

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Richard Manning, on January 31, 1991,
at 3:10 p.m.

ROLL CALL

Members Present:

Richard Manning, Chairman (D)
Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Thomas Keating (R)
J.D. Lynch (D)
Bob Pipinich (D)

Members Excused: Dennis Nathe (R)

Staff Present: Tom Gomez (Legislative Council).

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

Announcements/Discussion: NONE.

HEARING ON SENATE BILL 103

Presentation and Opening Statement by Sponsor:

Senator Jerry Noble presented Senate Bill 103 that would exclude cafeteria plan benefits from the definition of wages for unemployment and workers' compensation. Senator Noble told the Committee that many employers in the state of Montana have health, disability, and dental plans. Employers that have cafeteria plans allow employees to earmark before tax monies in a "use it or lose it in a year's time" fashion in order to pay non-health plan paid responsibilities. Senator Noble explained that such a plan is used in his own company. He explained that the monies going into the cafeteria plan should not be applicable to the workers' compensation or unemployment.

Proponents' Testimony:

Tom Harrison of the Montana Society of Certified Public Accounts addressed the portion of Senate Bill 103 that encourages employers and employees to utilize cafeteria plans. He explained that CPAs feel that cafeteria plans offer benefits to both the

employer and employee. (Although Mr. Harrison did not sign the visitor's register or present a Witness Statement his testimony is entered.)

Charles Brooks, Executive Vice President of the Montana Retail Association told the Committee that as employers they have encouraged their employees to become involved in the cafeteria plan as an excellent benefit for the employee and the employer. He pointed out that the Fiscal Note shows a minimal effect on the state compensation fund and the unemployment trust fund. Mr. Brooks urged support of Senate Bill 103.

Forrest H. Boles, President of the Montana Chamber of Commerce asked support of Senate Bill 103. He told the Committee cafeteria plans offer flexibility for small businesses to provide coverage to their employees. He explained the chamber encourages their members to offer such a plan.

Opponents' Testimony:

David Hartman representing the Montana Education Association expressed opposition to Senate Bill 103. He pointed to page 6, line 16 where the term "wages" does not include "the amount of any payment made by the employer". At page 7 the bill states what those employer payments are related to. These include employer payments made on behalf of employees to deferred compensation plans and cafeteria plans in general. On page 8, line 6 it states that "wages do not include", and further to lines 14 and 15 where "wages do not include contributions made by the employer or the employee to a group insurance or pension plan". Mr. Hartman told the Committee that this legislation would decree through statute that wages are not wages, because employee contributions to a group insurance plan come from the wages of those employees. He presented an example involving the Havre Public Schools. If an employees family is insured the monthly premium is \$421, with the employer contributing \$170, leaving the employee with a \$251 contribution. Under the terms of this bill the \$251 contribution would not be counted as it respects the salary involved as it further respects their unemployment or workers' compensation entitlement. He told the Committee that the 7% contribution teachers make to pension plans would be discounted for the purposes of workers' compensation and unemployment compensation because of the adjustment of salaries that would follow.

Don Judge, Executive Secretary of the Montana State AFL-CIO spoke from prepared testimony in opposition to Senate Bill 103. (Exhibit #1)

Gary Spaeth representing the National Council of Compensation Insurance (NCII) presented written testimony prepared by Leary C. Jones, Premium Audit Manager for NCII. Mr. Spaeth highlighted areas of Mr. Jones testimony for the Committee and urged a DO NOT PASS on Senate Bill 103. (Exhibit #2)

Nancy Butler, General Council for the State Compensation Mutual Insurance Fund spoke in opposition to Senate Bill 103. Ms. Butler told the Committee Senate Bill 103 effects the Workers' Compensation Act in Section 2 by amending the definition of wages. She explained the bill excludes from the definition of wages for workers' compensation purposes, profit sharing arrangements, employee contributions to group insurance and pension plans, and payments under a cafeteria plan. She told the Committee that if these items were no longer considered wages for workers' compensation purposes, they would not be included in calculating the weekly benefit received; and would not be included as employer payroll, and would decrease the amount of premium payable by the employer. Ms. Butler told the Committee that current rates are based on premium and payroll. Any reduction in payroll would decrease premium and therefore increase premium rates payable by employers. This data would be traceable after the fact. The administration costs for auditing and underwriting would also increase.

Questions From Committee Members:

Senator Blaylock asked Nancy Butler about her statement that the fund would be tracking these after the fact; and what might this do to the fund. She explained that the fund has no way to know what the premium would be, because there are no statistics on the number of employees contributing to health and pension plans, cafeteria plans or what the profit sharing arrangements are. Senator Blaylock pointed out that the medical benefits would have to be paid by the fund at full rate, but the income would have fallen, and would endanger the fund. Ms. Butler told the Committee that is correct.

Senator Towe asked Senator Noble what concern this legislation was addressing. Senator Towe asked if he intended to exclude all health and pension plans, or was the aim at authorizing cafeteria plans. Senator Noble explained his intention was to make it easier on small employers. He said this would enable the employee to pay out-of-pocket medical, dental, vision and child care costs. Senator Towe asked if there was anything that prevents the company from giving a cafeteria plan. Senator Noble said there was not.

Senator Towe asked why would Senator Noble would to remove health plans and pension plans. Senator Towe pointed to page 8, lines 14 and 15 where it states what wages are not: "contributions made by the employer or the employee through a group insurance or pension plan". Senator Towe referred to testimony that it would mean a substantial reduction in the amount of workers' compensation benefits. Senator Towe asked Senator Noble if that were his intention. Senator Noble explained that companies that offer cafeteria plans are not minimum wage companies. He told the Committee that this would affect workers' compensation payments very little.

Senator Keating asked Tom Gomez if he was the drafter of Senate Bill 103. Mr. Gomez said he was not.

Senator Keating questioned why the drafter included on page 8, line 14 "or the employees". He asked if group insurance and pension plans are now a part of a cafeteria plan.

Tom Gomez told the Committee that the title of Senate Bill 103 is insufficient and does not meet the standards required for public notice regarding the contents of the bill. He said it does not include notice concerning exclusion of profit sharing arrangements. He said it does not include any mention in the title of the exclusion of payments made pursuant to an authorized deferred compensation plan from the definition of wages for the purposes of unemployment insurance. He explained it does not include notice of several items at issue.

Senator Towe asked Nancy Butler to explain if for workers' compensation purposes this legislation says "wages do not include contributions made by the employee to group or pension plans, or any payment made on behalf of an employee to a cafeteria plan", are all group insurance plans and pension plans excluded. Ms. Butler explained that a state employee's portion of PERS, for example, would be taken out before the benefit was calculated for an injured employee.

Senator Keating asked if, a person making \$10 an hour, and out of the \$10 pays \$2 for group insurance coverage, the workers' compensation and unemployment insurance premiums paid by the employer calculated at \$10. Ms. Butler said that is the case now, but if this bill were to pass they would calculate at \$8.

Senator Lynch said if when an employee is injured, he receives no pay and his insurance premiums are no longer paid. He pointed out that with the present system workers' compensation benefits are currently based on salary and benefits.

Closing by Sponsor:

Senator Noble told the Committee there are drafting problems and other items that need to be addressed. He asked to be given time to revise.

HEARING ON SENATE BILL 130

Presentation and Opening Statement by Sponsor:

Senator Kennedy presented a written statement and exhibits to the Committee regarding Senate Bill 130. He also offered amendments. (Exhibit #3 and #4)

Proponents' Testimony:

Don Judge of the Montana State AFL-CIO spoke from prepared testimony in favor of Senate Bill 130 if amended. (Exhibit #5)

George Wood, Executive Secretary of Montana Self Insurers Association spoke in favor of Senate Bill 130 with amendments.

Bob Heiser of the United Food and Commercial Workers International Union told the Committee that concerns they had have been addressed in the amendments and they were in support of Senate Bill 130.

Mark Eichler, Vice President of the Montana State Pharmaceutical Association told the Committee that Senate Bill 130 presents an opportunity for the pharmacists in Montana to help reduce the pharmaceutical costs to the state fund, as well as other carriers, without harming or reducing the quality of care to the patient. In response to Mr. Judge's concern about availability of generic drugs in rural areas, Mr. Eichler told the Committee that most pharmacies stock generic pharmaceuticals because of federal guidelines mandating substitution of generic for Medicaid patients, as well as some third party insurers.

Pat Sweeney, President of the State Fund spoke in support of Senate Bill 130 as amended. He told the Committee the bill would amount to significant savings.

Bob Jensen of the Montana Department of Labor and Industry told the Committee that with the amendments the department's initial concerns have been addressed, and therefore encourage the passage of Senate Bill 130.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Blaylock asked if the three amendments proposed by Senator Kennedy address the concerns expressed by Don Judge. Senator Kennedy explained that when a physician writes a prescription he has an option to write 'do not substitute' on the prescription. Under those circumstances the pharmacy would bill workers' compensation for the brand name drug.

Senator Towe asked Senator Kennedy if through the authority a pharmacist has under current law to fill prescriptions if the pharmacist can dispense a generic drug if it costs less. Senator Towe questioned if a customer hesitates accepting a generic drug, what does the pharmacist normally do. Senator Kennedy explained that the customer would receive the brand name pharmaceutical and pay the difference. Senator Towe asked if under Senate Bill 130, where the pharmacist has the obligation to dispense a

generic name drug, and the customer refuses, does this generate two bills -- one to the insurer and one to the patient. Senator Kennedy told the Committee that is true.

Senator Towe asked Don Judge if his question regarding availability and responsibility of payments were addressed. Mr. Judge told the Committee that amendment drafting changes would address his concerns.

Senator Devlin asked if Mark Eichler represented pharmacists. Mr. Eichler said he did.

Senator Towe asked Pat Sweeney if the Fund had reviewed the Fiscal Note. Mr. Sweeney explained there would be no fiscal impact on the Fund. Senator Towe asked Mr. Sweeney if he was satisfied with Senator Kennedy's projection of savings. Mr. Sweeney told the Committee he could rely on Senator Kennedy's projection, as Senator Kennedy is a pharmacist.

Closing by Sponsor:

Senator Kennedy told the Committee that Senate Bill 130 would save the state fund and urged a DO PASS recommendation.

EXECUTIVE ACTION ON SENATE BILL 130

Motion:

Senator Blaylock moved the three amendments into Senate Bill 130.

Discussion:

Senator Towe suggested that before the first word "For" on the first amendment it be added "except as provided in Sub-section (3),".

Amendments, Discussion, and Votes:

Senator Blaylock concurred with Senator Towe and incorporated the suggestion into his motion. Motion CARRIED.

Recommendation and Vote:

Senator Lynch moved Senate Bill 130 as amended. Voice vote was unanimous for DO PASS as amended.

EXECUTIVE ACTION ON SENATE BILL 103

Motion:

Senator Devlin moved to TABLE Senate Bill 103.

Discussion:

NONE.

Amendments, Discussion, and Votes:

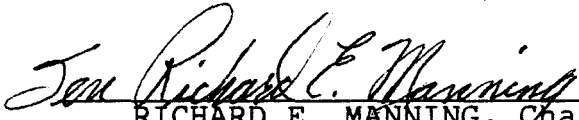
NONE.

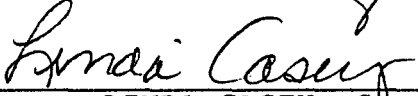
Recommendation and Vote:

Voice vote CARRIED unanimously.

ADJOURNMENT

Adjournment At: 4:25 p.m.


RICHARD E. MANNING, Chairman


LINDA CASEY, Secretary

REM/11c

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 11/31/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P 3:20 p	A	
SENATOR MANNING	P		
SENATOR NATHE			temporarily
SENATOR PIPINICH	P		
SENATOR TOWE	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 4, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 130 (first reading copy -- white), respectfully report that Senate Bill No. 130 be amended and as so amended do pass:

1. Title, lines 6 and 7.

Following: "UNLESS" on line 6

Strike: remainder of line 6 through "THE" on line 7

Insert: "A PHYSICIAN SPECIFIES NO SUBSTITUTIONS OR THE GENERIC-
NAME DRUG IS UNAVAILABLE; ALLOWING AN"

Following: "WORKER" on line 7.

Strike: "AGREES"

2. Title, line 8.

Following: "PRODUCT;"

Insert: "REQUIRING PHARMACISTS TO BILL ONLY FOR THE COST OF THE
GENERIC-NAME PRODUCT, EXCEPT WHEN PURCHASE OF THE BRAND-NAME
DRUG IS OTHERWISE ALLOWED;"

3. Page 3, line 19 through page 4, line 4.

Strike: subsection (1) in its entirety

Insert: "(1) For payment of prescription drugs, an insurer is
liable only for the purchase of generic-name drugs if the
generic-name product is the therapeutic equivalent of the
brand-name drug prescribed by the physician, unless the
physician specifies no substitutions or the generic-name
drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the
worker may pay directly to the pharmacist the difference in
the cost between the brand-name drug and the generic-name
product, and the pharmacist may only bill the insurer for
the cost of the generic-name drug.

(3) The pharmacist may bill only for the cost of the
generic-name product on a signed itemized billing,
except if purchase of the brand-name drug is allowed as
provided in subsection (1).

(4) When billing for a brand-name drug, the pharmacist
shall certify that the physician specified no
substitutions or that the generic-name drug was
unavailable."

Renumber: subsequent subsection

Signed: _____

Richard E. Manning, Chairman

2-4-91
Amd. Coord.

Sec. of Senate

251226SC.Sjl



DONALD R. JUDGE
EXECUTIVE SECRETARY

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TESTIMONY OF DON JUDGE ON SENATE BILL 103 BEFORE THE SENATE LABOR COMMITTEE,
JANUARY 31, 1991

Mr. Chairman, members of the committee, for the record, my name is Don Judge, Executive Secretary of the Montana State AFL-CIO, here today to testify in opposition to Senate Bill 103.

Initially, let me say that current law, as it applies to cafeteria plans, is fair and equitable! Secondly, there are serious problems with the changes proposed in Senate Bill 103.

I might illustrate our concerns with a hypothetical scenario: Say, for example, that all employees of a particular employer are allotted a set amount to cover insurance premiums which is in fact the case for state government in Montana. Let's set that premium amount at \$160.00 a month. A single employee of such an employer may find that his basic insurance costs, \$120.00 a month. That would leave \$40.00 to apply to cafeteria benefits. On the other hand, a married employee with dependents may use the entire \$160.00 for basic insurance.

Under the provisions of this bill, the employer would pay lower unemployment insurance rates and lower worker's compensation insurance rates on the single employee.

To carry our scenario a step further, if the single employee loses his job through no fault of his own, OR, if our single employee is injured on the job, the UI or worker's compensation BENEFITS paid to that employee would also be lower.

Of course, Senate Bill 103 would also exclude deferred compensation plans for payment of Worker's Compensation and Unemployment Insurance taxes. A number of our collective bargaining units have "profit sharing" provisions, and several provide for deferred compensation plans. The effect I just described is compounded by this exclusion.

Can you see how this bill would create an inequity? It's unfair -- further, it may even result in discrimination lawsuits against the employer.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 1/31/91
BILL NO. SB 103

Testimony of Don Judge, SB 103
Page Two
January 31, 1991

The maximum Unemployment Insurance benefit for Montana workers cannot exceed 49% of the state's average weekly wage. The maximum Worker's Compensation benefit for Montana workers cannot exceed the full amount of the state's average weekly wage. In each case, the employee's benefit is based on a percentage of their own weekly wage. Senate Bill 103 would reduce that wage and subsequent benefits at a time when a worker is facing the anxiety and distress of a job loss or injury.

Organized Labor urges you to uphold the integrity and fairness of the current law and to oppose Senate Bill 103.

Thank you.

SENATE BILL 103

CAFETERIA PLANS

I WOULD LIKE TO DISCUSS WITH YOU THE REASONS WE BELIEVE AUDITED PAYROLL SHOULD BE THE EMPLOYEE'S BASIC WAGE PRIOR TO THE REDUCTION FOR CAFETERIA PLAN SELECTIONS WHICH MAY BE DEDUCTED FROM THE EMPLOYEE'S WAGES.

MOST CAFETERIA PLANS WILL COMMENCE WITH THE EMPLOYER PROVIDING A BASIC "ACCIDENT & HEALTH" POLICY (AT NO COST TO THE EMPLOYEE) WHICH PROTECTS ONLY THE EMPLOYEE. IF THE EMPLOYEE DESIRES TO OBTAIN ADDITIONAL PROTECTION - SUCH AS VISION CARE, DENTAL CARE, DEPENDENT CARE, COVERAGE FOR THE SPOUSE AND/OR CHILDREN, ETC., THEY MAY PURCHASE SUCH DESIRED ADDITIONAL COVERAGES AND PAY FOR THEM WITH "PRE-TAX" MONIES WITHHELD FROM THEIR WAGES. THEREFORE, THE EMPLOYEE MERELY "SLIDES THE TRAY DOWN THE CAFETERIA LINE", MAKES THEIR PERSONAL SELECTION OF ADDITIONAL COVERAGES, AND, WHEN THEY ARRIVE AT THE END OF THE LINE, THEY WILL BE INFORMED HOW MUCH WILL BE DEDUCTED FROM THE WAGES PAID BY THE EMPLOYER FOR THE SELECTED OPTIONS.

FOR PURPOSES OF ILLUSTRATION, LET US CONSIDER THREE EMPLOYEES - HIRED ON THE SAME DAY - BY THE SAME EMPLOYER - TO PERFORM IDENTICAL DUTIES...FOR WHICH THE EMPLOYER AGREES TO PAY A BASE WAGE OF \$10.00 PER HOUR. THE EMPLOYER PROVIDES EACH WITH BASIC A & H COVERAGES FOR THEMSELVES. THE FIRST EMPLOYEE IS SINGLE - AND DECIDES THERE IS NO NEED FOR ADDITIONAL CAFETERIA PLAN PURCHASES...AND RECEIVES \$10.00 PER HOUR AS WAGES. THE SECOND EMPLOYEE IS MARRIED WITHOUT

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2DATE 1/31/91BILL NO. SB103

CHILDREN...SELECTS ADDITIONAL A & H COVERAGE FOR THE SPOUSE..WHICH WILL REQUIRE A REDUCTION OF \$1.00 PER HOUR. THE THIRD EMPLOYEE IS MARRIED WITH CHILDREN....DESIRES ADDITIONAL COVERAGE FOR THE SPOUSE, CHILDREN, DENTAL COVERAGE, VISION CARE, AND DEPENDENT CARE...WHICH WILL REQUIRE A REDUCTION OF \$3.00 PER HOUR FROM THE EMPLOYEE'S WAGES.

IN SUMMARY, THE FIRST EMPLOYEE HAD NO DEDUCTIONS AND RECEIVES \$10.00 PER HOUR IN "STRAIGHT TIME" WAGES. THE SECOND EMPLOYEE PURCHASES COVERAGE FOR THE SPOUSE, INCURS A REDUCTION OF \$1.00 PER HOUR...AND RECEIVES \$9.00 PER HOUR. THE THIRD EMPLOYEE SELECTED COVERAGE FOR THE ENTIRE FAMILY - PLUS DENTAL, VISION AND DEPENDENT CARE - AND INCURRED A REDUCTION OF \$3.00 PER HOUR FOR SELECTED CAFETERIA PLAN PURCHASES.

THEREFORE, IF THE DEFINITION OF WAGES WERE TO BE AMENDED TO EXCLUDE CAFETERIA PLAN PURCHASES VOLUNTARILY SELECTED BY INDIVIDUAL EMPLOYEES, THE FIRST EMPLOYEE WOULD HAVE AN AUDITABLE WAGE OF \$10.00 PER HOUR; THE SECOND EMPLOYEE WOULD HAVE AN AUDITABLE WAGE OF \$9.00 PER HOUR; AND THE THIRD EMPLOYEE WOULD HAVE AUDITABLE WAGES OF \$7.00 PER HOUR. YET EACH EMPLOYEE IS "PAID" THE SAME HOURLY WAGE - TO PERFORM THE SAME DUTIES - FOR THE SAME EMPLOYER - AND EACH HAVE IDENTICAL POTENTIAL FOR AN "ON-THE-JOB" INJURY.

BENEFITS

IN THE ABOVE EXAMPLES, LET US ASSUME AN "ON-THE-JOB" INJURY RESULTS IN A FATALITY. IF THE SINGLE EMPLOYEE LEFT NO DEPENDENTS BUT HAD SURVIVING PARENTS, THE WORKERS COMPENSATION BENEFITS WOULD BE THE SAME - REGARDLESS WHETHER ADDITIONAL CAFETERIA PLAN BENEFITS HAD BEEN SELECTED - OR NOT. IN THE CASE OF THE MARRIED EMPLOYEE WITHOUT CHILDREN, (AND ASSUMING THE WAGE FOR BENEFIT DETERMINATION IS ALSO THAT AMOUNT AFTER REDUCTION FOR CAFETERIA PLAN PURCHASES), THERE WOULD BE A REDUCTION IN THE COMPENSATION FOR LOSS OF WAGES

FOR THE SURVIVING SPOUSE BUT NO CHANGE IN MEDICAL OR BURIAL EXPENSES. IN THE CASE OF THE THIRD EMPLOYEE WITH A SPOUSE AND CHILDREN (AND ASSUMING THE WAGES FOR BENEFIT DETERMINATION WERE ALSO REDUCED TO \$7.00 PER HOUR), THERE WOULD BE A REDUCTION IN THE WEEKLY AMOUNT TO BE RECEIVED BY THE DEPENDENTS.

TO SUMMARIZE, THE BURIAL COST WILL NOT BE AFFECTED BY THE "WAGE"; MEDICAL EXPENSES WILL NOT BE AFFECTED BY THE WAGE; THE SURVIVING SPOUSE WITH CHILD/CHILDREN WOULD INCUR SOME REDUCTION IN THE COMPENSATION FOR LOSS OF WAGES THE DEPENDENTS WOULD RECEIVE BUT, THE INSURANCE CARRIER WOULD STILL BE LIABLE FOR THE MAXIMUM ALLOWABLE COMPENSATION FOR "LOSS OF WAGES" FOR 500 WEEKS.

INTERNAL REVENUE SERVICE

SOME MAY BE OF THE OPINION THAT SINCE THE I.R.S. PERMITS CAFETERIA PLAN PURCHASES TO BE MADE WITH "PRE-TAX" MONIES, WORKERS COMPENSATION INSURANCE PREMIUMS SHOULD ALSO EXCLUDE SUCH SALARY REDUCTIONS FROM PREMIUM CALCULATIONS. HOWEVER, THERE IS ABSOLUTELY NO CONNECTION BETWEEN I.R.S. REGULATIONS AND THE MANNER IN WHICH WORKERS COMPENSATION INSURANCE PREMIUMS ARE TO BE DETERMINED. FOR EXAMPLE, THE I.R.S. WILL CONSIDER ALL "STRAIGHT HOURLY WAGES" AND "OVERTIME WAGES" AS WAGES SUBJECT TO TAXATION. HOWEVER, WORKERS COMPENSATION INSURANCE PREMIUMS WILL EXCLUDE THE BONUS PORTION OF OVERTIME - AND MERELY AUDIT THE STRAIGHT HOURLY WAGE FOR ALL HOURS WORKED.

PROFIT SHARING

WE ALSO NOTE THE PROPOSAL TO AMEND SECTION 39-71-123 (c) TO DELETE "PROFIT SHARING ARRANGEMENTS" FROM THE DEFINITION OF WAGES. WE CONCUR THAT WHEN "PROFIT-SHARING" IS A RETURN ON INVESTMENTS (SUCH AS STOCK OWNERSHIP), IT SHOULD BE EXEMPT FROM WORKERS COMPENSATION INSURANCE PREMIUM DETERMINATION. HOWEVER, WHEN A "BONUS" IS CALLED "PROFIT SHARING" AS A MEANS TO EXEMPT

LEGITIMATE WAGES FROM REMUNERATION, IT CAN CREATE INEQUITY AMONG SIMILAR EMPLOYERS. FOR EXAMPLE, I KNOW OF INSTANCES WHEREBY AN EMPLOYER WOULD HAVE EMPLOYEE'S WORK FOR AN HOURLY WAGE CONSIDERABLY LESS THAN INDUSTRY AVERAGE - WITH THE PROMISE OF A SIZEABLE "BONUS" AT THE END OF THE YEAR...BUT IT WAS CALLED "PROFIT SHARING". SHOULD SUCH SCHEMES BE EXCLUDED FROM REMUNERATION, IT WILL EVENTUALLY RESULT IN HIGHER WORKERS COMPENSATION RATES FOR MONTANA EMPLOYERS. REMEMBER, IT IS THE PRODUCT OF "PAYROLLS" VERSUS "LOSSES" THAT DETERMINES THE WORKERS COMPENSATION RATE FOR OCCUPATIONS...AND WHEN ANY SCHEME IS UTILIZED TO REDUCE THE "PAYROLL" PORTION OF THE EQUATION, THE ONLY RESULT WOULD BE AN INCREASE IN THE MANUAL RATES.

THEREFORE, I WOULD RECOMMEND THAT "PROFIT SHARING ARRANGEMENT" BE RETAINED - WITH THE KNOWLEDGE THAT WHEN IT DOES REPRESENT A RETURN ON MONETARY INVESTMENT BY THE INSURED EMPLOYEE, IT WILL BE EXCLUDED FROM W. C. PREMIUM DETERMINATION. THE RETENTION OF THE PHRASE "PROFIT SHARING ARRANGEMENT" WILL ELIMINATE SCHEMES DESIGNED TO REDUCE WORKERS COMPENSATION COSTS - AND THE RESULTANT UNDESIRE EFFECT OF PASSING ALONG THOSE EMPLOYER'S FAIR SHARE OF PREMIUM TO THOSE EMPLOYERS WHO DO NOT ENGAGE IN SUCH ARRANGEMENTS.

SUMMARY

THE NATIONAL COUNCIL ON COMPENSATION INSURANCE HAS BEEN IN EXISTENCE SINCE 1922 AS A NON-PROFIT RATING ORGANIZATION LICENSED TO MAKE WORKERS COMPENSATION RATES IN APPROXIMATELY 37 STATES - ON AN INDIVIDUAL STATE BASIS. IN ALL SUCH STATES, "PAYROLL" IS DEFINED AS "REMUNERATION PAID OR PAYABLE BY THE INSURED FOR SERVICES OF EMPLOYEES COVERED BY THE POLICY". THEREFORE, I DO NOT KNOW OF ONE STATE THAT WOULD CONSIDER EXCLUSION OF CAFETERIA PLAN PAYMENTS WITHHELD FROM THE EMPLOYEE'S SALARY BUT WOULD AUDIT THE EMPLOYEE'S STRAIGHT TIME HOURLY WAGE BEFORE REDUCTION FOR CAFETERIA PLAN SELECTIONS. FURTHER, IF BENEFITS

WERE TO BE BASED ON THE EMPLOYEE'S WAGE AFTER REDUCTION FOR CAFETERIA PLAN PURCHASES, HOW WOULD THE EMPLOYEE CONTINUE TO PURCHASE A & H COVERAGES FOR THE FAMILY WHEN THE SALARY IS NO LONGER BEING PAID; AND, IN THE EXAMPLE OF THE MARRIED EMPLOYEE WITH SPOUSE & CHILDREN, THE COMPENSATION FOR LOSS OF WAGES WOULD NOT INCLUDE THE \$3.00 PER HOUR (OR \$120 PER WEEK) THE EMPLOYEE WAS PAYING FOR COVERAGE FOR THE FAMILY. IN ALL PROBABILITY, THE FAMILY WOULD HAVE TO DROP ALL A & H COVERAGES WITH THE USUAL RESULTS. IT IS INTERESTING TO NOTE THE EMPLOYEE'S VOLUNTARY SELECTION OF ADDITIONAL COVERAGES WHICH WILL BE WITHHELD BY THE "SALARY REDUCTION METHOD" IS REALLY NO DIFFERENT THAN YOU OR I CONTACTING AN A & H REPRESENTATIVE IN OUR HOME AND MAKING SIMILAR PURCHASES FROM OUR "TAKE-HOME" WAGES.

AS RESPECTS "PROFIT SHARING ARRANGEMENTS", THE NCCI DOES NOT HAVE AN AX TO GRIND - OTHER THAN TO PROMULGATE RATES FROM A BASIS WHICH IS EQUITABLE TO ALL INSURED EMPLOYERS IN THE STATE. WE DO NOT BELIEVE IT WOULD BE EQUITABLE TO PERMIT SOME EMPLOYERS TO REDUCE THEIR FAIR SHARE OF WORKERS COMPENSATION INSURANCE PREMIUMS BY CALLING A "BONUS" "PROFIT SHARING". WHEN SUCH SCHEMES ARE PERMITTED, IT MERELY PASSES ALONG AN UNFAIR SHARE OF THE PREMIUM CHARGES TO THOSE FIRMS THAT SIMPLY CALL A "BONUS" BY ITS TRUE NAME.

Leary C. Jones

Premium Audit Manager

National Council on Compensation Insurance

ONE S.W. COLUMBIA, SUITE 850

PORTLAND, OR 97258

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Thank you for the opportunity to present Senate Bill 130 to this committee for consideration.

Senate Bill 130 has a rather lengthy and complicated fiscal note in its present form.

I offer you the distributed amendments and request the staff to prepare the amendments for your consideration. If amended, Senate Bill 130 will cause no increase in staff or expenses, and will show a very substantial savings in the State Workers' Compensation Fund. My remarks refer to the amended bill.

Senate Bill 130, if amended, is a bill that will save a considerable amount of money in the financially troubled State Compensation Mutual Insurance Fund. The Fund's potential deficit is estimated at more than Two Hundred Million Dollars (\$200,000,000.00).

Senate Bill 130 simply requires a pharmacy to use generic drugs on Workers' Compensation prescriptions. This is not a new concept to the State of Montana, or pharmacy's in the state. The Medicaid program in the state presently requires this.

The proceedings involved in a Workers' Compensation prescription is this: The physician sees an injured worker. The physician writes a prescription to treat the injury. The patient takes the

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 1/31/91

BILL NO. SB 130

prescription to a pharmacy. The pharmacy fills the prescription, and gets the required information from the patient, i.e. employer, date of accident, claim number, etc. The pharmacy bills the State Compensation Fund. The Fund pays the pharmacy the amount billed. None of this would change under the amended Senate Bill 130, except the pharmacy would be required to fill the prescriptions with a generic drug with the following possible exceptions:

1. The doctor may specify "no substitution" on the prescription.
2. The patient may request no substitution, and pay the difference in cost between the brand name and generic to the pharmacy.
3. The generic drug is not available to the pharmacist.

Please refer to handout.

Thank you for your consideration.

Senate Bill 130

Sponsor - Senator Kennedy and 20 other legislators

1. Amendments
2. Provider Bulletin
3. Product selection permitted.
Savings passed on.
4. State Fund Letter of 1-15-91
5. Fiscal Impact

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 1/31/91
BILL NO. SB130

Senate Bill 130

New Section. Section 2.

Delete (1) and (1)a.

Replace with:

For payment of prescription drugs, an insurer is only liable for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician unless the physician specifies no substitutions.

Delete (b).

Replace with:

(2) If a worker prefers a brand-name drug, the worker may pay the difference between the price of the brand-name drug and the price of the generic-name drug direct to the pharmacist, and the pharmacist must only bill the insurer for the price of the generic-name drug.

Add (3):

The pharmacist must bill only the generic-name price on a signed itemized billing. When billing for a brand-name drug, the pharmacist must certify that the physician specified no substitutions, or that the generic-name drug was unavailable.



STATE COMPENSATION MUTUAL INSURANCE FUND
P.O. BOX 4759
HELENA, MONTANA 59604-4759

Stan Stephens, Governor
GENERAL INFORMATION (406) 444-6500

MAY 1990

PROVIDER BULLETIN

SUBJECT: PRESCRIPTION MEDICINES

Montana law requires workers' compensation insurance carriers to provide reasonable and necessary medical benefits to injured workers.

In keeping with its costs containment efforts, the State Compensation Mutual Insurance Fund (State Fund) believes this statutory requirement will be met if generic instead of "brand name" drugs are dispensed, when possible, to patients insured by the State Fund.

Prescriptions for medicines which do not have a generic equivalent or for which the physician has indicated "no substitutions" will be honored.

Through your cooperation in this program, considerable cost savings can be achieved, at no detriment to the patient.

Questions or comments concerning this program may be directed to:

P. J. Strizich, Benefits Support Director
State Compensation Mutual Insurance Fund
P. O. Box 4759
Helena, MT 59604-4759
Phone (406) 444-6484

37-7-505

37-7-505. Product selection permitted -- limitation. (1) Except as limited by subsection (2) of this section and unless instructed otherwise by the purchaser, the pharmacist who receives a written or oral prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary for his patient that an equivalent drug product not be selected, the prescriber may so indicate by certifying that in his professional judgment the specific brand-name drug product is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand-name drug product prescribed is medically necessary.

History: En. 66-1530 by Sec. 3, Ch. 403, L. 1977; R.C.M. 1947, 66-1530.

37-7-507

37-7-507. Savings passed on. (1) A pharmacist selecting a less expensive drug product must pass on to the purchaser the full amount of the savings realized by the product selection. In no event may the pharmacist charge a different professional fee for dispensing a different drug product than the drug product originally prescribed.

(2) If the prescriber prescribes a drug product by its generic name, the pharmacist must, consistent with reasonable judgment, dispense the lowest retail priced, therapeutically equivalent brand which is in stock.

History: En. 66-1532 by Sec. 5, Ch. 403, L. 1977; R.C.M. 1947, 66-1532.



STATE COMPENSATION MUTUAL INSURANCE FUND

P.O. BOX 4759

HELENA, MONTANA 59604-4759

Stan Stephens, Governor

GENERAL INFORMATION (406) 444-6500

January 15, 1991

Senator Ed Kennedy
Montana Legislature
CAPITOL STATION
Helena, MT 59620

Dear Senator Kennedy:

This is in response to your telephone call to our receptionist requesting information concerning the cost of drugs.


For fiscal years 1989 and 1990, the State Compensation Mutual Insurance Fund (State Fund) cost for drugs was \$1,422,544 and \$1,617,11 respectively. This, of course, does not include the costs incurred by insurance carriers or self-insurers who also adjust workers' compensation claims.

As shown by the attached "Provider Bulletin" which was mailed in June of 1990, the State Fund has attempted to encourage the use of generic drugs where possible.

We have not performed a study regarding any savings which are generated through the use of generic drugs, but it is generally agreed, such savings do exist. Perhaps the Blue Cross/Blue Shield Company or the Department of Social and Rehabilitative Services, in regard to their medicare/medicaid programs, have performed such studies. We are not sure such studies would be totally applicable to workers' compensation claims, but they may be able to provide you with additional information. Many drugs prescribed for workers' compensation claimants do not have a generic equivalent. In addition, some physicians specifically prescribe a brand name drug and indicate "no substitutions."

Please contact us if we can be of further assistance.

Sincerely yours,


JAMES J. MURPHY
Executive Vice President

JJM/bac

enclosure

SENATE BILL 130

A list of the most current 200 prescription billings to the State Compensation Fund were requested and received by Senator Kennedy.

197 of these were used. Some did not have medication strength and could not be used.

23% 45 Had no generic available.

48% 95 Were already generic.

29% 57 Were brand name that have a generic available.

Results: 197 prescriptions

Cost of 197 prescriptions as billed to Workers' Compensation is \$6,889.38.

Cost of 197 prescriptions if generics were used on the other 57 is \$5,424.32 (could vary somewhat from pharmacy to pharmacy).

Savings	\$1,465.06
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% Savings	21%
-----------	-----

Total Prescriptions Paid by Workers' Comp:

1989 \$1,422,544.00

21% x \$1,422,544.00 = \$298,734.24

1990

21% x \$1,617,110.00 = \$339,593.10

Pharmaceutical Equivalents: Same active ingredients, and are identical in strength of concentration, dosage, form, and route of administration.

Therapeutic Equivalents: Can be expected to have the same clinical effect when administered to patients under the conditions specified in the labeling.

Bioavailability: The ratio and extent to which the active drug ingredient or therapeutic ingredient is absorbed from a drug product and becomes available at the site of drug action.

Bioequivalent: Display comparable bioavailability when studied under similar experimental conditions.

In Vitro: Within a glass. Observable in a test tube.

In Vivo: Within the living body.



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 130 BEFORE THE SENATE LABOR COMMITTEE,
JANUARY 31, 1991

Mr. Chairman, members of the committee, for the record, my name is Don Judge, Executive Secretary of the Montana State AFL-CIO, here today to offer testimony on Senate Bill 130.

We would like to recognize the efforts of the sponsor for drafting a bill that helps to hold down the costs of workers compensation.

But we have questions about this bill and its provisions for availability of the generic drug and the assignment of responsibility for making sure that the generic drug is requested.

First, who is responsible for a generic drug being substituted for a prescribed name-brand drug? The doctor will make prescriptions to treat the symptoms of the patient, most likely, giving no consideration whether a generic brand is available.

The pharmacists will fill the prescription, often, giving no consideration to a generic brand drug. Must the injured worker be required to request the generic brand drug?

If the injured worker is required to request a generic drug and the pharmacist or doctor makes a mistake supplying a brand-name drug when a generic is available. Who pays? Is the injured worker at fault?

On the question of availability. In rural Montana not every pharmacy has generic brands in stock. If a pharmacy does not stock a generic brand it could take several days to get the prescribed drug from a warehouse, perhaps even more in Montana's uncertain weather. It would be unfair and perhaps even dangerous, to have an injured worker await receipt of the generic drug in accordance with this bill. And it would be equally unfair to force them to pay the additional cost of a brand name drug in such instances.

We would request that a new subsection "C" be added on page 4, to provide for an exception to this requirement if generic drugs are not available in the injured workers community.

We would also, request that an amendment be added to an appropriate section of the bill requiring physicians to request a generic brand drug when completing prescriptions for injured workers on workers compensation. This request could either be in writing or a phone call.

With these amendments we would ask this committee to give SB 130 a "do pass" recommendation.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO.

5

DATE

1/31/91

SB 130

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 31ST day of January, 1991.

Name: Mark EICHLER RPh. FASCP.

Address: 4224 Green Acre
Helen

Telephone Number: 449-2555

Representing whom?

Montana State Pharmaceutical Assoc.

Appearing on which proposal?

SB130-Ed Kennedy

Do you: Support? X

Amend?

Oppose?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY
SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 6

DATE 1/31/91

BILL NO. SB130

DATE 11/31/91
Senate Labor

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
James Butler	State Fund	SB 103		<input checked="" type="checkbox"/>
Christ Hartman	MEH	103		<input checked="" type="checkbox"/>
Jay Beardon	USWA	103		<input checked="" type="checkbox"/>
Charles R. Brooks	NAT RPT. & ASSOC	103	<input checked="" type="checkbox"/>	
Mark Geller	Montana State Pharm Assoc	130	<input checked="" type="checkbox"/>	
George Wood	MT. Self Insurers Assn.	130	<input checked="" type="checkbox"/>	
DAN EDWARDS	OCALW	103		<input checked="" type="checkbox"/>
PAT Sweeney	State Fund	130	<input checked="" type="checkbox"/>	
Gary Spartz	Nat Council of Comp An	103		<input checked="" type="checkbox"/>
Al Bales	Montana Chamber	103	<input checked="" type="checkbox"/>	
Don Judge	MT STATE AFL-CIO	SB 103		<input checked="" type="checkbox"/>
Don Judge	MT STATE AFL-CIO	SB 130	<input checked="" type="checkbox"/>	
Bob Jensen	Nat Fedl. of Labor	SB 130	<input checked="" type="checkbox"/>	
Nancy Butler	State Fund	SB 130	<input checked="" type="checkbox"/>	

Chairman Manning

I vote no on S.P. 73

Sen. Dennis R. ~~Lee~~