

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Vice Chairman Gary Feland, on March 4, 1993,
at 3:00 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. Norm Mills (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: None

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: SB 207, SB 256 & SB 270
Executive Action: SB 160, SB 184, SB 270 & SB 207

HEARING ON SB 256

Opening Statement by Sponsor:

SEN. CHARLES SWYSGOOD, SD 37, Madison and Beaverhead Counties,
sponsor, opened on SB 256 by addressing the situation that

occurred in the department regarding nonresident workers with workers' compensation. He stated that this bill is similar to SB 383 that passed in the last session. The definition of resident originally was put in for interstate drivers not covered by workers' compensation.

Proponents' Testimony:

Mike Micone, Montana Motor Carriers Association, referred to page 8, line 3 through 20 and stated that this section was intended to include employers in plan 1, 2, and 3. He distributed written testimony to the committee. **EXHIBIT #1**

Nancy Butler, General Council for the State Fund, stated that her organization wants to be on the record in support of SB 256.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. GALVIN asked Mike Micone if these employees and employers pay taxes on income taxes in Montana?

Mike Micone responded that he is not an expert in that field. He then referred him to Mr. Capdeville. Mr. Capdeville stated that he could not answer the question either.

REP. MILLS asked Mr. Micone if this results in any added revenue brought into the State Fund and if so, how much?

Mr. Micone responded that now the State Fund endorses these policies. Nonresidents are covered until the end of June this year. He stated that there will be no added revenue, but there will not be a loss either.

REP. DRISCOLL asked Mr. Micone if other states require the driver to buy a policy in their state, what effect would this effect have on those drivers who are residents of Montana? Do they pay twice?

Mr. Micone replied that he currently does not know of any states that have this law, but if they did, the carrier would need to carry two policies.

REP. DRISCOLL asked **SEN. SWYSGOOD** if he would object to an amendment that would not allow Montana to make the individual be covered if they already had to be covered in another state.

SEN. SWYSGOOD replied that he does not believe that this will be a problem, because the these individuals are hired, paid and supervised in Montana.

Closing by Sponsor:

SEN. SWYSGOOD closed on SB 256.

HEARING ON SB 207

Opening Statement by Sponsor:

SEN. BILL WILSON, Senate District 19, Cascade, sponsor, opened on SB 207 by stating that this bill requires the Department of Labor to revise the Montana wage protection laws. He referred to page 2, line 23. This line changes the ceiling from 100 percent to 110 percent. This ceiling allows the Department of Labor to use their own discretion; furthermore, this would eliminate the decision by the sheriff department. This bill will provide a faster, simpler way for employers to pay their employees.

Proponents' Testimony:

John Andrew, Department of Labor, testified that in the past, employees and employers both brought problems to the department. This bill will allow service by mail which will expedite the claims method.

Darrell Holzer, Montana State AFL-CIO, testified that this bill is a positive step because it will allow the employees to get their money sooner. Mr. Holzer stated that his organization would like to be on record in support of SB 207.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. PAVLOVICH asked Mr. Andrews if the state of Washington has the same provision as this bill would provide for Montana?

Mr. Andrews replied that he believes they do.

REP. DRISCOLL asked Mr. Andrew to refer to section 2. He asked why there is no interest in amending five percent per day like it used to be?

Mr. Andrews replied that the penalty provision was changed. The language has changed the law to 110 percent.

REP. DRISCOLL asked Mr. Andrews which penalties have been collected since last session.

Mr. Andrews stated that the penalty goes to the employee.

REP. COCCHIARELLA asked Mr. Andrew to refer to the amendment on page 4, line 14. His concern is with the language. The language suggests that registered mail should be used. She asked if the sheriff's department was paid when they delivered the letters?

Mr. Andrew replied that the cost of registered mail is expensive.

Furthermore, the amount of mail sent is approximately 3000 which would cause an additional cost of \$7,000.

REP. COCCHIARELLA asked Mr. Andrew if they paid the sheriff department when they delivered the letters?

Mr. Andrew replied that the sheriff's department was not an additional cost, but an additional step. Lewis and Clark County Sheriffs Department stated that the cost is approximately \$29 per delivery.

REP. COCCHIARELLA asked Mr. Andrew in the past, if they absorbed the \$29 cost, but now they can't absorb \$2.35 to send them registered mail?

Mr. Andrew replied that in the past, the sheriff department picked up the cost. Furthermore, the hearing notices that used to be sent out, are now eliminated.

REP. GALVIN asked SEN. WILSON if this bill applies to rail workers.

SEN. WILSON replied no.

Closing by Sponsor:

SEN. WILSON closed on SB 207 by referring to page 2, line 23.

HEARING ON SB 270

Opening Statement by Sponsor:

SEN. THOMAS KEATING, Senate District 44, Yellowstone County, sponsor, opened on SB 270. The purpose of SB 270 is to establish employment security accounts and allow fund transfers. The Department of Labor requested this bill to clean-up the current system.

Proponents' Testimony:

Brian Macula, Department of Labor, testified that his organization would like to be on the record in support of SB 270.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. BENEDICT asked SEN. KEATING if the objective of the amendment is to amend something into the UI administration tax?

SEN. KEATING replied that they could try this procedure, but it is not safe. The UI administration tax is used to fund Job Service.

REP. BENEDICT stated that Job Services are no longer in danger of closing, so why do they need this money?

SEN. KEATING replied that this is true; however, in 1981 several Job Services were salvaged and kept open because of the UI administration tax.

REP. BENEDICT asked if he could propose an amendment that would require the other half to also go to UI, JTPA, or MECA?

SEN. KEATING agreed with REP. BENEDICT, but stated that it probably would not be passed.

REP. DRISCOLL asked SEN. KEATING if the tax is repealed, will the schedule return back to what it used to be?

SEN. KEATING replied that the trust fund is solvent, but the UI administration tax is still being used for Job Service.

REP. DRISCOLL asked SEN. KEATING if the Governor could order all the money to be put into the UI trust fund each month?

SEN. KEATING replied that under the present law, this is correct.

REP. DRISCOLL told SEN. KEATING that the balance could be put into the trust fund, but not the tax itself.

Closing by Sponsor:

SEN. KEATING closed on SB 70.

EXECUTIVE ACTION ON SB 91

Motion: REP. SIMON MOVED SB 91 BE CONCURRED IN.

Discussion: REP. BENEDICT stated that he is in support of the bill, because these inmates employers are already paying for workers' compensation benefits. Furthermore, they return to jail if they can't pay their bills.

REP. TUNBY stated that he is in support of SB 91 because everyone would be better off.

REP. SIMON stated that in order to receive benefits, the inmates must have a job in the private sector that provides workers' compensation. If these inmates are injured at work, they are covered by medical; however, they lose their rights to prerelease until they can return to work full-time.

REP. TASH stated that he is in support of SB 91 for the same reason stated above. He stated that the inmates in prerelease have more potential for rehabilitation than those incarcerated.

REP. HANSON stated that this problem with hurt inmates does not

include large numbers. Furthermore, anyone drawing workers' compensation can go to court and still draw for preexisting conditions.

REP. HANSON stated that the judge makes the decision of who goes to the prerelease centers.

REP. ELLIS stated that the meat of SB 91 is the change in the definition of who is entitled to benefits.

Susan Fox stated that inmates in prerelease are still considered incarcerated.

REP. DRISCOLL stated that if these inmates go to the prerelease, they must look for work, if they don't find work in a certain amount of time, they return to the prison. He stated that his concern is with those inmates hurt prior to going into prison who are cut of their current benefits.

REP. HANSON moved the amendment on page 6, line 7 through 9, so that it does not cover preexisting conditions.

Susan Fox referred to line 20 after the words "work related injury" to add "residential prerelease". This language would mean that the injury must be received while in the program.

REP. PAVLOVICH moved the amendment.

REP. COCCHIARELLA stated that she is concerned that those under house arrest would not be covered if this language was changed.

REP. SIMON moved that the executive action on SB 91 be deferred until a later date.

EXECUTIVE ACTION ON SB 160

Motion: REP. HANSON MOVED SB 160 DO BE CONCURRED IN.

Discussion: CHAIRMAN NELSON explained the proposed amendments, dated March 2, 1993 by Eddy McClure, to the committee.

Mr. Anderson explained #3 of the amendments to the committee by their request. He stated that this amendment covers IBM employees who borrow or steal software and use it for their own personal use.

REP. BENEDICT asked Mr. Anderson what does computer software have to do with SB 160?

Mr. Anderson replied that IBM has experienced problems with their employees taking the software home. This software is considered a lawful product.

REP. WHALEN asked Mr. Anderson if amendment #3 is needed even

with the definition of a lawful product in amendment #1.

REP. SQUIRES read the title of the bill and stated that software does not really fit into the title of SB 160.

REP. HANSON stated that this bill does not exclude marketable products.

REP. MILLS stated that if these employees take home the software, it is illegal use of a lawful product.

REP. TUNBY stated that he feels the committee should visit with the sponsor before voting on SB 160.

REP. WHALEN moved to separate the amendments and vote on them separately. The question was called on #1 and #2 of the amendments. The motion to do pass amendment #1 and #2 **CARRIED** unanimously.

REP. HANSON moved amendment #3. The question was called on #3. The motion to do pass **FAILED** by a vote of 7 to 9.

REP. SQUIRES moved the amendments dated February 10, 1993 by Eddy McClure.

REP. PAVLOVICH called the question on the February 10, 1993 amendment. The motion to do pass **CARRIED** unanimously.

REP. ELLIS move the amendments dated March 4, 1993 prepared by Susan Fox.

REP. DRISCOLL stated that the language in this amendment could get an employee fired if they drink at all.

REP. COCCHIARELLA addressed page 2, line 13.

REP. BENEDICT called for the question on the March 4, 1993 amendments. The motion to do pass **FAILED** unanimously.

REP. SQUIRES MOVED SB 160 BE CONCURRED IN AS AMENDED. The question was called. A voice vote was taken. The motion to BE CONCURRED IN AS AMENDED **CARRIED** 15 to 1, with REP. MILLS voting no.

EXECUTIVE ACTION ON SB 184

Motion: REP. SIMON MOVED SB 184 BE CONCURRED IN.

Discussion: REP. SIMON stated that the newspaper is concerned because the current language would put minors in a situation where they could sign for their own rights. This bill makes sure the parents must also sign.

Motion/Vote: REP. PAVLOVICH MOVED THE AMENDMENT DATED MARCH 2,

1993. The question was called. The motion to do pass **CARRIED** unanimously. The question was called on SB 184, the motion to DO BE CONCURRED IN AS AMENDED **CARRIED**.

EXECUTIVE ACTION ON SB 270

Motion: REP. PAVLOVICH MOVED SB 270 DO CONCUR.

Discussion: None

Motion/Vote: The question was called. A voice vote was taken. The motion to DO CONCUR **CARRIED** 13 to 3, with REP. MILLS, DRISCOLL AND COCCHIARELLA voting no.

EXECUTIVE ACTION ON SB 207

Motion: REP. COCCHIARELLA MOVED SB 207 DO BE CONCURRED IN.

Discussion: REP. COCCHIARELLA offered an amendment and referred to page 8, line 23.

Chuck Hunter, by the request of the committee, stated that the current language gives the department of labor the ability to range from 0 to 100 percent.

Motion/Vote: The question was called on the Cocchiarella amendment. The motion to DO PASS **FAILED**. The question was called on SB 207. The motion to DO BE CONCURRED IN **CARRIED** with REP. WHALEN AND MILLS voting no.

ADJOURNMENT

Adjournment: CHAIRMAN NELSON adjourned the meeting at 4:40.



TOM NELSON, Chair



CHERRI SCHMAUS, Secretary

TN/CS

HOUSE OF REPRESENTATIVES

LABOR

COMMITTEE

ROLL CALL

DATE _____

3/4/95

[illegible]

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 160 (third reading copy -- blue) be concurred in as amended .

Signed: Tom Nelson
Tom Nelson, Chair

And, that such amendments read:

Carried by: Rep. Pavlovich

1. Page 1, line 13.

Following: line 12

Insert: "(1) For purposes of this section, "lawful product" means a product that is legally consumed, used, or enjoyed and includes food, beverages, and tobacco.

Following: "subsections"

Strike: "(2) and (3)"

Insert: "(3) and (4)"

Renumber: subsequent subsections

2. Page 1, line 20.

Strike: "(1)"

Insert: "(2)"

3. Page 5, line 5

Following: "reason"

Insert: ", unless the employer acts within the provisions of [section 1(3) or (4)]"

-END-

Committee Vote:
Yes 15, No 1.

501307SC.Hpf 36

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 184 (third reading copy -- blue) be concurred in as amended.

Signed: Tom Nelson, Chair

And, that such amendments read:

Carried by: Rep. Benedict

1. Title, lines 6 through 8.

Following: ";" on line 6

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

2. Page 4, line 14.

Following: "~~minor~~"

Insert: "or a parent or guardian of the person performing the services in the case of a minor"

3. Page 4, line 15.

Following: "and"

Insert: "the person performing the services and"

-END-

Committee Vote:
Yes 16, No .

501313SC.Hpf 30

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 270 (third reading copy -- blue) be concurred in.

Signed: Tom Nelson
Tom Nelson, Chair

Carried by: Rep. Gilbert

Committee Vote:
Yes 13, No 3.


501320SC.Hpf

HOUSE STANDING COMMITTEE REPORT

March 5, 1993

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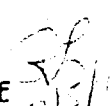
Mr. Speaker: We, the committee on Labor report that Senate
Bill 207 (third reading copy -- blue) be concurred in.

Signed: 

Tom Nelson, Chair

Carried by: Rep. Mills

Committee Vote:
Yes 14, No 2.

501321SC.Hpf 

TESTIMONY ON SB 256 BEFORE
THE HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MARCH 4, 1993
MIKE MICONE, MONTANA MOTOR CARRIERS ASSOCIATION

Mr. Chairman. Members of the Committee. For the record I am Mike Micone, representing the Montana Motor Carriers Association. We are here today to ask for your concurrence of SB 256, an act that clarifies the definition of a nonresident driver and working for a Montana company.

The problem was created in the 1991 Legislature with the adoption of SB 383, defining an employee in this state as it applies to a resident and a nonresident of Montana. As interpreted by the State Fund, the definition of a nonresident employee resulted in disallowing nonresident driver employees Workers' Compensation coverage when previous to the change in the law coverage for these employees was allowed.

Many nonresident drivers of Montana carriers who drive in several states end up performing their principal work duties in Montana. The State Fund interpreted the law to mean a "majority" of a nonresident driver's time had to be spent in the state and disallowed claims on that basis.

The interstate common and contract motor carrier industry is a unique group of employers having both resident and non resident drivers operating in multiple states throughout the United States. The risks are the same regardless of residence and both types of employees are "controlled and employed by a Montana employer."

MMCA is asking the 1993 Legislature to amend the law to cover nonresident drivers of Montana based carriers. The key element in the amendment is on page 8, lines, 3 through 20. The intent is that the nonresident driver will be similar to the conditions set out for a resident in the law, namely, "controlled within this state."

As a result of the State Fund interpretation of the law, MMCA surveyed carriers as to the number of nonresident drivers employed by their firms. Wages paid to some known 278 MMCA member nonresident drivers amounted to approximately \$7 million per year based on an average of \$25,000 per driver per year. The new current state fund rate is \$26.26 per \$100 of wages, for over-the-road drivers with towing units under classification 7219. The potential loss of premium based on the rate effective January 1, 1993 to the State Fund, now being paid by these employers, is estimated to be \$1,838,200 annually.

SB 256 will ensure, not only that drivers working for Montana carriers have adequate coverage, but also that a significant premium continues to be received by the State Fund.

We urge your concurrence of SB 256.

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

LAFOL COMMITTEE SB 156 BILL NO.
 DATE 3/2/03 SPONSOR(S) SYSGOOD

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John L. King	State Fund	X	
Nancy Butler	" "	X	
Mike Micone	MMCA	X	

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

DATE 4/4/95 COMMITTEE WILSON BILL NO. SB 207

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

LABOR COMMITTEE BILL NO. SB270
DATE 2/4/93 SPONSOR(S) KEATINGE

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Brian McLaughlin	Labor	✓	

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