

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION**

**SELECT COMMITTEE ON WORKERS' COMPENSATION**

**Call to Order:** By CHAIRMAN CHASE HIBBARD, on March 5, 1993, at 3:10 p.m.

**ROLL CALL**

**Members Present:**

Rep. Chase Hibbard, Chairman (R)  
Rep. Jerry Driscoll, Vice Chairman (D)  
Rep. Steve Benedict (R)  
Rep. Ernest Bergsagel (R)  
Rep. Vicki Cocchiarella (D)  
Rep. David Ewer (D)

**Members Excused:** REP. BERGSAGEL

**Members Absent:** None

**Staff Present:** Susan Fox, Legislative Council  
Evy Hendrickson, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 164, SB 258  
Executive Action: SB 164, HB 604, HB 361 and HB 13

**CHAIRMAN HIBBARD** asked **Linda White** from **Lewistown** to briefly address the committee. She said several months ago a group of employers and employees formed a grassroots group to look at the workers' comp problems. They put hours of work into a survey that went to people in Central Montana. **Ms. White** said they believed that fraud was one of the biggest issues why workers' comp is in trouble. **EXHIBIT 1**

**HEARING ON SB 164**

**Opening Statement by Sponsor:**

**SEN. JOHN HARP**, Senate District 4, Kalispell, said the bill was introduced at the request of the Governor. Insurance fraud is a hidden crime and national statistics show that approximately 8% of all premium dollars paid by insurers are attributable to fraud. He said the State Fund itself would be involved along with the Department of Justice. The Department of Justice would

have a special prosecutor solely set aside for fraudulent claims in workers' comp and they would also have additional people who would be doing field investigations. He then reviewed the bill section by section.

SEN. HARP said the State Fund currently has a total of 14 cases under investigation in Montana including one case in Lewis & Clark County, two in Flathead County, five in Yellowstone County, and one in Gallatin County. He said one of the problems is that county attorneys have the obligation to handle the fraudulent claims but they don't have the time or the expertise because workers' comp is a specialized area. By letting the Department of Justice have special prosecutors designated to take care of the claims with their sole purpose being one of conviction, that would perhaps enhance the process.

SEN. HARP closed by saying SB 164 addresses fraud in the system.

#### Proponents' Testimony:

Don Allen, representing the Coalition for Workers' Compensation System Improvement, said as a result of the articles in the Great Falls Tribune he received 15 calls relating instances of fraud. He said he had logged all the calls and had a file of stories that involve reports of workers who are contributing to the fraud issue. He said the Coalition strongly endorsed this bill.

Beth Baker, representing the Department of Justice, said she was appearing before the committee to express the Attorney General's support for the bill and to explain the relationship between the fraud units of the State Fund and of the Department of Justice that would be created. She referred to sections 1 & 3 of the bill and said the amendments to the bill clearly would put people on notice as to what constitutes criminal conduct under the law.

Ms. Baker pointed out that the bill included four investigative positions in the Department of Justice. Currently, there is only one investigative position dedicated to work comp cases. The bill would add three investigators, one prosecutor and a clerical support position. It was anticipated that the new investigators would be placed within the existing criminal investigation bureau and field locations where the activity was most prevalent. The prosecutor would be housed in Helena under the supervision of the existing county prosecutor services bureau. This team would be able to bring a level of awareness to people involved in fraudulent activity.

Ms. Baker said with respect to the amendments that were going to be offered by the trial lawyers' association, the Attorney General's office did not think they were necessary and may just add problems to the bill.

Pat Sweeney, representing the State Fund, said they strongly

support SB 164. EXHIBIT 2

Darrell Holzer, representing the Montana State AFL-CIO, presented written testimony. Mr. Holzer provided amendments for page 4, lines 6 through 10. EXHIBIT 3

Mr. Holzer said with the amendments they strongly supported a do pass recommendation on SB 164.

Russell B. Hill, representing the Montana Trial Lawyers' Association, presented written testimony with recommended amendments. EXHIBIT 4

Rick Hill, Office of the Governor, said if the skyrocketing cost of workers' comp is going to be stopped and if confidence is going to be restored to the system, fraud abuse has to end. The Governor had asked that this bill be introduced and asked the committee to support this bill.

James Tutwiler, Montana Chamber of Commerce, gave their strong support to SB 164.

Riley Johnson, representing the National Federation of Independent Business (NFIB), said that 95% of the small businesses in Montana perceive that fraud is the most common problem with workers' compensation. This bill would send a message that they are sincerely trying to do something about the problem. Mr. Johnson said they supported the bill and asked that the bill be passed without amendments.

Mike Micone, Montana Motor Carriers Association (MMCA), stated their support of this bill.

Charles Brooks, Montana Retailers Association, the Montana Tire Dealers Association, and the Montana Implement Dealers' Association, said they supported SB 164 and concurred with Mr. Johnson's testimony.

Jacqueline Lenmark, American Insurance Association (AIA), said they strongly supported passage of the bill with the amendments presented. Ms. Lenmark reviewed them section by section. EXHIBIT 5

Harlee Thompson, representing the Montana Building Industry Association to the Coalition of Work Compensation System Improvement, said SB 164 would deal very effectively with fraud in the system and urged a do pass.

Oliver Goe, Montana Municipal Insurance Authority, Montana Association of Counties, and the Montana School Groups Insurance Authority, supported the bill without the amendments.

Opponents' Testimony: None

Questions From Committee Members and Responses:

In response to a question from REP. DRISCOLL, Linda White said it was her understanding that page 6, line 8 is designed to address a situation where the worker returns to work without notifying the insurer and continues to receive benefits. The prosecutor would have to sustain a burden of proof beyond a reasonable doubt that the worker had committed theft. Ms. White said this language was in the bill because of prior cases that had been prosecuted.

REP. DRISCOLL said it was not the worker's job to notify the insurer; it was the doctor's responsibility.

CHAIRMAN HIBBARD asked someone from the State Fund to respond to that question. Mr. Sweeney said he could understand the dilemma but there was a misconception - it was not totally the obligation of the physician to notify the insurer but also the responsibility of the injured worker to notify the insurer. Mr. Sweeney said if this legislation was to pass, it would be the intent of the State Fund to notify each claimant with their first compensation check that in the event they are released to return to work by their physician, it is also their obligation to notify the insurer.

REP. BENEDICT asked Mr. Sweeney, from the State Fund's perspective, whether the bill was acceptable or needed amending. Mr. Sweeney replied the bill was fine as written. It had been amended in the Senate, and he recommended the bill be passed as is without amendments.

REP. BENEDICT asked Rick Hill the same question. Mr. Hill said the Governor's office would like to see the bill as it is and the House concur with Senate amendments.

REP. DRISCOLL asked Russell Hill and Mr. Holzer if they would like to see the bill amended. Both of the gentlemen responded affirmatively.

Closing by Sponsor:

SEN. HARP said the bill was funded solely by the State Fund and this bill, along with the additional reinforcement from the State Fund and the Department of Justice, asked for \$1.6 million from employers in Montana who were committed to improving the workers' comp system by putting dollars in. This would be a benefit to employees because any time there are additional dollars being used on fraudulent claims the money is being taken away from injured workers who truly deserve it.

HEARING ON SB 258

Opening Statement by Sponsor:

SEN. HARP, Senate District 4, Kalispell, said the bill was a code commissioner bill and explained the proposed legislation.

Informational Testimony:

Lawrence Hubbard, representing the State Compensation Mutual Insurance Fund, expressed the Fund's unconditional support for SB 258. EXHIBITS 6 and 7

Proponents' Testimony:

Russell Hill, representing the Montana Trial Lawyers' Association (MTLA), said they strongly supported SB 258 without amendments.

Oliver Goe, representing Montana Municipal Insurance Authority (MMIA), Montana School Groups Insurance Authority (MSGIA) and the Montana Association of Counties (MACO), said they likewise support the bill with the proposed amendments.

Jacqueline Lenmark, representing the American Insurance Association (AIA), said they supported the bill and amendments as proposed by the state.

Opponents' Testimony: None

Questions From Committee Members and Responses:

CHAIRMAN HIBBARD stated that, if the bill passed out of the committee, he would like to see it go directly to the floor of the House.

CHAIRMAN HIBBARD asked Susan Fox, Legislative Council staff person, to comment on the bill. She said the only substantive change was striking what the amendment proposed to reinsert. Therefore, if the committee adopted the amendment, there would be no reason for the bill, although Mr. Hubbard disagreed and said that language was critical to maintaining present law.

Ms. Fox said it seemed very little else was changed in the bill and the code commissioner deleted that for a reason; without his presence perhaps it would be better to check with him to see if he agreed. Mr. Hubbard said he had testified on this bill before the Senate Judiciary Committee and they were going to ask the code commissioner at that time. He said it was his belief that they had received a response. It was also his understanding that

this was acceptable to members of the Judiciary Committee; it just didn't get done.

REP. DRISCOLL asked what the difference between the meaning of "even though" and "unless" was. Mr. Hubbard said he didn't think there was a lot of substance to changing the words around and thought it was an attempt to make it clear that subrogation was not entirely out the window although some may argue that it is in light of the court decision. It clarifies that the burden is on the injured worker to prove that damages exceeded both the workers' compensation benefits and the recovery in the third party action.

REP. DRISCOLL repeated the question once again. Mr. Hubbard said the intent of the change was to conform with the court decision where it said that the insured is not entitled to subrogation under Article 2, section 16 where the injured worker was not made whole. If you leave in "even though," he believed that would be in direct violation of the court's holding. Mr. Hubbard said he believes the language "unless" is more innocuous.

REP. BENEDICT asked Mr. Hubbard if he asked for this amendment and the Senate refused. Mr. Hubbard said they did ask for the amendment and the Senate did not put it in. He said the chairman of the Senate Judiciary Committee was going to check with the code commissioner to address the concerns of the State Fund; it was his understanding through discussions with some of the senators that it was more or less an inadvertent failure to amend the statute. Mr. Hubbard encouraged that the code commissioner be contacted.

REP. BENEDICT asked Mr. Hubbard if the Senate committee voted to adopt this amendment. Mr. Hubbard said they did not.

CHAIRMAN HIBBARD said he had sent for Greg Petesch, the Code Commissioner, to clear this up but he was not available. Executive action on the bill was postponed until Monday. Ms. Fox was to check with the code commissioner.

Closing by Sponsor:

SEN. HARP declined.

EXECUTIVE ACTION ON SB 164

Motion: REP. BENEDICT MOVED SB 164 BE CONCURRED IN.

Motion: REP. DRISCOLL moved adoption of the amendment that was handed out by Darrell Holzer, page 3, line 22 EXHIBIT 3. He said this was going to make this equal for everybody.

REP. BENEDICT referred to page 3, line 10 & 11 and said it would

be redundant.

REP. DRISCOLL asked if they computed their payroll wrong, whether the lines would cover that. Nancy Butler, representing the State Fund, said they would have to go back to the criminal statute used in Title 45 which says an employer must knowingly and intentionally misrepresent payroll so they would have to find that there was a crime on the other side. Ms. Butler said when you talk about conduct under chapters 71 and 72, the Work Comp Act, it would pick up anything to do with workers, employers, and medical providers but then they would have to go to the criminal code to make sure that they met the criminal statute as well.

Motion/Vote: REP. DRISCOLL withdrew his amendment. REP. BENEDICT called the question. Voice vote was taken. Motion CARRIED.

#### EXECUTIVE ACTION ON HB 604

Motion: REP. BENEDICT said for purposes of discussion he would MOVE HB 604 DO PASS but told the committee that he intended to move to table the bill following a suitable discussion in the committee.

CHAIRMAN HIBBARD said the committee had discussed the bill thoroughly and felt most of the bill was too radical for where we are at this point in workers' compensation in the state. The committee did feel that a portion of the bill may be useful elsewhere.

REP. BENEDICT said he didn't think the state was ready for the far-reaching consequences of parts of the bill. He said the payroll part has some very definite advantages and possibilities and he intended to use some of that in the payroll tax bill.

Motion/Vote: REP. BENEDICT made a SUBSTITUTE MOTION HB 604 BE TABLED. Motion carried unanimously. EXHIBIT 8

#### EXECUTIVE ACTION ON HB 361 AMENDMENTS

Motion: CHAIRMAN HIBBARD moved adoption of the amendments dated February 19, 1993. EXHIBIT 9

Discussion: CHAIRMAN HIBBARD reviewed the amendments section by section. He said the amendments were a result of a number of meetings between REP. DRISCOLL, himself, and State Fund personnel. CHAIRMAN HIBBARD said this was a very important bill for the package.

Vote: REP. COCCHIARELLA called the question. Voice vote was taken. Motion carried.

**EXECUTIVE ACTION ON AMENDMENTS DATED MARCH 5, 1993**  
**by REP. COCCHIARELLA**

**Discussion:** REP. COCCHIARELLA said her amendments would insert "Requiring Insurers To Notify Employers of Reopened Claims." EXHIBIT 10.

**Motion/Vote:** Question was called.

**Vote:** Voice vote was taken. Motion carried.

**EXECUTIVE ACTION ON STATE FUND AMENDMENTS**

**Motion:** REP. BENEDICT moved adoption of the State Fund amendments dated March 5, 1993 to take out reference of second and insert third. EXHIBIT 11

(18.5 on tape)

**Discussion:** Pat Sweeney said the intent of the amendments was to lend some predictability to the system and add consistency. Mr. Sweeney said he had talked to the medical community and they were satisfied with the amendment.

CHAIRMAN HIBBARD asked what was the biggest area that would be addressed by a subsequent edition to the JAMA guide that REP. DRISCOLL was concerned with. Mr. Sweeney said the JAMA guide had consistently expanded to where pain was now a component in the JAMA guide and it was not in the past. CHAIRMAN HIBBARD then asked if the JAMA guides were moving away from the objective test they were trying to implement here. Mr. Sweeney said they were lending subjectivity to the impairment process whereas before impairments were always something measurable.

(9.2 on tape)

Mr. Sweeney suggested that the committee amend this to the third edition currently in use instead of the second edition.

CHAIRMAN HIBBARD said further editions of the JAMA guide were liberalizing the definition of pain which runs counter to what the committee was trying to establish in the bill. Mr. Sweeney said currently they are using the third edition.

REP. EWER said he opposed the amendment and would support the current law because the subject of pain had been established.

**Vote:** REP. BENEDICT called the question. The motion was the amendment prepared by the State Fund with the exception of inserting "third" instead of "second." Motion failed on tie vote 3 to 3 with REP. HIBBARD, REP. BENEDICT and REP. BERGSAGEL voting



Aye. EXHIBIT 12

EXECUTIVE ACTION ON HB 361

Motion: REP. BENEDICT MOVED HB 361 DO PASS AS AMENDED and to be a part of the workers' compensation reform package passed by the select committee.

Discussion: CHAIRMAN HIBBARD said he did not intend to offer amendments although he thought the committee should look to a different vehicle and discuss incorporating them.

Vote: REP. EWER called the question. Motion carried with REP. COCCHIARELLA voting no. EXHIBIT 13

EXECUTIVE ACTION ON HB 13

Motion: REP. BENEDICT moved the amendments dated March 5, 1993. EXHIBIT 14

Discussion: Nancy Butler, representing the State Fund, reviewed the amendments dated March 5, 1993 section by section.

REP. BENEDICT said the committee had reviewed the amendments from the Fund and incorporated REP. DRISCOLL'S and Jacqueline Lenmark's amendments with those of the Fund.

Vote: REP. BENEDICT called the question. Voice vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON HB 13 AMENDMENTS

Motion: CHAIRMAN HIBBARD moved the amendments dated February 5, 1993. EXHIBIT 15

Discussion: CHAIRMAN HIBBARD reviewed the amendments. He summarized the pluses and minuses as he saw them. On the minus side is the problem of undue political influences affecting the decisions made at the State Fund if the director of the Fund is too close to the Governor.

CHAIRMAN HIBBARD said if the committee decided to adopt this amendment that this was the sort of relationship that should be ongoing. He said ultimately, in the long run, autonomy is a better idea than a close political relationship. At this point in time and with the problems we're all aware of in worker's compensation, this might possibly be a good idea.

REP. COCCHIARELLA said these amendments seemed to undo what the committee had just done for the Fund and said part of the reason

the Fund was in trouble was because the legislature had tried to micro manage. REP. COCCHIARELLA said she does not support these amendments because the committee just gave them autonomy to do the job like an insurance company and then brings it back and puts it right next to the Governor for constant, daily supervision which defeats the purpose of the bill.

REP. BENEDICT said he agreed with the amendments and said he heard from a great many people that the system is not working.

REP. BENEDICT said he would try to get this amendment adopted as the bill goes through the process but it might have to be done on the floor of the House.

Vote: REP. COCCHIARELLA called the question. Motion failed on tie vote 3 to 3 with REP. DRISCOLL, REP. COCCHIARELLA and REP. EWER voting No. EXHIBIT 16

Motion: REP. DRISCOLL moved to adopt amendments regarding the board setting a minimum yearly premium.

Discussion: CHAIRMAN HIBBARD asked REP. DRISCOLL what the amendments would accomplish. REP. DRISCOLL said it would let the board of directors set a minimum yearly premium. He said there should be a yearly minimum premium and thought it should be \$500. REP. BENEDICT agreed with REP. DRISCOLL.

Vote: REP. DRISCOLL called the question. Motion carried unanimously. EXHIBIT 17

Susan Fox said this same section was just amended on page 7, lines 10 and 11, (3) which would strike all rulemaking authority for the State Fund. She said even though the State Fund is exempted under MAPA in this bill, all actions of the State Fund had to be covered either by statute or by rules. They could only do what was statutorily required and this would strike their rulemaking authority. Ms. Fox said there were different opinions whether this needed to be in or not but it did need to be brought to the committee's attention whether it should be replaced or not.

Nancy Butler said the bill exempted the State Fund from the Montana Administrative Procedure Act. The board would make decisions through resolutions of issues relevant to the conduct of the State Fund which was being done through the MAPA process where relevant. She said not everything was required to be done through MAPA. Ms. Butler said she thinks the two go together, no MAPA, no authority.

Ms. Fox said there is no rulemaking authority under MAPA or otherwise, and many agencies are exempted from MAPA but still retain rulemaking authority. Ms. Butler asked if it was discretionary with them. Ms. Fox said there was still the Administrative Code Committee that reviews administrative rules.

She said that MAPA covers the notice and public hearing.

Motion: REP. EWER MOVED the amendment to place the State fund under MAPA.

Discussion: REP. BENEDICT resisted the amendment because if they are going to be given the opportunity to act like a private insurance company, in order to do that they have got to take them out of MAPA and give them the opportunity to either fly or not fly on their own.

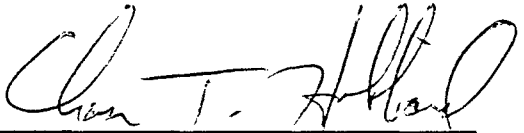
Vote: Voice vote was taken with REP. BENEDICT, REP. BERGSAGEL and REP. COCCHIARELLA voting No.

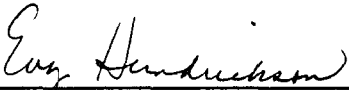
EXECUTIVE ACTION ON HB 13

Motion/Vote: REP. BENEDICT MOVED HB 13 DO PASS AS AMENDED and to be part of the Select Committee on Workers' Compensation package. Voice vote taken. Motion carried unanimously.

ADJOURNMENT

Adjournment: 6:00 p.m.

  
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REP. CHASE HIBBARD, Chairman

  
\_\_\_\_\_  
EVY HENDRICKSON, Secretary

CH/ev

## ROLL CALL

DATE 7-5-93

HR:1993

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Perkins  
for Perkins & Sons

HOUSE SELECT COMMITTEE REPORT

March 9, 1993

Page 1 of 4

Mr. Speaker: We, the select committee on Workers' Compensation recommend that House Bill 13 (first reading copy -- white) do pass as amended, and that the House refer the bill as amended to the House Committee on Labor and Employment Relations for its consideration as part of the Workers' Compensation package.

Signed: 

Chase Hibbard, Chair

And, that such amendments read:

1. Title, lines 7 and 8.

Following: ";" on line 7

Strike: remainder of line 7 through ";" on line 8

2. Title, line 11.

Following: "ACT;"

Insert: "AUTHORIZING THE LEGISLATIVE AUDITOR TO REVIEW RATES AND  
EXAMINE THE STATE FUND EACH YEAR;"

3. Title, line 12.

Following: "17-7-502,"

Strike: "33-1-401"

Insert: "18-8-103"

4. Title, line 14.

Strike: "AN"

Strike: "DATE"

Insert: "DATES AND AN APPLICABILITY DATE"

5. Page 2, line 12.

Strike: "mutual"

6. Page 5, line 4 through page 6, line 9.

Strike: section 2 in its entirety

Insert: "Section 2. Section 18-8-103, MCA, is amended to read:

"18-8-103. Exemptions. This part does not apply to  
employment of:

(1) registered professional engineers, surveyors, real  
estate appraisers, or registered architects;

(2) physicians, dentists, or other medical, dental, or

Committee Vote:

Yes 4, No 0.

531331SC.Hpf

Following: "discriminatory." on line 11  
Strike: remainder of line 11 through "13" on line 17  
Insert: "Each year, the legislative auditor shall:  
    (1) examine the state fund beginning no sooner than  
    October 1 following the end of the fiscal year; and  
    (2) report the findings of the examination and rate  
    review to the governor, the legislature, and the board of  
    directors of the state fund"

16. Page 11, line 20.  
Strike: "that"  
Insert: "as otherwise provided by law, and"

17. Page 12, line 2.  
Strike: "budget"  
Insert: "administrative expenditures"

18. Page 12, line 3.  
Following: "of the"  
Insert: "earned"

19. Page 12, lines 3 and 4.  
Following: "annual" on line 3  
Strike: "employer premiums"  
Insert: "premium of the prior fiscal year"

20. Page 12, line 6.  
Strike: "reserve"  
Insert: "financial"

21. Page 12, line 7.  
Strike: "prepared by the state fund's actuary"

22. Page 12, line 10.  
Strike: "resources and"  
Insert: "estimated"

23. Page 12, line 11.  
Following: "fund"  
Insert: "as determined by an independent actuary"

24. Page 12, line 23, through page 13, line 1.  
Following: "(b)" on page 12, line 23  
Strike: the remainder of line 23 through page 13, line 1 in their  
    entirety  
Insert: "All funds deposited in the state fund"

25. Page 15.  
Following: line 2

Insert: "NEW SECTION. Section 12. Name change -- directions to code commissioner. Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund".

NEW SECTION. Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent sections

26. Page 15, line 8.

Strike: "date. [This act] is"

Insert: "dates -- applicability. (1) [Section 9 and this section] are effective on passage and approval, and [section 9] applies to the budget for fiscal year 1994.  
(2) [Sections 1 through 8 and 10 through 14] are"

-END-

HOUSE SELECT COMMITTEE REPORT

March 9, 1993

Page 1 of 1

Mr. Speaker: We, the select committee on Workers' Compensation recommend that Senate Bill 164 (<sup>third</sup>~~first~~ reading copy -- <sup>blue</sup>~~white~~) do be concurred in, and that the House refer the bill to the House Committee on Labor and Employment Relations for its consideration as part of the Workers' Compensation package. BRT

Signed: Chase Hibbard

Chase Hibbard , Chair

Committee Vote:  
Yes 6, No 0.

541536SC.Hpf



HOUSE SELECT COMMITTEE REPORT

March 9, 1993

Page 1 of 5

Mr. Speaker: We, the select committee on Workers' Compensation recommend that House Bill 361 (first reading copy -- white) do pass as amended, and that the House refer the bill as amended to the House Committee on Labor and Employment Relations for its consideration as part of the Workers' Compensation package.

Signed: Chase Hibbard  
Chase Hibbard, Chair

And, that such amendments read:

1. Title, line 10.

Following: "CLAIMS;"

Insert: "REQUIRING INSURERS TO NOTIFY EMPLOYERS OF REOPENED CLAIMS;"

2. Title, lines 15 and 16.

Following: ";" on line 15

Strike: remainder of line 15 through ";" on line 16

3. Title, lines 17 through 20.

Following: ";" on line 17

Strike: remainder of line 17 through ";" on line 20

4. Title, line 22.

Following: "39-71-601,"

Insert: "39-71-606,"

5. Title, lines 23 and 24.

Strike: "39-71-741," on line 23

Strike: "39-71-1011," on line 24

6. Page 4, lines 24 and 25.

Strike: "diagnostic evidence, substantiated by clinical findings"

Insert: "verifiable findings demonstrated by accepted diagnostic procedures"

7. Page 5, line 1.

Strike: "clinical"

Insert: "verifiable"

Committee Vote:

Yes 5, No 4.

531613SC.Hpf

Following: line 15

Insert: "(4) If the treating physician releases a worker to return to the same position, the worker is no longer eligible for temporary total disability benefits, regardless of availability of employment."

Renumber: subsequent subsections

19. Page 15, lines 17 and 18.

Following: "to" on line 17

Strike: remainder of line 17 through "same," on line 18

Following: "modified" on line 18

Strike: ", "

20. Page 16, line 19.

Strike: "(7)"

21. Page 16, line 22 through page 17, line 2.

Following: "~~1986~~," on line 22, page 16

Strike: remainder of page 16 through line 2, page 17 in their entirety

22. Page 17, lines 13 and 14.

Strike: ", as determined after a vocational rehabilitation evaluation"

23. Page 21, line 8.

Following: "~~body~~"

Insert: "or injuries to the same part of the body"

24. Page 21, line 13.

Strike: "or parts of the body injured"

25. Page 22, lines 12 and 13.

Strike: "wage supplement,"

26. Page 22, line 16.

Following: "~~award~~,"

Insert: ", any impairment award,"

27. Page 23, line 10.

Strike: "attributable to the compensable injury"

28. Page 23, line 25 through page 27, line 10

Strike: section 11 in its entirety

Renumber: subsequent sections

29. Page 27, line 16.

Strike: the first "for"

Insert: "as a result of a conviction of"

30. Page 27, line 21 through page 31, line 8.  
Strike: sections 13 through 16 in their entirety  
Renumber: subsequent sections

31. Page 31, lines 11 and 12.  
Following: "(1)" on line 11  
Strike: remainder of line 11 through "disabled" on line 12  
Insert: "An injured"

32. Page 31, lines 15 and 16  
Strike: "the worker has not returned to work"  
Insert: "the injury results in permanent partial disability or permanent total disability as defined in 39-71-116"

33. Page 31, line 20.  
Following: line 19  
Insert: "(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;"  
Renumber: subsequent subsections

34. Page 32, line 3.  
Following: "~~insurer~~"  
Insert: "between the injured worker and the insurer"

35. Page 32, lines 7 through 11.  
Strike: subsection (2) in its entirety  
Renumber: subsequent subsections

36. Page 32, line 13.  
Strike: "disabled"  
Insert: "injured"

37. Page 32, line 19.  
Following: "~~upon~~"  
Insert: "agreed upon"

38. Page 33, line 16.  
Insert: "(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) If there is a dispute as to whether an injured

worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that the worker cannot, the worker is entitled to rehabilitation benefits and services as provided in subsection (2)."

Renumber: subsequent subsections

39. Page 34, line 14.

Strike: "(6)"

Insert: "(5)"

40. Page 36.

Following: line 2

Insert: "Section 14. Section 39-71-606, MCA, is amended to read:

"39-71-606. Insurer to accept or deny claim within thirty days of receipt -- notice of denial -- notice of reopening -- notice to employer. (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the department in writing of such denial.

(2) Every insurer under any plan for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

~~(2)~~ (3) Upon the request of an employer it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account."

Renumber: subsequent sections

41. Page 36, lines 9 through 13.

Strike: section 20 in its entirety

Renumber: subsequent section

EXHIBIT 1  
DATE 3/5/93  
HB \_\_\_\_\_

LEWISTOWN AREA WORK COMP COMMITTEE  
BOX 818  
LEWISTOWN, MT 59457

March 3, 1993

Select Committee on Workers Compensation  
Montana Legislature  
Helena, Mt 59624

Dear Sirs

Attached to this letter are the results of a survey conducted in our area in February by the Lewistown Area Work Comp Committee. This committee, made up of both employers and employees, has been meeting weekly since the first of December.

Responses came from both employees and employers.

The survey was a clip out ad in our 2/14/93 issue of the Lewistown News Argus with a circulation of 5000. There were 71 responses for a return rate of 1.5%.

Of those answering the survey, 83% feel the system needs major overhaul. Other answers indicate a desire for the system to be privatized, 72%. This is a very strong preference of those responding.

People think fraud is major part of the problem and it needs to be dealt with aggressively. Of those responding 86% support a local review board for claims review and fraud investigation.

There is strong support for accountability in administrative costs, to limit the maximum on workers compensation claims, and a limit on legal fees and medical fees.

Higher workers compensation premiums are seen by 65% of the people responding as resulting in lost jobs, lower wages and higher consumer prices.

The italicized comments are the individuals responses to each question and deserve your consideration.

Sincerely

*WB*  
*Mark Mentys*  
*Charlie*

*Linda O. White*  
*Sandy Mentys*  
*Susan Kneller*

Lewistown Area Work Comp Committee

## Work Comp Survey

Total of 71 responses, not all answers total 71, nor do all percentages equal 100

### 1. How do you rate the work comp system?

No Answer	2 ( 3%)
Excellent	0 ( 0%)
Minor Problems	0 ( 0%)
Satisfactory	0 ( 0%)
Needs Improvement	2 ( 3%)
Needs Major Overhaul	59 (83%)
Other	3

*Needs to be eliminated (2), Same undependable, inexperienced, un-reliable*  
*Riddled with Fraud*  
*Not working-defunct*  
*Disgrace*  
*Needs to be exposed for what it is*  
*Very Poor*  
*Disaster*  
*Start over-Lawyer's playground at our expense*  
*Failure since 1972!*  
*Bureaucracy at its worst*  
*Privatize (4)*  
*Gross mismanagement*

### 2. Size of business owned or work for:

No Answer	3 ( 4%)
0-5	31 (44%)
6-10	16 (23%)
11-15	9 (13%)
16-30	2 ( 3%)
above 30	10 (14%)

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### 3. Type of business

logging	4
construction	3
food service	2
agricultural	20
<i>repair shop &amp; parts</i>	
<i>repair shop,farming and retail</i>	
<i>retired</i>	
<i>rancher</i>	
medical	3
manufacturing	9
retail	14
<i>heaters</i>	
other	25
<i>personal services</i>	
<i>school</i>	
<i>insurance (4)</i>	
<i>service (8)</i>	
<i>autobody</i>	
<i>sawmill</i>	
<i>land surveying</i>	
<i>mining</i>	
<i>author/critic</i>	
<i>service repair</i>	
<i>government</i>	
<i>News-Argus</i>	
<i>(unspecified-3)</i>	

### 4. Have you had to file a work comp claim?

No answer	2 ( 3%)
<i>I quit employing people because the paper work got excessive</i>	
No	50 (70%)
<i>never needed lawyers ever</i>	
Yes	19 (27%)
<i>(one) small (claim)</i>	
<b>Type of service:</b> (of "Yes" answers)	
handled timely	15 (79%)
<i>2 (claims)-less than \$100 claims in 4 years</i>	
<i>several years ago</i>	
had to retain an attorney to resolve claim	1 ( 5%)
other	1 ( 5%)
<i>threatened to pay hospital direct &amp; deduct from next contribution; took 9 months to settle</i>	
no answer	2 (11%)

5. How do you think the work comp fund should become solvent?

1% tax on both employer/employee	13 (18%)
higher employer premiums	0 (0%)
limit maximum on work comp claims	41 (58%)
accountability in administration costs	47 (66%)
limit legal fees	51 (72%)
limit medical fees	44 (62%)
coal trust subsidy	5 (7%)
sales tax	1 (1%)
increased borrowing	0 (0%)
other	

*prosecution for fraud of cheaters*

*privatize (3), it may help to eliminate the "good ol' boys club" between lawyers and government officials*

*employees must share 1-2%*

*make system accountable, run like a business*

*employees pay 20% of tax*

*eliminate*

*make all people participate, stop letting people use exemptions on work comp coverage*

*need new laws, put specific limits on injuries*

*too many attorneys getting wealthy off system*

*undercover fraud investigation*

*need to get rid of lawyers and lower rates to get new business*

*eliminate work comp court and go back to district courts. Sell old fund now and phase new fund into residual market over 3 years*

*the strangulation of all business in Montana*

*disband state workmans' comp completely, they love to spend your money*

*set deductibles for employees \$ amount*

*we have to have the employees involved in the costs. They will then support in eliminating free loaders*

*eliminate fraud (2)*

*bid premiums private insurance companies*

*additional taxes is no method of solution. Hardly a solution for anything*

*do away with it completely, let people get their own insurance policy*

*rid system of unnecessary employees to cut payroll costs*

*oil, natural gas export tax*

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6. How do you personally see the increase in work comp premiums?

no answer	1 ( 1%)
lost jobs	52 (73%)
lower wages	37 (52%)
higher consumer prices	49 (69%)
reduced benefits	24 (34%)
other	15 (21%)
<i>poor management</i>	
<i>more jobs going out of state (2)</i>	
<i>destruction of business (3)</i>	
<i>committing suicide for State treasury</i>	
<i>higher claims, must limit claims</i>	
<i>chasing business out of Montana (2)</i>	
<i>fraud &amp; mismanagement by lawyers and government employees</i>	
<i>decrease of population</i>	
<i>payments to workers who may not be entitled to it</i>	
<i>frivolous proper care investigation <u>promptly</u> would help</i>	
<i>still necessary to cover fund/claim costs</i>	

7. Would you be willing to pay higher premiums in order to attract private insurers back to Montana?

yes	20 (28%)
no	49 (69%)
no answer	2 ( 3%)
<i>money won't solve problem, legal atmosphere must be changed</i>	
<i>loaded question</i>	

8. Do you support privatization of a part or all of work comp management & administration?

yes	51 (72%)
<i>(privatize) all (6)</i>	
<i>with a cap</i>	
<i>if privatized, all (employers) should be (included), otherwise hard on people left in the pool</i>	
no	8 (11%)
<i>not the plan currently under consideration</i>	
no answer	5 ( 7%)
??	3 ( 4%)
maybe	2 ( 3%)
<i>a better job would probably be the result</i>	

9. Would you as employers be willing to accept tort (legal) liability if work comp were eliminated or made optional?

yes . . . . . 30 (42%)  
    *but many will not*  
    *I would write through private insurers*  
    *but there must be changes in the law to limit claims and types of claims (2)*  
no . . . . . 28 (39%)  
    *not under current laws*  
    *not with the Treweilers of the world in the court system*  
no answer . . . . . 13 (18%)  
    *only if lawyers worked on work comp claims at 2/3 of minimum wage*  
    *would workers be willing to accept with their lawyers, liability for silly, fraudulent claims?*

10. Would you support a set fee schedule of medical benefits?

yes . . . . . 60 (85%)  
    *if handled by insurance companies*  
    *but only with severe and similar restriction on lawyers*  
no . . . . . 8 (11%)  
no answer . . . . . 3 (4%)

11. Would you support elimination of mandatory lump-sum settlements?

yes . . . . . 55 (77%)  
    *seems this would be decided case by case*  
    *cut all settlements to 20% of sum offered by judge*  
no . . . . . 13 (18%)  
no answer . . . . . 3 (4%)

12. Do you support allowing stress as part of work comp?

no answer . . . . . 2 (3%)  
no . . . . . 65 (92%)  
    *a crazy, expensive, disastrous concept*  
    *there's simply no way to calculate the economic loss vs. stress, or any degree of stress for that matter*  
    *privatization*  
    *it would become the psychological equivalent of whiplash*  
    *everyone is under stress in personal and working life*  
    *I was under stress for the last ten years in business and asked for no compensation. I'm not a welfare-itic*  
    *this is nuts! A lawyer's brew! How do you define it? We all have stress. What is stress for one may be a "walk in the park" for another*  
    *too difficult to prove or disprove*  
    *Stress is no factor being utilized as authority to collect funds. This is a big joke*  
    *I am not sure how it would be proven; there's stress in all our lives*  
yes . . . . . 4 (6%)  
    *the funding is there, just being abused*

### 13. How can state work comp be made more accountable?

local boards or county boards, with members that are employers and employees take responsibility for their actions, make all work comp fraud a felony!  
help people get or create jobs instead of just getting a claim off of books  
throw it out; let employers get their own private insurance, or investigate all employees, employers, and the medical profession  
take out the fraud, employee, employers, and the medical profession  
eliminate the whole program

strict guidelines and policies, thorough review of claims and annual audit of system  
better investigation of claims and better claims handling

may not be feasible, hence get the state out of it

put a ceiling on lawyers' charges (less than 5%)-get rid of judges that are obnoxious in settlements. Cut their awards to 1% of their regular settlements  
stay under 15%

mandatory yearly audits for all employers to ensure proper payments and lower rates  
turn it over to the private sector

making sure the claims processing is efficient, i.e. when a claim is submitted and adjuster contacts them, explains benefits, if long term injury- (adjuster) stays in contact with injured, continuing explanation and support

1)task force culling out fraud 2)mandated limits on collections, lawyers 3)no compensation for stress

limit lawyer fees to \$50/hour, limit medical, limit amount of claims to reasonable amounts  
place office locally in each unemployment office

set fees for doctors and lawyers, employees pay half, if employer carried insurance on employee, offer lower work comp premiums

the only way I can see it is if everyone ratted on others. Then we become like Nazi Germany by investigating doctors and DC and all people getting benefits from work comp  
by having follow-up exams and training for affected people to do a different job  
get a system with set limits, more employer rights, less lawyers, no chiropractors, and an administration that is responsible and accountable

publish names and amounts paid to people collecting benefits

1)require medical treatment bills to be reviewed and approved by the recipient. 2)eliminate attorneys on a contingent basis, 3)eliminate lump sum settlements

eliminate state control; via privatization with high-risk pool, similar to auto insurance  
make flat fees for every injury

lower lawyer and medical fees

by having six month or one year follow up on employee so that they don't use it as a lifetime pension!!

tough audits for fraud set settlements for a number of claims, set limit of lawyer fees at 8%  
privatize with state run review for accountability or do away with it and mandate the employer to carry their own insurance company

get rid of lawyers who are getting more than injured workers, set specific rates for injuries and retain (retrain?) workers instead of retiring them

job security based upon performance. If not operating a successful business - fire  
safety programs with drug testing mandatory. Prosecute fraud at all levels  
cap attorney fees that can be collected; prosecute those who defraud

*treat it like a business, watch waste and fraud*  
*lower attorney fees*  
*privatize, cap legal costs, cap medical costs, get "tough" on fraud*  
*privatize the system*  
*better management and accountability*  
*see to it that very severe penalties are levied against lawyers and clients for fraud and misuse*  
*and puffiness*  
*no way. Government can not be made accountable or practical, they have no experience and all*  
*lawyers and claimants bleed the system*  
*Incorporating a checks and balance system in the office and get tougher on people filing for*  
*work comp*  
*certify a number of private carriers to operate within Montana. Remove the state completely*  
*from the insurance business*  
*make it less political and start running it like a business with more aggressive claims*  
*management*  
*put it back into the private sector*  
*by checking claims more thoroughly to determine if actually needed by claimant*  
*privatize workers compensation*  
*get people to manage with some guts and get rid of the politics, run it as a business. Throw out*  
*the people that don't do their jobs*  
*have a review board of unrelated citizens*  
*am skeptical that it can - study what other successful states are doing*  
*investigate claims much more thoroughly, make the legal and medical professions more*  
*accountable*  
*less examination trying to prove someone that isn't a liar*  
*by making sure the claims are for real*  
*run it like a business, eliminate the lawyers and medical people that are getting wealthy at our*  
*expense*  
*remove the state from what should be privatized, the state has no proprietary interest when they*  
*have the taxpayer as their ultimate resource*  
*independent and regular audits, ongoing reports on specific cases (without worker's name) so*  
*public can see what happens with each case*  
*claims evaluated by separate Board of medical examiners - no chiropractors and self-*  
*determination*

**14. Would you support a local review board for claims review and fraud investigation?**

yes . . . . . 61 (86%)  
 no . . . . . 7 (10%)  
 no answer . . . . . 3 (4%)

*how much would this cost*  
*but not governmental board*  
*depends how the board is constructed*  
*increase cost of bureaucracy*  
*not necessary if privatized*

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**15. Do you think a safety program would lower work comp claims?**

yes . . . . . 56 (79%)  
no . . . . . 11 (15%)  
no answer . . . . . 4 ( 6%)

**What incentives for safety would be worthwhile?**

*lower rates (2)*  
*fees affected by safety results*  
*experience credits*  
*training allowance*  
*dollars saved to employers in premiums*  
*take a look at Montana Logging Assn.*  
*extra vacation day with pay (2)*  
*less injuries*  
*private carriers and self-insured see reduced losses and thus lower if not more stable rates as a result of better safety controls*  
*better wages and benefits*  
*lower the rates for good safety environments and records*  
*privatizing would eliminate the need*  
*worker following safety rules gets hurt, workmans comp pays; not following rules, worker pays already in place*

**16. Should it be legal for the employee and/or employer to ask about each others work safety history?**

yes . . . . . 69 (97%)  
no . . . . . 2 ( 3%)

*The current law should be removed and let employers and employees inquire without the burden of any law*  
*coupled with right of an employer to certify a new employee's prior injury(s) if their injury re-occurs*  
*could be a way to determine safety on previous jobs*  
*insurance companies applications ask many questions before insuring. Includes inspections backgrounds on each may weed out individuals and lawyers intent on making workmens comp their life instead of honest, productive work*  
*allows for more comfort*  
*an employee with a history of claims could be a detriment to other employees, the employer, and the system*  
*this would establish the importance of the safety issue to the employer and employee*  
*why hire someone with a back problem and then immediately be responsible to him for the rest of his life*  
*absolutely, you can't change the spots on a leopard*  
*and about spouse*  
*try to stop fraud both ways*

17. Have you ever called in a suspected fraud?

no answer . . . . . 3 ( 4%)

*this is the first time I knew there was a number (5) now I have three calls to make*

no . . . . . 60 (85%)

*Fraud difficult to detect in most cases*

*I'm sure their answer would be "It's in the computer and it would cost us too much to take it off"*

*Most work comp would insist on paying the injured double. Proven fact.*

*I have had something almost the same*

yes . . . . . 8 (11%)

**Was anything done?**

no . . . . . 6 (75%)

*Not to my knowledge*

yes . . . . . 2 (25%)

*This was fraud on part of employee and claim was denied. Claim was not totally true...puffy.*

*Denied on employer but paid anyway*

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**18. Do you know someone who is involved in defrauding the work comp system?**

no answer	38 (54%)
employee	20 (28%)
employer	10 (14%)
legal	5 (7%)
medical	8 (11%)

**How would you stop the fraud?**

*Penalties for fraud must be tough. More prosecutors are needed. It must be stopped  
Investigator was too limited in his access to information - he said employee was allowed  
reimbursement for medication (which he didn't take) when in fact he was given monthly  
compensation*

*more aggressive prosecution of fraud cases and report on it in the news media  
anyone found guilty of this fraud (should) be ineligible for any workers' comp benefits in the  
future. The people defrauding the work comp system are those entrusted to supervise it:  
politicians*

*have an advertised alarm number with a reward*

*employee other than mine*

*tighter regulations on everyone involved in the system*

*never paying lump sums*

*I suspect a few and I would stop the fraud by investigation as to what really happened and if it  
was really work related*

*Get the state out of the business (2) and let the law and courts work as intended, once fraud is  
found*

*video tape - investigate or surveillance*

*certain chiropractors are horrible "milkers" of the system. Cap visits for which work comp will  
pay or remove entirely from system.*

*Write work comp by private insurance companies, let independent adjusters settle all claims  
(G.A.B.) and disband the State Workmens Comp. The unions, lawyers and doctors would  
fight this because they would lose thousands of dollars a year in fringe benefits. You do not  
believe the facts either.*

*Many people in Lewistown area aware I'm sure, of individuals receiving unjust compensation.  
strict enforcement of fraud laws*

*fraud investigation, disallow illness as work related claims*

*report it if I knew*

*it's (knowledge of someone defrauding) not current. These people and their lawyers are the  
reason the system is in trouble*

*better investigation to see if person is really hurt and is not working*

*even though this is only 8%, have an investigation unit checking all areas - employees,  
employers, medical, and legal. It should pay for itself out of 8%*

*make defrauding a felony (2) with monetary compensation and jail time.*

*Do not let it get started! Must be a way to know what doctors and lawyers are involved, could  
find from records!*

*investigate all claims*

*This person (involved in defrauding the system) claims to have back problems and can't work,  
but he works on cars crawling under them too, shovels snow, etc. and draws workmans'  
comp and has for years!!*

18. How would you stop the fraud? (continued)

local claim review board (3), investigate all claims, with investigation power as a matter of clarification, I suspect fraud (on claim above)

Change laws so everything isn't litigated, The current system will always breed fraud. Put set limits on injuries. Let employer choose the doctor.

Investigate all claims, question the claims

stop the doctors and lawyers from taking advantage of employees...set fees paid

have local work comp office

mandatory prison sentences

make fraud punishable by a set jail term

Have every complaint checked. Lawyers for claimant limited to 10% or less. Rid all judges on off-base awards. Make doctors accountable for their decisions and charges, Cut administrative funds 70% (or 10%?).

Require second opinion from a doctor chosen by workmans comp

Eliminate the entire program

by more investigation - rewards for people calling work comp for suspected fraud.

Look into all cases and see just what some of these people are pulling. A lot aren't really hurt.

They're working at other jobs all the time.

Local board, accountability, check in once a week when on it, easier to report fraud to closer (with local board), and less cost to check fraud on (with local board)

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## Additional Comments:

*Privatize (4)*

*we must have a government that will do its job - people that will work, not people that say that's not my job description. Run it like a business and keep government out, and no unions*

*If the employee doesn't pay part of premium (then) bonuses to them by employer for outstanding safety record*

*no one has told the doctors they aren't worth \$150,000 a year (and) a hospital bed \$1,500 a day. Work comp should have its own doctors - no exception. They only pay for you to go to these doctors, period*

*I strongly feel that fraud is the biggest problem, but I also feel that the employer should not be totally responsible for medical insurance. The cost of workers comp in Montana is getting so high that employers are backing away from hiring, plus the high cost also encourages dishonesty.*

*Get the government out of the insurance business. Hold work comp administration responsible.*

*The truck driver story in the Tribune was self-explanatory of part of the problem - the Legislature awarded a claim to a drunk that wasn't even on duty as a truck driver!!!*

*Workmens' comp is fraud waiting to happen. It is more of a sham than a benefit. Lawyers love this ambulance.*

*all of these comments have been given over and over again to legislators - still no action the problem must be looked at in "real" world terms... government must be out!!! Government serves government, not people. Greed had to be eliminated as a possibility! Cap costs!*

*A major problem with comp is the abuse encouraged by medical and legal people. They encourage injured workers (in some cases) to more care and dollars than is necessary.*

*Comp was not intended to be a retirement program or to make doctors and lawyers rich!*

*I believe there could be a connection between a lot of repeat comp claims and alcohol (and) drug abuse and if we could investigate this further somehow the results could be startling - meaning we need drug testing*

*looks like work comp benefits are as low as they can go*

*the rates are way too high. We are losing jobs to other states. Companies leaving Montana and the rates stop new business from starting up. The lawyers are getting rich off the comp system.*

*a complete investigation of current and past practices should take place with automatic fines, prison time, and compensation for fraudulent abuse, whether an employee of workers comp or a claimant. Make people accountable for their actions that have abused the system.*

*Make the doctors more responsible when they examine these patients and have frequent follow-ups. Listen to people who report someone frauding the system.*

*I am a senior citizen, retired, neither employer nor employee. Just a tax payer who is (hoping?) to see this settled*

*Review equipment allowed as part of retraining and recovery effort, i.e. computers. Unless approved person has a purpose for which a computer can be applied, supplying a unit as retraining is worthless. Vo-tech or approved classes are worthwhile. Equipment for home is not. The same goes for hot tubs, etc. Plenty of facilities are available to provide access by those in need.*

*Court rulings such as the enclosed are completely out of line. Workmans comp should be only to compensate for serious injuries while on the job.*

Additional Comments: (continued)

*Raising the rates on employees or employers will only make people cheat on the system, raise consumer prices, or leave Montana.*

*My employees all deserve a raise, but I cannot afford to give them one, because of the 34% raise in work comp*

*work comp should have local office the same as unemployment division. Then you have accountability both ways.*

*hurry with the solutions*

*if the State runs the program all business should be mandatory to insure with the State. Right now all the low risk companies have private insurance, leaving the State with all the high risk companies*

*Use good common sense in all areas of compensation. Have all awards checked many times before giving away the taxpayers money. If anything seems fishy, make no awards without being forced to. Be tight-fisted with tax payers money. Cut down on all administration cost to the bone. They are not producers.*

*When a lawyer can receive payments equal to the payments to the injured worker and these payments are to continue for the entire life of the injured worker, something is ROTTEN. When a lawyer specializing in work comp claims can become a millionaire in only three years, something is ROTTEN!*

*Check employee as well as employer to see if they are not getting paid by grain, beef, or other non-traceable items.*

*Investigate and see if all employers are paying workers' comp insurance or are they paying hired help with beef, grain, or etc. Not reporting any wages.*

EXHIBIT 1

DATE 3/5/93

EXHIBIT 2  
DATE 3/5/93  
~~HB~~ SB 164

TESTIMONY ON S.B. 164

*PAT SWEENEY*  
*STATE FUND*

The State Fund strongly supports Senate Bill 164. We applaud Gov. Racicot's recognition of fraud as an area of workers' compensation that needs to be addressed. We also recognize the support of many others on this bill.

Nationally fraud costs insurers 8% of all premium dollars. Based on premiums collected in fiscal year 1992 by the State Fund on approximately \$127 million, there could have been approximately \$10 million attributable to fraud.

The State Fund has recognized fraud as an area that was not getting the in-depth approach necessary to realistically combat the problem. The staff at that State Fund, due to multiple duties, are unable to devote full time efforts at fraud detection and prevention. We also have only one full time investigator at the Department of Justice.

Last March we sent two State Fund employees along with an investigator from the Department of Justice to Oregon to review their much publicized fraud program. That visit provided us valuable information.

Oregon's State Fund believed they were losing \$1 million a week to fraud. They publicized a zero tolerance for fraud, they used a hot line, surveillance, and focused investigation on new claims. They found the program to be cost effective but believed the major value to be deterrence.

This bill provides for a unit at the State Fund whose function will be to detect and prevent fraud. This will be done through training of State Fund staff in claims, audit and underwriting. The unit will also provide preliminary review of alleged fraudulent activity as it is reported to us or detected. Education of the public will also be a role. Staffing is to consist of a coordinator of the unit, two field representatives, an auditor, and one half-time clerical support.

Once alleged fraud is detected, it will be referred on to the Criminal Investigation Bureau at the Department of Justice. They plan to field base the agents and they will investigate workers' compensation cases full time. A prosecutor for workers' compensation fraud in the Attorney General's Office will greatly facilitate prosecution of cases and also provide legal assistance to agents, the State Fund, and county attorneys.

We also want to make it clear that fraud by claimants will not be this program's only focus. Employer premium fraud and fraud by medical providers will also be pursued.

### Conclusion

Costs in workers' compensation must be addressed and this bill is key to that effort. We would like to send the message that fraud will not be tolerated because we want workers' compensation benefits to go to workers with legitimate injuries, lower premium rates for our employers, and our economy to not be depressed because of workers compensation problems.

We urge do pass on this bill.

EXHIBIT 2  
DATE 3/5/93  
SB 164



# Montana State AFL-CIO

Donald R. Judge  
Executive Secretary

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

406-442-1708

EXHIBIT 3  
DATE 3/5/93  
HB SB 164

## TESTIMONY OF DARRELL HOLZER ON SENATE BILL 164, HOUSE SELECT COMMITTEE ON WORKERS' COMPENSATION, MARCH 5, 1993

Mr. Chairman, members of the committee, for the record, I'm Darrell Holzer and I'm here today to represent the Montana State AFL-CIO in support of amending, and then passing, Senate Bill 164.

Thank God we're finally going to do something about all the fraud that's been taking place in the workers' comp system. It's outrageous, and something needs to be done about it. Having said that, let me share with you some information discovered in other states regarding this problem.

In Colorado, the *Business Journal* recently reported that **EMPLOYER** fraud was twice as likely to occur as **EMPLOYEE** fraud.

In California, a random check of construction contractors found that 70% of these employers failed to pay their appropriate premiums, costing the state workers' compensation fund in excess of \$2 **BIL-**  
**LION** in fiscal year 1990-91!

In Washington, D.C., a 1989 study showed that there were only 153,000 construction workers official-ly employed during a peak construction period, but there were another 120,000 operating as so-called "independent contractors".

In Connecticut, Congressional testimony offered that one contractor had 164 trades people working for him, but his payroll records reflected only 11 employees. The other 153 were listed as "independent contractors".

In Nevada, a state where the fund deficit is estimated at approximately \$1.6 **BILLION** dollars, the owners of a construction firm operating under two different names were ordered to pay a judgment of over \$800,000 for misreporting payroll to the State Industrial Insurance System.

*Cockshaw's Construction Labor News & Opinion*, a highly regarded industry publication, reported about workers' comp that: "There are many reasons for the crisis. But the largest single problem is employers who cheat the system by one means or another."

Even Congress is getting into the act. They are currently considering legislation which will allow unions, employers, associations and even workers, themselves, the authority to pursue legal redress against employers violating federal prevailing wage laws, an area where fraudulent payments of work-ers' comp and unemployment compensation taxes causes good employers and workers to lose billions of dollars.

Testimony of Darrell Holzer on SB 164  
March 5, 1993

Don't get me wrong, we don't condone fraud or abuse of the system by anyone, including workers. But we do believe that it's important for this committee to understand that fraud appears to be much more prevalent on the employer's side than that of the worker. That's one reason we have encouraged this Legislature to require submission of weekly certified payrolls on our state's Little Davis Bacon Act: So that the investigators provided for in this bill -- along with unions, good employers and the workers themselves -- can monitor the appropriateness of taxes paid to our state's workers' comp system.

We are concerned with a couple of issues as they are presented in SB 164 which I'd like to bring to your attention, and to offer some small amendments. The first amendment is quite simple, and I'll provide it only verbally.

Page 4, lines 6 through 10 seem to make it a crime for a worker to be receiving a combination of benefits without consent of the insurer. We object to giving the insurer the power of a judge by allowing them to approve or disapprove a worker's efforts to rehabilitate and return to the workforce. If we are out to prosecute crime, then we should find a fraudulent act of a worker, such as obtaining benefits for a non-existent injury. We don't think that SB 164 should provide an arbitrary limitation of benefits, without regards to the intent to defraud or steal from the insurer.

The other amendment we are suggesting is attached to this testimony, and simply calls for fraudulent activities on the part of the employer or the insurer to be prosecuted under the same provisions as those being suggested for the worker.

Fraudulent activities under this amendment would include: misrepresentation and underpayment of payroll taxes; refusal to pay or unduly delaying payments of legitimate compensation benefits, or underpayments of legitimate benefits.

It would seem to us, that in the interest of fairness, and considering the evidence that employer fraud may be far more costly to the system than worker fraud, and that insurers, too, bear the responsibility to do justice to the system, everyone should be treated equally under the law.

With these amendments, we urge a do pass recommendation on SB 164. Thank you.

*Suggested amendment to SB 164*

Page 3, line 22

Following: "means"

Insert: "-- fraudulent reporting of payroll and premium information, and fraudulently denying benefits to workers"

EXHIBIT 3  
DATE 3/5/93  
SB 164

# Montana Trial Lawyers ASSOCIATION

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March 5, 1993

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Governor

Rep. Chase Hibbard, Chair  
House Select Committee on Workers Compensation  
Room 325, State Capitol  
Helena, MT 59624

**RE: SB 164**

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's qualified support for SB 164, which targets workers compensation fraud.

MTLA supports efforts to investigate, prosecute and prevent genuine fraud in Montana's workers compensation system. MTLA believes that fraud does occur on a limited scale and involves employers, insurers, providers, consultants, and attorneys as well as employees.

However, MTLA also believes that Montana's workers compensation system is immense, complex, confused and unstable. Consequently, MTLA believes that investigators and prosecutors should observe the spirit as well as the letter of Sec. 45-6-301, MCA, in strictly construing the elements of criminal intent required to prove theft. The Senate amendments to Section 4 (page 4, line 3), Section 5 (page 6, lines 8-11), Section 6 (page 8, lines 2-5), and Section 7 (page 10, lines 17-20) ignore the requirement of criminal or fraudulent intent. A disabled worker who "receives" wages unexpectedly, for example--or who misunderstands the complex and convoluted definitions of "wages" currently incorporated in Secs. 39-71-123, 39-71-118, and 39-71-117, MCA--is guilty of theft. The only question is whether he will be prosecuted pursuant to Sec. 45-6-301, MCA. MTLA proposes the accompanying amendments 1 through 4 to conform each of those sections to the criminal intent required to prove theft under Sec. 45-6-301, MCA.

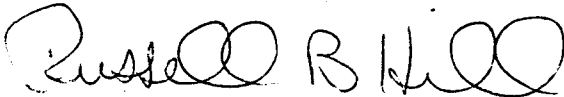


Sections 5, 6, and 7 also make disabled workers helplessly dependent upon written consent of the insurer but gives insurers unfettered discretion to withhold that consent for legitimate reasons, invalid reasons, or no reasons at all. The fundamental principles of equal protection in criminal law conflict directly with the enormous potential in SB 163 for insurers to unfairly discriminate among disabled workers in granting consent and in referring cases for prosecution. MTLA proposes the accompanying amendments 5 through 7 to guarantee that insurers provide or deny written consent uniformly.

Finally, consistent with the Senate amendments to Section 3 (page 3, lines 17-19), MTLA believes that expenditures for the fraud prevention and detection unit in the State Fund should be regularly recorded and reported separately. Additionally, however, MTLA believes that the State Fund should report those expenses in conjunction with the amounts recovered as a result of its investigations, prosecutions, and prevention. For that reason, MTLA proposes the accompanying amendment 8.

Thank you for considering these comments. If I can provide additional information or assistance, please notify me.

Respectfully,

A handwritten signature in black ink, appearing to read "Russell B. Hill". The signature is stylized with large, looping letters.

Russell B. Hill  
Executive Director

EXHIBIT 4  
DATE 3/5/93  
SB 164

Amendments to Senate Bill 164  
Third Reading Bill (Blue Copy)

Requested by the Montana Trial Lawyers Association  
March 5, 1993

1. Page 4, line 1.  
Following: "who"  
Insert: "purposely or knowingly"
2. Page 6, line 8.  
Following: "who"  
Insert: "purposely or knowingly"
3. Page 8, line 2.  
Following: "who"  
Insert: "purposely or knowingly"
4. Page 10, line 17.  
Following: "who"  
Insert: "purposely or knowingly"
5. Page 6, line 11.  
Following: "45-6-301."  
Insert: "An insurer shall establish and comply with procedures for providing or denying written consent."
6. Page 8, line 5.  
Following: "45-6-301."  
Insert: "An insurer shall establish and comply with procedures for providing or denying written consent."
7. Page 10, line 20.  
Following: "45-6-301."  
Insert: "An insurer shall establish and comply with procedures for providing or denying written consent."
8. Page 3, line 19.  
Following: "expended"  
Insert: "and recovered"

EXHIBIT 4  
3/5/93  
SB 164

Amendments to Senate Bill No. 164  
Third Reading Copy

EXHIBIT 5  
DATE 3/5/93  
# SB 164

Prepared by Jacqueline Lenmark  
American Insurance Association  
February 17, 1993

1. Title, line 18.

Following: "FRAUD;"

Insert: "REQUIRING SUSPENSION, REVOCATION, OR  
DENIAL OF A PROFESSIONAL OR OCCUPATIONAL LICENSE  
FOR VIOLATION OF THE WORKERS' COMPENSATION LAW;  
REVISING THE DEFINITION OF UNPROFESSIONAL CONDUCT;  
PROHIBITING CERTAIN ACTIONS; GRANTING IMMUNITY FOR  
REPORTING VIOLATIONS OF THE WORKERS' COMPENSATION  
LAW;"

2. Title, line 19.

Following: "39-71-702,"

Strike: "AND"

Following: "39-71-2001,"

Insert: "37-1-131, 37-3-322, 37-6-310, 37-10-311,  
37-12-321, AND 37-14-321,"

3. Page 4.

Following: line 10

Insert: "(3) A PERSON LICENSED UNDER THE  
PROVISIONS OF TITLE 37 IS SUBJECT TO SUSPENSION,  
REVOCATION, OR DENIAL OF THE LICENSE IF THE  
LICENSEE KNOWINGLY CLAIMS OR ASSISTS OR ABETS  
THE CLAIMING OF BENEFITS IN VIOLATION OF ANY  
PROVISION OF THIS CHAPTER OR OF CHAPTER 72."

4. Page 10.

Following: line 20

Insert: "Section 8. Section 37-1-131, MCA, is  
amended to read:

"37-1-131. Duties of boards. Each board within the  
department shall:

. . . .

(2) sit in judgment in hearings for the suspension,  
revocation, or denial of a license of an actual or potential member  
of the particular profession or occupation within its jurisdiction.  
The hearings shall be conducted by legal counsel when required  
under 37-1-121(1).

"(3) SUSPEND, REVOKE, OR DENY A LICENSE OF A PERSON WHO THE  
BOARD DETERMINES, AFTER A HEARING AS PROVIDED IN SUBSECTION (2) IS

GUILTY OF KNOWINGLY DEFRAUDING OR ABUSING OR AIDING OR ABETTING THE  
DEFRAUDING OR ABUSING OF THE WORKERS' COMPENSATION SYSTEM IN  
VIOLATION OF THE PROVISIONS OF TITLE 39, CHAPTERS 71 OR 72;

. . . renumber subsequent subsections in 37-1-131.

Section 9. Section 37-3-322, MCA, is amended to read:

"37-3-322. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means: . . .

(15) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, INCLUDING FRAUD, MISREPRESENTATION, OR DECEPTION WITH REGARD TO A CLAIM FOR BENEFITS UNDER TITLE 39, CHAPTERS 71 OR 72; . . . ."

Section 10. Section 37-6-310, MCA, is amended to read:

"37-6-310. Unprofessional conduct. As used in this chapter "unprofessional conduct" means: . . .

(9) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, INCLUDING FRAUD, MISREPRESENTATION, OR DECEPTION WITH REGARD TO A CLAIM FOR BENEFITS UNDER TITLE 39, CHAPTERS 71 OR 72; . . . ."

Section 11. Section 37-10-311, MCA, is amended to read:

"37-10-311. Revocation -- unprofessional conduct.

(1) the board may revoke a certificate of registration for:  
. . .

(2) unprofessional conduct includes:

(a) ~~obtaining a fee by fraud or misrepresentation~~ RESORTING TO FRAUD, MISREPRESENTATION, OR DECEPTION IN THE EXAMINATION OR TREATMENT OF A PERSON OR IN BILLING OR REPORTING TO A PERSON, COMPANY, INSTITUTION, OR ORGANIZATION, INCLUDING FRAUD, MISREPRESENTATION, OR THE SECTION WITH REGARD TO A CLAIM FOR BENEFITS UNDER TITLE 39, CHAPTERS 71 OR 72; . . . ."

Section 12. Section 37-12-321, MCA, is amended to read:

"37-12-321. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means: . . .

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to

a person, company, institution, or organization, INCLUDING FRAUD, MISREPRESENTATION, OR DECEPTION WITH REGARD TO A CLAIM FOR BENEFITS UNDER TITLE 39, CHAPTERS 71 OR 72; . . . ."

Section 13. Section 37-14-321, MCA, is amended to read:

"37-14-321. Revocation or suspension of license or permit. A license or permit may be suspended for a fixed period . . .

(4) is guilty of unethical OR UNPROFESSIONAL conduct, as defined by rules promulgated by the board, . . . ."

NEW SECTION. Section 14. Prohibited actions. It is a violation and subject to penalty provided if:

(1) a medical care provider

(a) fails to document, under oath, the provision of the services or treatment for which compensation is claimed under this chapter or chapter 72; or

(b) refers a worker for treatment or diagnosis of an injury or illness that is compensable under this chapter or chapter 72 to a facility owned wholly or in part by the provider unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist; or

(2) a person licensed to practice law in Montana or a medical care provider who advertises his services or facilities with the intention that a worker use those services or facilities in regard to an injury or illness that is compensable under this chapter or chapter 72 fails to announce in the advertisement that filing a fraudulent claim is a crime as provided in 39-71-316.

(3) A person who violates this section may be assessed a penalty of not less than \$200.00 or more than \$500.00 for each offense. The department shall assess and collect the penalty.

NOTE: This Section should probably be coordinated with other "self-referral" sections in other bills.

NEW SECTION. Section 15. No liability for reporting violation. A person, including but not limited to an insurer or an employer, may not be held liable for civil damages as a result of reporting in good faith and without malice information that the person believes proves a violation of the provisions of this chapter or of chapter 72."

5. Page 10, line 25.

Following: "3"

Insert: "14 and 15"

Testimony on Senate Bill 258 ~~HB~~ SB 258  
For the Select Committee on Workers' Compensation

Prepared by Laurence A. Hubbard  
State Compensation Mutual Insurance Fund  
March 5, 1993

Mr. Chairman, members of the House Select Committee, my name is Laurence Hubbard. I am here today on behalf of the State Compensation Mutual Insurance Fund to express conditional support for SB 258. I also presented similar testimony on this Bill before the Senate Judiciary Committee.

It is our understanding that SB 258 was drafted by the Legislative Council in response to the recent Supreme Court decision in Francetich v. State Fund (March 10, 1992). I represented the State Fund in that case, and believe I can offer some insight into the reason for SB 258. It appears that this Bill attempts to codify the holding of the Francetich case that stuck down as unconstitutional section (6) (a) of the present statute. That statute allowed the workers' compensation insurer full subrogation (which is legal jargon for the right of the insurer who has paid money which the third-party wrongdoer ought to have paid, to step into the shoes of the injured worker) for any money paid under the Workers' Compensation Act, when the injured worker recovers money against a third party wrongdoer in a personal injury claim. Subrogation was allowed even if the injured worker was able to demonstrate that his or her damages exceeded the benefits received under the Workers' Compensation Act, and the third-party recovery combined. In Francetich, the Court held that provision of the statute violated Art. II, Sec. 16 of the Montana Constitution. The Court's holding specifically states:

We hold that in a case of reasonably clear liability [of the third-party] where a claimant is forced to settle for the limits of an insurance policy which, together with claimant's workers' compensation award, do not grant full legal redress [make the injured worker whole] under general tort law to the claimant, under workers' compensation laws the insurer is not entitled to subrogation rights under Section 39-71-414, MCA.

Senate Bill 258 attempts to amend the statute to conform with the Court's holding in Francetich. However, we believe the present Bill goes beyond the Court's decision by striking the second sentence of section (6) (a), which permits subrogation, when otherwise available to the insurer, against the entire settlement or recovery regardless of the nature of the damages. Nothing in the Court's decision addressed that principal. In fact, allowing subrogation against the entire recovery regardless of how private litigants designate the damages is consistent with prior Supreme Court decisions in Swanson v. Champion International, 197 Mont. 509 (1982), and Butori v. Bruce Metcalf Sportsman, 740 P.2d 1126 (1987).

For the forgoing reasons, the State Fund with the concurrence of the Bill's sponsor, Sen. John Harp, requests that the Bill be amended by this Committee to reinsert the second sentence of Section 39-71-414 (6) (a), to read: "The insurer may subrogate against the entire settlement or award of a third party claim brought by the claimant or his personal representative, without regard to the nature of damages."

Thank you.

EX-101 6  
DATE 3/5/93  
SB 258

EXHIBIT 7  
DATE 3-5-93  
HB SB 258

Amendments to S.B. 258

1. Page 3, line 14

Following: "combined."

Insert: "The insurer may subrogate against the entire settlement or award of a third party claim brought by the claimant or his personal representative without regard to the nature of the damages."



HB 604

SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL VOTE

MOTION: Move the Bell - & will take - Benedict -

MOTION: Move the Bell - I will cook - Benedict -

Bill Tabler.

[illegible]

HR:1993

wp:rlclvote.man

Amendments to House Bill No. 361  
First Reading Copy

Requested by Representative Hibbard  
For the Select Committee on Workers' Compensation

Prepared by Paul Verdon  
February 19, 1993

1. Title, lines 15 and 16.  
Following: ";" on line 15  
Strike: remainder of line 15 through ";" on line 16
2. Title, lines 17 through 20.  
Following: ";" on line 17  
Strike: remainder of line 17 through ";" on line 20
3. Title, lines 23 and 24.  
Strike: "39-71-741," on line 23  
Strike: "39-71-1011," on line 24
4. Page 4, lines 24 and 25.  
Strike: "diagnostic evidence, substantiated by clinical findings"  
Insert: "verifiable findings demonstrated by accepted diagnostic procedures"
5. Page 5, line 1.  
Strike: "clinical"  
Insert: "verifiable"
6. Page 12, line 8.  
Strike: "a compensable"  
Insert: "an"
7. Page 12, line 9.  
Following: "prolongs"  
Strike: "the"
8. Page 12, line 11.  
Strike: second "compensable"  
Insert: "aggravating"
9. Page 12, line 12.  
Following: "of"  
Strike: "the"
10. Page 12, line 14.  
Strike: "A"  
Insert: "An insurer is not liable for a"
11. Page 12, line 14.  
Strike: "is not compensable as a consequence of"  
Insert: "arising after"
12. Page 12, line 16.

Following: "the"  
Insert: "resultant"

EXHIBIT 9  
DATE 3-5-93  
HB 361

13. Page 14, line 17.  
Strike: "12"  
Insert: "24"  
Strike: "only"

14. Page 14, line 21.  
Following: "~~e~~"  
Insert: "":  
    (a) lack of knowledge of disability;  
    (b) latent injury; or  
    (c) "

15. Page 14, line 25.  
Strike: "subsection"  
Insert: "subsections"  
Following: "(4)"  
Insert: "and (5)"

16. Page 15, line 16.  
Following: line 15  
Insert: "(4) If the treating physician releases a worker to  
    return to the same position, the worker is no longer  
    eligible for temporary total disability benefits, regardless  
    of availability of employment."  
Renumber: subsequent subsections

17. Page 15, lines 17 and 18.  
Following: "to" on line 17  
Strike: remainder of line 17 through "same," on line 18  
Following: "modified" on line 18  
Strike: ", "

18. Page 16, line 19.  
Strike: "(7)"

19. Page 16, line 22 through page 17, line 2.  
Following: "~~1986-~~" on line 22, page 16  
Strike: remainder of page 16 through line 2, page 17 in their  
    entirety

20. Page 17, lines 13 and 14.  
Strike: ", as determined after a vocational rehabilitation  
    evaluation"

21. Page 21, line 8.  
Following: "~~body~~"  
Insert: "or injuries to the same part of the body"

22. Page 21, line 13.  
Strike: "or parts of the body injured"

23. Page 22, lines 12 and 13.

Strike: "wage supplement,"

24. Page 22, line 16.

Following: "~~award~~,"

Insert: ", any impairment award,"

25. Page 23, line 10.

Strike: "attributable to the compensable injury"

26. Page 23, line 25 through page 27, line 10

Strike: section 11 in its entirety

Renumber: subsequent sections

27. Page 27, line 16.

Strike: the first "for"

Insert: "as a result of a conviction of"

28. Page 27, line 21 through page 31, line 8.

Strike: sections 13 through 16 in their entirety

Renumber: subsequent sections

29. Page 31, lines 11 and 12.

Following: "(1)" on line 11

Strike: remainder of line 11 through "disabled" on line 12

Insert: "An injured"

30. Page 31, lines 15 and 16

Strike: "the worker has not returned to work"

Insert: "the injury results in permanent partial disability or permanent total disability as defined in 39-71-116"

31. Page 31, line 20.

Following: line 19

Insert: "(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;"

Renumber: subsequent subsections

32. Page 32, line 3.

Following: "~~insurer~~"

Insert: "between the injured worker and the insurer"

33. Page 32, lines 7 through 11.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

34. Page 32, line 13.

Strike: "disabled"

Insert: "injured"

35. Page 32, line 19.

Following: "~~upon~~"

Insert: "agreed upon"

EXHIBIT 9  
DATE 3/5/93  
FILE HB 361

36. Page 33, line 16.

Insert: "(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that the worker cannot, the worker is entitled to rehabilitation benefits and services as provided in subsection (2)."

Renumber: subsequent subsections

37. Page 34, line 14.

Strike: "(6)"

Insert: "(5)"

38. Page 36, lines 9 through 13.

Strike: section 20 in its entirety

Renumber: subsequent section

EXHIBIT 9  
DATE 3-5-93  
HB 361

Amendments to House Bill No. 361  
First Reading Copy

EXHIBIT 10  
DATE 3-5-93  
HB 361

Requested by Rep. Cocchiarella  
For the Select Committee on Workers' Compensation

Prepared by Susan B. Fox  
March 5, 1993

1. Title, line 10.

Following: "CLAIMS;"

Insert: "REQUIRING INSURERS TO NOTIFY EMPLOYERS OF REOPENED  
CLAIMS;"

2. Title, line 22.

Following: "39-71-601,"

Insert: "39-71-606,"

3. Page 36.

Following: line 2

Insert: "Section 19. Section 39-71-606, MCA, is amended to read:

"39-71-606. Insurer to accept or deny claim within thirty  
days of receipt -- notice of denial -- notice of reopening --  
notice to employer. (1) Every insurer under any plan for the  
payment of workers' compensation benefits shall, within 30 days  
of receipt of a claim for compensation, either accept or deny the  
claim, and if denied shall inform the claimant and the department  
in writing of such denial.

(2) Every insurer under any plan for the payment of  
workers' compensation benefits shall notify the employer of the  
reopening of the claim within 14 days of the reopening of a claim  
for the purpose of paying compensation benefits.

~~(2)~~(3) Upon the request of an employer it insures, an  
insurer shall notify the employer of all compensation benefits  
that are ongoing and are being charged against that employer's  
account."

Renumber: subsequent sections

*(Do Not Pass)*

Amendments to House Bill No. 361  
First Reading Copy

EXHIBIT 11  
DATE 3-5-93  
HB 361

Requested by the State Fund  
For the Select Committee on Workers' Compensation

March 5, 1993

1. Page 19, line 6.  
Following: "by the"  
Strike: "latest"  
Insert: "second"

2. Page 19, line 21.  
Following: "by the"  
Strike: "latest"  
Insert: "second"

3. Page 23, line 4.  
Following: "on the"  
Strike: "current"  
Insert: "second"





EXHIBIT 13  
DATE 3-5-93  
HB 361

HOUSE OF REPRESENTATIVES  
53RD LEGISLATURE - 1993

ROLL CALL VOTE

DATE 3-5-93 BILL NO. HB 361 NUMBER \_\_\_\_\_

MOTION: *Repeal HB-361 <sup>Part</sup> amended to put in package.*

[illegible]

HR:1993

wp:rlclvote.man

Amendments to House Bill 13  
First Reading Copy

EXHIBIT 14  
DATE 3-5-93  
HB 13

Requested by Rep. Benedict  
For the Select Committee on Workers' Compensation

March 5, 1993

1. Title, lines 7 and 8.

Following: ";" on line 7

Strike: remainder of line 7 through ";" on line 8

2. Title, line 11.

Following: "ACT;"

Insert: "AUTHORIZING THE LEGISLATIVE AUDITOR TO REVIEW RATES  
AND EXAMINE THE STATE FUND EACH YEAR;"

3. Title, line 12.

Following: "17-7-502,"

Strike: "33-1-401,"

Insert: "18-8-103,"

4. Title, line 14.

Strike: "AN"

Strike: "DATE"

Insert: "DATES"

5. Page 2, line 12.

Page 5, line 6 and line 9

Page 6, line 4

Strike: "mutual"

6. Page 5, line 4 through page 6, line 9.

Strike: section 2 in its entirety

Renumber: subsequent sections

7. Page 8, line 6.

Following: "rates"

Insert: "The state fund must belong to the national council on compensation insurance  
and may use the classifications of employment adopted by a workers' compensation  
rating organization and corresponding rates as a basis for setting its own rates."

8. Page 11, line 2.

Following: "carry"

Insert: "the estimated cost of"

9. Page 11, lines 5 and 6.

Following: "July 1," on line 5

Strike: the remainder of line 5 through "standards" on line 6

Insert: "2003, a surplus of 25% of annual premium"

10. Page 11, line 7.

Following: line 6

Insert: "Section 7. Section 18-8-103, MCA, is amended to read:

**18-8-103. Exemptions.** This part does not apply to employment of:

- (1) registered professional engineers, surveyors, real estate appraisers, or registered architects;
- (2) physicians, dentists, or other medical, dental, or health-care providers;
- (3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor;
- (4) consulting actuaries to the public retirement boards or the State Compensation Insurance Fund; or
- (5) private consultants employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations."

Renumber: subsequent sections

11. Page 11, lines 7 and 8.

Strike: "insurance commissioner"

Insert: "legislative auditor"

12. Page 11, line 8.

Strike: "(1)"

13. Page 11, line 8 and 9.

Following: "The" on line 8

Strike: "insurance commissioner"

Insert: "legislative auditor"

14. Page 11, line 10.

Strike: "or any rate changes"

15. Page 11, lines 11 through 17.

Following: "discriminatory." on line 11

Strike: the remainder of line 11 through "13" on line 17

Insert: "Each year, the legislative auditor shall:

- (1) examine the state fund beginning no sooner than October 1, following the end of the fiscal year; and
- (2) report the findings of the examination and rate review to the governor, the legislature, and the board of directors of the state fund"

16. Page 11, line 20.

Strike: "that"

Insert: "as otherwise provided by law, and"

17. Page 12, line 2.

Strike: "budget"

Insert: "administrative expenditures"

EXHIBIT 14

DATE 3/5/93

HB 13

18. Page 12, line 3.

Following: "of the"

Insert: "earned"

EXHIBIT 14  
DATE 3/5/93  
HB 13

19. Page 12, lines 3 and 4.

Following: "annual" on line 3

Strike: "employer premiums"

Insert: "premium of the prior fiscal year"

20. Page 12, line 6.

Strike: "reserve"

Insert: "financial"

21. Page 12, line 7

Strike: "prepared by the state fund's actuary"

22. Page 12, line 10.

Strike: "resources and"

Insert: "estimated"

23. Page 12, line 11.

Following: "fund"

Insert: "as determined by an independent actuary"

24. Page 12, lines 23, through page 13, line 1.

Following: "(b)" on page 12, line 23

Strike: the remainder of line 23 through page 13, line 1 in their entirety

Insert: "All funds deposited in the state fund"

25. Page 15, line 2.

Following: line 2

Insert: "NEW SECTION. Section 12. Name change -- directions to code commissioner. Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund."

NEW SECTION. Section 13. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent sections

26. Page 15, line 8.

Strike: "date. [This act] is"

Insert: "dates. (1) [Section 9 and this section] are effective on passage and approval, and {section 9} applies to the budget for fiscal year 1994.

(2) [Sections 1 through 8 and 10 through 14] are"

Amendments to House Bill No. 13  
First Reading Copy

Requested by Representative Hibbard  
For the Select Committee on Workers' Compensation

Prepared by Paul Verdon  
February 5, 1993

1. Title, line 8.

Following: ";

Insert: "PROVIDING THAT THE GOVERNOR SHALL APPOINT THE EXECUTIVE DIRECTOR OF THE STATE FUND; PROVIDING THAT THE MEMBERS OF THE BOARD OF DIRECTORS AND THE EXECUTIVE DIRECTOR OF THE STATE FUND SERVE AT THE PLEASURE OF THE GOVERNOR;"

2. Title, line 12.

Following: "2-4-102,"

Insert: "2-15-1019,"

3. Title, line 13.

Following: "39-71-2316,"

Insert: "39-71-2317,"

4. Page 5, line 4.

Following: line 3

Insert: "Section 2. Section 2-15-1019, MCA, is amended to read:

"2-15-1019. Board of directors of the state compensation mutual insurance fund. (1) There is a board of directors of the state compensation mutual insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of five members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least three of the five members shall represent state fund policyholders and may be employees of state fund policyholders. At least three members of the board shall represent private, for-profit enterprises. A member of the board may not:

(a) represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years serves at the pleasure of the governor. The governor may remove a member at any time and appoint a new member to the office. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and

qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply and except that the members serve at the pleasure of the governor.""

{Internal References to 2-15-1019:

39-71-2312 checked Paul}

Renumber: subsequent sections

5. Page 8, line 24.

Following: line 23

Insert: "Section 6. Section 39-71-2317, MCA, is amended to read: "

"39-71-2317. Appointment of executive director -- management staff. (1) The board governor shall, at the beginning of each gubernatorial term, appoint an executive director of the state fund who has general responsibility for the operations of the state fund.

(2) The executive director serves at the pleasure of the governor. The governor may remove the executive director at any time and appoint a new executive director to the office.

(3) The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director.""

Renumber: subsequent sections

{Internal References to 39-71-2317:

\*39-71-431 checked Paul}

6. Page 12, line 23.

Strike: "9"

Insert: "11"

7. Page 15, lines 4 and 7.

Strike: "7"

Insert: "9"

Strike: "9"

Insert: "11"

EXHIBIT 15  
DATE 3/5/93  
HB 13

HB 13

SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL VOTE

NUMBER

**MOTION:**

No Fat Pass

[illegible]

HR:1993

wp:rlclvote.man

SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL VOTE

DATE 3-5-93 BILL NO. HB 13 NUMBER

MOTION: *Recall - More amendment =*  
*Prize of St. Fund. recommending*  
*passed*

[illegible]



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