

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Tom Nelson, on February 9, 1993, at 3:05 p.m.

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)
Rep. Tim Whalen (D)

Members Excused: Rep. Norm Mills

Members Absent: none

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

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

Committee Business Summary:

Hearing: HB 445, HB 472 (WALLIN) and HB 458
Executive Action: HB 259, HB 73, HB 332 & HB 445

HEARING ON HB 445

Opening Statement by Sponsor:

REP. SCOTT MCCULLOCH, HD 96, Yellowstone, sponsor, opened on HB 445 by stating that it is a simple bill. He passed out current statutes. (See Exhibit #1) He stated that the bill entitles an individual attending an adult basic education class, 20 hours a week or less, while laid off from a job, to qualify to receive unemployment insurance benefits.

Proponents' Testimony:

Joan Finsted, Unemployment Benefits, stated that the department has two provisions for training obsolete skills or skills in need of enhancement. She stated that the rules were re-written last spring. These rules broadened ability to train only for obsolete skills and enhancement. Full-time, in the past, has been considered 20 hours or more; therefore, not allowing those on unemployment to receive adult basic education unless they meet the rules provision. This bill would allow people to attend adult basic education. These courses are open-ended, there is no tuition and no fiscal impact with this bill. This bill just allows an adult to go to adult basic education and draw unemployment benefits while not working.

Darren Waeken, an individual who has been affected by the current rules, stated that he was employed for six years and was then laid off. He stated that computers were not available when he attended school in the 1970s. He stated that he could have spent his time in a casino or a bar, but he chose to return to school and was told he could not attend school and receive unemployment.

Jim Reno, Billings Adult Education, stated that when the work slows down, these adults would like to go to school and get their skills whipped into shape. Most of these adults must take a typing test when applying for employment. These adults are told they can not attend these refresher courses without permission.

David Owen, Montana Chamber of Commerce, stated that this bill will revise the current laws so these adults can go brush up on their skills while unemployed.

Opponents' Testimony: None**Questions From Committee Members and Responses:**

REP. SQUIRES asked Joan Finsted if this bill would help her, if she was ready, able, and willing to work, even though her organization works 24 hours per day.

Joan Finsted stated that it only deals with adult education, but she may qualify under approved training if it could be proven that she needs the extra training.

CHAIRMAN NELSON asked **REP. MCCULLOCH** to define the terms full-time and part-time student.

Closing by Sponsor:

REP. MCCULLOCH closed on HB 445. stated that the bill only applies to adult education less than 20 hours per week. Then he closed on HB 445.

Opening Statement by Sponsor:

REP. WALLIN, HD 78, Gallatin, sponsor, opened by stating that this bill will exclude certain retail establishment employees from overtime compensation.

Proponents' Testimony:

Frank Harrington, Montana Retailers, stated that he is here today to represent the retailers that sell appliances, electrical furnishings and home furnishings. He stated that this bill will give these salespeople the ability to compete in the market place. He provided the committee with two handouts. (EXHIBITS 2 & 3)

Charles Brooks, Montana Retailers Association, stated that his organization has a long history of supporting bills that are similar to HB 472. He stated that sales should not be restricted because it is hard to keep track of hours worked.

David Owen, Chamber of Commerce, stated that he would like to be on the record in support of HB 472.

Opponents' Testimony:

Don Judge, Montana AFL-CIO, stated that he did not hear any salespeople testifying today. He stated that the figures have changed on part-time employment. Today 70 percent of all workers are part-time. He stated that he does not feel passing this bill is the right step.

Questions From Committee Members and Responses:

REP. FELAND asked REP. WALLIN if this bill only applies to salespeople.

REP. WALLIN stated that it was anyone paid strictly on commission who has to go outside to sell.

REP. SIMON asked how to prevent employees from working 40 hours if their job requires more than that.

REP. WALLIN stated that the employer doesn't make them go out and sell, they are driven by their desire for bigger paychecks.

REP. PAVLOVICH asked if this bill has to start on the proposed effective date.

REP. WALLIN stated that it could be amended on passage.

REP. WHALEN asked REP. WALLIN to refer to page 7, line 22. He asked how this bill operates and asked if it can change from month to month.

REP. WALLIN stated that it operates under the same rules that commission does. This bill will not be a guarantee, but will provide an incentive.

REP. WHALEN asked how the bill works. He asked if the exemptions are lost if the commissions are more than half.

Mr. Harrington stated that in order to qualify, the commission must be more than 50 percent of the take home pay.

Tom Allen, Allen's Superstore, stated that his employees often work evenings and they asked him to testify in support of HB 472.

REP. WHALEN asked how the commissions are calculated. He asked if it is calculated at the time of sale or at the end of the pay period.

Mr. Harrington stated that there is no set rule. Everyone does it differently.

REP. SIMON asked REP. WALLIN if this bill is intended for outside salesmen.

Closing by Sponsor:

REP. WALLIN closed on HB 472 by stating that the incentive is that after the store closes more money can be made. These employees can afford to control their time and it is much more flexible than punching in on a time clock.

HEARING ON HB 458

Opening Statement by Sponsor:

REP. JERRY DRISCOLL, HD 92, Yellowstone, sponsor, opened on HB 458 by stating that if workers compensation bi-weekly benefits while working exceed \$500, the maximum they can receive is \$349 per week. The NCCI and State Fund raised the rates. The original prices were raised and then lowered with a discount to even lower than the original price.

He referred to page 1, line 12 and stated that Plan 2 insurers need to be stricken out because they do not cover anyone. If any construction person does not know how long it takes to do a job, they will not be in business over one year.

He stated that the process to determine rates per hour is not difficult. He stated that the formula is hourly rate times the percentage now divided by the hours worked. This calculation would give the rate per hour. If these employees work overtime, the rate still only needs to be calculated on the base rate. In construction everyone keeps track of hours. Furthermore, the bill states that they have two years to implement this. The bill states that it must be implemented by July 1, 1995.

Proponents' Testimony:

Don Judge, Montana AFL-CIO, stated that he would provide the secretary with written testimony at a later date. He stated that Montana has many good employers who like to pay good wages, but can't compete with the other states. He stated that this bill will keep wages in Montana. He told the committee that the formula to figure out the hourly rates is a simple math problem. He stated that in order to help the workers compensation division he proposes to reduce the classification from 75 to 25 different rates.

Montana employers demand safety. Union employers usually have fewer work related injuries. These people are currently being taxed for those employers and employees who do not practice safety and have a work-related injury.

He stated that this bill is good legislation and is good for business. He stated that the state of Washington is doing it currently and it is working fine. He recommended that the committee pass HB 458.

Lars Erickson, State Carpenters, stated that he is in support of changing from wages to hourly. He stated that he supports HB 458.

Mary Kinsey, Montana State Engineers, stated that this bill provides more fair standards than are currently provided. The ones being punished are those with higher skilled workers.

Opponents' Testimony:

Jacqueline Lenmark, American Insurance Association, stated that she is opposed to this hourly rate because changing to this would raise the cost of workers compensation to many and only lower it to very few. Furthermore, additional record keeping is an added cost. Her two major reasons are because employers are exposed to hazards and records are always available. An hourly rate is not required to keep records. Furthermore, accuracy of hours recorded is hard to verify. This just makes it even easier for dishonest employers and employees.

She stated that the time it takes to create rates is approximately three to five years. It takes at least that long to put the information together to do credible rate-making.

This bill will have specific effects on employers and employees. It would higher the rates to offset the increase in cost, it would jeopardize the payment of the injured workers, safety may be put on the back burner and it could decrease the confidence which would reduce consumer choice.

Hours worked will not encourage other insurers to come to Montana. This bill would have a significant effect on the

insurance market place.

Other states have considered this type of legislation and rejected it consistently. The only state that currently uses hours worked is Washington. The head of the Department of Commerce wanted to convert, but they don't have the money.

If this bill passes, it would have a detrimental affect on the state fund. This would be very costly to workers and would impact private carrier's rates. (EXHIBIT #4)

Gene Phillips, Independent Insurers, stated that this new system would not be as accurate and there is not enough time to implement it.

John King, State Fund, stated that this bill doesn't reduce workers compensation systems and it doesn't change it either.

He referred to the HB 187 of the 1991 session that was very similar to this bill. He stated that the impact on the State Fund will be over \$7,000,000 in FY 94. He then referred to the amendments.

Stan Kalecage, NCCI Attorney, stated that he brought a specialist on the matter to give a brief overview of the process.

Scott Yen, NCCI, stated that he supports use of total payroll. He also stated that the rate-making process is a complex procedure. He stated that it could be done on calculators, but it would cost many man hours.

He stated that using the hourly rate will not change the construction rates, but just shifts the cost to small employer.

Even if they keep track of hours worked and total wages, we still can't guarantee that rates will be accurate.

Questions From Committee Members and Responses:

REP. TASH asked **REP. DRISCOLL** if HB 187 was introduced last regular session or during the special session.

REP. DRISCOLL stated that it was last regular session.

REP. ELLIS asked Mr. Yen if the variables used, due to experience, produce a high or low loss rate. He asked if this is a national process or if it is different in different states.

Mr. Yen stated that it was different for each specific state.

REP. ELLIS asked if the rates could be expanded and contracted.

Mr. Yen stated that based on a study with mostly Montana information used, he suggested not to expand or contract, unless

there was a specific purpose.

REP. SIMON asked Mr. Yen if he agrees with the statements made earlier about employers being exposed and the records always being available.

Mr. Yen agreed with this statement.

REP. SIMON asked Mr. Yen if he was standing on a railroad track because someone was employing him, which would be more important, the number of hours he stood there or the amount of money he received.

Mr. Yen stated that it depends on how much they are paying you, and the longer you stand there, the more risks you are taking. Besides, he stated if you are not an employee of the railroad you would not be covered anyway.

CHAIRMAN NELSON told Mr. Yen that as he understands it, the rate making is very difficult to understand. He gave an example of a construction company who hired a various number of other specialty workers. He asked if the rate is based on the total of all these employees or if it is done on an individual basis.

Mr. Yen stated that for each class it is based on experience in that class. They combine the same classification in the state. He stated that it is a complex system.

REP. BENEDICT asked Mr. King if this bill would produce a fairly massive cost switch from small groups who pay more wages to large groups who pay lower wages.

Mr. Yen stated that this is correct. He stated that 80 percent of the small business' pay more, but there is a 5 percent reduction in the employers who pay higher wages.

REP. ELLIS told Ms. Lenmark that he has a friend who does local ditch work and plowing for local farmers. His job pays approximately \$7 per hour. He asked what type of affect this would have on his friend.

Ms. Lenmark stated that she is not able to calculate this specific case, but referred him to Mr. Yen.

Mr. Yen also stated that this information was not available at this time.

REP. DRISCOLL asked REP. ELLIS to restate what his friend does. He told Rep. Ellis that he could figure it right now. It would be \$2 per hour that he would have to pay the State Fund.

Closing by Sponsor:

REP. DRISCOLL closed on HB 458 by stating that the total wages

will burn just as fast as the hourly wages will if you put them in a fire.

He stated that this bill will shift from employers who pay high wages to those who pay low wages not from big to little employers.

He stated that the risk of injury gets greater as employees work more than eight hours per day.

EXECUTIVE ACTION ON HB 445

Motion: REP. PAVLOVICH MOVED HB 445 DO PASS.

Discussion: None

Motion/Vote: The question was called for. A voice vote was taken. The motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 259

Motion: REP. BENEDICT MOVED HB 259 DO PASS AS AMENDED.

Discussion:

REP. WHALEN asked REP. BENEDICT what the amendment meant. He stated that he has a problem with changing the wording to all recreational activities. He asked if this was defined anywhere.

REP. HANSON stated that these amendments came from other people that are concerned with passage of this bill due to constitutional reasons. He stated that he supports the amendments.

Discussion:

Motion/Vote: REP. FELAND called for the question. The motion DO PASS AS AMENDED CARRIED unanimously.

EXECUTIVE ACTION ON HB 332

Motion: REP. ELLIS MOVED HB 332 MOVED THE BILL.

Discussion:

Susan Fox, the Legislative Council, read the proposed amendments. She also referred to page 2, line 20.

REP. ELLIS asked Ms. Fox if these amendments had anything to do with what George Wood had mentioned during the hearing on HB 332.

Susan Fox stated that she was not sure.

REP. SQUIRES asked if injured at school, would the student get medical coverage but not workers compensation.

REP. DRISCOLL stated that if working after school hours at the school, Workers' Compensation would pay lost time.

REP. HANSON asked if a student at Eastern Montana College is hurt at school do they receive medical.

REP. SIMON stated that Vo-Tech students are often exposed to much greater work hazards than university students.

Motion/Vote: REP. SIMON MOVED HB 332 TABLE. The motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 73

Motion: REP. DRISCOLL MOVED HB 73 DO PASS AS AMENDED.

Discussion:

REP. SIMON asked REP. DRISCOLL if his offer was still good to show the committee how to save more money than this bill will ever spend.


REP. DRISCOLL stated yes, the way to save this is by lowering the workers compensation from 60 percent to 59 percent.

REP. HANSON stated that even if the amendments take off two weeks worth of benefits, the cost would still be \$130,000 per week which is still \$1.6 million per year. He called for the question.

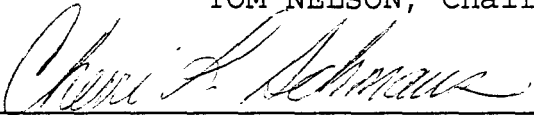
Motion/Vote: REP. DRISCOLL MOVED HB 73 DO PASS AS AMENDED. The question was called a role call vote was taken. The motion CARRIED 10 to 6.

ADJOURNMENT

Adjournment: CHAIRMAN NELSON adjourned the meeting at 5:20.



TOM NELSON, Chair



CHERRI SCHMAUS, Secretary

TN/CS

HOUSE STANDING COMMITTEE REPORT

February 10, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 259 (first reading copy -- white) do pass as amended.

Signed: _____
Tom Nelson, Chair

And, that such amendments read:

1. Title, line 5.

Strike: "OF A SKI AREA OPERATOR"

Insert: "INJURED WHILE PARTICIPATING IN A RECREATIONAL ACTIVITY"

2. Title, lines 6 through 8.

Following: "COMPENSATION" on line 6

Strike: the remainder of line 6 through "EMPLOYMENT" on line 8

3. Page 3, line 20 through page 4, line 1.

Following: "is" on page 3, line 20

Strike: the remainder of line 20 through "hours" on page 4, line 1

Insert: ":

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities"

Committee Vote:

Yes 10, No 0.

331056SC.Hss

57 2/10/93

HOUSE OF REPRESENTATIVES.

LABOR

COMMITTEE

ROLL CALL

DATE

2/9/11

[illegible]

HOUSE STANDING COMMITTEE REPORT

February 10, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 73 (first reading copy -- white) do pass as amended .

Signed: Tom Nelson
Tom Nelson, Chair

And, that such amendments read:

1. Title, lines 6 and 7.

Strike: "AND" on line 6 through "CLOSURES" on line 7

2. Title, line 9.

Strike: "SECTIONS"

Insert: "SECTION"

3. Title, line 10.

Strike: "20-9-806 AND"

4. Title, line 11.

Following: "AND"

Insert: "AN"

Strike: "DATES"

Insert: "DATE"

5. Page 2, lines 5 and 6.

Strike: "or" on line 5 through "contract" on line 6

6. Page 3, lines 9 through 19.

Strike: subsection (3) in its entirety

7. Page 3, line 20 through page 4, line 5.

Strike: Section 2 in its entirety

Renumber: subsequent sections

8. Page 4, line 6.

Strike: "(1)"

9. Page 4, lines 9 through 11.

Strike: subsection (2) in its entirety

Committee Vote:

Yes __, No __.

331038SC.Hss

GR 3/1/93

HOUSE STANDING COMMITTEE REPORT

February 10, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House
Bill 445 (first reading copy -- white) do pass .

Signed: _____
Tom Nelson, Chair

Committee Vote:
Yes , No .

GH 2/10/93
n331119SC.Hss

TABLED BILL

LABOR AM 4/37
Name of Committee

2/10/93
Date

19

115
The following bill

HB 332

was TABLED, by motion, on

2/9/93

19

116
Chemi Schmaus
For the Committee

J. Sullivan
For the Chief Clerk

10:20
Time

CS-04
1991

2-10-93
Date

HOUSE OF REPRESENTATIVES

LABOR

COMMITTEE

ROLL CALL VOTE

DATE 2/9/93 BILL NO. HB 73 NUMBER _____

MOTION: Do pass as comended

NAME	AYE	NO
REP. TOM NELSON, CHAIRMAN	✓	
REP. GARY FELAND, VICE CHAIRMAN	✓	
REP. STEVE BENEDICT		✓
REP. VICKI COCCHIARELLA	✓	
REP. JERRY DRISCOLL	✓	
REP. ALVIN ELLIS		✓
REP. PAT GALVIN	✓	
REP. SONNY HANSON		✓
REP. NORM MILLS		✓
REP. BOB PAVLOVICH	✓	
REP. BRUCE SIMON	✓	
REP. CAROLYN SQUIRES	✓	
REP. BILL TASH		✓
REP. ROLPH TUNBY		✓
REP. CARLEY TUSS	✓	
REP. TIM WHALEN	✓	

HOUSE OF REPRESENTATIVES

LABOR

COMMITTEE

ROLL CALL VOTE

DATE 2/9/93 BILL NO. HB 332 NUMBER _____

MOTION: Table

NAME	AYE	NO
REP. TOM NELSON, CHAIRMAN		
REP. GARY FELAND, VICE CHAIRMAN		
REP. STEVE BENEDICT		
REP. VICKI COCCHIARELLA		
REP. JERRY DRISCOLL		
REP. ALVIN ELLIS		
REP. PAT GALVIN		
REP. SONNY HANSON		
REP. NORM MILLS		
REP. BOB PAVLOVICH		
REP. BRUCE SIMON		
REP. CAROLYN SQUIRES		
REP. BILL TASH		
REP. ROLPH TUNBY		
REP. CARLEY TUSS		
REP. TIM WHALEN		

Unanimously

HOUSE OF REPRESENTATIVES

LABOR

COMMITTEE

ROLL CALL VOTE

DATE 2/9/93 BILL NO. HB 259 NUMBER

MOTION: Do Pass As amended

NAME	AYE	NO
REP. TOM NELSON, CHAIRMAN		
REP. GARY FELAND, VICE CHAIRMAN		
REP. STEVE BENEDICT		
REP. VICKI COCCHIARELLA		
REP. JERRY DRISCOLL		
REP. ALVIN ELLIS		
REP. PAT GALVIN		
REP. SONNY HANSON		
REP. NORM MILLS		
REP. BOB PAVLOVICH		
REP. BRUCE SIMON		
REP. CAROLYN SQUIRES		
REP. BILL TASH		
REP. ROLPH TUNBY		
REP. CARLEY TUSS		
REP. TIM WHALEN		

unanimously

EXHIBIT #1

DATE 2/9/03

HB 145

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"State" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) Effective April 1, 1977, an individual shall be disqualified for benefits for any week with respect to which he is receiving or has received payment in the form of:

(a) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States or under the social security disability law. However, when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this chapter if he shall be otherwise qualified. Compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter, provided the recipient has returned to the labor market and is otherwise qualified.

(b) benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States if such benefits are paid pursuant to 39-51-504.

(2) Receipt of any wages, compensation, or benefits as set forth in subsection (1) of this section after payment of unemployment benefits and with respect to the same week for which unemployment benefits were received will thereupon require such individual to repay such unemployment benefits, and the department may collect such unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1963; amd. Sec. 1, Ch. 164, L. 1965; amd. Sec. 1, Ch. 171, L. 1967; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 496, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (e); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 618, L. 1989.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"State" defined, 39-51-201.

"Wages" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2307. Disqualification because of student status. (1) Effective April 1, 1977, an individual shall be disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution.

(2) Notwithstanding any other provisions in this section, no otherwise eligible individual shall be denied benefits for any week because he is in

training approved by the department, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104(2).

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1967; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (f); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 13, Ch. 125, L. 1985.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2308. Repealed. Sec. 31, Ch. 373, L. 1991.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1967; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (g).

Part 24

Claims for Benefits

39-51-2401. Claims to be made in accordance with regulations — employers to post and make available copies of such regulations. Claims for benefits shall be made in accordance with such regulations as the department may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations. Such printed statements shall be supplied by the department to each employer without cost to him.

History: En. Sec. 8(a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1967; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(a); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Administrative rulemaking procedure,
Title 2, ch. 4, parts 1 through 3.

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2402. Initial determination — redetermination. (1) A representative designated by the department and hereinafter referred to as a deputy shall promptly examine the claim and, on the basis of the facts found by the deputy, shall either determine whether or not such claim is valid and, if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum benefit amount or shall refer such

~~EXHIBIT~~

EXHIBIT
HB 472 DATE 2/9/93
HB 472

AMI ASSOC MDSERS INC, PO BOX 1290 - 200 SO WALLACE ST, BOZEMAN, MT 59715 -1290

February 9th 1993

Before the House Committee on Labor Room 437 3 PM February 9th 1993

SEEKING AN AMENDMENT TO MONTANA STATE LABOR LAW, TO EXCLUDE EMPLOYEES OF MAJOR APPLIANCES/ MAJOR ELECTRONICS OR HOME FURNISHINGS INDEPENDENT RETAIL STORES, WHO ARE COMPENSATED PRINCIPALLY BY COMMISSSIONS, FROM COVERAGE UNDER THE MONTANA STATE OVERTIME COMPENSATION LAWS, AND AMENDING SECTION 39-3-405 MCA

I am Frank Harrington, President of AMI- Associated Merchandisers, Inc, a Bozeman based, not-for-profit, retail trade group, representing 27 independent retail stores across the state of Montana from Dillon to Plentywood, and from Kalispell to Miles City. Our group represents retailers selling only so called "big Ticket" merchandise, Appliances/Electronics and Home Furnishings.

I am here today, in support of HB 472, seeking exclusion for the employees of Appliance/Electronics/ Home Furnishings retailers, who are compensated principally by commissions, from coverage under the State overtime compensaton law, because application of this law is creating inequality in the marketplace, insofar as our independent retailers are concerned.

INEQUALITY

Competition at retail, is an increasingly intensive battle, today, in Montana for the consumers dollar, a battle between the power retailer, the mass merchandisers, the chain stores on the one hand, and the ever shrinking base of independent stores on the other. The one remaining advantage held by the independent, is the ability to provide extra service to the consumer.

Selling of our "big ticket" products to the consumer, and providing that "extra service" edge, requires outside selling (Outside the store) Most every sale of a Major Appliance/ Electronic Product, or in Home Furnishings needs a visit to the customers home, to (A) evaluate a trade in; (B) assess delivery/installation requirements or; (C) Offer interior decorating advise, color, style, etc.

Pricing merchandise for resale requires an exact knowledge of all costs, including selling costs. There is no "slack" in gross margins today, because of competitive pressure. It is impossible for the retailer to calculate his selling costs accurately, under the existing coverage of the state overtime compensation law, if he is providing that "extra service" he needs to make the sale. Only after the sale is completed, and a weeks payroll is calculated, will the actual selling costs be determined.

The payroll function is nearly 100% computerized today at retail, with software handling the accounting role, and "key punchers" entering the data. The requirements for processing payroll under the state overtime compensation law, is an accounting function, and must be done manually by someone competent, usually not present in an independent retail store.

The need to use outside selling, the inability to price goods accurately "up front", and the inability to calculate payroll economically are but three of the inequalities we seek to eliminate thru this Amendment.

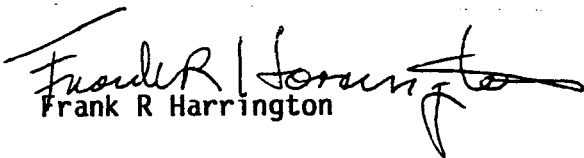


ASSOC MDSERS INC, PO BOX 1290 - 200 SO WALLACE ST, BOZEMAN, MT 59715 -1290

We believe that the Federal Fair Labor Standards Act coverage is designed to eliminate these inequalities, and this requested amendment would then allow us to be guided by that broader coverage.

Qualified commission reimbursed retail sales persons will also benefit from this amendment, in that employers will provide increased opportunities to earn additional compensation, plus the ability to "compete" in the marketplace will be enhanced, providing more sales.

Other independent retailers of Major Appliances/ Electronics/ and Home Furnishings within the state of Montana will benefit equally with AMI members, from the change in the application of the State overtime compensation law, to that of the Federal Fair Labor Standards act.

A handwritten signature in dark ink, appearing to read "Frank R Harrington", is written over the printed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.
Frank R Harrington

(EXHIBIT)

EXHIBIT

DATE

HB

AMI DEALER BASE List wil

A - Appliance, E - Electronic, HF - Home Furnishings

ALLENS SUPER STORE

Mr Tom Allen
2109 N Main St
PO Box -----
Helena, MT 59604 A
Phone 1(406)442-3781 E
Fax 1(406)442-9988

BAKER FURNITURE

Orville/Tom Stevens
14 South Main St
PO Box -----
Baker, MT 59393 A
Phone 1(406)778-3618 E
Fax 1(406)778-2083 HF

BITNEYS FURNITURE

Mr Sid Bitney
740 E Idaho St
PO Box 1119
Kalispell, MT 59901 A
Phone 1(406)755-6033 E
Fax 1(406)752-7047 HF

BOZEMAN TV & APPLIANCE

Mr WM (Bill) Truex
34 N Bozeman Ave
PO Box -----
Bozeman, MT 59715 A
Phone 1(406)587-0342 E
Fax 1(406)586-3259*

DILHART

Mr Dan Lengstorf
31 So Idaho Street
PO Box 565
Dillon, MT 59725 A
Phone 1(406)683-4321 E
Fax 1(406)683-2979 HF

EKLUNDS APPLIANCE & TV CENTER

Mr R.C. (Dick) Eklund
1007 Central Ave W
PO Box 1647
Great Falls, MT 59404 A
Phone 1(406)761-3430 E
Fax 1(406)452-9313*

EKLUNDS FURNITURE

Mr Lou Bryant, MGR
314 1st Ave North
PO Box -----
Great Falls, MT 59405
Phone 1(406)761-2661
Fax 1(406)761-1832 HF

FAIR DEAL FURNITURE

Mrs Julia Achillies
527 Broadway
PO Box -----
Thermopolis, WY 82443 A
Phone 1(307)864-2444 E
Fax 1(307)864-2600* HF

GYSLER FURNITURE

Mr Dave Mariani, MGR
Highway 2, West
PO Box -----
Wolf Point, MT 59201
Phone 1(406)653-2433
Fax HF

GYSLER HARDWARE, INC.

Mr John Gysler
124 Main Street
PO Box -----
Wolf Point, MT 59201 A
Phone 1(406)653-1110 E
Fax 1(406)653-1110*

HASKELL FURNITURE

Mrs Tracy Haskell, MGR
115 E Park St
PO Box -----
Powell, WY 82435
Phone 1(307)754-9509
Fax HF

HASKELL FURNITURE

Mrs Marilyn Haskell, MGR
700 N 10th St
PO Box -----
Worland, WY 82401
Phone 1(307)347-6548
Fax HF

HASKELL FURNITURE CO.

Mr Thales/B Haskell
465 Nevada Ave
PO Box -----
Lovell, WY 82431
Phone 1(307)548-2269
Fax 1(307)548-6838 HF

HOLIDAY FURNITURE CO.

Marion Cooke/Ted Rider
3301 1st Ave N
PO Box -----
Billings, MT 59101
Phone 1(406)245-3129
Fax 1(406)245-3615 HF

JOHNSON HARDWARE & FURNITURE

Mr Paul Johnson
111 Central Ave
PO Box 1006
Sidney, MT 59270
Phone 1(406)482-1402
Fax 1(406)482-5625 HF

KAMPSCHROERS, INC.

Gary Kampschror
126 N Merrill St
PO Box -----
Glendive, MT 59330 A
Phone 1(406)365-4095 E
Fax 1(406)365-4300*

LERWICK HOME FURNISHINGS

Mr Eldon Lerwick
1707 4 J Road
PO Box -----
Gillette, WY 82716 A
Phone 1(307)687-1777 E
Fax 1(307)682-7835 HF

LERWICK HOME FURNISHINGS

Mr Wayne Richards, MGR
2287 Colorado Blvd
PO Box 1060
Spearfish, SD 57783 A
Phone 1(605)642-1700 E
Fax 1(605)642-3770 HF

LETZ RADIO SUPPLY

Mr Dale Letz
642 E 2nd Street
PO Box -----
Casper, WY 82601 A
Phone 1(307)234-9159 E
Fax 1(307)266-1622

MOSSHOLDER FURNITURE

Mr Bert Hammond
1621 Central Ave.
PO Box -----
Cheyenne, WY 82001 A
Phone 1(307)632-0509 E
Fax 1(307)632-4219 HF

MOSSHOLDER FURNITURE, INC.

Mr Bert Hammond
111 Midwest Street
PO Box -----
Casper, WY 82601 A
Phone 1(307)473-8833 E
Fax 1(307)473-8839 HF

AMI DEALER BASE List wil
A - Appliance, E - Electronic, HF - Home Furnishings

MOSSHOLDERS FURNITURE

Mrs Sandy Nechvatal, MGR
818 Coffeen Street
PO Box 783
Sheridan, WY 82801 A
Phone 1(307)674-7192 E
Fax 1(307)674-2942 HF

PLENTYWOOD ELECTRIC, INC.

Bob Nikoliasen
113 N Main Street
PO Box -----
Plentywood, MT 59254 A
Phone 1(406)765-1851 E
Fax 1(406)765-2848

RADIO EQUIPMENT COMPANY

Mr John Eastman
1120 16th St West
PO Box 20236
Billings, MT 59104 A
Phone 1(406)245-3041 E
Fax 1(406)245-0701

RUCKERS FURNITURE SHOWROOM

Mr Wylie Rucker
2200 North Main
PO Box -----
Helena, MT 59601
Phone
Fax HF

RUCKERS, INC

Mr Beryl/Wylie Rucker
1010 Dearborn Street
PO Box -----
Helena, MT 59601
Phone 1(406)442-7234
Fax 1(406)442-5029 HF

S & S AUDIO/VIDEO INC

Mr Gary Saunders
1713 17th Street
PO Box -----
Cody, WY 82414 A
Phone 1(307)587-5257 E
Fax 1(307)587-5257*

SERV-UR-SELF FURNITURE

Mr John/Carl Beyer
511 N 7th Ave
PO Box -----
Bozeman, MT 59715
Phone 1(406)586-6450
Fax 1(406)586-0119 HF

STEADMAN'S HARDWARE, INC.

Mr Chas Steadman
818 Main Street
PO Box -----
Miles City, MT 59301 A
Phone 1(406)232-4168 E
Fax 1(406)232-7663

STEELES WAREHOUSE

Mr Dan Steele
800 So Wyoming St
PO Box -----
Butte, MT 59701 A
Phone 1(406)782-4231 E
Fax 1(406)782-7540 HF

STEELES, INC.

Mr Bob Spear, MGR
417 Main Street
PO Box -----
Deer Lodge, MT 59722 A
Phone 1(406)846-3311 E
Fax HF

SULLIVANS FURNITURE

Mrs Debbie, Mr Greg Moore
1106 N Sewell
PO Box 91
Miles City, MT 59301
Phone 1(406)232-1958
Fax 1(406)232-1958* HF

THE TOTAL HOME

Mr Gordon Granley
229 Main Street
PO Box -----
Ronan, MT 59864
Phone 1(406)676-5500
Fax 1(406)676-5501 HF

VALLEY DOWNTOWNER SUS

Mr George Evans, MGR
28 2nd Ave
PO Box -----
Havre, MT 59501
Phone 1(406)265-2714
Fax HF

VALLEY FURNITURE, INC.

Mr Mike Evans
315 W 1st Street
PO Box 991
Havre, MT 59501
Phone 1(406)265-2279
Fax 1(406)265-1266 HF

WAGNERS HOME FURNISHINGS

Mr John Wagner
916 SW Higgins St
PO Box -----
Missoula, MT 59803
Phone 1(406)728-3214
Fax 1(406)721-0950 HF

WIER FURNITURE, INC.

Mr WM C (Bill) Wier
116 West Main Street
PO Box -----
Lewistown, MT 59457 A
Phone 1(406)538-3443 E
Fax 1(406)538-3444* HF

WIER SERV-UR-SELF FURNITURE

Mr Neil Hamilton, MGR
515 West Main Street
PO Box -----
Lewistown, MT 59457
Phone 1(406)538-7571
Fax HF

EXH 47

EXHIBIT 47
DATE 2/9/93
HB 458

STATEMENT OF
AMERICAN INSURANCE ASSOCIATION
BY
JACQUELINE TERRELL LENMARK
RE HB 458 WORKERS' COMPENSATION PREMIUMS BASED
ON HOURS WORKED ("MAN-HOURS")

Mr. Chairman and members of the committee:

My name is Jacqueline Lenmark. I am a lawyer from Helena and a lobbyist for the American Insurance Association. The American Insurance Association is a national trade association that promotes the economic, legislative, and public standing of its some 250-member property-casualty insurance companies. The Association represents its participating companies before federal and state legislatures on matters of industry concern.

The American Insurance Association strongly opposes HB 458 and any method of premium calculation based on other than total payroll. It specifically opposes premium calculation based on hours worked for the following reasons.

Changing the basis for workers' compensation insurance premiums to hours worked instead of total payroll would raise costs for the majority of affected employers while only slightly reducing the rates for a few high-wage employers. Estimates from other states showed that 80% of employers would pay more, as much as double, while achieving a 5% reduction for some employers. The higher costs do not include the costs created by the additional recordkeeping burden on employers and insurers.

Lack of confidence in the accuracy of a rating base using hours worked would reduce consumer choice. Fewer and smaller

carriers would mean an increasing monopoly for the state fund, as insurers avoid marginal risks for which their confidence in the pricing system is lowest, such as new, small, or high risk employers. This would not only tax the capacity of the state fund to handle additional business, but would also create additional financial pressure on the state fund and Montana taxpayers.

Use of a costly new insurance premium rate base unique to Montana also would have a detrimental effect on the insurance market place. All states with workers' compensation insurance now use total payroll. The cost of developing an hours worked system for Montana, as well as new internal data systems for insurers for use only in this state, would further discourage insurers from competing for business.

There is no unfair discrimination in the present total payroll system that would justify the expense and disruption to ratemaking that switching to a new system would create. Total payroll as the basis for premium is approved by the insurance department under legal standards that require that rating systems be designed to produce rates that are not excessive, inadequate, or unfairly discriminatory.

The present rating system is sensitive to the true loss of potential of individual employees. An individual employer's actual premiums are calculated only after making a series of pricing adjustments. First, overall rate levels are translated into "manual" rates that provide loss-sensitive pricing by grouping jobs with similar hazards into employment classifications. Additional

price adjustments apply to all but the smallest employers, whose past loss histories are not actuarially predictive of future losses. The initial adjustment (a credit or debit) is for "experience." The experience modification is calculated separately for each employer based on the record of its actual losses. Further pricing adjustments include a discount based on economies of scale in issuing policies over a minimum size, deviations that recognize reduced risk of loss, loss-sensitive dividend plans that may return funds to policyholders at the conclusion of the policy year, and retrospective rating plans for large employers whose final rate is calculated at the end of the policy period based on actual loss experience.

To assure a fair price to all employers, the basis for workers' compensation insurance premiums must reflect 2 factors:

- (1) The employer's exposure to hazard; and
- (2) Records are always available and verifiable.

Total payroll satisfies these requirements:

- (1) Payrolls reflect exposure to hazard - number of workers' length of time worked, AND wage levels.
- (2) Records are always available and verifiable because they are kept for other purposes, not just for workers' compensation. For example, federal and state unemployment insurance laws require employers to report all wages paid on a quarterly basis. Employers must also keep these records for income tax, FICA, and other purposes.

Hours worked would not satisfy these requirements. For example, there would be significant recordkeeping problems:

- (1) Most employers are not required to report information detailed as hours worked. There would be an additional

paperwork burden on employers because hours worked data would be collected only for insurance purposes.

- (2) The accuracy of hours worked data reported by employers would be difficult to verify. It would be harder to detect recordkeeping errors and easier for dishonest employers to understate their true insurance exposure.
- (3) Hours worked would entail significantly more time for auditing employer records than total payroll, thus it would add directly to the administrative costs of workers' compensation insurance.

Insurers would need to collect hours worked data for 3 to 5 years before enough information would be available on which a rating system could be constructed, even if the information were reliable. During this time, employers would pay twice for the administrative expense of collecting data: once for the current system, and again for the additional expenses of collecting hours worked data and constructing a new rating system based on that information.

Hours worked do not reflect the components of insurance costs as well as total payroll:

- (1) Hours worked do not recognize that indemnity benefits are tied to worker's pre-injury wages.
- (2) Hours worked are less sensitive to medical costs. Higher wage workers as a whole live in geographic areas with more expensive medical costs.
- (3) Total payroll rises automatically as the economy expands and reduces the level of rate adjustments otherwise needed.

Significant uncertainty over accuracy of hours worked data would either lead to higher rates to offset possible undercounting of the insurance exposure, or inadequate rates that could threaten the insurance market and jeopardize payments to injured workers.

Studies of the basis for workers' compensation premium have consistently rejected adoption of hours worked as an alternative base, while total payroll has been validated as a fair and effective system. The Governor's Task Force of Premium Equity in Oregon upheld the use of total payroll. In fact, legislation to adopt hours worked has failed enactment in all states to consider the issue.

In the only state which uses hours worked (Washington, a state monopoly fund), the head of the fund has criticized hours worked and called for premiums based on payroll. The conversion, however, would be so costly, and involve the same five-year period to develop credible data, that Washington has been unable to convert to premium-based payroll. In that state employees also pay part of their premium, something that is not being suggested here.

Frequently, the proposal is presented as an industry-specific proposal. In several previous legislative sessions, the Montana Legislature has consistently rejected this proposal which was targeted for the construction industry only. In response to labor's request for implementation in 1991, however, the Legislature enacted a compromise offering a premium credit for those contractors who paid their employees higher wages. House Bill 187, Chapter 480, 39-71-2211, MCA (1991). The premium credit plan has been implemented in Delaware, Florida, Missouri, and Oregon with the agreement and satisfaction of both construction and the industry. It was agreed to in Iowa, again to the satisfaction of both construction and industry, but not implemented for other

reasons. In Montana, the administrative rules implementing the statute have been promulgated. The premium credit plan went into effect July 1, 1992. There has been insufficient time for the impact of the program to be fully realized. Further, while the Montana system remains generally out-of-balance, premiums for all employers will increase.

Unlike price adjustments based on losses, which provide direct incentive for employers to prevent injuries, a rating system based on hours worked will reward high-wage employers at the expense of lower-wage employers regardless of their safety records.

Submitted to House Labor Committee for hearing on House Bill 458, Tuesday, February 9, 1993, 3:00 o'clock p.m.

Jacqueline Terrell Lenmark

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Reno	Billings Adm / 7 Ed	X	
Donna Warden		X	
David Owen	mt chamber	✓	
Charles Brooks	MT Retail Assoc	✓	

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LABOR

COMMITTEE

BILL NO.

HB 472

DATE 2/9/93

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
FRANK HARRINGTON BOZEMAN MT	AMI	✓	
TOM ALLEN HELENA MT	ALLEN'S SUPER STORE	✓	
David Owen	MT Chamber of Commerce	✓	
Don Judge	MT STATE AFL-CIO		X
Charles Brooks	MT Ref. & Assoc	✓	
Wylie Rucker	Rucker's Furniture		

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DATE 2/9/11 SPONSOR(S) DRISCOLL

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
GEORGE PHILLIPS	N A I I		X
Jacqueline J. Denmark	Am. Ex. Assoc.		X
Scott Yen	N C C I		X
Timmy Dave Henry	N C C T		X
Stan Kalerzyk	N C C S		X
John King	State Fund		X
LARS EKKOR	CARPENTERS	X	
Mary Kinsey	1406 State Branch	X	
Doni Judge	MT STATE AFL-CIO	X	

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