

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Tom Towe, Chair, on March 4, 1993, at
3:06 PM

ROLL CALL

Members Present:

Sen. Tom Towe, Chair (D)
Sen. Bill Wilson, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Chet Blaylock (D)
Sen. Jim Burnett (R)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Kelsey Chapman, Committee Secretary

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

Committee Business Summary:

Hearing: HB 287, HB 259.
Executive Action: None.

HEARING ON HB 287

Opening Statement by Sponsor:

Representative William Wiseman, House District 33, told the Committee he would not reserve the right to close. He said HB 287 dealt with workers' compensation PLANS 1, 2, and 3.

Proponents' Testimony:

Chuck Hunter, Montana Department of Labor and Industry (DOLI), said HB 287 was drafted at the request of DOLI. He submitted written testimony (Exhibit #1).

George Wood, Executive Secretary, Montana Self Insurers' Association, said HB 287 was a good Bill without amendments.

George Bennett, Montana Bankers' Association, submitted written testimony (Exhibit #2).

Oliver Goe, an attorney with Browning, Kaleczyc, Berry & Hoven in Helena, representing Montana Municipal Insurance Authority (MMIA), Montana Association of Counties (MACO), Montana School Groups Insurance Authority (MSGIA), told the Committee MMIA, MACO, and MSGIA were self-insurance pools. He said these insurers are unique because they are funded by tax dollars. These organizations support HB 287, but have problems with Section 2. Mr. Goe said this section dealt with assessment, and the organizations he represented were concerned with the assessment cost. The insurers are required to pay the assessment cost. He handed out a breakdown of these assessment costs (Exhibit #3) and amendments proposed that dealt with assessment cost containment (Exhibit #4, Exhibit #5).

Russell Hill, American Trial Lawyers' Association told the Committee in Section 7 the \$2500 schedule benefit for disfigurement has been in place since 1965, and in Section 16 the \$10,000 occupational disease benefit has been in place since 1987. He said some benefits in workers' compensation were constantly shrinking.

Pat Sweeney, State Fund, said the fund was in support of HB 287 except for Section 20. Section 20 was amended to require the State Fund to provide separate data collection for various items. He said there was no meaningful purpose of Section 20. He asked the Committee to amend Section 20 to include the entire workers' compensation system or remove the section in its entirety.

Jan Van Riper, workers' compensation attorney, said Section 20 was amended in response to concern of where money was going into the system. She said there was concern that not all the money from certain claims were actually going to the appropriate funds. She said Representative Cocchiarella had proposed the amendments. Ms. Van Riper also said she could not think of a reason Representative Cocchiarella would not agree with an amendment to include all of workers' compensation system.

Bill Christianson, Risk Manager, Schools Group Workers' Compensation Program, told the Committee HB 287 contained language that pertained to the assessment method to PLANS 1, 2 and 3. He offered amendments to this language (Exhibit #6).

Roger Tippy, Independent Bankers' Association, told the Committee the association supported HB 287.

Jacqueline Lenmark, American Association (AIA), told the Committee AIA supported HB 287 as it was amended in the House, but would not support amendments to Sections 2 or 20. She said Section 20 should not be amended to include the entire workers' compensation system.

Opponents' Testimony:

Jock Anderson, Montana League of Savings Institutions, told the Committee the league stood in opposition to Section 6. He said he supported the amendments offered by George Bennett (Exhibit #2). He said the lien would be against real and personal property in HB 287 as currently drafted. When liens by lenders or when personal property is transferred, the search of liens against the property normally encompasses a \$5 to \$7 check with the Secretary of State's Office. If an institution would be required to search for liens that may be recorded as judgments, the search would go through a title company at \$50 to \$100 per search. This would increase the cost of loans. He said there was a tendency on behalf of government agencies to ask for the equivalent of judgments without requisite equivalent due process.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Lynch asked Chuck Hunter if he agreed with the amendments. Mr. Hunter said the Montana Department of Labor and Industry liked HB 287 in the current form.

Senator Blaylock asked George Wood what he thought of the amendments. Mr. Wood answered he thought HB 287 was good in its current form. He said the MSIA would not support the school board amendments, and thought the other amendments offered would cause problems.

Senator Aklestad stated he had problems with Section 6. He asked Chuck Hunter why the statute of limitations on the judgment was 10 years. Mr. Hunter answered Section 6 was borrowed verbatim from the Unemployment Insurance Collection Code. Currently claims against uninsured employers had to go through the county attorney. These attorneys are very busy, and there needs to be an administrative procedure to collect the debts owed to the workers' compensation system. Mr. Hunter continued the legislative researchers had decided due process was outlined sufficiently in HB 287. He said it was the feeling of DOLI that Section 6 would work.

Senator Aklestad asked Chuck Hunter if he would give the Committee an example of the due process in the system. Mr. Hunter said he was unfamiliar with the procedure. He said as he remembered if there was a debt and the employer was contacted repeatedly to pay, and the DOLI announced it would effect a lien unless there was a response by the employer, and the response was not made, the judgment was entered with the Clerk of the Court. Once entered, the judgment is sent to the sheriff for service.

Senator Towe asked Chuck Hunter when the employer got a hearing. Mr. Hunter answered the hearing was at any time during the process.

Senator Towe asked Chuck Hunter what happened if the certified mail used to notify the employer was not served. Mr. Hunter answered the DOLI would enter the lien.

Senator Aklestad asked Mr. Hunter if DOLI wrote in the notification letters that the department had the ability to seize property. Mr. Hunter answered he was not sure if this was included in the letters. Senator Aklestad said DOLI had a bad reputation and this would make it worse.

Senator Aklestad asked Mr. Hunter if DOLI could do anything without adding another FTE to the Bill. Mr. Hunter said the original bill had Section 20 as one that would enable DOLI to begin regulating the services of adjusters. He said since that section was stricken, the FTE was no longer in HB 287.

Senator Towe asked Mr. Hunter if the employer could be given an administrative hearing, and then have the decision transferred to District Court, and record it like a foreign judgment. Mr. Hunter answered there may be another method of collecting debts owed to the system. He said the Unemployment Insurance Fund (UIF) had tried for many legislative sessions to find a collection process that worked for personal property, and the provisions in HB 287 were similar to the provisions in UIF.

Senator Towe said the simplest way to carry out obligations to due process was to send out a notice that told of the employer's right to a hearing. If the person did not want a hearing, the right to have a hearing could be waived, and there would be the administrative decision to transfer to a District Court.

Senator Towe asked Mr. Hunter if this method would work. Mr. Hunter answered this was like the system DOLI had in place.

Senator Towe asked George Bennett if the system he had described satisfied his concerns. Mr. Bennett answered what he was concerned about was Subsection 2(b). An innocent lender or buyer would have to get an affidavit before the fact in order to protect a purchase or lien. He said he would like to see a centralized filing of liens so everyone could know what liens were out.

Senator Towe asked Roger Tippy if he would like to comment. Mr. Tippy said he agreed with Mr. Bennett that Subsection 2(b) was a concern. He continued HB 287 may not have all fifteen elements that would make it meet the due process definition, but the Bill had enough of them that people would agree with it.

Senator Towe asked Oliver Goe if the limit on assessments he wished to put in was outside the scope of HB 287. Mr. Goe said

the assessment section was contained within the Bill, and it was designed to clarify who was the subject of an administrative assessment. He said HB 287 was the only bill before the Legislature specifically designating MCA 39-71(201). He said the concern of his organizations was that assessment costs were continuing to grow.

Senator Towe asked Chuck Hunter why the repealers dealing with PLAN 1 and PLAN 2 relief from liability had been taken out of the Bill. Mr. Hunter answered those sections were amended out because they were not used and should not be used. He told the Committee there may be problem of assessing the cost of the claim over time. Thus the section was taken out of the law.

Senator Towe asked if the self-insurers objected. George Wood answered they did not.

Senator Keating asked Chuck Hunter for a definition of "exclusive remedy." Mr. Hunter told the Committee this would be defined as the sole remedy that an employee has for getting benefits.

Senator Keating asked Chuck Hunter if an employer is uninsured, in accordance with state law, could the person not be sued for liability. Mr. Hunter answered the law specifically said if an employer is uninsured, the employer may be sued for liability.

Senator Keating said the Constitution provided that if an employer provided workers' compensation, the employer was exempt from liability. If an employer is uninsured, the employer could go to the uninsured account, pay double premiums, and be in accordance with state law. He said the uninsured provision was a remedy.

Mr. Hunter said within the uninsured provision in the Bill, the law provides where the worker may sue for damages through the civil court system.

Closing by Sponsor:

Representative Wiseman had waived his right to close.

HEARING ON HB 259

Opening Statement by Sponsor:

Representative Dore Schwinden, House District 20, told the Committee HB 259 was an act clarifying that an employee injured while participating in a recreational activity at the place of employment is not eligible to receive workers' compensation.

Proponents' Testimony:

Pat Melby, Montana Ski Areas Association, told the Committee several employees of ski areas that were skiing at the ski area of employment were injured on their days off, and were eligible for workers' compensation. The State Fund explained that Supreme Courts in other states had ruled situations such as this one be included under workers' compensation. The reasoning was that because the employee was skiing on a free pass that had been given to them as part of payment, the employee was in scope of employment. Mr. Melby explained HB 259 had originally only included ski areas, but had been amended to include all similar recreational facilities, such as a dude ranch or golf course. Volunteers would also be included in this law, but there would still be ways to cover a volunteer if an employer chose to do so.

Ken Hoovestol, Montana Snowmobile Association and the Montana Boating Association, rose in support of HB 259.

Kevin Taylor, Great Divide Ski Area, said the people he employed were mostly young people who skied aggressively and took risks. He said Great Divide Ski Area provided the employees a free season ski pass as a benefit of employment. Mr. Taylor said when the issue of HB 259 had arisen, he had spoken to his employees, and found they would not want to give up the free passes, and did not expect to receive workers' compensation benefits while skiing on their own time. He continued that the employees had said taking risks while skiing on their own time was their own choice, and shouldn't be a responsibility of the employer.

George Willit, Showdown Ski area, Neihart, said the ski area had workers' compensation premium rates go up when an employee filed a claim. The legislation may help curb some of the costs of the system. He said employees would rather have the free ski passes and not receive benefits than to have those privileges taken away.

Tim Prather, Red Lodge Ski Area, told the Committee his ski area had four workers' compensation claims filed within two years by employees who were injured on their days off while skiing.

Eleanor Hardgrove, a rancher from Kalispell, said people must take responsibility for their own actions. Both employees and employers are hurt from the current system because as premiums go up, the employer must forego some salary or employees. She said she would like the choice of whether or not to cover her employees she hired at the ranch on their time off.

Jim Tutwiler, Montana Chamber of Commerce, said there was a serious effort to get the workers' compensation system under control. Montana's standing in workers' compensation when compared to the other states is fairly even. When it comes to measuring cost-benefit ratio, the pay out on benefits as opposed to payroll, Montana ranks near the top. He said there needed to

be some way of controlling who could access and use the system. He said HB 259 would not subvert the workers' compensation system.

Jim Murphy, State Fund, said HB 259 clarified the laws dealing with recreational employment and activities.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Wilson asked George Willit if this workers' compensation situation was common. Mr. Willet answered this had happened across the state in many different areas.

Closing by Sponsor:

Representative Schwinden closed. He said Senator Christiaens would carry HB 259 on the Senate Floor.

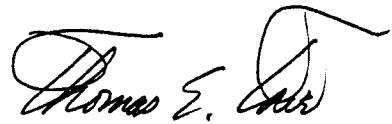
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ADJOURNMENT

Adjournment: 4:13 PM



THOMAS E. TOWE, Chair



KELSEY CHAPMAN, Secretary

TET/kc

ROLL CALL

SENATE COMMITTEE LABOR & EMPLOYMENT REL. DATE 3/4/93

[illegible]

Attach to each day's minutes

Amendments to House Bill No. 287
Third Reading Copy

Requested by Senator Lynch
For the Senate Committee on Labor and Employee Relations

Prepared by Eddy McClure
March 5, 1993

1. Title, page 2, lines 14 through 16.
Following: "MEDIATION;" on line 14
Strike: remainder of line 14 through "CODES;" on line 16
2. Page 36, line 14 through page 37, line 9.
Strike: section 20 in its entirety
Renummer: subsequent sections
3. Page 37, line 13.
Strike: "Sections"
Insert: "Section"
Strike: "AND 20"
Strike: "are"
Insert: "is"
4. Page 37, lines 15 and 16.
Strike: "sections" on line 15
Insert: "section"
Strike: "AND 20" on line 16

House Bill 287
Synopsis of Section Content

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 3/4/93

BILL NO. HB 287

- Section 1: Definitions
- Section 2: Separates funds for Subsequent Injury and Uninsured Employers Fund from Workers' Compensation Administrative Fund, and provides for assessment to all plan 1s and 2s.
- Section 3: Allows Uninsured Employers Fund to issue subpoenas.
- Section 4: Exempts person working for indian employer on indian lands from coverage.
- Section 5: Provides for statutory appropriation of benefits for Uninsured Employers Fund.
- Section 6: Provides for the filing of liens for debts owed to the Uninsured Employers Fund.
- Section 7: Clarifies how disfigurement awards are made.
- Section 8: Provides that the administrative costs of the Subsequent Injury Fund must be paid out of that fund.
- Section 9: Provides for statutory appropriation of benefits from the Subsequent Injury Fund.
- Section 10: Provides that the department may set staggered renewal dates for Plan 1 applications.
- Section 11: Requires security deposits placed with the department to be in book entry form.
- Section 12: Allows the department to use the National Council of Compensation Insurers to be the department's agent for notice of coverage.
- Section 13: Same as above, except for notice of cancellation of coverage.
- Section 14: Provides that the department may cash a maturing security and retain the funds until the security is replaced by the insurer. Also provides that the department can transfer the security to the Montana Insurance Guarantee Association in the event of an insolvency.
- Section 15: Provides that a self-insurer's assessment is based upon compensation paid during the preceding policy year rather than the preceding 12 months.

- Section 16: Clarifies how a lump sum payment for a non-disabling occupational disease may be made, and specifies that mediation procedures shall be used in the event of a dispute.
- Section 17: Clarifies that the party requesting an autopsy shall be the party that pays for the autopsy under the occupational disease act.
- Section 18: Places the Subsequent Injury Fund and the Uninsured Employers Fund in the list of statutory appropriations.
- Section 19: Provides a time limit for benefit appeals regarding the Uninsured Employers Fund.
- Section 20: Section dealing with State Fund accounting.
- Section 21: Repealer.
- Section 22: Codification instructions.
- Section 23: Effective date.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 3/4/93
BILL NO. HB 287

WITNESS STATEMENT HOUSE BILL 287

Name: GEORGE T. BENNETT HOUSE BILL 287 Date: March 4th, 1993

Address: 111 N. Last Chance Gulch, Arcade Bldg 3-I, Helena, MT 59601
Telephone 442-369

Whom do you represent? MONTANA BANKERS ASSOCIATION

Support with amendment as suggested below.

This prepared statement to be left with Secretary.

PROPOSED AMENDMENTS:

Propose the following amendments to Second Reading Bill, Section 6, pages 20 and 21:

Page 20, line 17, after phrase "a lien upon all real" strike words "and personal" and,

Pages 20 and 21, strike all of subsection (2).

PURPOSE FOR AMENDMENTS:

Under Section 39-71-506 MCA, as now effective, the department must bring a law suit to collect amounts due from employers.

The purpose of Section 6 of the Bill is to amend this section to give the department the authority to obtain a judgment by filing with the clerk of court a "certificate" showing the amounts due; and thereby allowing the department to obtain a judgment lien pursuant to Section 25-9-301 MCA.

However Section 25-9-301 MCA, copy attached, only creates a lien against real property, not personal property and for a variety of practical reasons.

This judgment, can be enforced by the department, as to personal property, by having a writ of execution issued so that personal property can be subjected to the payment of the judgment. The Department of Revenue has a somewhat similar procedure by warrant of distraint, see attached statutes, Sections 15-1-701 MCA, et seq.

Under Montana law, the way that a lien is created in personal property is by possession, filing with the Secretary of State, or, as to motor vehicles, by filing with the Registrar of Motor Vehicles, Department of Justice.

We would suggest that if other state agencies are going to be granted the authority to obtain a judgment by filing a document with the clerk of the court, that a uniform procedure be used patterned after that used for some 11 years by the Department of Revenue under the statutes cited and attached hereto. The purpose of these amendments is to clarify that the innocent purchaser and lien holder is protected. The department with a judgment can reach personal property by execution and garnishment.

Part Cross-References

"Judgment book" defined, 3-5-507.

Docket, 3-5-508.

Docket to be available for inspection,
3-5-509.

Execution of lien upon real property,
25-13-305.

Entry of judgment, Rule 58, M.R.Civ.P.
(see Title 25, ch. 20).

25-9-301. Docketing of judgment — lien. (1) Immediately after the

entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment under appropriate heads in the docket kept by him.

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned by him at the time or which he may afterward acquire until the lien ceases. The lien continues for 6 years unless the judgment be previously satisfied.

History: En. Sec. 180, p. 78, Bannack Stat.; en. Sec. 204, p. 174, L. 1867; re-en. Sec. 244, p. 77, Cod. Stat. 1871; amd. Sec. 1, p. 40, L. 1876; re-en. Sec. 295, p. 116, L. 1877; re-en. Sec. 295, 1st Div. Rev. Stat. 1879; re-en. Sec. 307, 1st Div. Comp. Stat. 1887; re-en. Sec. 1197, C. Civ. Proc. 1895; re-en. Sec. 6807, Rev. C. 1907; re-en. Sec. 9410, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 671; re-en. Sec. 9410, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, December 10, 1965, eff. January 1, 1966; R.C.M. 1947, 93-5708.

Cross-References

Liens, Title 71, ch. 3.

25-9-302. Filing of transcript of docket in another county. A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county; and from the time of the filing, the judgment

clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 17, L. 1969; amd. Sec. 1, Ch. 249, L. 1973; amd. Sec. 1, Ch. 63, L. 1975; R.C.M. 1947, 84-6701.

15-1-602. Montana compact commissioner — director of revenue. The director of the department of revenue shall represent this state on the multistate tax commission.

History: En. Sec. 2, Ch. 17, L. 1969; amd. Sec. 118, Ch. 405, L. 1973; R.C.M. 1947, 4-6-12.

15-1-603. Alternate. The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him.

History: En. Sec. 3, Ch. 17, L. 1969; amd. Sec. 119, Ch. 405, L. 1973; R.C.M. 1947, 4-6703.

15-1-604. Not codified. Committee abolished. Sec. 1, 82A-1806, Ch. 272, L. 1971.

History: En. Sec. 4, Ch. 17, L. 1969; amd. Sec. 27, Ch. 453, L. 1977; R.C.M. 1947, 4-6704.

Part 7

Collection of Delinquent Taxes — Warrant for Distrain

15-1-701. Warrant for distraint. (1) A warrant for distraint is an order, under the official seal of the department of revenue or of the department of transportation, directed to a sheriff of a county of Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer.

(2) Upon filing the warrant as provided in 15-1-704, there is a lien against the real and personal property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, and the department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced.

(3) A warrant may be issued for the amount of unpaid tax plus penalty, penalty, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant.

History: En. Sec. 1, Ch. 439, L. 1981; amd. Sec. 11, Ch. 512, L. 1991.

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Compiler's Comments

1991 Amendment: In (1), near beginning after "department of revenue", inserted "or of the department of transportation"; and made

minor changes in style. Amendment effective July 1, 1991.

15-1-702. Issuance of warrant. (1) If a tax administered and collected by the department is not paid within 30 days of the due date, the department may issue a notice to the taxpayer notifying him that unless payment is received within 30 days of the date of the notice a warrant for distraint may be issued. Thirty days after the date of the notice, the department may issue a warrant if payment is not received.

(2) Use of the procedure to issue a warrant under this section does not preclude use of the procedure under 15-1-703 if the department determines that it is appropriate to utilize 15-1-703.

History: En. Sec. 2, Ch. 439, L. 1981; amd. Sec. 1, Ch. 131, L. 1989.

15-1-703. Emergency issuance of warrant. (1) The department may issue a warrant for distraint without waiting for the expiration of either 30-day period provided for in 15-1-702 if:

(a) the department determines that the collection of the tax is or may be jeopardized because of the delay imposed by the waiting period; or

(b) the tax involved is a tax considered to be held in trust by the taxpayer under state law.

(2) Whenever the provisions of this section are utilized, the department must notify the taxpayer that warrants have been issued.

History: En. Sec. 3, Ch. 439, L. 1981.

15-1-704. Filing with district court. (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect the tax.

History: En. Sec. 4, Ch. 439, L. 1981.

15-1-705. Review. (1) Except as provided in 15-1-707, a taxpayer has the right to a review of the tax liability pursuant to 15-1-211 prior to execution on a filed warrant for distraint.

(2) The department must provide notice of the right to review to the taxpayer. This notice may be given prior to the notice referred to in 15-1-702. If the taxpayer notified the department that he disagrees with an assessment as provided in 15-1-211, the warrant may not be executed upon until after the review process and any appeals are completed.

History: En. Sec. 5, Ch. 439, L. 1981; amd. Sec. 4, Ch. 811, L. 1991.

Compiler's Comments

1991 Amendment: In (1) substituted "right to a review of the tax liability pursuant to 15-1-211" for "right to request a hearing on the matter of tax liability"; in (2), in first sentence, substituted "review" for "hearing", deleted former second sentence that read: "A request for a hearing must be made in writing within 30 days of the date of the notice", and

substituted last sentence relating to requirement that review process and appeals be completed before warrant may be executed for former last sentence that read: "If a written request for a hearing is received, the warrant may not be executed upon until after the date the hearing is held or, if the taxpayer fails to attend a scheduled hearing, the date the hearing is scheduled"; and deleted (3) that read: "(3)

A hearing is subject to the contested case provisions of the Montana Administrative Procedure Act. Before a decision may be appealed to the district court, an appeal must first be taken to the state tax appeal board. A request for a hearing must be in writing in order to postpone execution on a warrant.

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-1-706. Execution upon warrant. (1) Upon receipt of a copy of the warrant and notice from the department that the applicable hearing provisions have been complied with, the sheriff or agent authorized to collect the tax shall proceed to execute upon the warrant in the same manner as is provided for execution upon a judgment.

(2) A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. An agent is not entitled to any fee or compensation in excess of actual expenses incurred in enforcing the warrant.

(3) A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the date of the warrant.

(4) If the warrant is returned not satisfied in full, the department has the same remedies to collect the deficiency as are available for any civil judgment.

History: En. Sec. 6, Ch. 439, L. 1981.

Cross-References

Execution of judgment, Title 25, ch. 13.

15-1-707. Emergency execution upon warrant. (1) The department may execute upon a filed warrant for distraint without providing an opportunity or a hearing prior to execution if the department determines that the collection of the tax is jeopardized because of the delay imposed by the hearing requirement.

(2) When the provisions of this section are utilized, the department must notify the taxpayer and inform the taxpayer that he has a right to request a hearing to be held subsequent to execution. A hearing, if desired, must be requested in writing within 30 days of the date of the notice and, if requested, must be held as soon as possible. The commencement of a proceeding under 15-1-705 does not preclude the use of the provisions of this section if the department determines that such action is appropriate.

History: En. Sec. 7, Ch. 439, L. 1981.

15-1-708. Release of lien. (1) Upon payment in full of the unpaid tax plus penalty, if any, and accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

(2) Upon partial payment or whenever the department determines that a release or partial release of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

History: En. Sec. 8, Ch. 439, L. 1981.

15-1-709. Remedy not exclusive. The use of the warrant for distraint provided for in 15-1-701 through 15-1-708 is not exclusive, and the department may use any other remedy provided by law for the collection of tax debts.

EXHIBIT A

SCHEDULE OF FISCAL YEAR 1992 ACTUAL COSTS AND FACTORS

FUNCTIONS	Costs & Factors	Plan I	Plan II	Plan III
LEGAL FUNCTIONS:				
1. WORKERS COMPENSATION COURT				
Actual: # of Petitions filed	389	39	99	251
Percent of Total	100.00%	<u>10.03%</u>	<u>25.45%</u>	<u>64.52%</u>
Total Cost	\$357,241.98	\$35,831.37	\$90,918.08	\$230,492.53
2. HEARINGS				
Actual: # of Cases	163	28	27	108
Percent of Total	100.00%	<u>17.18%</u>	<u>16.56%</u>	<u>66.26%</u>
Total Cost	\$245,225.87	\$42,129.81	\$40,609.40	\$162,486.66
INSURANCE COMPLIANCE:				
3. ADMINISTRATION/CLERICAL SUPPORT				
Actual: Percent of FY 92 Total Actual Expenses	100.00%	<u>20.58%</u>	<u>41.95%</u>	<u>37.47%</u>
Total Cost	\$385,559.85	\$79,348.22	\$161,742.36	\$144,469.28
4. CLAIMS MANAGEMENT				
Actual: # of Orders Processed & Files Reviewed	14,040	1,586	3,421	9,033
Percent of Total	100.00%	<u>11.30%</u>	<u>24.37%</u>	<u>64.33%</u>
Total Cost	\$230,492.37	\$26,045.64	\$56,170.99	\$148,275.74
5. FILES MANAGEMENT				
Actual: # of Reports Reviewed	73,333	26,182	47,151	0
Percent of Total	100.00%	<u>35.70%</u>	<u>64.30%</u>	<u>0.00%</u>
Total Cost	\$275,303.39	\$98,283.31	\$177,020.08	\$0.00
6. ACCIDENT CATALOGING				
Actual: New Claim Files Created	10,335	5,518	4,817	0
Percent of Total	100.00%	<u>53.39%</u>	<u>46.61%</u>	<u>0.00%</u>
Total Cost	\$59,537.52	\$31,787.08	\$27,750.44	\$0.00
7. REHABILITATION DLI				
Actual: # of Panels & Reviews	518	44	65	409
Percent of Total	100.00%	<u>8.49%</u>	<u>12.55%</u>	<u>78.96%</u>
Total Cost	\$109,462.30	\$9,293.35	\$13,737.52	\$86,431.43

FUNCTIONS	Costs & Factors	Plan I	Plan II	Plan III
3. REHABILITATION PANELS SRS				
Actual: # of Panels	518	44	65	409
Percent of Total	100.00%	<u>8.49%</u>	<u>12.55%</u>	<u>78.96%</u>
Total Cost	\$34,435.64	\$2,923.59	\$4,321.67	\$27,190.38
SPECIAL PROJECTS				
Blue Book Costs				
Governor's Task Force on Work Comp				
Percent of FY 92 Total Actual Expenses for Admin	100.00%	<u>20.58%</u>	<u>41.95%</u>	<u>37.47%</u>
Total Cost	\$14,246.86	\$2,932.00	\$5,976.56	\$5,338.30
4. MEDICAL REGULATION				
Actual: Same Basis as Claims Management, #4	14,040	1,586	3,421	9,033
	100.00%	<u>11.30%</u>	<u>24.37%</u>	<u>64.33%</u>
Total Cost	\$59,628.14	\$6,737.98	\$14,531.38	\$38,358.78
POLICY COMPLIANCE				
Actual: # of Carriers	279	55	224	0
Percent of Total	100.00%	<u>19.71%</u>	<u>80.29%</u>	<u>0.00%</u>
Total Cost	\$179,847.02	\$35,447.85	\$144,399.17	\$0.00
MEDIATION				
Actual: # of Cases Processed	663	78	125	460
Percent of Total	100.00%	<u>11.76%</u>	<u>18.85%</u>	<u>69.39%</u>
Total Cost	\$173,062.61	\$20,352.16	\$32,622.30	\$120,088.15
SUBSEQUENT INJURY FUND ADMIN				
Actual: Total Compensation Paid	\$112,815.857	\$12,298.230	\$23,348.891	\$77,168.736
	100.00%	<u>10.90%</u>	<u>20.70%</u>	<u>68.40%</u>
Total Cost	\$20,798.51	\$2,267.04	\$4,305.29	\$14,226.18
PROPERTY FUNCTIONS:				
ADMINISTRATION				
Percent of FY 92 Total Actual Expenses	100.00%	<u>25.64%</u>	<u>9.29%</u>	<u>65.07%</u>
Total Cost	\$28,943.53	\$7,421.12	\$2,688.85	\$18,833.55

FUNCTIONS	Costs & Factors	Plan I	Plan II	Plan III
15. OCCUPATIONAL SAFETY STATISTICS				
Actual: # of Employers	31,213	358	4,249	26,606
Percent of Total	100.00%	<u>1.15%</u>	<u>13.61%</u>	<u>85.24%</u>
Total Cost	\$54,570.17	\$627.56	\$7,427.00	\$46,515.61
16. SUPPLEMENTAL DATA SYSTEM				
Actual: # of Claims	11,397	6,480	4,917	0
Percent of Total	100.00%	<u>56.86%</u>	<u>43.14%</u>	<u>0.00%</u>
Total Cost	\$31,000.00	\$17,626.60	\$13,373.40	\$0.00
17. LOSS CONTROL				
Actual: # of Activities (Hours)	2,296	801	25	1,470
Percent of Total	100.00%	<u>34.89%</u>	<u>1.09%</u>	<u>64.02%</u>
Total Cost	\$275,192.24	\$96,014.57	\$2,999.60	\$176,178.07
18. MINING INSPECTION				
Actual: # of Inspection	2,711	593	521	1,597
Percent of Total	100.00%	<u>21.87%</u>	<u>19.22%</u>	<u>58.91%</u>
Total Cost	\$228,339.54	\$49,937.86	\$43,886.86	\$134,514.82
19. BOILER INSPECTION				
Actual: # of Field Hours	2,173	382	29	1,762
Percent of Total	100.00%	<u>17.58%</u>	<u>1.33%</u>	<u>81.09%</u>
Total cost	\$199,024.47			
Less License Fees Collected	\$36,086.00			
Adjusted Costs	\$162,938.47	\$28,644.58	\$2,167.08	\$132,126.81
TOTAL COSTS	\$2,925,826.01	\$593,651.69	\$846,648.04	\$1,485,526.29
LESS MISCELLANEOUS REVENUE FY 1992 *	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL ADJUSTED COSTS TO EXHIBIT A-1 **	\$2,925,826.01	\$593,651.69	\$846,648.04	\$1,485,526.29

* Fees collected for photocopies or transcripts were used to abate expenditures, they are no longer accounted for as Miscellaneous Revenue.

Amounts may vary due to rounding.

EXHIBIT 3
DATE 3-4-93
HB 287

SCHEDULE OF INCOME COLLECTED
IN EXCESS OF FY 1992 ACTUAL COSTS
TO BE CARRIED FORWARD TO FY 1993 ASSESSMENT

	TOTAL	PLAN I	PLAN II	PLAN III
TOTAL COLLECTED IN FY 1991	\$2,815,519.22	\$681,454.91	\$647,740.94	\$1,486,323.37
LESS NET TOTAL COSTS PER EXHIBIT A	(\$2,925,826.01)	(\$593,651.69)	(\$846,648.04)	(\$1,485,526.29)
COLLECTION ADJUSTMENT TO EXHIBIT B *	(\$110,306.80)	\$87,803.22	(\$198,907.10)	\$797.08

*Amounts may vary due to rounding.

PROPOSED AMENDMENTS TO HOUSE BILL 287

Prepared by Oliver Goe on Behalf of the
Montana Municipal Insurance Authority,
Montana Association of Counties and
Montana School Group Insurance Authority

1. p. 9, line 7
Following: "1"
Insert: "private"
2. p. 9, line 11
Following: "year"
Insert: "Public entities insured as plan no. 1 employers
must be assessed based on a fee for services
actually performed by the department."

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 4

DATE 3/4/93

BILL NO. HB 287

PROPOSED AMENDMENTS TO HOUSE BILL 287

Prepared by Oliver Goe on Behalf of the
Montana Municipal Insurance Authority,
Montana Association of Counties and
Montana School Group Insurance Authority

1. p. 10, line 2

Following: "assessment"

Insert: "After July 1, 1993, the percentage increase in the
assessment provided for in this section may not
exceed the annual percentage increase in the
state's average weekly wage as defined in § 39-71-
116, MCA.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 3/4/93
BILL NO. HB 287

Amendments to House Bill No. 287

Requested by the Montana Schools Group Insurance Authority
For the Senate Labor & employment Relations Committee

Prepared by the MSGIA
March 4, 1993

- 1) Amend page 9, line 6 by inserting after "the" and before "preceding" the following: "compensation paid in Montana in the."
- 2) Amend page 9, line 7 by striking "'s gross annual payroll of" and inserting in its place "by".
- 3) Amend page 9, line 12 by striking "200" and inserting in its place "1,500".

Note:

- Amendments 1 and 2 are to be considered in conjunction with one another.
- Amendment 3 to be considered separate from 1 and 2.
- Amendment page numbers and line numbers are accurate for H.B. 287 - 2nd reading edition.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6
DATE 3/4/93
BILL NO. HB 287

Plan Administrator, Montana School Services Foundation - Howard R. Bailey, Director
1 South Montana Ave. • P.O. Box 5388 • Helena, Montana 59604
442-0557 (Administration)

March 4, 1993

EXHIBIT 6
DATE 3-4-93
HB 287

Senate Labor and Employment Relations Committee
Honorable Committee Chairperson Tom Towe and Committee Members:

This letter serves as an addendum to the MSGIA proposed amendments to H.B. 287 originally introduced in the House Labor and Employment Relations Committee and now being heard by the Senate Labor and Employment Relations Committee. These remarks are directed toward the proposed amendments suggested by the Montana Schools Group Insurance Authority which recommends amending Section 2; 39-71-201, (1), (c) on page 9, line 6 by inserting after "the" and before "preceding" the following "compensation paid in Montana in the", and page 9, line 7 by striking "'s gross annual payroll of" and inserting in its place "by". Another amendment would be to change page 9, line 12 from "200" to "\$1,500". These amendments are based on the second reading. These amendments should be considered separate and individual. It must be noted, the MSGIA does not oppose H.B. 287, but strongly endorses these amendments and graciously requests your serious consideration.

Addressing the first proposed amendment, we submit the following:

- The Montana Schools Group is a unique entity, with over 180 separate member local school districts of all sizes, from all areas of the State. The gross annual payroll exceeds \$300,000,000 and will continue to rise as additional districts join the plan. No other Plan I insurer is, or ever will be, this size.
- Since becoming a Plan I insurer in late 1989, the Schools Group has paid a disproportionate share of the assessment. It is one of over 50 Plan I insurers, but paid about 25% of the Plan I assessment for Fiscal Year 1992, and will pay about 30% of the assessment in Fiscal Year 1993.
- The Schools Group places light demands on the administration of the Workers' Compensation and Occupational Disease Acts, despite having a large payroll and despite covering a large number of employees. Teachers do not sustain work related injuries at the rate, or with the severity, of the employees of many other Plan I insurers yet they account for 89% of Montana Schools Group payroll. The Schools Group is in fact high payroll - low loss.

- In Fiscal Year 1992 the Schools group was assessed over \$160,000 as its share of the administrative costs. This amount included:
 - Over \$20,000 for hearings and for petitions filed in the Workers' Compensation Court, even though Schools Group employees generated no hearings and no petitions.
 - Over \$4,000 for mediations, even though only three telephone mediations involving Schools Group employees were conducted.
 - Over \$3,400 for rehabilitation panels, even though only two rehabilitation panels considered cases involving Schools Group employees.
 - Over \$10,000 for mining inspections, even though no members of the Schools Group operates a mine.
 - Almost \$30,000 for loss control, even though the Schools Group has its own active, effective loss control program.
- Basing the assessment on gross payroll distorts the distribution of the assessment among Plan I employers and bears no relation to the demands actually made on the system.
- Much of the Department's workers' compensation workload is generated by claims activity or actual loss incurred to employers not by payroll. Even more of their workload should be prioritized by actual loss incurred. The assessment generates necessary revenue to allow these service functions for employers and injured workers to exist. Payroll alone is not a good indicator of actual loss or exposure to loss and, therefore, is not an equitable assessment. It is not used for Plan II or Plan III assessments, nor is it used as a basis for other assessments allowed for in the Workers' Compensation Act. Indemnity Compensation paid is a much more accurate basis of assessment. It not only takes into account payroll (indicator of employee exposure to loss), but also inherent industry hazards and employer specific hazards (also potential and actual loss determinants). Frequency and severity (complexity) of claims are loss related and workload and expense generators for the Department of Labor and Industry. Indemnity compensation paid is a more equitable basis for assessment.

6
3-4-93

HB 287

Page 3

- The proposed amendment does not affect Plan II or Plan III, nor does it affect the amount of revenue generated from Plan I entities. It merely re-apportions the individual assessment amounts among Plan I entities.
- An indemnity claims paid assessment method would provide additional incentive for individual Plan I entities to pursue or maintain extremely effective safety and health programs and effective and efficient claims management activities. The MSGIA currently has in place comprehensive safety and health programs in Montana school districts and provides them with excellent claims management services. The fact these are effective at stabilizing or reducing claims frequency, severity and loss will have no effect on our assessment amount under the payroll assessment method, but would for us and other self funded entities under an indemnity compensation paid assessment method.
- Opponents of this amendment have yet to state that the current assessment method was equitable, nor did they state the proposed method was inequitable. They did state the current method was traditional. Traditional does not equate to equitable nor is it, by itself, a valid defense for a State statute should it ever be contested in court. This traditional assessment method has essentially offered private self insured entities a "free lunch", since MSGIA inception, at our expense. Sticking with tradition in workers' compensation may have been a contributing factor with the current unfunded liability incurred by the State. Major reform in this session will deviate from tradition in hopes of providing a more fair and equitable workers' compensation system. The assessment method should be no exception.

In regards to the second proposed amendment, we submit the following.


- These are procedures at the Department that are done at least annually for all self funded entities. The costs are relatively fixed regardless of entity size. It is our contention that the current minimum assessment amount of \$200.00 does not cover "fixed" costs at this time and, therefore, should be increased. We are recommending \$1,500 minimum annual assessment amount for Plan I entities.
- This is a noticeable increase; however, self insured entities are substantially large businesses and should pay a fair share.

Page 4

Thank you for your consideration on these proposed amendments.
Please call if you desire additional information or clarification.



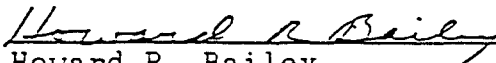
Bill Adamo, Chairperson
Livingston School District #4&1



Debra Fulton, Vice Chairperson
Helena School District #1



Christie Deck, Secretary/Treasurer
Great Falls School District #1



Howard R. Bailey
Program Administrator



Bill Christianson
Risk Manager

DATE March 4, 1993

SENATE COMMITTEE ON Labor : Employment Relations

BILLS BEING HEARD TODAY: HB287 - Wiseman

HB 259 - Schwinden

PLEASE PRINT

Bill
No.

Check One
Support Oppose

Name

Representing

GEORGE T. BENNETT	MONT. BANKERS ASSN	287	X	
JOCK ANDERSON	Mt. League of Sw. Inst.	287		X
Pat Melby	MT. SKI AREA ASS'n	259	✓	
Geo Willett	Snowcoast Ski Area	259	✓	
TIM Prather	Red Lodge Mountain	259	✓	
Dore Schwinden	Dist #20	259	✓	
Chuck Hunter	DOLF	287	X	
Jamie S. Van Riper	self	287	X	
Ray Barnicoat	MACo	287	X	
Gill Christianson	MSG - W ORRP	287	X	
Deagland	Int Self Insurance Assoc	287	X	
W. T. Twilzer	MT & CHAMBERL	259	✓	
Jacqueline Bernmark	Am. Ins. Assoc.	287 259	✓	
Kelly Williams	MPC/Entech	287	✓	
Jim Murphy	State Fund	259	✓	
Dan WALTER	US WEST	287	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

BILLS BEING HEARD TODAY: HB 287 & HB 259

F10