

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR CAROLYN SQUIRES on March 13, 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)
Royal Johnson (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzenried (D)
Tim Whalen (D)

Members Absent:

David Hoffman (R)
Thomas Lee (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 SB 420

Presentation and Opening Statement by Sponsor:

SEN. PAUL SVRCEK, Senate District 26, Thompson Falls, said SB 420 revises a law passed last session which set up a system of deductibles in Workers' Compensation. It was set up to be totally discretionary. The suggestions of the National Commission on Compensation Insurance (NCCI) have to be followed. Since NCCI said there wouldn't be significant savings with the system, there hasn't been much interest in the deductible. It was estimated that \$7 or \$8 million would be saved per year in the Workers' Compensation system if it was enacted. When the bill

was passed, there were two states that had a deductible system, and now there are about 13. It is working well. New Mexico originally had a discretionary system, and it had the same trouble with NCCI that Montana did. New Mexico went to a mandatory system and showed a savings, so NCCI was forced to say there would be a savings because of this system. "SB 420 makes mandatory a \$500 deductible on Workers' Compensation insurance." In regard to the crossed-out language: The intent of the bill as originally introduced was the employer could pay the medical provider directly if an injury was under \$500. There are legitimate concerns that if an employer refuses to pay that claim, the employee might become liable.

Proponents' Testimony:

Riley Johnson, National Federation of Independent Businesses (NFIB), said in 1989 the NFIB was in favor of Sen. Svrcek's bill which passed almost unanimously in both houses. The concept of the bill was if there were 15-18,000 medical claims per year, there would be a considerable savings if the employers would pay the first \$500. There would have been a savings in premiums also. NCCI said there would only be a 2-6 percent savings. It was found that NCCI was telling that to all states passing this law. One year after New Mexico instituted the law, NCCI found it was saving as much as 14.8 percent on the higher limits. NCCI had to revise all of its savings limits and figures. Since then NCCI has indicated it would work with Montana. As a result, no one has produced the deductible Workers' Compensation. The state is prepared and willing to go along with it. This bill can save money to the State Fund and can save on premiums. The worker is not in danger. The worker has his injury taken care of, and the state pays the claims. If a person chooses to take that policy (he doesn't have to), the state charges him back for up to the first \$500. By July 1 the State Fund and the private insurers of Montana shall offer to employers a deductible of \$500, which goes up to \$1,000, \$1,500, \$2,000, and \$2,500.

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

Bob Heiser, United Food and Commercial Workers' Union, said the concerns with the original bill have been addressed, which are the sections crossed out.

Jim Murphy, State Fund, stated his support of the bill as amended. The State Fund will evaluate each employer.

Jacqueline Terrell, American Insurance Association, stated her support of the concept. It will produce a savings for some companies. Not all private insurance companies are created alike, and some are not structured to offer this type of deductible. It may work very well for the State Fund. This deductible requirement should be made optional for the Plan 2 carriers, so they may offer it if they are structured to do so.

The potential insured can then choose to insure with a company that does or doesn't offer a deductible or the State Fund. She stated her support of the bill with the amendment.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

SEN. SVRCEK said if the deductible was optional for the private insurers, in essence they aren't going to do it. Perhaps there could be an exception if private insurers could show that they aren't structured to offer this type of deductible. Rep. O'Keefe will carry the bill.

HEARING ON SB 383

Presentation and Opening Statement by Sponsor:

SEN. CECIL WEEDING, Senate District 14, Jordan, said SB 383 is introduced at the request of the State Fund. The requested changes clarify the statutes. Sections 6 and 7 have been struck from the bill because they were dealt with in another bill. Sections 1-3 attempt to clarify and identify the proper employer for coverage purposes in leasing arrangements and in the trucking industry. Leasing arrangements are a nationwide Workers' Compensation problem, and the difficulty is determining the proper employer for coverage purposes so adequate premiums can be collected to pay the benefits. This bill sets forth criteria to determine which employer should provide coverage. Section 4 allows the insurer and a claimant to agree on the disposition of a third-party settlement when satisfying the insurer's subrogation interests. Section 6 allows the State Fund to consider the employer's premium history as well as the employer's safety record in determining the variable pricing level for the insured. Section 7 clears up a conflict in the statute for the cancellation notice. The statute requires both a 20-day and a 30-day notice. The bill deletes the 20-day notice and uses the 30-day notice, which is what the State Fund is presently doing. Sections 10 and 11 have been struck at the request of the State Fund.

Proponents' Testimony:

Pat Sweeney, State Fund, said the changes in Sections 1-3 attempt to clarify and identify the employers responsible for providing Workers' Compensation coverage. This does not expand the coverage requirements under the existing law. The first issue deals with leasing companies. The changes continue to allow businesses who furnish temporary employees to other employers to provide the required Workers' Compensation coverage, but the changes define a temporary service contractor and temporary worker. Section 2 requires coverage by the using

employer if the workers are furnished by a business who does not meet the definition of temporary service contractor. The second issue deals with coverage requirements for motor carriers. The bill does not expand coverage but attempts to identify the employer responsible. Section 2, Paragraph 4, requires the motor carrier doing business in Montana, who utilizes Montana employees, to provide Montana coverage. The bill allows two exceptions: 1. if the driver is certified as an independent contractor, which is the same as existing law; 2. if the employer or leasing firm furnishing the drivers to the motor carrier provides Montana coverage. This provision has been discussed with and agreed to by the Montana Motor Carriers' Association. Section 3 clarifies the definition of employee so it ties to the coverage change discussed previously. Section 4 clarifies the statute in response to a Supreme Court decision. The bill allows the insurer and claimant to determine the disposition of a settlement as it relates to subrogation when they agree without a Department determination. The current statute and Supreme Court decision require the Department to determine the disposition even though the parties had no dispute. The language is identical to HB 837 and to the best of his knowledge all parties agree. Section 6 is amended to clarify the State Fund's role in implementing variable pricing as required by existing statutes. The bill clarifies that an employer's payroll reporting and premium payment history as well as other relevant factors may be considered in implementing variable pricing levels. Section 7 clarifies the provisions for cancellation of coverage under Plan 3 of the Workers' Compensation Act. The current provisions are in conflict where one section requires a 20-day notice and another section requires a 30-day notice. The bill amends Section 23-39 which requires a 30 day notice, incorporates the appropriate parts under Section 23-38 and repeals Section 23-38.

Mike Sherwood, Montana Trial Lawyers' Association, stated his support of the bill as amended.

Don Judge, Executive Secretary, AFL-CIO, said the bill addresses a concern regarding specific employment contractors and how they were paying their Workers' Compensation premiums when those contractors were, in fact, providing full-time workers in certain industries. Under HB 420, the rate that is charged to a particular industry is based upon the industry rate and not the rate that an overall employment contractor would apply, unless it was similar to Kelly Girls, in which it would be a temporary position.

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

Curt Laingen, Motor Carriers Association, stated his support.

Jacqueline Terrell, American Insurance Association, stated her support.

Bob Jensen, Administrator, Department of Labor and Industry, stated his support.

Opponents' Testimony: None

Questions From Committee Members:

REP. DRISCOLL said the Senate struck Section 6 completely so that Section stays in the law. Page 19, Line 6, says the settlements are subject to Department approval. Since it is struck and is now back in the law, people will have to beg the Department to get settlements again. **Ms. McClure** said the Senate struck that Section because it has been dealt with in SB 465 and HB 837.

REP. DRISCOLL asked what would happen if those bills don't pass. **Ms. McClure** said the Section could be amended to conform with SB 465 and HB 837, or the entire Section could be struck and the other bills could be used.

REP. THOMAS asked **Mr. Sweeney** to explain the cancellation process in Section 7. **Mr. Sweeney** said nonpayment of premium or non-reporting of payroll can start the cancellation process. The State Fund has been using a 30-day cancellation notice. It was in conflict in the law, and this bill clarifies it. **REP. THOMAS** asked if the State Fund would initiate the 30-day notice if a payroll report is not received. **Mr. Sweeney** said yes. **REP. THOMAS** asked if the State Fund received a payroll report from an employer but the premium wasn't paid by a certain date, would the State Fund initiate the 30-day notice. **Mr. Sweeney** said yes.

REP. DRISCOLL said 39-71-431 pertains to the assigned risk plan. If it is not implemented by December 31, 1990, the Commissioner cannot do it ever. Why is it needed in the law book? **Mr. Murphy** said Section 5 is in the bill because Page 14, Line 9, says Section 23-38 is repealed. That is the only change in this Section. It probably isn't needed now. There was no intent to deal with the assigned risk plan. That is the Department's problem.


REP. THOMAS asked **Ms. McClure** if Section 5, Page 14, Line 10, will stay in statute since it has not been enacted as of December 31, 1990, or will it have to be repealed. **Ms. McClure** said it will have to be repealed.

Closing by Sponsor:

SEN. WEEDING closed. Rep. Wanzenried will carry the bill.

ADJOURNMENT

Adjournment: 3:30 p.m.



CAROLYN SQUIRES, Chair



JENNIFER THOMPSON, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 3/13/91

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	✓		



EXHIBIT 1
DATE 3/13/91
HB SB 420

DONALD R. JUDGE
EXECUTIVE SECRETARY

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

(406) 442-1708

TESTIMONY OF DON JUDGE ON SENATE BILL 420, HEARINGS OF THE HOUSE LABOR COMMITTEE, MARCH 13, 1991

Madam Chair, members of the committee, for the record my name is Don Judge of the Montana State AFL-CIO, and we rise in support of Senate Bill 420 as an improvement in the deductible provisions of the state workers' compensation law.

As a general rule, workers and their unions are skeptical of the use of deductibles in workers' compensation systems. That skepticism is born of our firsthand knowledge that some employers will use deductibles as a loophole to escape the system's requirements.

It has been the experience in other states that employers may use a deductible provision to pressure an employee against reporting a workplace accident, and to instead file a claim under the employer's regular health insurance program.

That often can leave the employee holding the bag for at least part of the cost of the injury because of copayment and deductible requirements so common in private health insurance. We've also seen cases in which employers will volunteer to pay those out-of-pocket costs to the injured worker, which is a clear sign of just how far some employers may go to avoid having a workplace injury reported, and then having that impact his safety record and premium rates.

We're very opposed to anything that moves us toward a system where such abuse is possible.

We think SB 420 moves in the opposite direction. We think its provisions expanding the deductible option and requiring deductibles to be handled through the insurer are in line with current insurance practices in the 16 states where deductibles have been enacted.

There should be less opportunity for abuse of the deductible under this legislation, while at the same time giving employers the option to take steps that may save them money in the long run via lower premium rates and overall workers' compensation costs.

We urge the committee to give SB 420 a "do pass" recommendation.

Thank you.

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. SB 420

DATE 3/13/91

SPONSOR(S) Sen. Paul Svrcek

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Riley Johnson	NFIB	X	
Bob Heiser	U.F.C.W	X	
Jim Murphy	State Fund	X	
Jaqueline Terrell	Am. Ins. Assoc.	if amended 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 383

DATE 3/13/91

SPONSOR(S) Sen. Cecil Weeding

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bob Heiser	UFCW	X	
Bob Jensen	Dept of Labor + Ind.	X	
CURT LAINGEN	MONTANA MOTOR CARRIER'S ASSN	X	
PAT Sweeney	STATE FUND	✓	
Jacqueline Terrell	Am. Ins. Assoc.	✓	
Michael J. Sherwood	MTLA	✓	

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