

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By CHAIR CAROLYN SQUIRES on March 11, 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)  
Fred Thomas (R)  
Dave Wanzenried (D)  
Tim Whalen (D)

**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 SB 343**

##### **Presentation and Opening Statement by Sponsor:**

**SEN. DAVID RYE, Senate District 47, Billings,** said SB 343 is an act to grant the Department of Labor and Industry discretionary authority in determining the amount owed to the Uninsured Employers' Fund by an uninsured employer. There is no fiscal impact because the Uninsured Employers' Fund doesn't come out of the General Fund.

##### **Proponents' Testimony:**

**Mike Micone, Commissioner, Department of Labor,** said a recent employer had an uninsured period of about 60 days by accident.

The employer purchased the business and thought it was covered by Workers' Compensation. Thirty days later he found out it wasn't covered and applied to the State Fund for coverage. That triggered an audit which mandated the Department to look at his books. It was determined that the business owed \$20 in premium, but because of the law there is a \$200 penalty mandated. It would be more fair to allow the Department to impose the 100 percent penalty.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

SEN. RYE said the bill has no controversy and will solve some internal problems of the Department of Labor. It will solve the problem of employers who refuse to insure their workers even though their workers are entitled to the insurance. Rep. Benedict will carry the bill.

#### HEARING ON SB 237

Presentation and Opening Statement by Sponsor:

SEN. JERRY NOBLE, Senate District 21, Great Falls, said SB 237 brings the Montana Code into compliance with the federal wage and hour standards. Currently, if a person is exempted from overtime pay as an outside salesman, he must be specifically exempt from the Code by reference. Page 3 lists salesman, partsman, or mechanic who are primarily engaged in selling trailers, boats, or aircraft. Page 4, Line 4, 7, and 14, have exemptions. In practice, this has been overlooked by many employers, employees, and the Department of Labor. The Senate Committee strictly made the exemption in this bill for office equipment salesmen.

Proponents' Testimony:

Charles Brooks, Executive Vice President, Montana Retail Association, presented written testimony and a copy of the Fair Labor Standards Act. EXHIBIT 1

Sierra Wolf, Davis Business Machines, presented written testimony. EXHIBIT 2. She presented written testimony for Loren Davis, President, Davis Business Machines. EXHIBIT 3

Terry Harris, President, Capital Office Equipment, said it is difficult to keep track of the hours that outside salespeople work. It would be difficult for an employer to tell an outside salesman that he could only work a certain amount of hours. A new salesperson is learning and most of his training is done after 5:00 or on the weekends. These salespeople don't want to be out of their sales territories during the week when they have a chance to make money.

Forrest "Buck" Bowles, President, Montana Chamber of Commerce, stated his support.

Opponents' Testimony:

Darrell Holzer, AFL-CIO, presented written testimony. EXHIBIT 4

Questions From Committee Members:

REP. O'KEEFE asked SEN. NOBLE if there was an amendment on Page 3 that struck the outside salesman selling advertising for a newspaper from the bill and if it was replaced. SEN. NOBLE said the Senate Committee changed the language which would also include the newspaper salesman. REP. O'KEEFE asked if they put the original language back in the bill on Page 3, Lines 13-20. SEN. NOBLE said Page 3, Line 18, conforms with Page 4, Lines 7-10. The language on Page 3 replaced the language that was there.

REP. WANZENRIED said in previous testimony it was stated that this bill brought Montana into conformity with federal law. The language is part of what was stricken. Does this language not bring Montana into conformity with federal law because it is now omitted? Mr. Brooks said the portion of the Federal Code referred to is the 80-20 rule, in which an outside salesman spending 80 percent of his time in commission sales would not be subject to overtime pay in Section 541-507. The change in the language from the Senate that Rep. O'Keefe asked about pertains to leaving that section of the Federal Code in because it might include salesman, which the labor movement objected to. The office equipment salesmen are strictly outside commissioned salesmen. REP. WANZENRIED said with the way the bill is drafted, does the 80-20 rule apply now. Mr. Brooks said any time there is a question as to the duties and responsibilities of an employee, a complaint is filed with the Department of Labor or with the federal department. The 80-20 rule applies to determine whether the employee's work comes under the exempt or non-exempt status.

REP. THOMAS asked SEN. NOBLE when someone is paid on commission, how is the overtime calculated. SEN. NOBLE said the salespeople are paid on strictly a commissioned basis and that is federal law.

REP. THOMAS said to Mr. Holzer, since this is common practice today, how does this bill affect anybody negatively. Mr. Holzer said the AFL-CIO is opposed to any situation that leads to the exploitation of any worker. There is no protection. REP. THOMAS said the harder a commissioned salesman works, the more he earns. It is an incentive basis. Typically, there is no wage paid. A person doesn't work eight hours and automatically make money; he either makes the sale or he doesn't. Mr. Holzer said it would be based on the employer and employee relationship. In previous testimony, it was said there is no way of keeping track of the actual hours of the employee. There is a certain amount of trust that should go both ways. The AFL-CIO is not opposed to

enhancement of productivity. The concern is that unreasonable demands would be placed upon these employees. **REP. THOMAS** asked if a commission base could be applied to the overtime compensation. **Mr. Holzer** said he didn't know without studying it.

**Closing by Sponsor:**

**SEN. NOBLE** said commission pay is an incentive program. The intent of the bill is not to get the best of anybody. The bill is current state law, and it will conform with the federal standards. Rep. Thomas will carry the bill.

**HEARING ON SB 267**

**Presentation and Opening Statement by Sponsor:**

**SEN. TOM TOWE**, Senate District 46, Billings, said SB 267 deals with so-called security agents, who are people hired during a strike by the company being struck for the specific purpose of causing violence and disruption. He presented a handout. **EXHIBIT 5.** These people are often referred to as "goons" and are hired ostensibly to add greater security during a strike. According to the handout, there is a group of professionals that roam the country just to work during strikes. The purpose of being employed is to cause disruption and problems on the picket line to make it look like the strikers have caused violence. Presently, people are anxious to believe that the union picketers are causing the violence. The handout refers to a man employed by a so-called security firm in Ohio who later indicated exactly what he was required to do. He read the yellow highlighted areas from the handout. This is not foreign to Montana, and it happened in the United Mine Workers strike in Decker. Baker and Associates was hired to "provide security" for the strike at Decker, and that agency had just come from the Hormel strike and had worked many strikes prior to that time. It was found that many of the same things as in the handout were being done. There were two witnesses on one occasion who saw an employee of Baker and Associates sneak in behind a picket line where many union people were involved and sliced the tires of a Decker truck. At first the union picketers were blamed. This won't be totally stopped by the bill, but it will be reduced or may quit altogether if it is exposed. The bill requires the so-called security people to register with the Department of Labor. Security agent is defined as a person hired by an employer whose business is involved or anticipates in a labor dispute during a strike to guard or protect the employer's property or to assist an employer with activities directly relating and necessitated by the strike. In Section 2, a person may not be employed as a security agent unless he first obtains a permit from the Department of Labor. He would list his job description, prior experience, and all previous employment within the last 15 years during which he has worked a strike, whether he is authorized to carry a firearm, criminal convictions, etc. Page 4, Lines 15-10,

prohibits a person whose employment may cause a disruption or result in violence from working as a security agent during a strike. The Department of Labor may reject a person if disruption or violence will occur. It is not likely that very many people will be rejected. The purpose of the registration is to find out who they are and get their past work experience. There is a requirement on the top of Page 4 for a transfer of that information to the Department of Labor. It is funded by its own fees to be charged to the people. The fiscal note which included two FTEs (Full Time Equivalent) is incorrect. He referred to his brown fiscal note. Section 4 of the bill authorizes the Department to deny, suspend, or revoke a permit. Section 6 allows the Department to make this information available to the public. Section 7 deals with the violations. The punishment for working as a security agent without a permit or obtaining a permit falsely would be a misdemeanor. He is liable for six months in jail or a \$500 fine. The company who knowingly employs this person without a permit is penalized by six months in jail or a \$10,000 fine.

**Proponents' Testimony:**

**SEN. TOWE** presented written testimony for **Dan Edwards, International Representative, Oil, Chemical & Atomic Workers International Union. EXHIBIT 6**

**Darrell Holzer, AFL-CIO,** presented written testimony. **EXHIBIT 7**

**Bob Heiser, United Food and Commercial Workers' Union,** stated his support.

**Danny Quigley, Billings,** sent written support. **EXHIBIT 8**

**Opponents' Testimony:**

**Mike Micone, Commissioner, Department of Labor and Industry,** said the bill would be unenforceable. He agreed with Sen. Towe that no one should cause violence. This may be the wrong vehicle to do it. These problems were discussed when the bill was in the Senate. There were no amendments to correct the concern of the Department. The easiest one is to get the Department out of the bill. The Department is not in the business of issuing licenses or permits; the Department of Commerce handles that. In Section 2(c) the Department is required to ask an individual who he has worked for in the last 15 years or if he was involved in violence during his employment. Some of the questions violate the freedom from self-incrimination. No one would fill out an application indicating that he has caused a riot or violence during a work stoppage. The Department would have to determine if an individual may cause disruption. The fiscal note (yellow copy) shows one FTE for two fiscal years. The Department is required to prepare a fiscal note based on each piece of legislation.

**Forrest "Buck" Bowles, President, Montana Chamber of Commerce,** said there are occasions when unions incite and participate in violence. It would be fair to register the professional strike advisors who are usually present during a strike. They move around the country like strikebreakers helping unions conduct strikes. Some of that advice deals with activity that might be considered illegal or perhaps violent. The intent of the bill is to stop this activity, but the sponsor admits that it can't be stopped and will continue.

**David Blatter, Security Armored Express (armored cars),** said there is a federal law in place. He presented a handout and referred to the second to the last page. **EXHIBIT 9.** The federal law imposes a stricter fine. If the law is used properly, the importation of "goons" can be stopped. The security guard companies in Montana are controlled by a board appointed by the Governor which is under the direction of the Department of Commerce. This board has set rules attached in the handout. His business also supplies security guards to retirement homes, banks, lumber yards, saw mills, etc. A staff of eight to ten people would be needed in case an organization is struck. Several years ago a school bus company had a strike. His business supplied guards to patrol the strike. Under the bill, current guards can be used if they have been employed for the employer for six months. His business can't keep several employees available waiting for a strike to occur and still have adequate guards when a strike does happen. It will take much more than \$250. Equipment will be needed for identification cards, fingerprints, investigations, etc. The Department of Commerce already has this in place. He proposed an amendment, which is on the last page of the handout, to be inserted on Page 4, Line 12, after the word "situation."

**Questions From Committee Members:**

**REP. THOMAS** said the bill requires records be kept and the Department would have to supply those records to anybody requesting them for \$1. The records would be open to the public. He asked **Mr. Micone** if there is a file of people who have gone on strike. **Mr. Micone** said no. **REP. THOMAS** asked if home addresses would be included in the application form. **Mr. Micone** said yes. **REP. THOMAS** stated, for the record, when this bill becomes law the addresses are to be omitted for family safety reasons.

**REP. THOMAS** said the bill could mean that an employer could not hire people to protect his property if there was any kind of labor dispute involving a firm and its negotiating agents. **SEN. TOWE** said absolutely not. There is an exception provision on Page 4, Lines 9-15. This section does not apply to a licensed attorney, a professional who is involved in collective bargaining negotiations, a person hired and employed as a security agent at least six months prior to the commencement of the strike, or any licensed employee under Section 37-6301 when the employer is a

security company on strike itself. If an employer wants special security during a strike, there is a special security registration process. A permit is required from the Department of Labor.

REP. FAGG proposed an amendment to add people who help the union. REP. TOWE said that is not a problem. Those people are not brought in or hired specifically for creating violence. Recently in union meetings, members have been told not to do anything that might be close to violence because they would "lose." The problem is when an outsider is brought in who incites violence.

REP. SOUTHWORTH asked Mr. Blatter if he supplied security people to strikes. Mr. Blatter said he supplied guards to anyone who needed it. Usually it is the convalescent homes, hospitals, etc. When a strike occurs, he is the first called. He has enough guards for a 24-hour period, but if the strike lasts longer, he has to get names submitted to the Department of Commerce, fingerprinted, etc. to have them ready as soon as possible. The Department of Commerce has developed a security industry and has done an excellent job. REP. SOUTHWORTH asked if there is a strike and extra people are hired, are those people available at the time. Mr. Blatter said yes; he keeps a list of people on file who have already filled out applications. It is expensive to get the people licensed. They can't be on the payroll waiting for a strike to occur.

REP. WANZENRIED asked Mr. Micone if he meant the bill would be difficult to administer instead of unenforceable. Mr. Micone said that is what he meant. The administration would be next to impossible. REP. WANZENRIED asked what the proper vehicle would be since it was indicated that this bill was the wrong vehicle to address the problem. Mr. Micone said he didn't know if there is a problem and had to take Sen. Towe's word for it. He doesn't have a proper vehicle for it. This is the wrong approach to stop violence. Law enforcement is the way to curb violence. REP. WANZENRIED asked if his opposition to the bill would change if the Department of Labor was changed to the Department of Commerce. Mr. Micone said he wouldn't have been at the Committee hearing if the Department of Commerce was in the bill.

REP. JOHNSON said in Section 1, Page 2, Line 2, a security agent is defined as anybody who assists an employer with activities directly related and necessitated by the strike. He asked SEN. TOWE if, for example, the Decker coal people strike again and the secretaries give directly related help to the strike, are the secretaries security agents too. SEN. TOWE said no. The language may need to be tighter so it relates back to the principle part of the sentence. Security agent clearly is one who is employed to guard or protect the employer's property, or to assist the employer with activities directly related to the strike. If the language "to assist in protecting and guarding his property directly related and necessitated by the strike" needs to be added, he doesn't object. The bill is aimed at

persons who are hired to protect and guard the employer's property only. **REP. JOHNSON** asked if the processing of \$1 on Page 6, Line 5, could be changed to \$75 since it would be difficult to process material and send it out for \$1. **SEN. TOWE** said that is unrealistic. **REP. JOHNSON** said the people who want the information are the ones who will benefit by this situation. There is some place inbetween the two fiscal notes, where there would be a more reasonable figure. **SEN. TOWE** said it might cost a little more than what is stated in his fiscal note, but that is to be paid for by the application fees of the people who would apply. If \$1 won't cover the cost, then it could be \$2, or by saying the actual cost.

**REP. THOMAS** asked **Mr. Micone** if people are licensed who have the potential to incite violence, how does the license eliminate that from happening. **Mr. Micone** said he couldn't answer the question because his interpretation of the bill is that if they have a history of being involved in violence or a criminal conviction, it is implied that the Department is not to issue them a permit. **REP. THOMAS** said if there is no record of violence, no criminal record, etc, how does the licensing prohibit the people when they don't get caught. **Mr. Micone** said he agreed; the bill could not be administered.

**Closing by Sponsor:**

**REP. TOWE** said the Department of Labor is in the bill because there is a Private Investigators Board which does license privatized and other security agents. In the Decker strike, the Board was notified that there were security agents not licensed with that Department. The Board made some inquiries and two months later wrote back and said it didn't have jurisdiction over the matter. According to the Board members, the people aren't really privatized and aren't security people, so they aren't required to be licensed. Changing that law would have been counterproductive. That wouldn't have been as effective as having somebody that knows what goes on in a labor dispute handle the matter, which is the Department of Labor. **Mr. Micone** suggested that asking questions about prior involvement in violence might ask an individual to incriminate himself. If he chooses not to answer because he might incriminate himself, that is a legitimate answer. That might be a basis for **Mr. Micone** to not grant a license, which would probably be a valid reason. **Mr. Micone** was concerned that he wouldn't know which people would cause disruptions and which ones wouldn't. Nobody can guarantee that the individual will always behave in a professional manner. If the person has a criminal record, has been involved in violence, and has worked 15 strikes in the last 15 years, there is a good indication that he is likely to cause violence. There may be someone who applies who has never been involved in violence, has worked 15 strikes, and has no criminal record. The Department has no choice but to grant that license. That is the intent of the bill. Violence is not going to be prevented in every situation, but this bill will get control of it. **Mr.**

Blatter's concern, with the armored car problem and security guards, has been taken care of. He had asked about it before the bill was heard in the Senate. An amendment on Page 4, Lines 14-15 was done specifically for Mr. Blatter. If he can't afford to hire someone full time, and if he is going to hire new people just to work a strike, they should qualify. If he has good people, there is not going to be a problem. The Decker company hired security guards, and they are working there today, but Decker also hired Baker and Associates which was a company that works nothing but strikes. The purpose was to cause disruption, and make the violence appear that it was caused by the union. It may be beneficial to add "or lock out" after the word "strike" on Page 2, Line 25.

**EXECUTIVE ACTION ON SB 343**

**Motion:** REP. JOHNSON MOVED SB 343 BE CONCURRED IN.

**Discussion:**

REP. THOMAS asked if this was in regard to Workers' Compensation. CHAIR SQUIRES said it is in Unemployment Insurance (UI).

REP. O'KEEFE asked Ms. McClure if it was possible to meet the intent of the bill and require the Department to collect the premium owed. He doesn't want the Department to say, "you're nice guys, you only have to pay \$25 and you're in." Ms. McClure said that certainly removes any "discretion" on the part of the Department.

REP. BENEDICT suggested to Ms. McClure to insert "at least the premium owed" after "penalty of" on Page 1, Line 17. Ms. McClure said "the amount of the premium" could be inserted.

**Motion:** REP. O'KEEFE moved to amend SB 343 as Rep. Benedict described.

REP. THOMAS said this deals with Workers' Compensation and not UI. There is a minimum premium due from every employer to insure, which is about \$125. In this case the minimum premium times two would equal \$250. Whatever the premium would do for a year would be the minimum of whatever the Department says. Maybe there is already a minimum in there in excess of \$200.

REP. DRISCOLL said presently, the penalty is twice the premium amount or \$200 whichever is greater. So, if a person only owed \$50 in premium, he would pay \$200. If it is to be consistent with the other bills passed out of this Committee, an amendment should be drafted to say the uninsured employer would pay the premium due plus no less than 2 points over prime and no more than 100 percent penalty. REP. O'KEEFE said that solves the problem. Currently in the bill, they can charge up to double the premium amount the employer would have paid, but it doesn't say that he has to pay at least the premium amount owed.

REP. THOMAS asked Ms. McClure if the premium would be due and payable from another clause anyway. Is this just the penalty that is being addressed? Ms. McClure said she couldn't answer that and would have to look at the Codes. REP. DRISCOLL said if an employee, who is working for an uninsured employer, gets injured, he could sue the employer for liability. If it is a small employer it sometimes isn't worth the effort. If the Labor Division catches the employer cheating, presently the fine would be twice what the premium would have been. A premium needs to be paid or the employer still doesn't have insurance.

Motion: REP. DRISCOLL made a substitute motion to amend SB 343.

REP. BENEDICT said he supported the amendment.

Motion: REP. O'KEEFE'S previous motion to amend SB 343 was withdrawn.

REP. THOMAS asked Ms. McClure if it could be determined as to whether they are required to pay a premium and where the premium goes if it is paid. Would the State Fund collect a premium, because if it did then that firm would have been covered. This is funding an Uninsured Employers' Fund through the penalty process. Is there a premium that is collected? REP. DRISCOLL said if an employer is caught without Workers' Compensation before there is an accident, then he is required to get a policy. This is the fine for not having a policy. If the employer is caught after a claim is filed by an injured worker, the injured worker has the option of going to this Uninsured Employers' Fund or to court to sue the employer. If an employer doesn't have a policy, he is not covered by the limited liability of Workers' Compensation in the Constitution. If an employee is working for an employer who is "well off," he is better off to sue the employer than to go through Workers' Compensation. Normally, if an employee sued an employer who didn't have coverage, he wouldn't get anything anyway. So, most injured workers go through the Uninsured Employers' Fund, and the Division tries to get the money and may have to get a court order to stop production until the employer gets insured. REP. THOMAS said Page 1, Line 21, describes how the premium is then determined. He read from the bill, "In determining the premium amount for the calculation of the penalty under this subsection, the Department shall make an assessment on how much premium would have been paid on the employer's past three-year payroll for periods within the three years when the employer was uninsured." That would be doubled to figure the penalty. That penalty, if paid, goes into this Fund. A back premium is not collected. It shouldn't be amended that a premium be collected, because the employer would be insured automatically. In this case a penalty is being collected for not insuring and that goes into the Uninsured Employers' Fund. REP. DRISCOLL said currently when an employer is caught being uninsured, the penalty is double what the premium would have been or \$200. This bill is asking for discretion for the Department to fine the uninsured employer up to 100 percent

of what the premium would have been up to double the amount. The purpose is to get the employer insured, not to fine him and put him out of business. REP. O'KEEFE said he didn't want to collect the total penalty, but just the minimum amount of the premium owed. REP. THOMAS said on top of collecting a premium, it could be a substantial penalty with the three-year calculation to determine what the premium would have been.

**Motion:** REP. DRISCOLL withdrew his motion to amend SB 343.

**Vote:** SB 343 BE CONCURRED IN. Motion carried 14 to 3 with Reps. Dolezal, O'Keefe, and Whalen voting no. Rep. Pavlovich was absent for the vote.

REP. FAGG said that Rep. O'Keefe will amend the bill on the House Floor. Since considerable time has been spent discussing the amendment, is there anyway to discuss the amendment further.

**Motion/Vote:** REP. DRISCOLL MOVED TO RECONSIDER ACTION ON SB 343. Motion carried unanimously. Rep. Pavlovich was absent for the vote.

REP. THOMAS asked REP. O'KEEFE if he wanted to make sure that the employer pays the premium that he would have owed. REP. O'KEEFE said yes. REP. THOMAS said in the bill the minimum would be three annual premiums times two if the minimum is collected. With Rep. O'Keefe's amendment, it would be changed from "may" to "shall" require this collection to be made. If that is done, the bill would be eliminated. The title says to grant the Department discretionary authority. REP. O'KEEFE said the only time it would be up to three times is if the employer has been uninsured for three years. If the premium is \$25, only \$25 should be collected. REP. THOMAS said there is a minimum premium of \$125 that is required to enroll. That would be the minimum premium. REP. O'KEEFE said if it is a firm operating for three years without insuring its workers, then the firm can pay the \$750. If it is a firm that only let a payment lapse by one month and owes \$25, all that should be collected is \$25.

REP. JOHNSON said the language refers only to Fund penalty. Is there someplace else in the law that says what they must do? REP. DRISCOLL said Section 39-71-401 says that every employer shall have coverage in the State of Montana in either Plan 1, 2, or 3. This Section deals with what occurs when an employer doesn't have coverage. It may be more acceptable if the Department would say since a premium wasn't paid for the last 2-3 months, therefore, if coverage for a year is paid in advance, the fine will be \$25. At least there is coverage for a year for the employees. The fine isn't as important as allowing the Department to have the discretion to get coverage.

REP. BENEDICT said the bill is acceptable the way it is.

REP. O'KEEFE said if an employer is caught and doesn't buy a policy, then he is fined double what the policy would be. REP. DRISCOLL said that is what is done now, which is up to twice what the premium would have been but no less than \$200. REP. O'KEEFE said if the employer didn't have coverage for one month and it wasn't paid, he shouldn't have to pay double or the \$200. The premium amount is what should be collected. REP. DRISCOLL said when an employer sends in a form to Workers' Compensation which includes employees from the past quarter, then the employer is sent a bill. If the bill isn't paid within 30 days, they send a letter saying the policy will be canceled. The employer can call and ask for a little more time. Currently, it can be delayed for six months as long as the employer keeps in contact with them.

REP. WHALEN asked Ms. McClure if there was a provision in the current law in which the unpaid premium has to be collected, and this particular section being discussed is an additional penalty. Is this section the only mechanism in the law for dealing with uninsured employers? Ms. McClure said this is it.

REP. JOHNSON suggested inserting "between the premium cost and up to double the premium amount" on Line 17 after "of."

Ms. McClure asked REP. O'KEEFE if his point was to say on Line 17 to fund the penalty of either the actual premium amount owed or up to double if the employer is uninsured? REP. O'KEEFE said yes.

REP. WHALEN asked REP. O'KEEFE if the Department discovers an employer is uninsured, the employer should be charged the premium that should have been paid for the period of time. REP. O'KEEFE said yes. REP. WHALEN asked if his amendment was for the Department to collect at least the premium amount for the Uninsured Employers' Fund. It would be left up to the discretion of the Department to determine the penalty of up to double the amount of the premium collected. REP. O'KEEFE said yes.

Motion: REP. O'KEEFE moved to amend SB 343 as described by Rep. Whalen.

REP. THOMAS asked if the minimum fine would be the three-years premium. REP. O'KEEFE said up to; if the employer only missed one month he wouldn't have to pay for three years.

REP. WHALEN clarified the amendment. If an employer is found by the Department to be uninsured, the Department will collect the unpaid premium for the determined period of time. In its discretion, based upon the circumstances of each case, the Department may levy a penalty of up to double the premium amount that has been determined to have been unpaid. The Department wouldn't have to levy the penalty, but at least the unpaid premium would be collected for the period of time that the Department determines that there was non-coverage.

REP. DRISCOLL said if an employer is uninsured and gets caught, the fine is collected by the Department of Labor, but until a premium is paid to the State Fund, that employer will still not be insured.

REP. WHALEN asked Ms. McClure if her answer to his previous question was if it was determined that an employer is uninsured, it is too late to buy insurance from the State Fund because they can't issue insurance policies retroactively. The only availability for the Department to fund this Uninsured Employers' Fund is this penalty statute that is being discussed. Ms. McClure said yes. REP. WHALEN said there is a separate provision that would require a cease and desist order be issued until the employer buys insurance from the State Fund or elsewhere. Ms. McClure said she didn't know where it was in the Codes but assumed it was correct. REP. WHALEN said if the amendment is passed, it will provide a mechanism to make sure that uninsured employer doesn't have an economic incentive to go without insurance, because if he is caught he will have to make up the back premium and at the same time be required to purchase insurance from the State Fund or another insurance carrier under the threat of having a cease and desist order issued to shut down his business.

REP. O'KEEFE said without the amendment there is no penalty for being uninsured.

**Vote:** REP. O'KEEFE'S AMENDMENT TO SB 343. Motion failed 8 to 10. EXHIBIT 10

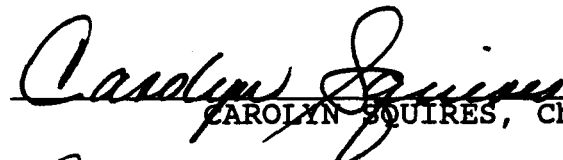
**Motion/Vote:** REP. WANZENRIED MOVED SB 343 BE CONCURRED IN. Motion carried 16 to 2 with Reps. O'Keefe and Whalen voting no.


**EXECUTIVE ACTION ON SB 237**

**Motion/Vote:** REP. JOHNSON MOVED SB 237 BE CONCURRED IN. Motion carried 11 to 7 with Reps. Beck, Cocchiarella, Dolezal, Kilpatrick, Southworth, Squires, and Wanzenried voting no.

**ADJOURNMENT**

**Adjournment:** 5:30 p.m.

  
CAROLYN SQUIRES, Chair

  
JENNIFER THOMPSON, Secretary

# HOUSE OF REPRESENTATIVES

## LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 3/11/91

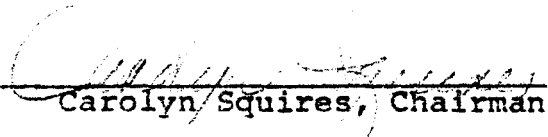
NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH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

HOUSE STANDING COMMITTEE REPORT

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 343 (third reading copy -- blue) be concurred in .

Signed:   
Carolyn Squires, Chairman

Carried by: Rep. Benedict

HOUSE STANDING COMMITTEE REPORT

March 12, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 237 (third reading copy -- blue) be concurred in .

Signed: Carolyn Squires, Chairman

Carried by: Rep. Thomas



EXHIBIT

Executive Office 3/11/91  
318 N. Last Chance Gulch  
P.O. Box 440 SB 237  
Helena, MT 59624  
Phone (406) 442-3388

MARCH 11, 1991  
TESTIMONY  
SB 237

MADAM CHAIR AND MEMBERS OF THE COMMITTEE:

FOR THE RECORD. I AM CHARLES BROOKS, REPRESENTING THE MONTANA RETAIL ASSOCIATION AND THE MONTANA OFFICE EQUIPMENT DEALERS ASSOCIATION. I AM HERE TODAY TO SPEAK IN FAVOR OF SB 237.

WE SUPPORT SB 237 BECAUSE IT SEEKS TO CONFORM MONTANA LAW WITH THE FEDERAL FAIR LABOR STANDARDS ACT IN THE COMPENSATION OF OUTSIDE OFFICE EQUIPMENT DEALER AND SUPPLY SALESMEN. A COPY OF THE SECTION DEALING WITH OUTSIDE SALESMEN OF THE FAIR LABOR STANDARDS ACT IS ATTACHED FOR YOUR INFORMATION. THESE SALESPeOPLE ARE PAID ON A COMMISSION BASIS AND AS YOU WILL HEAR LATTER ARE NOT INTERESTING IN BEING RESTRICTED IN THEIR EARNING ABILITY BY WORKING ONLY 40 HOURS PER WEEK. THE 80-20 RULE WILL CONTINUE AS A TEST TO DETERMINE IF A SALESPERSON IS EXEMPT FROM OVERTIME, WHICH YOU WILL FIND OUTLINE IN THE FEDERAL STANDARDS.

HIGHLY MOTIVATED OUTSIDE SALES PEOPLE DESIRE FREEDOM TO PERFORM UP TO THEIR POTENTIAL TO EARN THE MAXIMUM SALES COMMISSION RATHER THAN BEING HAMPERED BY A OVERTIME PROBLEM.

WE ASK THAT YOU GIVE THIS BILL CAREFUL CONSIDERATION AND A "DO PASS" FROM THIS COMMITTEE.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

MIL-R PRODUCTIONS  
CLIENT: LABOR DEPARTMENT

GALLEY NO.1  
JOB NO. 3264

EX-1  
3-11-91  
RECEIVED

SB 237

FEB 01 1991

EMPLOYMENT RELATIONS DIV.

# The Fair Labor Standards Act of 1938, as Amended

---



U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

WH Publication 1318  
Revised April 1990

March 11, 1991

House of Representatives  
Labor & Employment Relations  
Chairman, Carolyn Squires

re: SENATE BILL NO. 237

*Modam* <sup>person</sup> ~~Chairman~~, ~~Carolyn Squires~~ & Committee Members:

I am Sierra Wolf, representing Davis Business Machines.

The current legal requirements of the employer are unfair to outside sales people. Why? Because the commission sales person wants to work as much as deemed necessary without restriction by the employer who is shackled with paying overtime compensation. My time and effort will yield financial results, just as the businessman who works hard to make a success of his business.

An outside sales person must work in excess of 40 hours per week. At least in the beginning of their careers. We must remember we are asking for the freedom to choose how many hours we will work without our employer being at risk. No sales person is asked to work over 40 hours, just that some of us wish to make full use of our time for our own financial benefit.

The straight commission sales person knows there are no guarantees. But those who are successful got there by working the hours required to make the sales.

Give outside sales people the freedom to work the Free Enterprise system that has made this country the envy of others.

*NOTE Do PASS on Senate Bill # 237*



DAVIS BUSINESS MACHINES,  
INC.

EXHIBIT 3  
DATE 3/11/91  
SB 237

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

March 11, 1991

House of Representatives  
Labor & Employment Relations  
Chairman, Carolyn Squires

re: SENATE BILL NO. 237

Chairman, Carolyn Squires & Committee Members:

I am Loren Davis, President of Davis Business Machines, Inc., incorporated in the State of Montana in 1968. At present, I have three stores and 25 employees. Six of these employees are full time, outside sales people that are paid by commissions.

I have been hiring and training people for thirty years. As in most industries, and especially the high tech area, the training is extensive and continuous. Many industry supported educational classes and seminars are after business hours and on week-ends so that the sales people are not taken out of their territory when businesses are open. As Montana law reads now, we would have to pay overtime or cut back on sales time.

Sales people are entrepreneurs who set their own destinies. A sales person's potential should not be limited by controlled work hours. Nothing happens until someone makes a sale. The more items sold, the more demand on production. The sale of an item affects our economy in every aspect: raw materials, manufacturing, transportation - all the way to banking and taxes. Outside sales people are hard to track for time. Time spent on the job has to be on the honor system which is very scary considering the labor relations trend.

I encourage this committee to send Senate Bill #237 to the House floor with "Do Pass" recommendation.

Sincerely,

*Loren W. Davis*  
Loren W. Davis  
President



EXHIBIT 4  
DATE 3/11/91  
SB 237

DONALD R. JUDGE  
EXECUTIVE SECRETARY

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

(406) 442-1708

Testimony of Darrell Holzer before the House Labor Committee on Senate Bill  
237, March 11, 1991

-----

Madam Chair and members of the committee, for the record my name is Darrell Holzer and I am here today to testify on behalf of the Montana State AFL-CIO in opposition to Senate Bill 237.

Madam Chair, said briefly, this bill is simply another attempt to exclude more workers from the protection of Montana's overtime compensation law. You will note on page 3 of the bill that an exemption currently exists for outside salesmen paid on commission or contract basis.

We were opposed to granting this exemption when it was adopted by the legislature. At that time, we argued that any worker deserves protection from exploitation by their employer, regardless of occupation. We continue to believe that to be true.

The original intent of this bill was to exclude a multitude of outside salespersons from entitlement to overtime compensation. While a portion of our concerns have been addressed favorably, others have not. Those concerns being that not all workers would be justly compensated for the number of hours worked. The Montana State AFL-CIO has always subscribed to the philosophy of a "FAIR DAYS PAY FOR A FAIR DAYS WORK". As written, Senate Bill 237 does not equate into fairness for workers.

The most important asset that a worker has to offer to an employer is his or her labor. The financial compensation for that labor, is the bottom line for the worker and his family. Due to the fact that Senate Bill 237 is not fair to all principles involved, we urge the committee to reject this bad idea and to give Senate Bill 237 a do not pass recommendation.

Thank you.



# 'Our Purpose Was To Break Strikes'

For six years George Johns' job was to break unions. As the number-three man at an Ohio "security

union in two weeks, and we never failed.

JOURNAL: That's quite a guarantee. What kinds of things did you have to do to live up to it?

JOHNS: The first thing I did on a new job was to go to the local authorities and explain why we were in town. Most of the time we got 100 percent cooperation from them.

Then we'd bring our people and equipment in and set up shop. We'd do the same things Massey is doing here.

We used video cameras 24 hours a day, 35mm cameras, tape recorders and we wore our riot gear—helmets, face shields, jumpsuits and 36-inch-long batons.

Then we set about provoking violence from the strikers and getting it on film for the judge.

JOURNAL: How did you do that?

JOHNS: Usually it was easy. Our presence alone made people mad. And if we could find a loudmouth on the line, that just made our job easier.

Or one of our guys would walk up to a striker—especially if he had on a wedding band—and say he had gone to bed with the guy's wife.

over \$100,000.00  
IN HIGHLY SOPHISTICATED EQUIPMENT

- TRAINED SPECIALISTS
- SPECIALLY EQUIPPED VANS
- FULL COMMUNICATION EQUIPMENT
- VIDEOTAPE CAPABILITIES
- AUDIO AND VIDEO TAPE RECORDING
- LABOR DISPUTE FORCE
- S.W.A.T. TEAM
- WATCHMEN
- LAW ENFORCEMENT
- UNARMED OFFENSE
- INVESTIGATION
- SURVEILLANCE
- ACQUITTAL TRAINING
- LEGAL SWEETEN
- LINE DETECTION

Sometimes we'd use rubber bands and paper clips. They can puncture the skin and draw blood. When one would hit a striker, he'd come after the security officer and we'd take his picture and go straight to the judge to show 'union violence.'

We'd take our film to court and the judge would bring his mallet down and say, 'Injunction granted.'

Only once did a judge even ask me any questions.

JOURNAL: How did you recruit your guards, and what kind of training did they have?

JOHNS: We just hired off the street and let them choose their own weapons.

A lot of the guys we hired couldn't have got a gun license, because of having a record or whatever, but the company had a blanket gun permit, so anyone who worked for us could get guns.

They'd get into trouble because they didn't know how to handle the weapons. One guy blew his brains out playing Russian roulette. Another shot the mirror out in a Holiday Inn practicing his 'quick draw.'

And the longer a strike went, the more money we made. Once you've got injunctions, you might have to disrupt the negotiations by destroying equipment to keep the strike going. But basically, you don't have much to worry about.

JOURNAL: What's the answer for union members on strike facing these kinds of imported strikebreakers?

JOHNS: Organization. You have to be just as organized as the mercenaries. The hardest strikes for us to break were with unions who had things under control, and had their own surveillance and security.

They're there to get you mad and to set up violent confrontations. If you don't take their bait, you've got a lot better chance in the long run.

"Johns' specialty was provoking picket-line violence and training recruits in strike-breaking tactics. Johns left that firm in 1981, and is now working with the Michigan AFL-CIO to expose union busters' illegal tactics. He recently traveled from Detroit to Williamson, W. Va., where he agreed to talk to a Journal reporter.

JOURNAL: Why did you come to Williamson?

JOHNS: I came down with the Auto workers to look over the security that A.T. Massey is using against the U.M.W.A.

JOURNAL: What did you find?

JOHNS: Southeastern Security has the same kind of operation at Sprouse Creek and Rocky Hollow that we used. In fact, I'm fairly sure I trained one of the guys I saw there.

They even wore the same kind of jumpsuits—the kind that are designed to conceal weapons. Under my cover, I wore a .45 automatic in a shoulder holster.

JOURNAL: Why do you think companies such as A.T. Massey hire security firms like Southeastern?

JOHNS: Our purpose was to break strikes. We knew how to provoke violence on the picket line. We tapped phones and conducted surveillance. We destroyed property. One time we destroyed \$148,000 worth of lumber to break a strike.

We guaranteed our clients that we would get an injunction against the

*[Handwritten signature]*

# 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 6  
DATE 3/11/91  
RE: SB 267

March 7, 1991

TO: HOUSE LABOR AND EMPLOYMENT RELATIONS

RE: SB-267

Dear Carolyn and members of the Committee:

For the record I am:

Dan C. Edwards, International Representative  
Oil, Chemical and Atomic Workers Int'l Union, AFL-CIO  
P.O. Box 21635  
Billings, MT 59104  
(406) 669-3253

Testimony: March 11, 1991, before the House Labor and Employment Relations Committee, in SUPPORT of SB-267.

Previously scheduled negotiations do not permit my personal appearance before the Committee today. However, on behalf of the OCAW members in Montana, I strongly support SB-267.

This Bill will establish a permitting system for so-called security agents that are hired for strike related activities. The Bill does not adversely affect persons providing legitimate security services, only those who are hired by employers whose business is involved, or who anticipates the business will be involved, in a labor dispute resulting in a strike.

This Bill is necessary to stop the abuses of security firms that specialize providing so-called security agents (goons) for strike related activities. The objective of these firms is to cause disruption and violence, not to provide security, with the objective of placing the blame on the union. Some of these firms actually sell the services by promising the employer that they will have an injunction against the union within 10 days to two weeks after they are hired.

One illustration of this comes from Richard Trumpka, President of the United Mine Workers of America, speaking about the Pittston Strike:

"What is the source of violence the picket lines? We understand that violence is our enemy. From a purely practical and strategic perspective, the company needs violence to get the full force of the courts and the government behind it. The company hired a security firm which guaranteed an injunction within ten day of their arrival on the scene. They provoke violence, and where they can't provoke it, they

EXHIBIT 6  
DATE 3/11/91  
SB 267

manufacture it. When something happens that shows that Pittston is operating in bad faith, the same day an incidence of violence occurs. When the NLRB issues a complaint, an incidence of violence occurs. They never have a perpetrator."

"In strikes, workers are presumed guilty until proven innocent. They had 150 security guards staying in a warehouse. They claim that someone snuck in and planted a charge. A portion of it went off, and the rest just happened to be lying there as evidence. Isn't it ironic that someone would be able to sneak past 150 professional security guards and plant a charge? Either they are incompetent, or they planted it themselves."

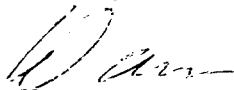
Another example is found in the current New York Daily News strike. The Daily News hired a London, Kentucky firm called Securex to provide drivers and security guards during the strike. Securex recruited the scabs via newspaper ads from around military bases in the South where local economies were hard hit by the deployment of troops to the Persian Gulf. In November, several of the scabs quit, revealing that they were hired as "bait" to videotape themselves and other security personnel being beaten as evidence to be used against the drivers union in court. New York City police officials testified before a state legislative hearing that there was no coordinated effort by the unions to commit violence against the scabs.

It's important to remember that firms like Securex will send their goons to Montana just as quickly as they will to New York. (Of course, Securex is going to charge a healthy fee for providing these goons.)

These situations, of course, are not limited to places back East. I'm sure Senator Towe has related the abuses of the so-called security firm hired by the Decker Coal Company right here in Montana.

Thank you for your consideration of our position. Your support of SB-267 will be appreciated.

Respectfully submitted,



Dan C. Edwards, International Representative



EXHIBIT 7  
DATE 3/11/91  
HB SB 267

DONALD R. JUDGE  
EXECUTIVE SECRETARY

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

(406) 442-1708

Testimony of Darrell Holzer before the House Labor Committee on Senate Bill 267, February 14, 1991

-----

Madam Chair, members of the committee for the record my name is Darrell Holzer, representing the Montana State AFL-CIO and I am here today to testify in support of Senate Bill 267 which would require security agents to obtain permits from the state of Montana.

Newspaper articles, affidavits and documentation sent to us by the National AFL-CIO dramatize union busting by so-called "security firms". These articles point out that security during a strike is not only big business but sometimes a very dirty business.

The Decker strike incidents that Senator Towe describes are not isolated incidents. They happen around the country and are the "modus operandi" of the modern union busting security firm.

I would like to read to you just one account of a former security agent, George Johns, of the security agency Nuckols and Associates: "Our purpose was to break strikes. We could guarantee any employer we'd have an injunction for him within two weeks."

Johns described blowing up an electric transformer on one occasion, and setting \$148,000 worth of lumber on fire on another. Both of these incidents were blamed on unions in order to get injunctions.

"We used video cameras, 35mm cameras and tape recorders, 24 hours a day. We wore riot gear -- helmets, face shields, jumpsuits -- and carried nylon batons 36 inches long. Each guard carried a gun, mace, handcuffs, and soft gloves with lead in the knuckles."

Johns spoke recently at a joint Mine Workers/Autoworkers rally in Kentucky in support of the A.T. Massey strike, and described some other techniques the Nuckols firm used:

"One of our guys would walk up to a striker in front of a plant -- especially if he had a wedding band -- and say he had gone to bed with his wife. When the guy got mad and went after our guy, we'd get his picture and take it to the judge.

"Sometimes we'd use rubber bands and paper clips. They can puncture the skin and draw blood. When one would hit a striker, he'd come at the security officer and we'd take his picture.

Testimony of Darrell Holzer, SB 267  
February 14, 1991  
Page Two

EXHIBIT 7  
DATE 3/11/91  
HB SB267

"When a union and a company would be negotiating, something would often happen inside the plant. Or something would be destroyed. It would be blamed on the union and the company would break off negotiations.

"In one strike we knew there was a snitch inside, telling the strikers everything. I followed one of the secretaries home one evening and got a picture of her hugging one of the pickets. Soon after that, she was fired. Not for that, or course."

Senate Bill 267 may not make it illegal to operate a disgusting union busting security firm in Montana, but it is a start. If a security firm is legitimately protecting the property of the employer, what reason would they have not to register with the state. If their intentions are otherwise, maybe this bill will help expose these people as the slimy bugs that they are.

We urge you to support Senate Bill 267 not only because it is the right thing to do for Montana, but because it is the just thing to do.

Thank you.

March 14, 1991

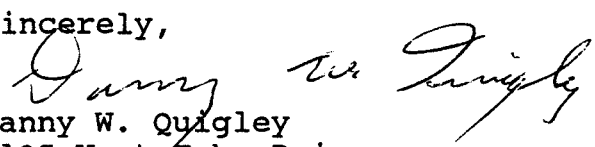
EXHIBIT 8  
DATE 3/11/91  
HB SB 267

House Labor Committee  
Room 413/415  
State Capitol  
Helena, Mt. 59601

Dear Committee Members:

I would like to go on record as Supporting  
Senate Bill 267.

Sincerely,

  
Danny W. Quigley  
2125 West Echo Drive  
Billings, Mt. 59105

DEPARTMENT OF COMMERCE

CHAPTER 50

BOARD OF PRIVATE SECURITY PATROLMEN AND INVESTIGATORS

NOTE: Rules 8.50.401 through 8.50.422 under Sub-Chapter 4 have been repealed because of major changes in the statutes. New rules under sub-chapter 4 start at 8.50.423.

Sub-Chapter 1

Organizational Rule

Rule 8.50.101 Organization

Sub-Chapter 2

Procedural Rules

Rule 8.50.201 Procedural Rules

8.50.202 Public Participation

Sub-Chapter 3 reserved

Sub-Chapter 4

Substantive Rules

Rule 8.50.401 Definitions

8.50.402 Powers of Director

8.50.403 Exemptions

8.50.404 Powers of Arrest

8.50.405 Firearms

8.50.406 Additional Categories of Licensure

8.50.407 Probationary and Temporary Licenses

8.50.408 General Requirements

8.50.409 Experience Requirements

8.50.410 Manager of a Licensee - Qualifications

8.50.411 Application

8.50.412 Written Examination

the assets of any person who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

History: En. Sec. 27, Ch. 444, L. 1987.

#### Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

**37-53-506. Criminal proceedings.** The board may refer evidence concerning violations of this chapter to the attorney general or the proper prosecuting attorney, who may institute appropriate criminal proceedings.

History: En. Sec. 28, Ch. 444, L. 1987.

## CHAPTERS 54 THROUGH 59

### RESERVED

## CHAPTER 60

### PRIVATE INVESTIGATORS AND PATROL OFFICERS

#### Part 1 — General

37-60-101. Definitions.

37-60-102. Repealed.

37-60-103. Purpose.

37-60-104. Restrictions on contract security company and proprietary security organization.

37-60-105. Exemptions.

#### Part 2 — Director of Department—Board

37-60-201. Organization — meetings — records.

37-60-202. Rulemaking power.

37-60-203 through 37-60-210 reserved.

37-60-211. Compensation of board members — expenses.

37-60-212. Attorney general to act as attorney for the board.

#### Part 3 — Licensing

37-60-301. License required.

37-60-302. Qualifying agent and resident manager required — substitution.

37-60-303. License qualifications.

37-60-304. Licenses — application form and content.

37-60-305. Repealed.

37-60-306. Repealed.

37-60-307. Action on application.

37-60-308. Temporary employment without identification card — authority of board.

37-60-309. Form of license and identification card.

37-60-310. Display of license and identification card.

37-60-311. Repealed.

37-60-312. Annual renewal.

37-60-313. Repealed.

37-60-314. Nontransferability of license — record changes.

37-60-315 through 37-60-319 reserved.

37-60-320. Fees.

37-60-322. Surrender of licenses and identification cards.

#### Part 4 — Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees.

37-60-402. Confidentiality of information — false reports — badges and uniforms — entry.

37-60-403. Licensee advertising.

37-60-404. Duty to maintain employee records.

37-60-405. Approval of weapons.

37-60-406. Peace officer's casual employment.

37-60-407. Regulation of uniforms, badges, and equipment.

37-60-408. Restrictions on use of certain automatic dial-up systems.

37-60-409. Installation of new security alarm systems by electrician.

37-60-410 reserved.

37-60-411. Penalties — investigation — enforcement — review.

#### Chapter Cross-References

Service of process and other papers, Title 25,

ch. 3.

Weapons, Title 45, ch. 8, part 3.

Search and seizure, Title 46, ch. 5.

Arrest, Title 46, ch. 6.

### Part 1

#### General

**37-60-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers transport under armed private security guard from one place to another in currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of his duties.

(5) "Armored car service" means any person who transports or offers transport under armed private security guard from one place to another in currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrol officers and investigators provided for in 2-15-1891.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system.

Ex. 9

that the constitutional provision to the effect that courts shall be open to every person who shall have a remedy by due process is not violated by a rule of a labor union declaring the decisions of its authorities with respect to the right to strike benefits to be conclusive.<sup>55</sup>

§ 2035. Strikebreaking.

At common law, strikebreaking was lawful.<sup>56</sup> Under 18 USCS § 1231, which by its terms is inapplicable to common carriers, whoever willfully transports in interstate or foreign commerce any person who is employed or is to be employed for the purpose of obstructing or interfering by force or threats with (1) peaceful picketing by employees during any labor controversy affecting wages, hours, or conditions of labor, or (2) the exercise by employees of any of the rights of self-organization or collective bargaining; or whoever is knowingly transported or travels in interstate or foreign commerce for any of the above enumerated purposes, shall be fined not more than \$5,000 or imprisoned not more than 2 years, or both. Some states have statutes forbidding the recruitment of strikebreakers by licensed private investigators.<sup>57</sup>

During a public employees' strike, a municipal ordinance authorizing the payment of a one-time bonus to employees in affected positions who remain at work during the strike has been held not violative of the equal protection clause of the Fourteenth Amendment.<sup>58</sup> In accordance with the rule that the federal pre-emption doctrine does not apply as to state regulated conduct involving interests deeply rooted in local feeling and responsibility, there was held to be no pre-emption of a state investigation into alleged violations of a state statute prohibiting the transportation of strikebreakers into the state, inasmuch as the statute's concern lay with the preservation of peace, order, and domestic tranquility.<sup>59</sup>

2. ANTISTRIKE STATUTES

§ 2036. Public utility antistrike laws.

Since by the Labor-Management Relations Act Congress has closed to state regulation the field of peaceful strikes in industries affecting interstate commerce, and since the Labor-Management Relations Act applies to privately owned public utilities affecting commerce even if their business and activities are carried on wholly within a single state, a state public utility antistrike law governing such utilities is invalid as conflicting with the exercise of federally protected rights.<sup>60</sup> Hence, a state statute which prohibits strikes against public utilities and provides for compulsory arbitration of labor disputes after an impasse in collective bargaining has been reached is invalid as in conflict with the Labor-Management Relations Act.<sup>61</sup> A state statute providing for state seizure of struck privately owned public utilities, so as to convert a lawful

55. *Brotherhood of R. Trainmen v Barnhill*, 214 Ala 565, 108 So 456, 47 ALR 270.

56. *Building Service & Maintenance Union v St. Luke's Hospital*, 11 Ohio Misc 218, 40 Ohio Ops 2d 500, 227 NE2d 265.

57. NY Gen Business Law § 84.

58. *Social Workers Union v County of Los*

*Angeles*, 270 Cal App 2d 65, 75 Cal Rptr 566.

59. *Warren v State, Dept. of Labor* (La App) 313 So 2d 6.

60. *Amalgamated Asso., etc. v Wisconsin Employment Relations Board*, 340 US 383, 95 L Ed 364, 71 S Ct 359, 22 ALR2d 874.

61. *Henderson v State* (Fla) 65 So 2d 22.

EXHIBIT  
DATE 3/11/91  
IB 58267

Ex. 9

3-11-91

SB 267

To a person hired and employed as a security agent by a contract security company or proprietary security organization which is licensed by the Board of private security patrol officers and investigators in accordance with Sections 37-60-202 through 37-60-411.

EXHIBIT 1  
DATE 3/11/91  
HB SB 267

EXHIBIT 10  
DATE 3/11/91  
HB SB 343

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL VOTE

DATE 3/11/91 BILL NO. 343 NUMBER       

MOTION: Amendment

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	8	10

**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. SB 237

DATE 3/11/91

SPONSOR(S) Sen. Jerry Noble

**PLEASE PRINT**

**PLEASE PRINT**

**PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DARRELL HOLZEL	MONTANA STATE AFL-CIO		X
Charles R. Brooks	MT. REP. N. 1 ASSOC	✓	
BUCK BOLES	MT CHAMBER OF COMMERCE	✓	
TERRY HARRIS	CAPITAL OFFICE EQUIP.	✓	
Sara Dwyer	Davis Business Machines	✓	
<del>XXXXXXXXXX</del>	<del>XXXXXXXXXX</del>		<del>XXXX</del>

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

**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. SB 267

DATE 3/11/91

SPONSOR(S) Sen. Tom Towe

**PLEASE PRINT**

**PLEASE PRINT**

**PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DARRELL HOLZER	MONTANA STATE AFL-CIO	X	
DAVID L. BLATTER	Security Armored Exp.		X
Mike Nicom	DLI		X
Elmer Buck Boles	Mont Chamber of Commerce		X
Bob Heiser	UFCW	X	
Robbie G. Ford	AFSCME	X	

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

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. SB 343

DATE 3/11/91

SPONSOR(S) Sen. David Rye

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Mike Nucione</i>	<i>DLI</i>	<i>X</i>	

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