers' Compensation. The state Workers' Compensation program may not be the right program, possibly there could be a national program. If HJR 13 is passed, the resolution should point out the defects of the FELA system.

Leo Berry, Burlington Northern Railroad, stated, "to pass HJR 13 on the proposition that the Workers' Compensation Fund is unfunded and not actuarially sound is ridiculous." That system got into its present financial state for reasons unrelated to FELA. In solving the problems that caused the unfunded liability, premium rates have been increased, benefits have been redefined, etc. If the railroad workers were included in the system, they would be included under the existing law which is designed to be actuarially sound. Railroad workers are specifically excluded by state law from Workers' Compensation. Affirmative action would have to be taken to change the law. A resolution is not needed.

Questions From Committee Members:

REP. PAVLOVICH asked **Mr. Simpson** why the FELA system wasn't changed years ago since it has been in existence for 80 years. **Mr. Simpson** said he didn't know; at the time FELA was adopted, railroads were the dominant industrial force in the United States. At that time there wasn't a Workers' Compensation system. For the last three years Regional Railroads, representing smaller railroads, has been trying to bring this problem to the attention of Congress.

REP. JOHNSON asked **Mr. Simpson** if the railroad workers were allowed to be covered under Workers' Compensation and the highest rate was paid, would less money be paid than what is currently being done. **Mr. Simpson** said he didn't know.

Closing by Sponsor:

REP. CONNELLY said FELA is specifically tailored toward the rail industry and Montana Workers' Compensation is not. The negligent liability provisions in FELA maintain corporate accountability. Most of the injuries are not from big accidents, for example, in Whitefish a switchman got both legs cut off because the engineer couldn't see the clear signal. Workers' Compensation can't afford to include the high accidents from this big industry. 85 percent of FELA cases are settled without the worker having to hire a lawyer. FELA costs from the private rail industry would be changed over to public tax payers.

HEARING ON HB 110

Presentation and Opening Statement by Sponsor:

REP. BOB GILBERT, House District 22, Sidney, stated interstate motor carriers are required by federal law to be tested for drugs. The federal laws do not apply to intrastate. If the employer is an interstate and an intrastate carrier and obeys the federal law, he violates Montana law and vice versa. He presented amendments. **EXHIBIT 2**

Proponents' Testimony:

Curt Laingen, Montana Motor Carriers Association, presented written testimony. **EXHIBIT 3**

Steve Browning, IBM, stated illegal drugs are a problem in Montana. According to the Drug Enforcement Administration, two thirds of illegal drugs consumed are consumed in the United States. 70 percent of those illegal drugs are consumed by working people. The law being amended, 39-2-304, was enacted in 1987. It was a revision to the prohibition against unreliable lie detectors. This law has made drug testing a crime. Any drug testing should be sensitive to the concerns of privacy, confidentiality, and reliability. Drug testing should not be punitive. All employees should be tested. The 1987 law said only applicants could be tested for jobs that are involved in hazardous work, public safety, or fiduciary responsibility. HB 110 adds jobs in the commercial transportation industry.

James Tutwiler, Montana Chamber of Commerce, stated businesses in America have a responsibility to control the use of drugs. A credible, scientifically-sound drug testing program should address the problem of drug abuse in the workplace. Montana would be uniform with the mandated federal legislation.

Charles Brooks, Executive Vice President, Montana Retail Association, stated he was appearing on behalf of Safeway. Montana law must be brought into conformity with the federal law to allow the testing of drivers which are particularly coming from Washington to Montana and vice versa.

Opponents' Testimony:

Dan Edwards, International Representative, Oil, Chemical and Atomic Workers Union, presented written testimony and a handout. **EXHIBIT 4**

Scott Crichton, Executive Director, American Civil Liberty Union, presented written testimony. **EXHIBIT 5**

Don Judge, Executive Secretary, AFL-CIO, stated that if the bill is passed legislators should be tested before they are allowed to apply or run for public office. State and school district employees should be tested before being allowed to work. There are about 10,000 state government employees, and the employers should pay for the tests at $125 each. The title of the bill includes, "jobs involving commercial transportation of persons or commodities if the testing is required by federal law." In agriculture the commercial products being transported are wheat, cattle, sheep, and etc. The workers may be high school kids working in the summer for their parents or neighbors. That employer, who is a farmer or rancher, must have the following procedures in place: a drug testing policy, guaranteed safe transportation of the urine specimen to the testing place and back, a rehabilitation program, procedures for firing the worker, and the employer will have to defend himself if the employee files suit over the accuracy of the testing. The custom cutter that comes through Montana will have to comply with the regulations and those costs will be passed on to the farmer. The person who delivers potato chips to stores will be affected. The drug problem in Montana does not warrant the imposition of this law.

Questions From Committee Members:

REP. BENEDICT asked **Mr. Browning** where he got the 70 percent figure and what it applies to. **Mr. Browning** said he got the figure from a book called Building a Drug Free Workforce. 70 percent of all people who consume drugs work for a living.

REP. WHALEN asked **Mr. Browning** if he knew what the current remedy under Montana law would be pertaining to the provision on Page 3, Paragraph 4, "adverse action may not be taken against a person if the person presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use". There is no remedy provided to that person if adverse action is taken, for example, if an employee is discharged. **Mr. Browning** said there would be no adequate basis for discharge if a person had a reasonable

explanation or medical opinion, and he would be compensated for the wrongful discharge. **REP. WHALEN** said the current Wrongful Discharge From Employment Act has very severe limitations on the damages an employee is entitled to. **REP. WHALEN** asked **Mr. Browning** if he would support an elimination of those caps on damages if this change were made in the law. **Mr. Browning** said no.

Closing by Sponsor:

REP. GILBERT said that the amendments clarify that there is no federal provision to require drug testing on intrastate traffic. There are two sets of laws, and it is impossible to obey both. The intent of this bill is not to test all working people in Montana. It is the same as federal testing, which includes pre-employment, periodic testing meaning every two years at the time of a physical as required by Department of Transportation Regulations, and probable cause. 50 percent of the people tested under probable cause were found to be on drugs. These people are hazardous to public safety and health. The laws prohibit people to drive under the influence of alcohol; there is no difference in being under the influence of alcohol or drugs. The state policy says the testing is a violation of privacy. Where does privacy stop and concern start? Drug tests are more accurate than people believe. The specimen is given to the doctor who sends it to a lab certified by the Department of Transportation, which is one of the requirements of union contracts. The employers pay the costs for drug testing. Performance tests indicate a person's ability to drive, but they don't identify if he is on drugs. If an interstate carrier is found to be under the influence of drugs, he can no longer drive interstate, but he can drive intrastate in the State of Montana. Farmers are not considered commercial by the State of Montana nor by the Department of Transportation, therefore, they are exempt. Commercial custom cutters, who are coming from out of state, are covered by the Federal Interstate Commerce Law and have to be tested anyway. The person delivering potato chips is exempt because he is under 26,000 pounds gross and doesn't fall under Department of Transportation regulations. This bill will not put drug users in jail but will try to get them rehabilitated.

HEARING ON HB 525

Presentation and Opening Statement by Sponsor:

REP. TOM NELSON, House District 95, Billings, stated HB 525 would require discounts on auto insurance premiums charged to employees at jobs covered by qualified drug testing programs. Currently there are no such programs in Montana. Workplace drug testing is outlawed in Montana except in the most limited circumstances. In 1987 the Legislature adopted a law that provided criminal penalties for any employer who conducted drug testing under most circumstances. The only drug testing permitted is for applicants applying for high-risk jobs and employees where the employer had

reason to believe the employee was drug impaired while at work. There are few jobs that fall under those categories. Most job applicants can't be tested. Drug testing can be conducted in a reliable and confidential manner. In the last four years the Federal Government has allowed the requirement for employers to conduct workplace drug testing. In 1987, Montana was the first state to prohibit workforce drug tests. Safe driving discounts are available only to individual drivers on individual vehicles. HB 525 would require an employer to have a qualified drug testing program, which is described in SB 138, to become eligible. Some insurance companies may oppose this bill because it may not be actuarially sound to reduce someone's insurance by a set amount if there is no experience basis to justify the reduction. This bill may serve as an incentive to employees who want to participate in a workplace drug testing program.

Proponents' Testimony:

Tom Harrison, Montana Automobile Dealers Association, stated there may be technical problems with HB 525, but the philosophy is on the right line.

Opponents' Testimony:

Dan Edwards, International Representative, Oil, Chemical & Atomic Workers Union, presented written testimony. **EXHIBIT 6.** In addition, he asked that the handout passed out previously be applied to HB 525 also. It is included in Exhibit 3.

Don Judge, Executive Secretary, AFL-CIO, suggested an amendment to strike all the wording that refers to expanding testing and say that if an employee chooses to have a drug test conducted to have his insurance rates reduced and the employer agrees, he should be granted that reduction. This bill would require the insurance company to grant that reduction.

Jacqueline Terrell, American Insurance Association, stated the American Insurance Association specifically objects to Sections 3 and 4 mandating the insurance premium reduction because it does not match the premium rate to the risk that is being insured by the insurance. There is no direct correlation between the results of the drug testing and performance. Classes of people would be treated differently based on criteria that is not related to driving ability or to the risk that the driver presents. This bill mandates a reduction based on a testing program in which the insurer is not allowed to participate in the design or regulation, and the insurance commissioner has no oversight ability. There are technical problems where the bill mandates a premium reduction that corresponds to a safe driver education course. There is no such rate reduction unless a particular insurance company may choose to offer it.

Gene Phillips, National Association of Independent Insurers and the Alliance of American Insurers, stated this bill is based on

the assumption that many drivers on the road are under the influence of drugs, and that testing will result in a significant decline in accidents on the highways. The following two lines are inconsistent and are possibly drafted incorrectly: Page 2, Section 4, Line 18, refers to individual motor vehicle insurance and Line 25 says, " (1) is employed by an insured having a qualified program."

Roger McGlen, Independent Insurance Agents Association of Montana, stated his concern on how a double rate reduction is tied to something that does not apply to commercial vehicles. When it is not documented with actuarial evidence to justify the discount, premiums are increased to a level that can absorb the discount. The insureds have to be told that they will have to pay the same amount but they are getting a discount. This bill is poorly drafted in reference to the mature driver and safe driving education course.

Questions From Committee Members:

REP. JOHNSON asked **Mr. Browning** to answer the questions raised against the bill. **Mr. Browning** said the technical questions against the bill have merit. The concept of the bill is to provide an incentive for employers to establish drug-free workplaces through qualified testing programs.

REP. WHALEN asked **Mr. Browning** why the provision on Page 6, Section 6, was drafted that way, stating the results of the tests can't be used for any purpose except for two instances where the employer can use the test, but the employee can't use it for any purpose. **Mr. Browning** said the confidentiality protections are for the employee and not for the employer. The information is required to be kept confidential. The two exceptions are: 1. If an action is taken against an employer with a qualified drug testing program, the information can be used. That action is taken by the employee and the employer may demonstrate that he has qualified program. 2. If there is an accident where property damage is over $10,000 the information can be used. **REP. WHALEN** asked if once the tests are taken, are the materials and results considered proprietary information of the employer. **Mr. Browning** said the information is handled by a medical review officer contracted with the employer. The medical review officer is bound to maintain confidentiality on all aspects except for communicating information to designated people of a positive test result that does not have an adequate medical explanation. **REP. WHALEN** asked what access does the employee, who had the test taken, have to the information. Does the information become the proprietary property of the employer once the test is given. **Mr. Browning** said the employee has complete access to the information; he will visit personally with a medical review officer and examine the results of the test and provide to the medical review officer any explanation if the test was positive, for example a prescription for that drug. **REP. WHALEN** said the intention of this bill in Subsection (6) would be that the

employee is not limited in any way in which he can use the results of the tests. **Mr. Browning** said yes.

REP. DRISCOLL asked **REP. NELSON** if this bill could be amended so it could be for individuals too. **REP. NELSON** said yes.

Closing by Sponsor:

REP. NELSON said that this is a companion bill to SB 138. The intent is to offer an incentive to not only employers but employees to participate in a drug testing program.

EXECUTIVE ACTION ON HB 305

Motion: **REP. JOHNSON MOVED HB 305 DO PASS.**

Discussion:

REP. JOHNSON moved to amend HB 305.

Ms. McClure said on February 5, 1991, there was discussion about who would pay for the transcripts. At Rep. Driscoll's request she conferred with the Department of Labor about the amendments. **EXHIBIT 7**

REP. WHALEN asked what was left in the bill after the amendments. **Ms. McClure** said telephone hearings for Unemployment Insurance.

REP. JOHNSON asked if the amendments were worked out with the sponsor of the bill. **Ms. McClure** said Rep. Rice knew about the amendments and agreed to removing Workers' Compensation.

Vote: The motion to amend carried 15 to 2 with **REPS. FAGG AND JOHNSON** voting no.

Motion/Vote: **REP. Johnson** made a substitute motion that **HB 305 DO PASS AS AMENDED.** Motion carried 15 to 2 with **REPS. O'KEEFE AND WHALEN** voting no.

EXECUTIVE ACTION ON HJR 13

Motion: **REP. SOUTHWORTH MOVED HJR 13 DO PASS.**

Discussion:

REP. WANZENRIED said that it is a very expensive process for individuals to settle injuries through the FELA program. In previous testimony it was said if the railroad workers are not given an alternative at the federal level, that they will be forced upon the state. That is unlikely to happen since the railroads are more likely to self-insure than rely upon independent carriers or the State Fund.

REP. BENEDICT said FELA is a bad vehicle for injured parties or

the railroad. The resolution should urge Congress to remove the FELA program and proceed with a federal Workers' Compensation program that has language to allow the no-fault system to be used.

REP. WHALEN said railroad workers shouldn't be placed in the Workers' Compensation program, which has politics played with it regularly. There was previous discussion about what takes place with regard to FELA claims. A letter to the CEO of Union Pacific Corporation by a UTU local business agent says less than 1 percent of all FELA cases are decided by juries, attorneys are hired in only 15 percent of the cases, and 85 percent of all cases are handled between railroad claims agents and the injured employees. After Workers' Compensation changes were adopted in 1987, employers no longer had incentive to have safety programs that cost money. In many cases the cost/benefit analysis was cheaper to injure an employee because of the amount paid in Workers' Compensation than to institute the costly safety programs. There are extensive safety programs in the railroad industry because it costs the employer money when there is an injury. That system should stay in place.

REP. JOHNSON said he was going to vote against HJR 13. He didn't hear any testimony saying that FELA wasn't going to be here. The Legislature shouldn't try to put in a House Joint Resolution expressing the opposition to the railroad corporation's participation in Montana Workers' Compensation. The Legislature shouldn't try to exclude anybody.

REP. WANZENRIED said that railroad workers are excluded from the system right now. An affirmative decision would have to be made to include them in Workers' Compensation.

Vote: HJR 13 DO PASS. Motion carried 14 to 3. **EXHIBIT 8**

EXECUTIVE ACTION ON HB 336

Ms. McClure presented amendments. **EXHIBIT 9**

Motion: REP. DRISCOLL MOVED HB 336 DO PASS

Motion: REP. DRISCOLL moved to amend HB 336.

Discussion:

REP. DRISCOLL said the amendments say that the Department shall collect the unpaid wages and at least 2 percent interest over New York prime and no more than 100 percent. This gives the Department room to negotiate and may be able to get the cases settled quicker. The worker would always get the interest and possibly 100 percent penalty.

Vote: The motion to amend carried unanimously.

Motion/Vote: **REPS___?** made a substitute motion that **HB 336 DO PASS AS AMENDED.** Motion carried 16 to 1 with **REP. O'KEEFE** voting no.

EXECUTIVE ACTION ON HB 342

Ms. McClure presented written testimony explaining previous laws about cosmetologist and barber services, amendments, and a gray bill. **EXHIBIT 10**

Motion/Vote: **REP. BENEDICT** moved to amend HB 342. Motion carried unanimously of the members present.

Motion/Vote: **REP. LEE MOVED HB 342 DO PASS AS AMENDED.** Motion carried unanimously of the members present.

HEARING ON HB 531

Presentation and Opening Statement by Sponsor:

REP. JOHN PHILLIPS, House District 33, Great Falls, stated he sponsored HB 531 on behalf of Montanans For A Drug-Free Society. It is an act adopting the Workforce Drug Abuse Prevention Act requiring recipients of certain state grants and contracts to implement employee drug abuse prevention programs. There are already similar federal regulations, and it has been recommended that states adopt them also.

Proponents' Testimony:

Wade Rea, Montanans For A Drug-Free Society, presented and summarized a Montana Poll handout from the Gallup Organization. **EXHIBIT 11.** Drugs contribute to loss of revenue to employers, loss of productivity which causes cutbacks in employment and revenue, and decrease tax revenues. Employees are supporting a drug-free workplace. There is no place for drugs in society or in the workforce.

Steve Browning, IBM, distributed a copy of the Drug-Free Workplace Act of 1988, which is a federal law currently in effect. **EXHIBIT 12.** This law governs any contract or grant by the Federal Government in excess of $50,000. It requires the employers, who are the grantees, to certify that they have a drug-free workplace. HB 531 is a similar law and also requires the grants to be subject to the maintenance of the drug-free workplace. Failure to do so will revoke the grant.

Opponents' Testimony:

Dan Edwards, International Representative, Oil, Chemical & Atomic Workers Union, presented written testimony. **EXHIBIT 13**

Jim Beck, Chief Counsel, Department of Highways, stated that HB 531 would present serious problems to the Department of Highways.

The definition of contractor is not clear whether it includes firms, companies, corporations, or units of local government since the term "person" is used. The Department has many contracts with firms, corporations, etc. The term "contractor" would also include people who may be selling or leasing property to any state agency. The term "grantee" is unclear whether it includes firms, companies, etc. Section 3 requires a contractor to certify that he will impose sanctions on employees for drug abuse. Most highway contractors have union employees. The contractor may not be able to impose sanctions on employees without renegotiating its labor contract. As a result the contractor could not make the necessary certification and would be barred from bidding on highway contracts. Section 5 suspends payments, termination of contracts, and debarment of contractors. It is unclear how the suspension of payments and termination of contracts would be implemented. This section must be clarified to require state agencies to insert mandatory provisions for suspension of payments and termination of every contract they enter into. The debarment of contractors is in accordance with Section 18-4-241 which is part of the Montana Procurement Act. Highway contracts do not come under that Act. Contractors will use any ambiguity or unclarity in the legislation for defense.

Don Judge, Executive Secretary, AFL-CIO, said he agreed with the Department of Highways. The current federal law requires employees to be notified that there is a drug-free workplace policy in effect at the place of employment if that employer has grants with the federal agency. This bill would require a policy describing what the implications are for the use of every specific drug. State agencies will be unable to negotiate with contractors, subcontractors, or grantees without changing the policy.

Questions From Committee Members: None

Closing by Sponsor:

REP. PHILLIPS closed the hearing on HB 531.

ADJOURNMENT

Adjournment: 5:45 p.m.

CAROLYN SQUIRES, Chair

JENNIFER THOMPSON, Secretary

CS/jt

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HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 2/12/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS		✓	
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

CS05COM.man

HOUSE STANDING COMMITTEE REPORT

February 13, 1991

Mr. Speaker: We, the committee on Labor report that House Bill 305 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires
Carolyn Squires, Chairman

And, that such amendments read:
1. Title, line 12.
Following: "39-51-1109,"
Insert: "AND"

2. Title, line 13.
Following: line 12
Strike: "39-71-204, AND 39-72-612,"

3. Page 2, lines 7 through 12.
Following: "court" on line 7
Strike: remainder of line 7 through "transcript" on line 12

4. Page 2, line 13.
Following: "(4)"
Strike: "The"
Insert: "Except for transcripts, the"

5. Page 4, line 14 through page 6, line 8.
Strike: sections 5 and 6 in their entirety
Renumber: subsequent sections

4.42
2-13-91
SDR

HOUSE STANDING COMMITTEE REPORT

February 13, 1991

Mr. Speaker: We, the committee on Labor report that House Bill 336 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires, Chairman

And, that such amendments read:

1. Title, lines 5 and 6.
Strike: "THE" on line 5 through "RETAIN" on line 6
Insert: "PAYMENT TO AN EMPLOYEE OF"

2. Title, line 7.
Following: "DUE;"
Insert: "REQUIRING AN EMPLOYER TO PAY THE EMPLOYEE ANNUALIZED INTEREST ON UNPAID WAGES;"

3. Page 1, line 19.
Following: "~~Any~~"
Insert: "(1)"

4. Page 1, line 23.
Following: "~~shall~~"
Strike: "must"
Insert: "may"

5. Page 1, line 25.
Following: "the"
Strike: "department"
Insert: "employee"

6. Page 2, line 1.
Following: "amount"
Strike: "equal to 5%"
Insert: "not to exceed 100%"

7. Page 2, line 4.
Following: "due"
Insert: ", but not less than the wages due plus interest payment required in subsection (2)"

8. Page 2, lines 5 through 7.
Following: "~~such~~" on line 5
Strike: remainder of line 5 through "due" on line 7
Insert: "(2) The employer shall also pay the employee annualized interest on the unpaid wages from the date the wages were due. The interest must be calculated by the department and compounded annually, but the annualized rate may not exceed 2 percentage points a year above the prime rate of major New York banks on the date of settlement."

9. Page 5, lines 9 and 10.
Following: "wages" on line 9
Strike: ","
Insert: "or"
Following: "taxes"
Strike: remainder of line 9 through "premiums" on line 10

9:45
2-13-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 13, 1991

Mr. Speaker: We, the committee on Labor report that House Bill 342 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires
Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 8.
Following: "CONSTRUCTION"
Strike: "TRADE"
Insert: "INDUSTRY"

2. Page 3, lines 7 through 14.
Following: "Construction"
Strike: remainder of line 7 through "masonry." on line 14
Insert: "industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual."

3. Page 7, line 8.
Following: line 7
Strike: "trade"
Insert: "industry"

4. Page 7, lines 11 and 12.
Following: "employment"
Strike: remainder of line 11 through "trade," on line 12
Insert: ", in a position other than a construction industry,"

5. Page 8, line 20.
Following: line 19
Insert: " (1) cosmetologist's services and barber's services as defined in 39-51-204(1)(l)."

6. Page 9, lines 1 and 2.
Following: "but"
Strike: remainder of line 1 through "services," on line 2

7. Page 9, line 4.
Following: "himself"
Insert: "unless he is contracting for construction industry services"

8. Page 10, line 7; page 11, line 25; and page 12, line 12.
Following: "construction"
Strike: "trade"
Insert: "industry"

9. Page 17, line 24; page 18, lines 2, 14, and 22.
Following: "construction"
Strike: "trade"
Insert: "industry"

Jennifer

CLERICAL

Bill No. 342

Date: 2/13/91

Time: 4:30

MER
(Legislative Council Staff)

☑ S / H Standing Committee Labor

(Chairman) Carolyn Squires

☐ S / H Committee of the Whole

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

Amendment # 2 insert
"... 1987 Standard Industrial Classification Manual."

(do not underline name of manual)

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

2-13-91
JDR

HOUSE STANDING COMMITTEE REPORT

February 13, 1991

Mr. Speaker: We, the committee on Labor report that House Joint Resoulution 13 (first reading copy -- white) do pass .

Signed: Carolyn Squires
Carolyn Squires, Chairman

EXHIBIT 1
DATE 2/12/91
HB HJR 13

DONALD R. JUDGE
EXECUTIVE SECRETARY

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

(406) 442-1708

TESTIMONY OF DON JUDGE ON HOUSE JOINT RESOLUTION 13 BEFORE THE HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE, FEBRUARY 12, 1991

Madam Chair, members of the committee, for the record my name is Don Judge and I'm appearing here today in behalf of the Montana State AFL-CIO in support of House Joint Resolution 13.

We all know, Madam Chair, that Legislative Resolutions don't carry the weight of law. They can, however, send a strong signal to those individuals and law-making bodies whose actions can create laws which impose requirements upon us, that we would oppose certain such actions.

That is the purpose of HJR 13. We want to send a signal to Washington, D.C. that it would be a tragic mistake for them to remove the protections of the Federal Employees Liability Act (FELA) from workers in the railroad industry.

As has been described to you, there is an effort under way to exempt railroad workers from the coverage of FELA and to force state's to accept these workers under the provisions of their individual Workers' Compensation programs. Proponents of this crazy idea would argue that railroad workers and the industry is no different than any others operating in a state. Hogwash!

The FELA program provides incentives for the railroad industry to avoid negligence and to provide safe operations for serving the public. Those of us who live near the Carroll College site of the railroad tank car explosion here in Helena during the last Legislative Session can full well appreciate the necessity of encouraging safe rail operation. In the rail industry, safety means far more to the general public than in most other industries covered under our state's Workers' Compensation program. Incentives for safe operation, therefore, have a much greater meaning.

It's been interesting to watch this industry as it works to pick and choose between state and federal regulation, in order to select the lowest cost, less restrictive environment. One example of this would be the Montana Caboose Law, in which the industry was successful in exempting those trains which pass through the state. They argued that the prerogative to require trains to have cabooses attached was a federal one, and they succeeded, in part, to overturn our law. It's clear that the Carroll College incident would not have happened if a caboose had been attached to that train.

The reason that the industry is attempting to remove itself from the coverage of FELA is simple. Workers' benefits are less costly under our state's Workers' Compensation system, therefore, employer taxes are less. And, incentives for safe operation are insignificant under our system as compared to the FELA system.

Workers lives and public safety are far too important to allow such a transfer of responsibility to take place. We urge you to send a signal to Washington, D.C. Say NO to those who would surrender our safety to the worship of profit! Please give HJR 13 a "do pass" recommendation. Thank You.

DATE 2/12/91
HB 110

Amendments to House Bill No. 110
White Reading Copy

Requested by Rep. Gilbert
For the Committee on

Prepared by Valencia Lane
January 9, 1991

1. Title, line 7.
Following: "THE"
Insert: "INTRASTATE"

2. Title, lines 8 and 9.
Following: "COMMODITIES" on line 8
Strike: remainder of line 8 through "LAW" on line 9

3. Title, line 10.
Strike: "FEDERAL"

4. Page 2, line 2.
Following: "the"
Insert: "intrastate"

5. Page 2, lines 3 and 4.
Following: "commodities" on line 3
Strike: remainder of line 3 through "law" on line 4

6. Page 2, lines 9 and 10.
Following: "use" on line 9
Strike: remainder of line 9 through "law" on line 10
Insert: ", except for employment in jobs involving the intrastate commercial transportation of persons or commodities"

7. Page 3, line 5.
Following: "required by"
Insert: "law or"

8. Page 3, line 6.
Strike: "or federal law"

2-12-91
HB 110

HOUSE BILL NO. 110

INTRODUCED BY GILBERT

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAW RELATING TO THE REGULATION OF BLOOD AND URINE TESTING; ALLOWING BLOOD AND URINE TESTING OF EMPLOYEES AND JOB APPLICANTS IN JOBS INVOLVING THE INTRASTATE COMMERCIAL TRANSPORTATION OF PERSONS AND COMMODITIES ~~IF THE TESTING IS REQUIRED BY FEDERAL LAW~~; ALLOWING THE RELEASE OF TEST RESULTS AS REQUIRED BY ~~FEDERAL~~ LAW; AMENDING SECTION 39-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-2-304, MCA, is amended to read:

"**39-2-304. Lie detector tests prohibited -- regulation of blood and urine testing.** (1) No A person, firm, corporation, or other business entity or representative thereof ~~shall~~ may not require:

(a) as a condition for employment or continuation of employment, any person to take a polygraph test or any form of a mechanical lie detector test;

(b) as a condition for employment, any person to submit to a blood or urine test, except for employment in:

(i) hazardous work environments ~~or in~~;

(ii) jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; or

(iii) jobs involving the intrastate commercial transportation of persons or commodities ~~if the testing is required by federal law~~; and

(c) as a condition for continuation of employment, any employee to submit to a blood or urine test unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use ~~or the testing is required by federal law~~.

, except for employment in jobs involving the intrastate commercial transportation of persons or commodities

(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt a written testing procedure and make it available to all persons subject to testing. A testing procedure must provide for the:

(a) collection of a blood or urine specimen in a manner that minimizes invasion of personal privacy while ensuring the integrity of the collection process;

(b) collection of a quantity of specimen sufficient to ensure the administration of several tests;

(c) collection, storage, and transportation of the specimen in tamper-proof containers;

(d) adoption of chain-of-custody documentation procedures identifying how the specimen was handled and tested;

INTRODUCED BILL
HB 110

(e) verification of test results by two or more different testing procedures before judging a test positive; and

(f) prohibition of the release of test results, except as authorized by the person tested or as required by law or a court of law ~~or federal law~~.

(3) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug or alcohol test results to the person tested and provide him the opportunity, at the expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an independent laboratory selected by the person tested. The person tested must be given the opportunity to rebut or explain the results of either test or both tests.

(4) Adverse action may not be taken against a person tested under subsections (1)(b), (1)(c), (2), and (3) if the person tested presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.

(5) A person who violates this section is guilty of a misdemeanor."

NEW SECTION. **Section 2.** Effective date. [This act] is effective on passage and approval.

-End-

EXHIBIT 3
DATE 2/12/91
HB 110

Date submitted: 2/12/91
HB 110
Curt Laingen

Madam Chairman.....Members of the Committee, for the record, my name is Curt Laingen, Director of Safety for the Montana Motor Carriers Association.

A very important part of the commercial trucking industry's safety program is the drug testing program and MMCA strongly supports the passage of HB 110. Without its passage, the intrastate motor carrier industry cannot carry out the mandated federal transportation drug testing program in Montana.

MMCA has some 300 motor carrier members, 90% of whom operate in interstate commerce; some 200 log trucking members and some 150 livestock haulers, 90% of whom operate solely in intrastate commerce. Many of the interstate motor carrier members operate in both interstate and intrastate commerce. As of December 21, 1990, all interstate carriers and single owner operators must comply with federal drug testing requirements.

Under current Federal Department of Transportation Motor Carrier Safety rules, all operators...employee drivers and independent owner-operators...of commercial motor vehicles, those over 26,000 pounds gross weight and those under 26,000 pounds transporting people and/or hazardous materials, must be subject to a qualified drug testing requirement. The Federal rules stipulate that the motor carrier employer, must institute a drug testing program under the strict parameters set out in federal rules (CFR Part 40).

For the information and benefit of the committee, I have attached a copy of the federal rules to this statement.

The rules spell out specific requirements for a drug testing policy to be adopted by the carrier, the drugs to be tested for, collection site procedures, testing and reporting procedures, and under what circumstances tests are to be performed.

Montana has adopted most all the Federal DOT Motor Carrier Safety Rules for operation by intrastate motor carriers of commodities and passengers except the rules dealing with drug testing.

Under Montana law, intrastate carriers are precluded from requesting blood and urine samples as a condition for employment and continuous

employment. Only probable cause is grounds for testing under the law.

Motor carriers in Montana are faced with a serious problem of how to establish and comply with a drug-free operation when their drivers operating in Montana cannot be tested. HB 110 is attempting to change a present law that mandates a policy to which Legislature and our Courts must adhere that says, in effect, that all drug user drivers, weeded out of the interstate motor carriage, can operate freely in Montana's intrastate motor carriage industry. Is this what we want?

Under this policy, the transportation industry and the federal government are mandating a drug-free transportation system to protect the public, while it would appear that Montana's transportation slogan is, "Come drive in Montana, where a driver can rest....cause we don't test."

Intrastate bus drivers can transport passengers without being tested and worse, "contracted for" school bus drivers do not have to be tested. It is hard to imagine that anyone can feel comfortable with that kind of policy.

A Montana carrier is concerned enough about his business and the well-being of his employees to conduct strict interviews, employee background checks and maintain a high standard for employment, but cannot complete the driver screening process to include drug testing.

HB 110, allowing the drug testing of commercial transportation employees, is a needed and necessary piece of legislation in Montana. With its adoption, Montana can be free to consider the adoption, by reference, of the Federal DOT Controlled Substances Testing rules. We urge your adoption of HB 110. Thank you.

be a regularly employed driver of that motor carrier and who drives a vehicle that:

(1) Is a truck (as defined in §390.5 of this subchapter), and

(2) Is operated in retail delivery service, and

(3) Is transporting combustible liquids (as defined in §173.115 of this title), and

(4) Is operated in intrastate commerce.

SUBPART H - CONTROLLED SUBSTANCES TESTING

(Note: For readers convenience ATA has published 49 CFR Part 40 - Procedures For Transportation Workplace Drug Testing Programs as Appendix 1 to these regulations).

§391.81 Purpose and scope.

(a) The purpose of this subpart is to reduce highway accidents that result from driver use of controlled substances, thereby reducing fatalities, injuries, and property damage.

(b) This subpart prescribes minimum Federal Safety standards to detect and deter the use of controlled substances as defined in 49 CFR Part 40 (marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP)).

(c) As part of reasonable cause drug testing programs established pursuant to this subpart, motor carriers may test for drugs in addition to those specified in this part only with approval granted by the Federal Highway Administrator under 49 CFR Part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

§391.83 Applicability.

(a) This subpart applies to motor carriers and persons who operate a commercial motor vehicle as defined in this subpart in interstate commerce and are subject to the driver qualification requirements of Part 391 of this subchapter.

(b) This subpart shall not apply to any person for whom compliance with this subpart would violate the domestic laws or policies of another country.

(c) This subpart is not applicable until January 2, 1992, with respect to any foreign-based employee of a foreign-domiciled carrier. On or before July 1, 1991, the Administrator shall issue any necessary amendment resolving the applicability of this subpart to such employee on and after January 2, 1992.

§391.85 Definitions.

As used in this subpart-

"Collection site" means a place where individuals present themselves for the purpose of providing body fluid or tissue samples to be analyzed for specified controlled substances. The site must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation or shipment of the samples to a laboratory.

"Commercial motor vehicle" means any self-propelled or towed vehicle used on public highways in interstate commerce to transport passengers or property when:

(a) The vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds; or

(b) The vehicle is designed to transport more than 15 passengers, including the driver; or

(c) The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1813).

"Controlled substances" has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR 1308).

"Drivers subject to testing" means employee drivers and contract drivers under contract for 90 days or more in any period of 365 days.

"Drug" means any substance (other than alcohol) that is a controlled substance as defined in this section and 49 CFR part 40.

"FHWA" means the Federal Highway Administration, U.S. Department of Transportation.

"Interstate commerce" means trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States.

"Medical practitioner" means a licensed doctor of medicine (MD) or osteopathy (DO) or a doctor of dental surgery (DDS) authorized to practice by the State in which the person practices.

"Medical Review Officer" means a licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders that is employed or used by a motor carrier to conduct drug testing in accordance with this part.

"Motor carrier" means a for-hire motor carrier or a private motor carrier of property. The term "motor carrier" includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, the definition of "motor carrier" includes the terms "employer" and "exempt motor carrier."

"Random selection process" means that drug tests are unannounced and that every commercial motor vehicle driver of a motor carrier has an equal chance of being selected for testing.

"Reasonable cause" means that the motor carrier believes the actions or appearance or conduct of a commercial motor vehicle driver, on duty as defined in §395.2 of this subchapter, are indicative of the use of a controlled substance.

§391.87 Notification of test results and record-keeping.

(a) The MRO shall report to the motor carrier whether a driver's test was positive or negative and, if positive, the identity of the controlled substance for which the test was positive.

(b) A motor carrier shall notify its driver or driver-applicant of the results of a controlled substance test conducted under this subpart.

(c) A motor carrier shall notify–

(1) A driver-applicant of the results of a pre-employment controlled substance test conducted under this subpart provided the driver-applicant requests such results within 60 days of being notified of the disposition of the employment application; or

(2) A driver of the results of a periodic, random, reasonable cause, or post-accident test conducted under this subpart, provided the results were positive. The driver must also be advised of what controlled substance was identified in any positive test.

(d) A motor carrier shall ensure that all records related to the administration and results of the drug testing program for its drivers subject to the testing requirements are maintained for a minimum period of 5 years except that individual negative test results shall be maintained for a minimum of 12 months.

(e) A medical review officer shall be the sole custodian of individuals test results. The medical review officer shall retain the reports of individual test results for a minimum of 5 years.

(f) A motor carrier shall retain in the driver's qualification file such information that will indicate only the following:

(1) The types of controlled substances testing for which the driver submitted a urine specimen.

(2) The date of such collection.

(3) The location of such collection.

(4) The identity of person or entity:

(i) Performing the collection,

(ii) Analysis of the specimens, and

(iii) Serving as the MRO.

(5) Whether the test finding was "positive" or "negative" and, if "positive," the controlled substances identified in any positive test.

(g) A motor carrier shall produce upon demand and shall permit the Federal Highway Administrator to examine all records related to the administration and results of controlled substance testing performed under this part.

(h) A motor carrier shall maintain an annual (calendar year) summary of the records related to the administration and results of the controlled substance testing program performed under this subpart. This summary shall include at a minimum:

(1) The total number of controlled substance tests administered;

(2) The number of controlled substance tests administered in each category (i.e., pre-employment, periodic, reasonable cause, and random):

(3) The total number of individuals who did not pass a controlled substance test;

(4) The total number of individuals who did not pass a controlled substance test by testing category;

(5) The disposition of each individual who did not pass a controlled substance test;

(6) The number of controlled substances tests performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the screening test in a sufficient quantity to warrant a confirmatory test;

(7) The number of controlled substance tests performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the confirmatory test in a sufficient quantity to be reported as a "positive" finding to the medical review officer; and

(8) The number of controlled substance tests that were performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the confirmatory test in a sufficient quantity to be reported as a "positive" finding by substance category (e.g., marijuana, cocaine, opium, PCP, or amphetamine).

§391.89 Access to individual test results or test findings.

(a) No person may obtain the individual tests results retained by a medical review officer, and no medical review officer shall release the individual test results of any employee to any person, without first obtaining written authorization from the tested employee. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the employing motor carrier, the information delineated in §391.87 (e) of this subpart.

(b) No person may obtain the information delineated in §391.87 (e) of this part and retained by a motor carrier, and no motor carrier shall release such information about any employee or previous employee, without first obtaining written authorization from the tested employee.

§391.93 Implementation schedule.

(a) This rule is effective December 21, 1988.

(b) Motor carriers with 50 or more "drivers subject to testing" on December 21, 1989, are required to implement a controlled substance testing program which meets the requirements of this subpart by:

(1) December 21, 1989, for "drivers subject to testing," and

(2) December 21, 1990, for all commercial motor vehicle drivers.

(c) Motor carriers with less than 50 "drivers subject to testing" on December 21, 1989 are required to implement a controlled substance testing program by December 21, 1990, for all commercial motor vehicle drivers.

(d) During the first 12 months following the institution of random drug testing pursuant to this rule, a motor carrier shall meet the following conditions:

(1) The random drug testing is spread reasonably through the 12-month period;

(2) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(3) The total number of tests conducted during the 12 months is equal to at least 25 percent of the drivers subject to testing.

§391.95 Drug use prohibitions.

(a) No driver shall be on duty, as defined in §395.2 of this subchapter, if the driver uses any controlled substances, except as provided in §391.97 of this part.

(b) No driver shall be on duty, as defined in §395.2 of this subchapter, if the driver tests positive for use of controlled substances, except as provided in §391.97 of this part.

(c) A person who tests positive for the use of a controlled substance, as defined in 49 CFR Part 40, is medically unqualified to operate a commercial motor vehicle.

(d) A person who refuses to be tested under provisions of this subpart shall not be permitted to operate a commercial motor vehicle. Such refusal shall be treated as a positive test and subject the driver to the restrictions contained in paragraph (c) of this section.

§391.97 Prescribed drugs.

(a) *Affirmative defense.* Any driver who is alleged to have violated §391.95 of this subpart shall have available as an affirmative defense, to be proven by the driver through clear and convincing evidence, the his/her use of a controlled substance (except for methadone) was prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties.

(b) The MRO shall afford a tested individual the opportunity to discuss a positive test result with the MRO before reporting the positive test result to the motor carrier. If an MRO, after making and documenting all reasonable efforts is unable to contact a tested person, the MRO shall contact a designated management official of the motor carrier to arrange for the individual to contact the MRO prior to going on duty. The MRO may verify a positive test without having communicated with the driver about the results of the test if:

(1) The driver expressly declines the opportunity to discuss the results of the test, or

(2) Within 5 days after a documented contact by a designated management official of the motor carrier instructing the driver to contact the MRO, the driver has not done so.

(c) All positive tests reported to the motor carrier by the MRO in which the MRO did not discuss the results with the driver shall be so noted and be accompanied by complete documentation of the MRO's efforts to contact the driver including contacts with a motor carrier's designated management official.

(d) The rules in this subpart do not prohibit a motor carrier from requiring a driver to notify the motor carrier of thereapeutic drug use.

§391.99 Reasonable cause testing requirements.

(a) A motor carrier shall require a driver to be tested, upon reasonable cause, for the use of controlled substances.

(b) A driver shall submit to testing, upon reasonable cause, for the use of controlled substances when requested to do so by the motor carrier.

(c) The conduct must be witnessed by at least two supervisors or company offficials, if feasible. If not feasible, only one supervisor or company official need witness the conduct. The witness or witnesses must have received training in the identification of actions, appearance, or conduct of a commercial motor vehicle driver which are indicative of the use of a controlled substance.

(d) The documentation of the driver's conduct shall be prepared and signed by the witnesses within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier.

§391.101 Reasonable cause testing procedures.

(a) A motor carrier shall ensure that the driver is transported immediately to a collection site for the collection of a urine sample.

(b) A motor carrier shall ensure that the test performed under the requirements of §391.99 of this Subpart conforms with 49 CFR Part 40 and this Subpart.

§391.103 Pre-employment testing requirements.

(a) A motor carrier shall require a driver-applicant who the motor carrier intends to hire or use to be tested for the use of controlled substances as a prequalification condition.

(b) A driver-applicant shall submit to controlled substance testing as a prequalification condition.

(c) Prior to collection of a urine sample under §391.107 of this subpart, a driver-applicant shall be notified that the sample will be tested for the presence of controlled substances.

(d) *Exceptions.* (1) A motor carrier may use a driver who is a regularly employed driver of another motor carrier without complying with paragraph (a) of this section, if the driver meets the requirement of §391.65 of this subchapter.

(2) A motor carrier may use a driver who is not tested by the motor carrier without complying with paragraph (a) of this section, provided the motor carrier assures itself

(i) That the driver has participated in a drug testing program that meets the requirements of this subpart within the previous 30 days and,

(ii) While participating in that program, was either

(A) tested for controlled substances within the past 6 months (from the date of application with the motor carrier) or

(B) participated in the drug testing program for the previous 12 months (from the date of application with the motor carrier).

(3) A motor carrier who exercises either paragraphs (d)(1) or (d)(2) of this section shall contact the controlled substances testing program in which the driver participates or participated and shall obtain the following information:

(i) Name and address of the program.

(ii) Verification that the driver participates or participated in the program.

(iii) Verification that the program conforms to 49 CFR Part 40.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for controlled substances.

(vi) The results, positive or negative, of any test taken.

(4) The motor carrier shall retain the information required by this paragraph in the driver's qualification file required under §391.51 of this part.

(5) A motor carrier who uses, but does not employ, such a driver more than once a year must assure itself once every 6 months that the driver participates in a controlled substances testing program that meets the requirements of this subpart.

§391.105 Biennial (periodic) testing requirements.

(a) A motor carrier shall require a driver to be tested in accordance with the procedures set forth in this subpart and Part 40 of this title at least once every two years commencing with the driver's first medical examination required under §391.45 of this part after the motor carrier's implementation of a drug testing program in accordance with this subpart.

(b) *Exception.* A motor carrier may use a driver who participates in a drug testing program of another motor carrier or controlled substance test consortium.

(c) *Exceptions:* A motor carrier may discontinue

periodic testing after a driver has been tested at least once under

(1) The requirements of paragraph (a) of this section;

(2) The requirements of §391.103 of this Subpart; or

(3) The requirements of §391.109 of this Subpart, and the motor carrier is testing its drivers at a 50 percent rate under its random testing program as required by §391.109 of this Subpart.

§391.107 Pre-employment and biennial testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure that the test performed under the requirements of §391.105 of this Subpart conforms with 49 CFR Part 40 and this Subpart.

§391.109 Random testing requirements.

(EDITOR'S NOTE: Implementation of random testing is deferred until further notice.)

(a) The number of tests conducted under this section annually shall equal or exceed 50 percent (50%) of the average number of commercial motor vehicle driver positions for which testing is required to be tested under this subpart.

(b) A motor carrier shall use a random selection process to select and request a driver to be tested for the use of controlled substances.

(c) A driver shall submit to controlled substance testing when selected by a random selection process used by a motor carrier.

(d) *Exception.* A motor carrier may use the results of another's controlled substances testing program that a driver participates in to meet the requirements of this section provided that the motor carrier obtains the following information from the controlled substances testing program entity:

(1) Name and address of the program.

(2) Verification that the driver participates in the program.

(3) Verification that program conforms to the 49 CFR Part 40.

(4) Verification that driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(5) The date the driver was last tested for controlled substances.

(6) The results, positive or negative, of any tests taken.

§391.111 Random testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure that the test performed under the requirements of §391.109 of this Subpart conforms with 49 CFR Part 40 and this Subpart.

§391.113 Post accident testing requirements.

(EDITOR'S NOTE: Implementation of post accident testing is deferred until further notice.)

(a) A driver shall provide a urine sample to be tested for the use of controlled substances as soon as possible, but no later than 32 hours, after a reportable accident if the driver of the commercial motor vehicle receives a citation for a moving traffic violation arising from the accident.

(b) A driver who is seriously injured and cannot provide a specimen at the time of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.

(c) A motor carrier shall provide drivers with necessary information and procedures so that the driver will be able to meet the requirement of paragraph (a) of this section.

§391.115 Post-accident testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A driver shall ensure that a specimen is collected and forwarded to a National Institute on Drug Abuse (NIDA) certified laboratory in a manner which conforms to 49 CFR Part 40.

(c) A motor carrier shall ensure that the test performed under the requirements of Section 391.113 of this Subpart conforms with 49 CFR Part 40 and this Subpart.

§391.117 Disqualification.

(a) *Disqualification for refusal.* Except for a driver who meets the conditions of §391.113(b), a driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year following a refusal to give a urine sample when the driver has been involved in a fatal accident.

(b) *Disqualification for use of controlled substances.*

A driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year for a positive test of controlled substance use when the driver has been involved in a fatal accident.

§391.119 Employee Assistance Program (EAP).

(a) Every motor carrier shall establish an EAP program. The EAP program shall, as a minimum, include-

(1) An educational and training component for drivers which addresses controlled substances;

(2) An education and training component for supervisory personnel and company officials which addresses controlled substances; and

(3) A written statement, on file and available for inspection, at the motor carrier's principal place of business, outlining the motor carrier's EAP.

§391.121 EAP training program.

(a) Each EAP shall consist of an effective training program for the motor carrier's supervisory personnel and all drivers.

(b) The training program must include at least the following elements:

(1) The effects and consequences of controlled substance use on personal health, safety, and the work environment;

(2) The manifestations and behavioral changes that may indicate controlled substance use or abuse; and

(3) Documentation of training given to drivers and motor carrier supervisory personnel.

(c) EAP training programs for all drivers and supervisory personnel must consist of at least 60 minutes of training.

§391.123 After-care monitoring.

After returning to work, drivers who test positive must continue in any after-care program and be subject to follow-up testing for not longer than 60 months following return to work.

periodic testing after a driver has been tested at least once under

(1) The requirements of paragraph (a) of this section;

(2) The requirements of §391.103 of this Subpart; or

(3) The requirements of §391.109 of this Subpart, and the motor carrier is testing its drivers at a 50 percent rate under its random testing program as required by §391.109 of this Subpart.

§391.107 Pre-employment and biennial testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure that the test performed under the requirements of §391.105 of this Subpart conforms with 49 CFR Part 40 and this Subpart.

§391.109 Random testing requirements.

(EDITOR'S NOTE: Implementation of random testing is deferred until further notice.)

(a) The number of tests conducted under this section annually shall equal or exceed 50 percent (50%) of the average number of commercial motor vehicle driver positions for which testing is required to be tested under this subpart.

(b) A motor carrier shall use a random selection process to select and request a driver to be tested for the use of controlled substances.

(c) A driver shall submit to controlled substance testing when selected by a random selection process used by a motor carrier.

(d) *Exception.* A motor carrier may use the results of another's controlled substances testing program that a driver participates in to meet the requirements of this section provided that the motor carrier obtains the following information from the controlled substances testing program entity:

(1) Name and address of the program.

(2) Verification that the driver participates in the program.

(3) Verification that program conforms to the 49 CFR Part 40.

(4) Verification that driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(5) The date the driver was last tested for controlled substances.

(6) The results, positive or negative, of any tests taken.

§391.111 Random testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure that the test performed under the requirements of §391.109 of this Subpart conforms with 49 CFR Part 40 and this Subpart.

§391.113 Post accident testing requirements.

(EDITOR'S NOTE: Implementation of post accident testing is deferred until further notice.)

(a) A driver shall provide a urine sample to be tested for the use of controlled substances as soon as possible, but no later than 32 hours, after a reportable accident if the driver of the commercial motor vehicle receives a citation for a moving traffic violation arising from the accident.

(b) A driver who is seriously injured and cannot provide a specimen at the time of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.

(c) A motor carrier shall provide drivers with necessary information and procedures so that the driver will be able to meet the requirement of paragraph (a) of this section.

§391.115 Post-accident testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A driver shall ensure that a specimen is collected and forwarded to a National Institute on Drug Abuse (NIDA) certified laboratory in a manner which conforms to 49 CFR Part 40.

(c) A motor carrier shall ensure that the test performed under the requirements of Section 391.113 of this Subpart conforms with 49 CFR Part 40 and this Subpart.

§391.117 Disqualification.

(a) *Disqualification for refusal.* Except for a driver who meets the conditions of §391.113(b), a driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year following a refusal to give a urine sample when the driver has been involved in a fatal accident.

(b) *Disqualification for use of controlled substances.*

A driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year for a positive test of controlled substance use when the driver has been involved in a fatal accident.

§391.119 Employee Assistance Program (EAP).

(a) Every motor carrier shall establish an EAP program. The EAP program shall, as a minimum, include-

(1) An educational and training component for drivers which addresses controlled substances;

(2) An education and training component for supervisory personnel and company officials which addresses controlled substances; and

(3) A written statement, on file and available for inspection, at the motor carrier's principal place of business, outlining the motor carrier's EAP.

§391.121 EAP training program.

(a) Each EAP shall consist of an effective training program for the motor carrier's supervisory personnel and all drivers.

(b) The training program must include at least the following elements:

(1) The effects and consequences of controlled substance use on personal health, safety, and the work environment;

(2) The manifestations and behavioral changes that may indicate controlled substance use or abuse; and

(3) Documentation of training given to drivers and motor carrier supervisory personnel.

(c) EAP training programs for all drivers and supervisory personnel must consist of at least 60 minutes of training.

§391.123 After-care monitoring.

After returning to work, drivers who test positive must continue in any after-care program and be subject to follow-up testing for not longer than 60 months following return to work.

OCAW
Oil, Chemical & Atomic Workers
International Union, AFL-CIO

Dan C. Edwards
International Representative
P.O. Box 21635
Billings, MT 59104

406 / 669-3253 (Home)

EXHIBIT 4
DATE 2/12/91
HB 110

H.B. 110

Testimony of:

Dan C. Edwards, International Representative
Oil, Chemical and Atomic Workers Int'l Union, AFL-CIO
P.O. Box 21635
Billings, MT 59104

Testifying February 12, 1991, before the House Labor and Employment Relations Committee in OPPOSITION to HB 110:

This bill would amend Montana's current good drug testing law to provide for testing where required under federal law. However, such an amendment is not necessary. Where drug testing is mandated by federal law or regulation, the federal regulation preempts state law so this change in current law is not needed.

The concern with the proposal as presented is that it is ambiguous. I can readily see where some zealous federal or state official might interpret these changes to allow changes to State regulations based upon federal regulations without the appropriate notice, hearings, etc. currently required to change intrastate regulation.

An example of this is the situation in 1990 involving the Research and Special Programs Administration of the federal Department of Transportation (RSPA/DOT). RSPA/DOT advised the Montana Public Service Commission that they were required to adopt RSPA/DOT's regulation covering interstate pipelines to apply to intrastate pipelines. This Union and the MT ACLU challenged that action. After a hearing before the MT Public Service Commission and legal briefing, the MT Public Service Commission appropriately ruled that certain provisions of the RSPA/DOT proposed rules were inconsistent with Montana statutory and constitutional law. The PSC's eight page decision of October 1, 1990, concluded,

> "The Commission is of the opinion that the types of testing adopted herein (reasonable cause, pre-employment and nonrandom return to duty) are consistent with Montana statutory and constitutional law. The Commission also considers the revised drug-testing rules to be reasonable and appropriate in view of the important governmental interest in assuring public safety in the pipeline industry."

I have a copy of the complete decision if the Committee wishes same.

In this bill there is at least an implication that federally mandated drug testing might be required for intrastate matters when that is not the intention of federal law.

Moreover, SB 31, which is currently in the Senate Judiciary Committee, was amended to deal with the concerns we are dealing with in HB 110 by adding a section which provides:

> "Federal preemption of any part of this section shall strictly be limited to the specific scope of the federal preemption."

This give the supporters of HB 110 what they seek, while at the same time making it clear that federal regulations do not automatically intrude into those matters reserved for the State.

I urge you give HB 110 a "Do Not Pass". What HB 110 seeks to do is done by SB 31. If the committee is inclined to act on what is sought here, then the proposals included in HB 110 should be deleted, and the language above should be inserted in its place.

Thank you. I'll be glad to take questions at the conclusion of the hearing.

2/12/91
HB 110

FACT SHEET

SUBJECT: DEPARTMENT OF TRANSPORTATION (DOT) DRUG TESTING PROGRAM

The DOT is the first Executive agency to implement a Department-wide drug-free workplace program for civilian employees under Executive Order 12564 (Drug-Free Federal Workplace - Issued in September 1986). The DOT program was officially announced in June 1987. Testing began in September 1987.

The DOT program includes the following:

-- broad education and awareness training
-- an increase in supervisory training and the visibility of the employee assistance program
-- a six-part forensic drug testing program to identify illicit drug use
-- initiatives to foster and promote drug-free life styles among DOT employees.

Random drug testing of approximately 32,000 employees in critical safety and security positions is underway at more than 900 work sites. the remaining five categories of testing (reasonable suspicion, follow-up, voluntary, post-accident, and pre-employment) were phased in during the months following the implementation of the random testing program.

The chart below details DOT drug testing program statistics as of February 28, 1990. We have conducted 49,590 drug tests within the department.

TEST TYPE	NUMBER OF TESTS	NUMBER POSITIVE	
RANDOM	30,960	152	0.49 %
REASONABLE SUSPICION	21	11	
FOLLOW-UP	1,938	43	
POST-ACCIDENT	55	0	
PRE-EMPLOYMENT (FAA)	16,249	63	0.38 %
PRE-EMPLOYMENT (OTHER MODES)	315	0	
VOLUNTARY	52	0	

Of the 152 individuals who tested positive on the Random test, 99 have completed rehabilitation and have returned to their original position.

Testing under the random program will continue every month at a rate of approximately 50 percent of the total number of covered employees per year.

The total forecasted yearly cost of the DOT program is estimated at 5 million dollars. To date, collection costs have averaged $125.00 per collection, and forensic testing has averaged $25.00 per test.

April 26, 1990/drugfac

PIPELINE SAFETY

REGULATIONS

PART 199

Current through Amendment 3

AND

PART 40

DRUG TESTING

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

TRANSPORTATION SAFETY INSTITUTE
PIPELINE SAFETY DIVISION
6500 SOUTH MACARTHUR BLVD. (DMA 607)
OKLAHOMA CITY, OKLAHOMA 73125

(405) 680-4643 Fax 680-3521

NOT AN OFFICIAL COPY

8/7/90

DATE 2/12/91
FILE HB110
10-8-90

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Amendment of Rule 38.5.2202 and Adoption of a New Rule Regarding Investigation and Reports of Accidents	NOTICE OF AMENDMENT AND ADOPTION OF RULES REGARDING FEDERAL PIPELINE SAFETY REGULATIONS INCLUDING DRUG-TESTING REQUIREMENTS

TO: All Interested Persons

1. On February 8, 1990 the Department of Public Service Regulation published Notice of Proposed Amendment and Adoption at page 275, issue number 3 of the 1990 Montana Administrative Register. Requests were received for a hearing and on April 12, 1990 the Department of Public Service Regulation published a Notice of Public Hearing to consider the above matter at page 698, issue number 7 of the 1990 Montana Administrative Register.

2. The Department of Public Service Regulation has adopted and amended the rule as proposed with the following changes:

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The public service commission hereby adopts and incorporates by reference the U.S. Department of Transportation Pipeline Safety Regulations, Code of Federal Regulations, Title 49, Chapter 1, Subchapter D, Parts 191, and 192, including all revisions and amendments enacted by the department of transportation on or before the effective date of this rule, October 12, 1990 ~~and 199~~. A copy of CFR Title 49, Chapter 1, Subchapter D, Parts 191, and 192 ~~and 199~~ may be obtained from the U.S. Department of Transportation, ~~Materials Transportation Bureau, Office of Operations and Enforcement (Pipeline Safety)~~ Research and Special Programs Administration, Western Region, Pipeline Safety, 555 Zang Street, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 2701 Prospect Avenue, Helena, Montana 59620.

Comments: No comments were received regarding Parts 191 and 192. As adopted, ARM 38.5.2202 now incorporates the latest revisions to Parts 191 and 192. All comments received were regarding Part 199. Since substantial changes were made to Part 199 they have been adopted as new rules II through XIII.

3. The Commission has adopted the rule as proposed:

RULE I. 38.5.2220 INVESTIGATION AND REPORTS OF INCIDENTS OF INTRASTATE GAS PIPELINE OPERATORS

Comments: No comments were received.

4. The Commission has adopted the following new rules as stated above. Random and post-accident drug testing requirements are not being adopted. Other minor revisions to 49 C.F.R. 199 as proposed have also been made. Since the PSC does not enforce 49 C.F.R. Parts 193 and 195, all references to those parts have been deleted. Due to the date these rules are being adopted, § 199.1(b) is being deleted as unnecessary.

RULE II. 38.5.2301 SCOPE AND COMPLIANCE (1) This subchapter requires pipeline facilities subject to 49 Code of Federal Regulations (C.F.R.), Part 192 to test employees for the presence of prohibited drugs and provide an employee assistance program. However, this subchapter does not apply to "master meter systems" defined in 49 C.F.R. § 191.3.

(2) Nothing contained in this subchapter shall be construed or applied in a manner inconsistent with the provisions and requirements of § 39-2-304, MCA.

(3) This subchapter shall not apply to any person for whom compliance with this subchapter would violate the domestic laws or policies of another country.

(4) This subchapter is not effective until January 2, 1992, with respect to any person for whom a foreign government contends that application of this subchapter raises questions of compatibility with that country's domestic laws or policies. On or before December 2, 1991, the administrator will issue any necessary amendment resolving the applicability of this subchapter to such person on and after January 2, 1992. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE III. 38.5.2303 DEFINITIONS As used in this subchapter:

(1) "Accident" means an incident reportable under 49 C.F.R. part 191 involving gas pipeline facilities.

(2) "Administrator" means the administrator of the research and special programs administration (RSPA) of the U.S. department of transportation (DOT), or any person who has been delegated authority in the matter concerned.

(3) "DOT procedures" means the "procedures for transportation work place drug testing programs" published by the office of the secretary of transportation in 49 C.F.R. part 40.

(4) "Employee" means a person who performs on a pipeline, an operating, maintenance, or emergency-response function regulated by 49 C.F.R. part 192. This does not include clerical, truck driving, accounting, or other functions not subject to 49 C.F.R. part 192. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

(5) "Fail a drug test" means that the confirmation test result shows positive evidence of the presence under DOT procedures of a prohibited drug in an employee's system. The testing procedure must provide for the verification of test results by two or more different testing procedures before judging a test positive.

(6) "Operator" means a person who owns or operates pipeline facilities subject to 49 C.F.R. part 192.

(7) "Pass a drug test" means that initial testing or confirmation testing under DOT procedures does not show evidence of the presence of a prohibited drug in a person's system.

(8) "Prohibited drug" means any of the following substances specified in schedule I or schedule II of the Controlled Substances Act, 21 U.S.C. 801.812 (1981 and 1987 Cum.P.P.): marijuana, cocaine, opiates, amphetamines, and

phencyclidine (PCP). In addition, for the purposes of reasonable cause testing, "prohibited drug" includes any substance in schedule I or II if an operator has obtained prior approval from RSPA, pursuant to the "DOT procedures" in 49 C.F.R. part 40, to test for such substance, and if the department of health and human services has established an approved testing protocol and positive threshold for such substance.

(9) "State agency" means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009). AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE IV. 38.5.2305 DOT PROCEDURES (1) The anti-drug program required by this subchapter must be conducted according to the requirements of this subchapter and the DOT procedures. In the event of conflict, the provisions of this subchapter prevail. Terms and concepts used in this subchapter have the same meaning as in the DOT procedures. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE V. 38.5.2307 ANTI-DRUG PLAN (1) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this subchapter and the DOT procedures. The plan must contain:

(a) Methods and procedures for compliance with all the requirements of this subchapter, including the employee assistance program;

(b) The name and address of each laboratory that analyzes the specimens collected for drug testing; and

(c) The name and address of the operator's medical review officer; and

(d) Procedures for notifying employees of the coverage and provisions of the plan. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE VI. 38.5.2309 USE OF PERSONS WHO FAIL OR REFUSE A DRUG TEST (1) An operator may not knowingly use as an employee any person who:

(a) Fails a drug test required by this subchapter and the medical review officer makes a determination under ARM 38.5.2315(4)(b); or

(b) Refuses to take a drug test required by this subchapter.

(2) Paragraph (1)(a) of this rule does not apply to a person who has:

(a) Passed a drug test under DOT procedures;

(b) Been recommended by the medical review officer for return to duty in accordance with ARM 38.5.2315(3); and

(c) Not failed a drug test required by this subchapter after returning to duty. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE VII. 38.5.2311 DRUG TESTS REQUIRED: PRE-EMPLOYMENT, REASONABLE CAUSE AND RETURN TO DUTY (1) Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(a) No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this subchapter.

(b) Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. However, in the case of operators with 50 or fewer employees subject to testing under this subchapter, only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

(c) An employee who refuses to take or does not pass a drug test may not return to duty until the employee passes a drug test administered under this subchapter and the medical review officer has determined that the employee may return to duty. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE VIII. 38.5.2313 DRUG TESTING LABORATORY (1) Each operator shall use for the drug testing required by this subchapter only drug testing laboratories certified by the department of health and human services under the DOT procedures.

(2) The drug testing laboratory must permit:

(a) Inspections by the operator before the laboratory is awarded a testing contract; and

(b) Unannounced inspections, including examination of records, at any time, by the operator, the administrator, and if the operator is subject to state agency jurisdiction, a representative of that state agency.

(3) Nothwithstanding the above, a person tested may request retesting by a laboratory of his choice, pursuant to ARM 38.5.2317. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE IX. 38.5.2315 REVIEW OF DRUG TESTING RESULTS: MEDICAL REVIEW OFFICER (1) Each operator shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified individual on staff to serve as MRO, the operator may contract for the provision of MRO services as part of its anti-drug program.

(2) The MRO must be a licensed physician with knowledge of drug abuse disorders.

(3) The MRO shall perform the following functions for the operator:

(a) Review the results of drug testing before they are reported to the operator.

(b) Review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test result:

(i) Conduct a medical interview with the individual tested.

(ii) Review the individual's medical history and any relevant biomedical factors.

(iii) Review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication.

(iv) If necessary, require that the original specimen be reanalyzed to determine the accuracy of the reported test result.

(v) Verify that the laboratory report and assessment are correct.

(c) Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT procedures may be returned to duty.

(d) Ensure that an employee has been drug tested in accordance with the DOT procedures before the employee returns to duty.

(4) The following rules govern MRO determinations:

(a) If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO is not required to take further action.

(b) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall refer the individual tested to an employee assistance program, or to a personnel or administrative officer for further proceedings in accordance with the operator's anti-drug program.

(c) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO should conclude that the test is negative for the presence of a prohibited drug or drug metabolite in an individual's system.

(5) A copy of all drug test results shall be provided to the person tested.

(6) The person tested must be given the opportunity to rebut or explain the results of all drug tests and retests.
AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE X. 38.5.2317 RETENTION OF SAMPLES AND RETESTING

(1) Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT procedures. Within this 365-day period, the employee or his representative, the operator, the administrator, or, if

the operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

(2) The person tested must be provided the opportunity, at the expense of the operator, to obtain a confirmatory retest of the urine by an independent laboratory selected by the person tested.

(3) If the employee specifies retesting by a second laboratory, the original laboratory must follow approved chain-of-custody procedures in transferring a portion of the sample.

(4) Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT procedures, but equal to or greater than the established sensitivity of the assay, must, as technically appropriate, be reported and considered corroborative of the original positive results. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE XI. 38.5.2319 EMPLOYEE ASSISTANCE PROGRAM (1) Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish the EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP services. Each EAP must include education and training on drug use. At the discretion of the operator, the EAP may include an opportunity for employee rehabilitation.

(2) Education under each EAP must include at least the following elements: display and distribution of informational material; display and distribution of a community service hotline telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs.

(3) Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause must include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE XII. 38.5.2321 CONTRACTOR EMPLOYEES (1) With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this subchapter be carried out by the contractor provided:

(a) The operator remains responsible for ensuring that the requirements of this subchapter are complied with; and

(b) The contractor allows access to property and records by the operator, the administrator, and if the operator is sub-

ject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this subchapter. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE XIII. 38.5.2323 RECORDKEEPING (1) Each operator shall keep the following records for the periods specified and permit access to the records as provided by paragraph (2) of this rule:

(a) Records that demonstrate the collection process conforms to this subchapter must be kept for at least three years.

(b) Records of employee drug test results that show employees failed a drug test, and the type of test failed (e.g., post-accident), and records that demonstrate rehabilitation, if any, must be kept for at least five years, and include the following information:

(i) The functions performed by employees who failed a drug test.

(ii) The prohibited drugs which were used by employees who failed a drug test.

(iii) The disposition of employees who failed a drug test (e.g., termination, rehabilitation, leave without pay).

(iv) The age of each employee who failed a drug test.

(c) Records of employee drug test results that show employees passed a drug test must be kept for at least one year.

(d) A record of the number of employees tested, by type of test (e.g., post-accident), must be kept for at least five years.

(e) Records confirming that supervisors and employees have been trained as required by this subchapter must be kept for at least three years.

(2) Information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, or as required by a court of law. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to the administrator or the representative of a state agency upon request. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

5. Comments: The Oil, Chemical and Atomic Workers International Union, Local 2-493 (OCAW) submitted written and oral comments in opposition to the random and post-accident drug testing requirements contained in the proposed rules. OCAW did not oppose the reasonable cause and nonrandom return-to-duty testing provisions. OCAW did not take a position on pre-employment testing.

The American Civil Liberties Union (ACLU) submitted written and oral comments in opposition to pre-employment and random drug-testing. At the hearing the ACLU also expressed some reservations regarding the scope of the proposed post-accident testing. The ACLU did not take a position on return-to-duty testing and did not oppose reasonable cause testing.

The ACLU's objections to pre-employment testing were not stated in specific terms. The ACLU's statement simply ex-

pressed general opposition to drug testing, based upon the intrusion of individual privacy and violation of constitutional rights. Drug tests are unfair if administered to workers without any reason to suspect illegal drug use; and unnecessary because they cannot detect actual job impairment. Drug tests are also sometimes inaccurate. Performance tests in safety-sensitive positions are more appropriate. Competent supervision, professional counseling and voluntary rehabilitation would better address the drug problem. Finally, the ACLU stated that § 39-2-304, MCA is a good law, probably the best in the country that balances the rights of individual privacy against the rights of the public interest.

The Montana Power Company did not take a position for or against the rules, but did offer oral comments and presented a copy of the company's anti-drug plan.

Response: The Commission has determined that the random and post-accident drug testing provisions of the proposed rules would violate § 39-2-304, MCA. These types of tests are therefore not being adopted in the Administrative Rules of Montana, including the random provisions of the return-to-duty testing.

In response to the ACLU's objections to pre-employment testing, the Commission first notes that the U.S. 9th Circuit Court of Appeals recently upheld 49 C.F.R. Part 199 against challenges based upon Federal law, including the 4th Amendment of the United States Constitution. IBEW v. Skinner, ___ F.2d ____, 1990 WL 129349 (Sept. 12, 1990). In addition, the Commission believes the pre-employment testing required by the proposed rules is permitted by § 39-2-304(1)(b), due to the nature of the pipeline industry and the functions performed by operations, maintenance and emergency response personnel.

The rules as proposed contain other provisions which are inconsistent with § 39-2-304, MCA, in the areas of testing procedure, verification, test review, retesting, and release of results. Appropriate revisions have been made to conform the rule as adopted to the requirements of § 39-2-304, MCA. A general provision has also been added requiring application and construction of these rules in a manner consistent with § 39-2-304, MCA.

The Commission is of the opinion that the types of testing adopted herein (reasonable cause, pre-employment and nonrandom return-to-duty) are consistent with Montana statutory and constitutional law. The Commission also considers the revised drug-testing rules to be reasonable and appropriate in view of the important governmental interest in assuring public safety in the pipeline industry.

Howard L. Ellis

HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 1, 1990.

EXHIBIT 5
DATE 2/12/91
HB 110

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION

P O BOX 3012 • BILLINGS MONTANA 59103 • (406) 248-1086

DRUG TESTING TESTIMONY

State Office
335 Stapleton Building
Billings, Montana 59101

BOB ROWE
President

SCOTT CRICHTON
Executive Director

JEFFREY T. RENZ
Litigation Director

I am testifying as the Executive Director of the American Civil Liberties Union of Montana on behalf of my board of directors and the 800 families that pay dues to our organization so that we might work to preserve the protections afforded us by the Constitution and the Bill of Rights.

There was a time in the United States when your business was also your boss's business. At the turn of the century, company snooping was pervasive and privacy almost non-existent. Your boss had the right to know who you lived with, what you drank, whether you went to church, or to what political groups you belonged. With the growth of the trade union movement and heightened awareness of the importance of individual rights, American workers came to insist that life off the job was their private affair not to be scrutinized by employers.

But major chinks have begun to appear in the wall that has separated life on and off the job, largely due to new technologies that make it possible for employers to monitor their employees off-duty activities. Today, millions of American workers every year, in both the public and private sectors, are subjected to urinalysis drug tests as a condition for getting or keeping a job.

The American Civil Liberties Union opposes indiscriminate urine testing because the process is both unfair and unnecessary. It is unfair to force workers who are not even suspected of using drugs, and whose job performance is satisfactory, to "prove" their innocence through a degrading and uncertain procedure that violates personal privacy. Such tests are unnecessary because they cannot detect impairment and, thus, in no way enhance an employer's ability to evaluate or predict job performance.

Employers have a right to expect their employees not to be high, stoned, drunk, or asleep. Job performance is the bottom line: If you cannot

do the work, employers have a legitimate reason for firing you. But urine tests do not measure job performance. Even a confirmed "positive" provides no evidence of present intoxication or impairment; it merely indicates that a person may have taken a drug at some time in the past.

Urine tests cannot determine precisely when a particular drug was used. They can only detect "metabolites," or inactive, leftover traces of previously ingested substances. For example, an employee who smokes marijuana on a Saturday night may test positive the following Wednesday, long after the drug has ceased to have any effect. In that case, what the employee did on Saturday has nothing to do with his or her fitness on Wednesday. At the same time, a worker can snort cocaine on the way to work and test negative that same morning. That is because the cocaine has not yet been metabolized and will, therefore, not show up in his urine.

You'll hear the question, "If you don't use drugs, you have nothing to hide- so why object to testing?" Innocent people do have something to hide: their private life. The "right to be left alone" is, in the words of the late Supreme Court Justice Louis Brandeis, "the most comprehensive of rights and the right most valued by civilized men."

Analysis of a person's urine can disclose many details about that person's private life other than drug use. It can tell an employer whether an employee or a job applicant is being treated for a heart condition, depression, epilepsy or diabetes. It can also reveal whether an employee is pregnant.

Drug screens are not completely reliable. These tests can and often do yield false positive results. The ACLU in Montana has heard stories from numerous individuals whose jobs require testing about how false positives have sent their lives into real disarray. Although more accurate testing is becoming available, it is expensive and less frequently used. And even the more accurate tests can yield inaccurate results due to laboratory error. A survey by the National Institute of Drug Abuse (NIDA) found that 20 percent of the labs surveyed mistakenly reported the presence of illegal drugs in drug-free urine samples. Unreliability also stems from the tendency of drug screens to confuse similar compounds. For example, codeine and Vicks Formula 44-M have been known to produce positive results for heroin, Advil for marijuana, and Nyquil for amphetamines.

Such testing may be the easiest way to identify drug users, but it is also the most un-American. Americans have traditionally believed that general searches of innocent people are unfair. This tradition began when King George's soldiers searched everyone indiscriminately in order to uncover those few people who were committing offenses against the Crown. Early Americans deeply hated these general searches, which were a leading cause of the Revolution.

After the Revolution, when memories of the experience with warrantless searches were still fresh,the Fourth Amendment was adopted. It says that the government cannot search everyone to find the few who might be guilty of an offense. The government must have good reason to suspect a particular person before subjecting him or her to intrusive body searches. These long-standing principles of fairness should apply to the private sector, even though the Fourth Amendment only applies to government action.

Urine tests are body searches, and they are an unprecedented invasion of privacy. The standard practice, in administering such tests, is to require employees to urinate in the presence of a witness to guard against specimen tampering. In the words of one judge, that is "an experience which even courteously supervised can be humiliating and degrading." Noted a federal judge, as he invalidated a drug-testing program for municipal fire-fighters, "Drug testing is a form of surveillance, albeit a technological one."

Shouldn't exceptions be made for certain workers such as airline pilots are responsible for the lives of others? Obviously, people who are responsible for others' lives should be held to high standards of job performance. But urine testing will not help employers do that because it does not detect impairment.

If employers in transportation and other industries are really concerned about the public's safety, they should abandon imperfect urine testing and test performance instead. Computer- assisted performance tests already exist and, in fact, have been used for years by NASA on astronauts and test pilots. These tests can actually measure hand-eye coordination and response time, do not invade people's privacy, and can improve safety far better than drug tests can.

Drug use costs industry millions in lost worker productivity each year. Don't employers have a right to test as a way of protecting their investment?

Actually, there are no clear estimates about the economic costs to industry resulting from drug use by workers. Proponents of drug testing claim the costs are high, but they have been hard pressed to translate that claim into real figures. And some who make such claims are manufacturers of drug tests, who obviously stand to profit from industry-wide urinalysis. In any event, employers have better ways to maintain high productivity, as well as to identify and help employees with drug problems. Competent supervision, professional counseling and voluntary rehabilitation programs may not be as simple as a drug test, but they are a better investment in America.

Our nation's experience with cigarette smoking is a good example of what education and voluntary rehabilitation can accomplish. Since 1965, the proportion of Americans who smoke cigarettes has gone down from 40.4 percent to 29.1 percent. This dramatic decrease was a consequence of public education and the availability of treatment on demand. Unfortunately, instead of adequately funding drug clinics and educational programs, the government has cut these services so that substance abusers sometimes have to wait for months before receiving treatment.

Many state and federal courts have ruled that testing programs in public workplaces are unconstitutional if they are not based on some kind of individualized suspicion. Throughout the country, courts have struck down programs that randomly tested police officers, fire-fighters, teachers, civilian army employees, prison guards and employees of several federal agencies. The ACLU and public employees unions have represented most of these victorious workers. In Washington, D.C., for example, one federal judge had this to say about a random drug testing program that would affect thousands of government employees: "This case presents for judicial consideration a wholesale deprivation of the most fundamental privacy rights of thousands upon thousands of loyal, law abiding citizens..."

In 1989, for the first time, the U.S. Supreme Court ruled on the constitutionality of testing government employees not actually suspected of

drug use. In two cases involving U.S. Customs guards and railroad workers, the majority of the Court held that urine tests are searches, but that these particular employees could be tested without being suspected drug users on the grounds that their Fourth Amendment right to privacy was outweighed by the government's interest in maintaining a drug-free workplace.

Although these decision represent a serious setback, the Court's ruling does not affect all government workers, and the fight over the constitutionality of testing is far from over.

Court challenges to drug testing programs in private workplaces are underway throughout the country. These lawsuits involve state constitutional and statutory laws rather than federal constitutional law. Some are based on common law actions that charge specific, intentional injuries; others are breach of contract claims. Some have been successful while others have failed. Traditionally, employers in the private sector have had extremely broad discretion in personnel matters.

In most states, private sector employees have virtually no protection against drug testing's intrusion on their privacy, unless they belong to a union that has negotiated the prohibition or restriction of workplace testing.

Montana is one of only eight states that has enacted protective legislation that restricts drug testing in the private workplace and gives employees some measure of protection from unfair and unreliable testing. Montana, Iowa, Vermont and Rhode Island have banned all random or blanket drug testing of employees (that is, testing without probable cause or reasonable suspicion), and Minnesota, Maine and Connecticut permit random testing only of employees in "safety sensitive" positions. The laws in these states also mandate confirmatory testing, use of certified laboratories, confidentiality of test results and other procedural protections. While they are not perfect, these new laws place significant limit on employers' otherwise unfettered authority to test and give employees the power to resist unwarranted invasions of privacy.

The ACLU will continue to press other states to pass similar statutes and to lobby the U.S. Congress to do the same.

I urge you to reject HB 110, 525, and 531.

OCAW
Oil, Chemical & Atomic Workers
International Union, AFL-CIO

Dan C. Edwards
International Representative
P.O. Box 21635
Billings, MT 59104

406 / 669-3253 (Home)

EXHIBIT C
DATE 2/12/91
HB 525

H.B. 525

Testimony of:

Dan C. Edwards, International Representative
Oil, Chemical and Atomic Workers Int'l Union, AFL-CIO
P.O. Box 21635
Billings, MT 59104

Testifying February 12, 1991, before the House Labor and Employment Relations Committee in OPPOSITION to HB 525:

Before I get into the reasons this is not a good bill, I want to make it clear that I, OCAW nor the Montana labor movement support or condone the use of drugs or alcohol on-the-job , or coming to work under the influence of any substance. However, unless there is objective evidence that a worker is impaired on-the-job, or that the worker's job performance is effected, workers have the same rights as any other american against unwarranted intrusion into an employee's private life away from the workplace. IT IS NOT THE ROLE OF THE EMPLOYER TO BE SOCIETY'S POLICEMEN!

HB 525 is one of a series of proposals fronted by an organization headed by IBM lobbyist Steve Browning known as "Montanans for a Drug-Free Society". MFDFS is an employer dominated group lead by the Corporate giants IBM and Exxon.

If former drug czar William Bennett is "your cup of tea", then you should like this bill and HB 531, because that's where they came from. In fact, they are counting on you being impressed because these bills "came out of the White House.

At first glance, this bill might seem like a good idea because it makes a promise of reduced insurance rates for commercial motor vehicle carriers and for the individuals who work for commercial motor vehicle carriers.

There are two very good reasons this bill is not a good bill:

1. First, I seriously doubt that the insurance scheme contemplated by HB 525 is workable. It may be possible for commercial motor vehicle carriers to obtain insurance rates from an insurance company which will provide the "double deduction" called for in the bill. But, I submit that it is

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HB 525

a test. This bill is just another piece of the not-so-subtle efforts to impose random drug testing on Montana's workers.

I urge that you give HB 525 a "Do Not Pass".

Thank you. I'll be glad to take questions at the conclusion of the hearing.

EXHIBIT 1
DATE 2/12/91
HB 305

Amendments to House Bill No. 305
First Reading Copy

For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 5, 1991

1. Title, line 12.
Following: "39-51-1109,"
Insert: "AND"

2. Title, line 13.
Following: line 12
Strike: "39-71-204, AND 39-72-612,"

3. Page 2, lines 7 through 12.
Following: "court" on line 7
Strike: remainder of line 7 through "transcript" on line 12

4. Page 2, line 13.
Following: "(4)"
Strike: "The"
Insert: "Except for transcripts, the"

5. Page 4, line 14 through page 6, line 8.
Strike: sections 5 and 6 in their entirety
Renumber: subsequent sections

EXHIBIT 0
DATE 2/12/91
HB HJR 13

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL VOTE

DATE 2/12/91 **BILL NO.** HJR 13 **NUMBER** _____

MOTION: Do Pass

NAME	AYE	NO
REP. JERRY DRISCOLL	✓	
REP. MARK O'KEEFE	✓	
REP. GARY BECK	✓	
REP. STEVE BENEDICT		✓
REP. VICKI COCCHIARELLA	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG	✓	
REP. H.S. "SONNY" HANSON		
REP. DAVID HOFFMAN	✓	
REP. ROYAL JOHNSON		✓
REP. THOMAS LEE	✓	
REP. BOB PAVLOVICH	✓	
REP. JIM SOUTHWORTH	✓	
REP. FRED THOMAS		✓
REP. DAVE WANZENRIED	✓	
REP. TIM WHALEN	✓	
REP. TOM KILPATRICK, VICE-CHAIRMAN	✓	
REP. CAROLYN SQUIRES, CHAIR	✓	
TOTAL	14	3

EXHIBIT 1
DATE 2/12/91
HB 336

Amendments to House Bill No. 336
First Reading Copy

Requested by Representative Simpkins
For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 6, 1991

1. Title, lines 5 and 6.
Strike: "THE" on line 5 through "RETAIN" on line 6
Insert: "PAYMENT TO AN EMPLOYEE OF"

2. Title, line 7.
Following: "DUE;"
Insert: "REQUIRING AN EMPLOYER TO PAY THE EMPLOYEE ANNUALIZED INTEREST ON UNPAID WAGES;"

3. Page 1, line 19.
Following: "~~Any~~"
Insert: "(1)"

4. Page 1, line 23.
Following: "~~shall~~"
Strike: "must"
Insert: "may"

5. Page 1, line 25.
Following: "the"
Strike: "department"
Insert: "employee"

6. Page 2, line 1.
Following: "amount"
Strike: "equal to 5%"
Insert: "not to exceed 100%"

7. Page 2, line 4.
Following: "due"
Insert: ", but not less than the wages due plus interest payment required in subsection (2)"

8. Page 2, lines 5 through 7.
Following: "~~such~~" on line 5
Strike: remainder of line 5 through "due" on line 7
Insert: "(2) The employer shall also pay the employee annualized interest on the unpaid wages from the date the wages were due. The interest must be calculated by the department and compounded annually, but the annualized rate may not exceed 2 percentage points a year above the prime rate of major New York banks on the date of settlement."

9. Page 5, lines 9 and 10.
Following: "wages" on line 9

Strike: ","
Insert: "or"
Following: "taxes"
Strike: remainder of line 9 through "premiums" on line 10

EXHIBIT 10
DATE 2/12/91
HB 342

House Bill 342

Senate Bill 315 and House Bill 381:

In 1987, Senate Bill 315 was introduced on behalf of the Senate Labor Committee by Senator Williams and was a major revision on workers' compensation. House Bill 381 was introduced by Rep. Grandy and exempted from W.C. and U.I. self-employed cosmetologists and barber's who rent space or fixtures in a shop.

Both bills amended section 39-71-401:
(1) S.B. 315 took out the references to broker, salesman, direct seller, and references to farm or ranch in subsection (2) dealing with sole proprietors, and replaced them in the list under subsection (2) dealing with exemptions from W.C.

(2) H. B. 381, as drafted, amended subsection (2) of 401 to include "cosmetologist's services and barber's services as defined in 39-710204(1)(l)". Unlike SB 315, HB 381 in it's original form, did not amend subsection (3) at all. HB 381 stayed this way until the 3rd reading, when it was amended to move the reference to the cosmetologists and barbers into subsection (3) dealing with sole proprietors.

As a result, both bills passed with SB 315 removing the words "and not contracting" from 401(3) and HB 381 leaving them in. This explains the brackets now seen in subsection 3 around "and not contracting". As a result, SB 351 occupations out of subsection (3) and put them as exemptions in subsection (2) while HB 381 moved the cosmetologists and barbers out of (2) and put them in (3).

That's why HB 342 looks like it does. My suggestion to the committee is to move the cosmetologists and barbers back into subsection (2), the list of occupations exempted from W.C. since that's what HB 381 was meant to do. That leaves (3) stating the

following:

A sole proprietor or working member of a partnership who holds hemself out or considers himself an independent contractor mut elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the department for an exemption from the Workers' Compensation Act for himself unless he is contracting for construction industry services.

(h) employment as an official, including a timer, referee, or judge, ... school amateur athletic event, unless the person is otherwise employed b... school district.

(3) A sole proprietor or working member of a partnership who holds h... self out or considers himself an independent contractor and who is not t... tracting for ~~agricultural services to be performed on a farm or ranch, or ... broker or salesman services performed under a license issued by the board ... realty regulation, or for services as a direct seller engaged in the sale of c... sumer products to customers primarily in the home~~ must elect to be bou... personally and individually by the provisions of compensation plan No. 1, ... or 3, but he may apply to the division for an exemption from the Worke... Compensation Act for himself. The application must be made in accordan... with the rules adopted by the division. The division may deny the applicati... only if it determines that the applicant is not an independent contract... When an application is approved by the division, it is conclusive as to t... status of an independent contractor and precludes the applicant from obtai... ing benefits under this chapter.

(4) Each employer shall post a sign in the workplace at the locatio... where notices to employees are normally posted, informing employees abo... the employer's current provision of compensation insurance. A workplace ... any location where an employee performs any work-related act in the cour... of employment, regardless of whether the location is temporary or permanen... and includes the place of business or property of a third person while t... employer has access to or control over such place of business or property f... the purpose of carrying on his usual trade, business, or occupation. The si... will be provided by the division, distributed through insurers or directly b... the division, and posted by employers in accordance with rules adopted by t... division. An employer who purposely or knowingly fails to post a sign as pr... vided in this subsection is subject to a $50 fine for each citation.

History: (1), (2)(a) thru (f)En. 92-202.1 by Sec. 1, Ch. 492, L. 1973; amd. Sec. 1, Ch. 550, ... 1977; Sec. 92-202.1, R.C.M. 1947; (2)(g)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2931, R.C.... 1921; re-en. Sec. 2931, R.C.M. 1935; Sec. 92-805, R.C.M. 1947; R.C.M. 1947, 92-202.1, 92-80... amd. Sec. 58, Ch. 397, L. 1979; amd. Sec. 1, Ch. 470, L. 1983; amd. Sec. 1, Ch. 94, L. 198... amd. Sec. 1, Ch. 100, L. 1985; amd. Sec. 3, Ch. 336, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 94 at end of (2)(d) and in first sentence of (3), inserted "or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home".

Chapter 100 inserted (2)(h).

Chapter 336 at end of (2)(b) and (2)(f) inserted "except employment of a volunteer under 67-2-105".

1983 Amendment: In (2)(d), inserted language following "partnership"; and inserted (3) and (4).

Cross-References

Regulation of real estate brokers and sale... men, Title 37, ch. 51.

"Casual employment" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

Compensation plan No. 1, Title 39, ch. ... part 21.

Compensation plan No. 2, Title 39, ch. ... part 22.

Compensation plan No. 3, Title 39, ch. ... part 23.

39-71-402. Extraterritorial application and reciprocity. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of

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EXHIBIT 10
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...ed the assessment amount from $25 to ...

Cross-References
"Division" defined, 39-71-116.
"Payroll" defined, 39-71-116.
"Public corporation" defined, 39-71-116.

39-71-309. Hospitals to submit schedule of fees and charges — effective period of schedule — when to be submitted. All hospitals must submit to the division a schedule of fees and charges for treatment of injured workers to be in effect for at least a 12-month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least 30 days prior to its effective date and may not exceed the charges prevailing in the hospital for similar treatment of private patients.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(2); amd. Sec. 57, Ch. 397, L. 1979.

Cross-References
"Division" defined, 39-71-116.

Part 4

Coverage, Liability, and Subrogation

39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3) except employment of a volunteer under 67-2-105;

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter;

ıg business under this chapter
ed by the division, make and file
the division may require.
c. 2934, R.C.M. 1921; re-en. Sec. 2934,
8, R.C.M. 1947; (2)En. Sec. 35, Ch. 96,
37, R.C.M. 1935; amd. Sec. 64, Ch. 23,
8, 92-1010.

urer" defined, 39-71-116.
ıployer" defined, 39-71-117.
ıployee" defined, 39-71-118.
ury" defined, 39-71-119.

lic corporation to file payroll
ion. Whenever any public corpo-
surance fund neglects or refuses
loyees, the division may levy an
oration in an amount of $75 for
hall be collected in the manner
assessments.
Ch. 100, L. 1919; amd. Sec. 1, Ch. 196,
340, R.C.M. 1935; amd. Sec. 1, Ch. 410,
206(part); amd. Sec. 3, Ch. 21, L. 1981.

ıyroll" defined, 39-71-116.
ıblic corporation" defined, 39-71-116.

. L. 1987.
amd. Sec. 1, Ch. 43, L. 1975; amd. Sec.
. 57, Ch. 397, L. 1979.

ed.

ıaining benefits through decep-
person filing a claim under this
ıg the claim, affirms the informa-
ıat person's knowledge.
obtaining benefits to which the
r chapter 72 of this title may be
torney may initiate criminal pro-

ate worker for filing claim —
. (1) An employer may not use as
of a claim under this chapter or

f returning to work within 2 years
medical release to return to work,
other applicants for a comparable
on is consistent with the worker's

nployment with the employer for
e the injury occurred.

1987

(4) The division, department, and workers' co
have jurisdiction to administer or resolve a dispute
sive jurisdiction is with the district court.
History: En. Sec. 20, Ch. 464, L. 1987.

Part 4

Coverage, Liability, and Subr

39-71-401. Employments covered and emp
Except as provided in subsection (2) of this section
tion Act applies to all employers as defined in 39-7
as defined in 39-71-118. An employer who has any
any appointment or contract of hire, expressed o
shall elect to be bound by the provisions of comp
3. Every employee whose employer is bound by th
Act is subject to and bound by the compensation
by the employer.

(2) Unless the employer elects coverage for the
chapter and an insurer allows such an election, th
Act does not apply to any of the following employm

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of members of an employer
employer's household;

(d) employment of sole proprietors or working
except as provided in subsection (3);

(e) employment of a broker or salesman perfor
by the board of realty regulation;

(f) employment of a direct seller engaged in the
primarily in the customer's home;

(g) employment for which a rule of liability fo
ease, or death is provided under the laws of the Un

(h) employment of any person performing se
sustenance only, except employment of a volunteer

(i) employment with any railroad engaged in i
that railroad construction work is included in an
of this chapter;

(j) employment as an official, including a tim
school amateur athletic event, unless the person i
school district;

(k) any person performing services as a news
correspondent if the person performing the servic
of the person performing the services in the cas
edged in writing that the person performing the s
not covered. As used in this subsection "free-lance
who submits articles or photographs for publicatio
or by the photograph. As used in this subsection "
(i) is a person who provides a newspaper wit
newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to his main duties, carries or delivers papers.

HB 381 Put in (3) on 3rd Reading

(3) (a) A sole proprietor or a working member of a partnership who holds himself out or considers himself an independent contractor [and who is not contracting] for cosmetologist's services or barber's services as defined in 39-51-204(1)(l) must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself.

(b) The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the division, the election remains effective and the independent contractor retains his status as an independent contractor until he notifies the division of any change in his status and provides a description of his present work status.

(e) If the division denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to such rules as the division promulgates and subject in all cases to approval by the division, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the division, served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and the division; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, the division, and the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if he elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer must sign the notice required by subsection (4)(a) under oath or affirmation, and he is subject to the penalties for false swearing under 45-7-202 if he falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the

EXHIBIT 10
DATE 2/12/91
HB 342

Amendments to House Bill No. 342
First Reading Copy

Requested by Representative Wanzenried
For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 6, 1991

1. Title, line 8.
Following: "CONSTRUCTION"
Strike: "TRADE"
Insert: "INDUSTRY"

2. Page 3, lines 7 through 14.
Following: "Construction"
Strike: remainder of line 7 through "masonry." on line 14
Insert: "industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual."

3. Page 7, line 8.
Following: line 7
Strike: "trade"
Insert: "industry"

4. Page 7, lines 11 and 12.
Following: "employment"
Strike: remainder of line 11 through "trade," on line 12
Insert: ", in a position other than a construction industry,"

5. Page 8, line 20.
Following: 19
Insert: " (1) cosmetologist's services and barber's services as defined in 39-51-204(1)(l)."

6. Page 9, lines 1 and 2.
Following: "but"
Strike: remainder of line 1 through "services," on line 2

7. Page 9, line 4.
Following: "himself"
Insert: "unless he is contracting for construction industry services"

8. Page 10, line 7; page 11, line 25; and page 12, line 12.
Following: "construction"
Strike: "trade"
Insert: "industry"

9. Page 17, line 24; page 18, lines 2, 14, and 22.
Following: "construction"

Strike: "trade"
Insert: "industry"

GRAY BILL

IIBI
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LC 0175/01

House BILL NO. 342

INTRODUCED BY ~~WAIVED~~ Daniel Connelly
Bob Gilpinich Bruski

A BILL FOR AN ACT ENTITLED: "AN ACT MANDATING WORKERS' COMPENSATION COVERAGE FOR INDEPENDENT CONTRACTORS, SOLE PROPRIETORS, WORKING MEMBERS OF A PARTNERSHIP, CORPORATE OFFICERS, AND DEPENDENT MEMBERS OF AN EMPLOYER'S FAMILY WHEN ANY OF THESE PERSONS ARE ENGAGED IN A CONSTRUCTION INDUSTRY ~~TRADE~~; CREATING REMEDIES FOR FAILURE TO PROVIDE COVERAGE; AND AMENDING SECTIONS 39-71-116, 39-71-401, 39-71-405, 39-71-721, 39-71-723, 39-72-102, AND 39-73-108, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to the investigation, review, and settlement of claims; payment of benefits; setting of reserves; furnishing of services and facilities; and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (3)(a) through (3)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (3)(a) through (3)(e) of this

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Insert: "industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual."

section, exists).

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Construction ~~trade" means a trade in which a person, whether by general contracting, subcontracting, as a sole proprietorship or partnership, as an employee, or otherwise, is directly involved in providing skilled or unskilled physical labor in the renovation or construction of buildings or other structures. The term includes but is not limited to general labor, carpentry, electrical work, plumbing, sheet rocking, painting, and masonry.~~ The term does not include office workers, design professionals, salesmen, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(6)~~(7) "Days" means calendar days, unless otherwise specified.

~~(7)~~(8) "Department" means the department of labor and industry.

~~(8)~~(9) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(9)~~(10) "Insurer" means an employer bound by

compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

~~(10)~~(11) "Invalid" means one who is physically or mentally incapacitated.

~~(11)~~(12) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

~~(12)~~(13) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(13)~~(14) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

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~~(14)~~(15) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

~~(15)~~(16) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

~~(16)~~(17) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

~~(17)~~(18) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

~~(18)~~(19) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(19)~~(20) "Reasonably safe place to work" means that the

place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(20)~~(21) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

~~(21)~~(22) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

~~(22)~~(23) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-401, MCA, is amended to read:

"39-71-401. **Employments covered and employments exempted.** (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment, in a position other than a construction ~~trade~~ industry, of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment, in a position other than a construction ~~trade~~ industry, of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included

in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to his main duties, carries or delivers papers.

(3) (a) A sole proprietor or a working member of a partnership who holds himself out or considers himself an independent contractor ~~[and who is not contracting] for cosmetologist's services or barber's services as defined in 39-51-204(1)(l)~~ must elect to be bound personally and individually by the provisions of compensation plan No. 1,

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l).

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∧ unless he is contracting for construction industry service

2, or 3, but, ~~unless he is contracting for cosmetologist's, barber's, or construction trade services,~~ he may apply to the department for an exemption from the Workers' Compensation Act for himself.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains his status as an independent contractor until he notifies the department of any change in his status and provides a description of his present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to such rules as the department promulgates and subject in all cases to approval by the department, an officer of a private corporation may elect not to be bound as an employee under this chapter if he does not work in a construction ~~trade~~ industry by giving a written notice, on a form provided by the department, served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and the department; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, the department, and the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if he elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under

this chapter. In any case, the officer must sign the notice required by subsection (4)(a) under oath or affirmation, and he is subject to the penalties for false swearing under 45-7-202 if he falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 3. Section 39-71-405, MCA, is amended to read:

"39-71-405. Liability of employer who contracts work out. (1) An employer who contracts with an independent contractor, except an independent contractor working in a construction ~~trade~~ industry, to have work performed of a kind which

is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.

(2) Where an employer contracts to have any work to be done by a contractor other than a contractor working in a construction ~~trade~~ industry or an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall not be construed to be casual employment. Where an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees shall come under that plan of compensation adopted by the employer.

(3) Where an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where the work so contracted to be done is casual employment as to such employer, then the contractor

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shall become the employer for the purposes of this chapter."

Section 4. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116.

(2) "Child" is as defined in 39-71-116.

(3) "Department" means the department of labor and industry.

(4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "permanent partial disability".

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Independent contractor" is as defined in 39-71-120.

(8) "Insurer" is as defined in 39-71-116.

(9) "Invalid" is as defined in 39-71-116.

(10) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in

the course and scope of employment and caused by events occurring on more than a single day or work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

(11) "Order" is as defined in 39-71-116.

(12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

(14) "Wages" is as defined in 39-71-123.

(15) "Year" is as defined in 39-71-116~~(8)~~(9) and 39-71-116~~(22)~~(23)."

Section 5. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death -- limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased is entitled to the same

compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116~~(2)(a)~~(3)(a) through ~~(2)(d)~~(3)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in 39-71-116~~(2)(e)~~(3)(e) and ~~(2)(f)~~(3)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary as defined in

39-71-116~~(2)~~, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116~~(2)(b)~~(3)(b) through ~~(2)(d)~~(3)(d).

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116~~(2)~~.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of $299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be $149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."

Section 6. Section 39-71-723, MCA, is amended to read:

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"39-71-723. How compensation to be divided among beneficiaries. Compensation due to beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. ~~In cases--where~~ If beneficiaries are a surviving spouse and stepchildren of such spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in ~~subsections (2)(e) and (2)(f) of~~ 39-71-116(3)(e) and (3)(f), ~~where~~ when there is more than one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount thereof ~~shall be~~ is a question of fact for determination by the department."

Section 7. Section 39-73-108, MCA, is amended to read:

"39-73-108. Payment of benefits where when person entitled is in institution. If any person who is entitled to benefits under this chapter ~~shall be~~ is an inmate in any Montana state institution, benefits ~~shall~~ may not be paid to him but ~~shall~~ must be paid his beneficiary, if any, as defined in 39-71-116(2)."

NEW SECTION. **Section 8.** Remedies for failure to provide coverage. (1) (a) A person may file a complaint with the department asserting that:

(i) an employer has not provided workers' compensation coverage for an employee in a construction ~~trade~~ industry;

(ii) a sole proprietor or a working member of a partnership who holds himself out or considers himself an independent contractor in a construction ~~trade~~ industry has not provided coverage for himself.

(b) The department must investigate the complaint within 5 working days of its filing and either issue a cease and desist order as provided in subsection (2) or dismiss the complaint as unsupported by fact.

(c) The department may assess the costs of investigating a frivolous complaint against the person who files the complaint and may assess against the employer the costs of investigating a complaint that is not frivolous.

(2) The department shall issue an order to:

(a) an employer who has an employee in service in a construction ~~trade~~ industry under an appointment or contract of hire, expressed, implied, oral, or written, who does not provide workers' compensation coverage for that employee, ordering the employer to cease and desist from continuing to employ the employee until the employer has obtained coverage for the employee;

(b) a sole proprietor or a working member of a partnership who holds himself out or considers himself an independent contractor in a construction ~~trade~~ industry who has not obtained workers' compensation coverage for himself, ordering him to cease and desist from continuing the construction project until he has provided coverage for

himself.

(3) The department may bring an action in district court to enforce a cease and desist order by injunction or other means.

NEW SECTION. **Section 9.** Codification instruction. [Section 8] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 8].

-End-

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INSTITUTE FOR A DRUG-FREE WORKPLACE

Montana

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"On a one-to-five scale where '5' means very appropriate and '1' means not at all appropriate, how appropriate do you think the following actions are for employers to take to deal with the use of drugs in the workplace? How about (_____)?"

TABLE 6
Attitudes Toward Appropriateness of Employer Actions to Deal with Drugs at the Workplace
(n=503)

	Mean**	Percent 4 or 5	Percent 1 or 2	Don't Know
Drug awareness educational programs	4.40	82%	8%	*
Company policies against drug use and discipline for violations of the policy	4.35	82	7	*
Family counseling	4.14	74	11	1
Employee assistance programs for drug-abusing employees	4.14	73	9	2
Drug testing of employees suspected of drug use	3.88	65	19	1
Random drug testing of employees	3.31	49	32	1
Drug testing of all employees on a periodic basis	3.33	48	32	1
Use of undercover agents	2.61	27	50	1
Searches and surveillance	2.55	24	50	1

* Less than 1% mention
** Mean - 5=very appropriate...4=not at all appropriate

"Would you favor denial of employment to job applicants who test "positive" for drugs?"

TABLE 18
Attitudes Toward Denial of Employment to Job Applicants Who Test "Positive" for Drugs
(n=503)

Response	Percent Total
Yes	66%
No	25
Undecided/don't know	9

* Approximately two-thirds of the respondents (66%) would favor denial of employment to job applicants who tested positive for drugs. Particularly likely to report this were respondents from rural areas (71%).

"In your opinion, does drug use among employees in your company, on or off the job, greatly affect, somewhat affect or not at all affect (_____)?"

TABLE 20
Attitude Toward Effect of Drug Use among Employees
(n=503)

Response	Mean*	Greatly Affect	Some-what Affect	Not at All Affect	Don't Know
Employee attendance	2.01	33%	33%	32%	2%
The morale and motivation of employees	2.06	37	29	31	2
Your company's productivity	2.01	34	29	33	3
Your company's health care costs	1.96	28	30	32	9
Safety at your workplace	1.97	36	22	39	2
Your own out-of-pocket health care costs	1.83	25	29	41	5
Crime on the job	1.72	23	23	50	4

* Mean: 3=greatly affects,...1=does not affect at all

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Drug-Free Workplace Act of 1988
U.S.C. §§ 701–707)

Drug-free workplace requirements for Federal actors

) Drug-free workplace requirement

(1) Requirement for persons other than individuals

No person, other than an individual, shall be considered a responsible source, under the meaning of such term as defined in section 403(8) of this title, for the purposes of being awarded a contract for the procurement of any property or services of a value of $25,000 or more from any Federal agency unless such person has certified to the contracting agency that it will provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the person's policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment in such grant, the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the granting agency within 10 days after receiving notice of a conviction under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).

(2) Individuals

No Federal agency shall make a grant to any individual unless such individual certifies to the agency as a condition of such grant that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting any activity with such grant.

) Suspension, termination, or debarment of the ntee

(1) Grounds for suspension, termination, or debarment

Each grant awarded by a Federal agency shall be subject to suspension of payments under the grant or termination of the grant, or both, and the grantee thereunder shall be subject to suspension or debarment, in accordance with the requirements of this section if the agency head of the granting agency or his official designee determines, in writing, that—

(A) the grantee has made a false certification under subsection (a) of this section;

(B) the grantee violates such certification by failing to carry out the requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1) of this section; or

(C) such a number of employees of such grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a)(1) of this section.

(2) Conduct of suspension, termination, and debarment proceedings

A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding Executive order and any regulations promulgated to implement such law or Executive order.

(3) Effect of debarment

Upon issuance of any final decision under this subsection requiring debarment of a grantee, such grantee shall be ineligible for award of any grant from any Federal agency and for participation in any future grant from any Federal agency for a period specified in the decision, not to exceed 5 years.

(Pub.L. 100-690, Title V, § 5153, Nov. 18, 1988, 102 Stat. 4306.)

(b) Suspension, termination, or debarment of the contractor

(1) Grounds for suspension, termination, or debarment

Each contract awarded by a Federal agency shall be subject to suspension of payments under the contract or termination of the contract, or both, and the contractor thereunder or the individual who entered the contract with the Federal agency, as applicable, shall be subject to suspension or debarment in accordance with the requirements of this section if the head of the agency determines that—

(A) The contractor or individual has made a false certification under subsection (a) of this section;

(B) The contractor violates such certification by failing to carry out the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1) of this section; or

(C) such a number of employees of such contractor have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a) of this section.

(2) Conduct of suspension, termination, and debarment proceedings

(A) If a contracting officer determines, in writing, that cause for suspension of payments, termination, or suspension or debarment exists, an appropriate action shall be initiated by a contracting officer of the agency, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures.

(B) The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and such other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual in such proceeding.

(3) Effect of debarment

Upon issuance of any final decision under this subsection requiring debarment of a contractor or individual, such contractor or individual shall be ineligible for award of any contract by any Federal agency, and for participation in any future procurement by any Federal agency, for a period specified in the decision, not to exceed 5 years.

(Pub. L. 100-690, Title V, § 5152, Nov. 18, 1988, 102 Stat. 4304.)

§ 702. Drug-free workplace requirements for Federal grant recipients

(a) Drug-free workplace requirement

(1) Persons other than individuals

No person, other than an individual, shall receive a grant from any Federal agency unless such person has certified to the granting agency that it will provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such grant be

§ 703. Employee sanctions and remedies

A grantee or contractor shall, within 30 days after receiving notice from an employee of a conviction pursuant to section 701(a)(1)(D)(ii) or 702(a)(1)(D)(ii) of this title—

(1) take appropriate personnel action against such employee up to and including termination; or

(2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(Pub.L. 100-690, Title V, § 5154, Nov. 18, 1988, 102 Stat. 4307.)

§ 704. Waiver

(a) In general

A termination, suspension of payments, or suspension or debarment under this chapter may be waived by the head of an agency with respect to a particular contract or grant if—

(1) in the case of a waiver with respect to a contract, the head of the agency determines under section 701(b)(1) of this title, after the issuance of a final determination under such section, that suspension of payments, or termination of the contract, or suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract, as the case may be, would severely disrupt the operation of such agency to the detriment of the Federal Government or the general public; or

(2) in the case of a waiver with respect to a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

(b) Exclusive authority

The authority of the head of an agency under this section to waive a termination, suspension, or debarment shall not be delegated.

(Pub.L. 100-690, Title V, § 5155, Nov. 18, 1988, 102 Stat. 4307.)

§ 705. Regulations

Not later than 90 days after November 18, 1988, the governmentwide regulations governing actions under this chapter shall be issued pursuant to the Office of Federal Procurement Policy Act. (41 U.S.C. 401 et seq.).

(Pub.L. 100-690, Title V, § 5156, Nov. 18, 1988, 102 Stat. 4308.)

§ 706. Definitions

For purposes of this chapter—

(1) the term "drug-free workplace" means a site for the performance of work done in connection with a specific grant or contract described in section 701 or 702 of this title of an entity at which employees of such entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this Act;

(2) the term "employee" means the employee of a grantee or contractor directly engaged in the performance of work pursuant to the provisions of the grant or contract described in section 701 or 702 of this title;

(3) the term "controlled substance" means a controlled substance in schedules I through V of section 812 of Title 21;

(4) the term "conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(5) the term "criminal drug statute" means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance;

(6) the term "grantee" means the department, division, or other unit of a person responsible for the performance under the grant;

EXHIBIT 12
DATE 2/12
HB 531

OCAW
Oil, Chemical & Atomic Workers
International Union, AFL-CIO

Dan C. Edwards
International Representative
P.O. Box 21635
Billings, MT 59104

406 / 669-3253 (Home)

H.B.531

Testimony of:

Dan C. Edwards, International Representative
Oil, Chemical and Atomic Workers Int'l Union, AFL-CIO
P.O. Box 21635
Billings, MT 59104

Testifying February 12, 1991, before the House Labor and Employment Relations Committee in OPPOSITION to HB 531:

HB 531 is not as nocuous as the previous bill (assuming the current drug-testing law remains in place), but it is still a bill that is not needed.

The title and wording of this bill would have us believe HB 531 is a State companion to the federal Drug-Free Workplace Act of 1988. But its not. It goes far beyond the federal DFWA of 1988 in delving into the private lives of Montana's citizen's.

The federal DFWA of 1988 requires specific steps to ensure a drug-free workplace by recipients of federal government contracts or grants. Its central provisions requires covered employers (federal contractors and/or grantees) to prepare and distribute an anti-drug policy statement prohibiting any drug-related activity in the workplace. Unlike HB 531, it makes no requirement on individuals who may be the recipient of a federal contract or grant, and it limits itself to the workplace. HB 531 goes well outside the bounds of the workplace.

HB 531 would require State contractors or grantees to adopt and implement a drug abuse prevention program -- even if there is clearly no need to do so.

HB 531's requirements for individual contractors or grantees clearly goes far beyond the allowable governmental intrusion into an individuals private life. I would imagine a successful argument could be made regarding the constitutionality of this provision. Section 4 requires certification by the individual that, at a minimum, he or she will not be under the influence of or engage in the unlawful manufacture, distribution, possession, or use of a controlled substance while the contract is in force. This would mean 24 hours a day, seven days a week, at work, at home -- anyplace. This is far beyond the workplace.

Since Montana's law also covers alcohol, possibly an individual would be in violation of this law if he or she has a few too many beers on Saturday night.

This bill is just another piece of the ongoing assault on individual rights we are seeing this session.

I urge that you give HB 531 a "Do Not Pass". IT IS NOT NEEDED.

Thank you. I'll be glad to take questions at the conclusion of the hearing.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

LABOR & EMPLOYMENT RELATIONS **COMMITTEE** **BILL NO.** HB 531

DATE 2/12/91 **SPONSOR(S)** John Phillips

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
J. Heck	MDOT		✓
WADE REA	Mont. for a drug free society	✓	
DON EDWARDS	BCBW		✓
Don Judge	MT STATE AFL-CIO		✓
Steve Browning	IBM	✓	
Tom Harrison	Mont. Auto Dealers	✓	
CHARLES R BROOKS	MT RETAIL ASSOC	✓	
Scott Crichton	MCU		✓
CURT LAINGEN	MT MOTOR CARRIERS ASSOC.	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

LABOR & EMPLOYMENT RELATIONS **COMMITTEE** **BILL NO.** HJ 13

DATE 2/12/91 **SPONSOR(S)** Mary Ellen Connelly

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Matt Fagan	Rail Labor	✓	
Raymond West	UTU	✓	
Dan Edwards	OLBW	X	
Dennis Lind	Washington Corps		X
Fred Simpson	Montana Rail Link		X
James T Millar	Mont Joint Rail Labor Legis Council	X	
Don Judge	MT State AFL-CIO	X	
Steve Brown			
D. B Ditzel	Bro. of Locomotive Engrs	X	
Michael J. Sherwood	MTLA		X
Leo Berry	BNRR		X

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

LABOR & EMPLOYMENT RELATIONS **COMMITTEE** **BILL NO.** HB 110

DATE 2/12/91 **SPONSOR(S)** Bob Gilbert

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
CURT LAINGEN	MT MOTOR CARRIERS ASSN	X	
Don Edwards	OCHW		X
Steve Browning	IBM	X	
Charles R. Brooks	MT Hardware + Imp Assn	X	
Gaus Tuthill	MT Chamber	✓	
Don Judge	MT STATE AFL-CIO		X
Scott Crichton	ACLU		X

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

LABOR & EMPLOYMENT RELATIONS **COMMITTEE** **BILL NO.** HB 525

DATE 2/12/91 **SPONSOR(S)** Tom Nelson

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
CURT LAINGEN	MT MOTOR CARRIER'S ASS'N	X	
DON EDWARDS	OCAW		X
GENE PHILLIPS	ALLIANCE OF AMER. INS. NAT. ASSOC. IND. INS		X
Jacqueline N. Terrell	AM. INS. ASSOC.		X
Roger McGlenn	INDEPENDENT INSURANCE AGENTS ASSOC. OF MT		X
Don Judge	MT STATE AFL-CIO		X
Steve Browning	IBM	X	
Tom Harman	MT. Auto Dealers	X	
Richard Brown	MTRPTA, LIFSSOC	X	
Scott Crichton	ACLU		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.