

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By SENATOR LARRY BAER, ACTING CHAIRMAN on
February 7, 1995, at 1:00 P.M.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Legislative Council
Mary Florence Erving, Committee Secretary

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

Committee Business Summary:

Hearing:	SB	179
	SB	238
	SB	264

Executive Action: None.

SENATOR LARRY BAER served as the Chairman for this hearing.

HEARING ON SB 179

Opening Statement by Sponsor:

SENATOR BILL WILSON, SD 22, Great Falls, stated there has been no minimum wage increases in Montana since 1991, when the minimum wage was indexed to the federal increase. Currently, a person working full-time, year around will make approximately \$8,400. The wage is far under the federal poverty level for a three member family. Other workers had hourly wage increases of \$1 since 1991, but the minimum wage earner continues to fall farther

behind, earning only 37% of the average wage. If the minimum wage amount increased with inflation, the amount would currently be \$5.84. Senate Bill 179 adjusts the minimum wage to reflect the cost of living and to keep workers on the bottom of the economic ladder from falling further behind. Opponents talk about the majority of minimum wage workers being teenagers. However, the U.S. Department of Labor reported two-thirds of the 4.2 million minimum wage workers are adults over age 25. Eighty percent are over the age 18. Of those over the age of 25, more than 45% of the workers provide approximately half of the family's income. The increase in minimum wage will not result in "job loss", according to the Princeton/Harvard economic study conducted to evaluate whether New Jersey's higher minimum wage rate of \$5.05 cost jobs. No change or difference in employment between the two states was identified. Harvard University's Richard Freeman's research identified at the minimum 1980's wage, moderate legislated increases did not reduce employment and were, if anything, associated with higher employment in some localities.

SENATOR WILSON stated economic studies report that customer demand and inventories are the driving factors employers use to determine whether the employers hires or lays off workers, not the \$.75 change up or down in the minimum wage. The evidence of job loss is weak. **SENATOR WILSON** encouraged committee members to **PASS SB 179**.

Proponents' Testimony:

JON ELLINGSON, HD 65, Missoula, stated he is a proponent of SB 179. **REP. ELLINGSON** distributed Department of Labor handouts to illustrate reasons to support SB 179. Page one illustrates real family income over the last fifteen years. The bottom 60% of families have experienced no real income growth. In fact, the income has depreciated. Montana statistics show real wage at \$8.00 in WP has now depreciated to \$7.00 in 1991. The last page illustrates expected growth through 1997. The fastest growth is predicted to be low paid jobs. Handouts represent a dangerous picture of what is happening. It will be hard to explain to future generations why the top 25% of the population experienced an increase in real wages, while the bottom population experienced a decrease of 17% in real wages. Public policy makers must consider the low wage implications for the future (**EXHIBIT 1**).

Brad Martin, Director of Montana Democratic Party, stated support of SB 179. **Mr. Martin** stated the increase in minimum wage is the best way to "grow" Montana's economy. The minimum wage is not something that belongs to teenagers and other people looking for low, part time wages. Over 60% of minimum wage earners are adults. The minimum wage was not intended to be a living wage. There are many who are trying to make the minimum wage a living wage. **Mr. Martin** urged the committee to pass SB 179.

Sharon Hoff, Montana Catholic Conference, Helena, MT, represents Montana's two Roman Catholic Bishops in matters of public policy. **Ms Hoff** stated the Fair Labor Standard Acts of 1938 set up a minimum standard for wages, overtime and child labor. The language in the act requires the minimum wage rate is set high enough to guarantee a minimum standard of living necessary for health, efficiency and general well being. From the inception, the purpose of the minimum wage act was meant to avoid exploitation and to provide a living wage. The minimum wage requests a general social, and moral conviction that there should be a floor beneath from which wages should not be permitted to fall. For the sake of human dignity and decency, society should not permit wages that are insufficient to support a minimally decent standard of living. From the Catholic Church standpoint, the minimum wage is an issue that must be considered in the broad content of human policy and social justice. In Catholic teaching, work is seen as an exercise of self expression and self realization. Work is also the ordinary way people meet their material needs and participate in the economy. Traditionally, the Catholic Church has supported the minimum wage, which should be at a level adequate to meet one's material needs. U.S. Bishops say that all workers have a right to a wage and other benefits sufficient to provide individuals and their family with the standard of living necessary in keeping with human dignity.

Ms. Hoff stated the comparison between the minimum wage with the rate of unemployment, there is not direct correlation between raising the minimum wage and increased levels of unemployment. When the wage standard rose in real terms during the 1950s and 1960s, the unemployment rate was low and remained so. For example, when the minimum wage went from \$2.30 an hour in 1977 to \$2.65 an hour in 1978, civilian employment went up from 92.0 million to 96.1 million, a rise of 4.5 percent. In contrast, while the wage standard went down during the 1980s, unemployment rose. **Ms Hoff** urged the committee to support SB 179. Written testimony was submitted (**EXHIBIT 2**).

Don Judge, Montana State AFL-CIO, Helena, verbalized written testimony in support of SB 167 (**EXHIBIT 3**).

Melissa Case, Hotel, Employee Restaurant Employee Union, Helena, encouraged the committee to accept a DO PASS recommendation on SB 179.

Robert L. Torres, National Association of Social Workers, Montana Chapter, stated SB 179 is a social dignity bill and is compatible with the policy of helping people become self sufficient. **Mr. Torres** urged passage of SB 179 to move people off welfare roles into affordable and dignified work. **Mr. Torres** submitted written testimony (**EXHIBIT 4**).

Edmund J. Caplis, Executive Secretary Director, Montana Senior Citizens Association, Helena, MT, stated support for the minimum wage increase. The Association understands that more and more

elderly Montanans can not make do on their social security and need a part time job. **Mr. Caplis** urged passage of SB 179.

Proponents' Testimony:

Riley Johnson, National Federation of Business, Helena, stated opposition to SB 179. **Mr. Johnson** read testimony, which included questionnaire responses regarding the proposed minimum wage increase. The questionnaire asked, "should the state minimum wage be increased from the current level of \$4.25 per hour". The response was: 71.5% said no, 21.6% said yes, and 6.9 remained undecided. **Mr. Johnson** passed out questionnaire responses to the committee which he chose randomly from responses received from small Montana businesses. All were against the minimum wage increase (**EXHIBIT 5**).

Jim Tutwiler, Montana Chamber of Commerce, Helena, commented from written testimony. **Mr. Tutwiler** stated the topics to consider when debating the minimum wage increase proposal are people under twenty-five, and new employees, and the need for supplementary incomes. At least twenty percent of today's current minimum wage employees come from households with combined incomes in excess of \$50,000. There are 18,000 more jobs in Montana since 1991 because the economy is able to work and to "grow" those jobs. **Mr. Tutwiler** stated it is reasonable to assume in Montana that there is some reasonable linkage between wages in general and the minimum wage. The wages are at least one indicator of the economic vitality, and robustness. Unfortunately, any measurement of wages per capita income does not place Montana favorable with other states. Montana does not pay better wages, compared to others, Montana ranks very poorly in the overall ability to pay wages. Yet, Montana turns around and mandates the 3rd highest minimum wage in the nation, making no economic sense. Most states are at the \$4.25 federal level. There are only eight other states that have a higher minimum wage than the federal level. Seven of those nine states have a tip credit feature to offset minimum wage. In 1991, representatives from the business community negotiated with **REPRESENTATIVE HARRINGTON, Butte,** and agreed to match the federal rate. If the federal rate goes up, Montana is obligated and will move with that increase. **Mr. Tutwiler** stated if SB 179 is passed, Montana joins Hawaii, New Jersey in being the three highest minimum wage paying states in the nation. Given the economic engine of Montana today, the high minimum wage does not make sense. **Mr. Tutwiler** submitted written testimony and information about minimum wage and tip credit pertaining to other states (**EXHIBIT 6**).

Charles R. Brooks, Montana Food Distributer, Helena, stated he has 25 years experience in the retail business, grocery and merchandize business. **Mr. Brooks** stated that has testified before about the minimum wage issue and the acceleration of wages when the floor goes up. **Mr. Brooks** stated increased employment is hard to justify when dealing with the increases in the minimum wage. Currently, the grocery net profit is approximately 1/2 of

1% to 1 % and the merchandise net profit is 2 % of gross sales. The largest single item of retail enterprise's budget or profit and loss statement is salary cost. In addition, approximately 30 to 35% must be added for benefits. **Mr. Brooks** quoted, "the poor, we will have with us always." The minimum wage is not going to cure the problem. There are no statistics to report job loss, and there is the difficulty to add jobs when the minimum wage is increased.

Robert A. White, Bozeman Area Chamber of Commerce, Bozeman, MT, stated SB is not a bad bill for unemployment, but it is a wonderful bill for under employment. Underemployed people are not counted as unemployed. The last time the minimum wage was raised in Montana, three Bozeman businesses did not layoff workers, but the workers' hours were severely cut back. The workers could not make a living. If the minimum wage is raised and the work hours are cut back, no one wins. **Mr. White** urged the committee to table HB 179.

Questions From Committee Members and Responses:

SENATOR VAN VALKENBURG asked **Mr. Hunter** for statistics concerning Montana employment rate compared to the employment rate of Wyoming, North Dakota, South Dakota, and Idaho. **Mr. Hunter** stated he would provide **SENATOR VAN VALKENBURG** with the statistic after the committee hearing.

SENATOR AKLESTAD asked **Mr. Hunter** for the number of hours worked by the minimum wage earner per week. **Mr. Hunter** stated he would provide **SENATOR AKLESTAD** with the statistics after the committee hearing.

Closing by Sponsor:

SENATOR WILSON stated concern with **Mr. Brook's** statement, "the poor will always be with us." **SENATOR WILSON** expressed doubt that the raise of such a small magnitude should elicit such a heavy quotation. **SENATOR WILSON** compared **Mr. Brook's** statement with the idea that pollution will always be with us, so nothing should be done about pollution either. The proposed minimum wage increase is modest. Had the minimum wage kept up with inflation, the minimum wage would be \$5.84 an hour. The amount could make a difference between a family going on welfare or staying a vital part of Montana's economy. SB 176 gives to those who need help the most. **SENATOR WILSON** urged the committee to vote yes for fair legislation.

HEARING ON 238

Opening Statement by Sponsor:

SENATOR FRED VAN VALKENBURG, SD 32, Missoula, MT, stated SB 238 is heard due to the University of Montana, and the University system occasionally needs short term employees to work on campus

projects as skilled laborers. Under current statutes, the university system is required to pay employees according to all the benefit structure that all full-time state employee receive. The carpenter's union, in particular, has worked out an arrangement with the University of Montana to create a negotiated benefit package for temporary employees that works for both laborers and the university system. In order to guarantee the negotiated package fulfills state requirements, SB 32 is necessary. While the carpenter's union and the University of Missoula worked out the basic bill, the Commissioner of Higher Education decided other improvements were necessary. An amendment will be offered by the commissioner's office to tighten up the definition of the temporary employee. **SENATOR VAN VALKENBURG** urged passage of SB 238 and the proposed amendment.

Proponents' Testimony:

Bruce Morris, Missoula, MT, stated he is employed by the carpenter's union, representing maintenance carpenters employed by university systems. **Mr. Morris** stated the union has a contract with U of M, MSU, Billings, and Butte. The carpenter union situation is a good example of how this legislation works, but the temporary carpenter employees are not the only temporary employees affected. Craft employees, as apposed to permanent employees are hired on a case by case basis by the university physical plant, residence halls, various departments. The length of work is up to 90 day contracts, which are often extended to six months or longer, with a renewal process. Temporary employees, who work under such circumstances are not paid initial benefits. The temporaries work for the same maintenance negotiated craft scale. After a certain time periods, the university system is mandated by state law to pay the same benefits for permanent line-item, full time FTE positions. Health insurance is available for the temporary employee who has worked or expected to work for six months from day one. Ninety days contracted temporary employees are unsure whether or not work will last for sixmonths, must operate under the belief they have no health insurance coverage for the first three months. If the temporary worker has worked construction under the negotiated agreement with private industry, they may have health benefits under the autobank system to carry them for a period of time with no guarantee. The workers often time run out of bank hours while employed under the university system. Often the employee will run over the six month period of time, then they get insurance retroactive to day one. An individual without family insurance will often time purchase insurance, and pay for it if they are eligible for the COBRA Law construction plan or make an independent purchase. After an employee is on the job for 960 hours per fiscal year, the state is required to pay PERS for the temporary employee, as well as sick leave under the contract, after 90 days, and an annual leave after six months is required.

Agreement was made at the last negotiation the personnel department could negotiable campus by campus for temporary

employee benefits. **Mr. Morris** stated **Kathy Crego**, Human Resource Development Director reached a tentative agreement with the physical plant management about benefits for temporary employees, but the whole negotiations were scuttled when **Ms. Crego** realized that by agreeing to pay benefits to the temporaries the university system would be placed in a double jeopardy situation of having to pay state mandated benefits as well. The solution to the problem is legislative. SB 238 rectifies the problem and allows for an exemption from state mandated benefits in the event an alternative benefit package has been negotiated. The impact is neutral to positive, allowing management and labor to negotiate for alternative benefit package. If an alternative benefit package is negotiated, it will allow temporary craft employees to have the state's dollars spent on benefits that will truly be of benefit. If the temporary employee is only there for six to nine months, and PERS money is spent, the PERS money will do no good because the temp will not vest. After six months, the temp will have health insurance benefits, and state money spent for health benefits. The hour bank system hours will also be wasted. **Mr. Morris** stated another impact is the ability to attract a higher skilled craft workers to maintain physical plants. The legislation will cost no more dollars. **Mr. Morris** urged support of SB 238.

Rod Sundsted, Montana University System, distributed amendments to committee members (EXHIBIT 7). **Mr. Sundsted** stated the legislation is a win for both sides and is supported by the university system. Basically, the amendment ties down the definition of the temporary worker and clarifies the cost won't exceed the statutory benefits. **Mr. Sundsted** urged passage of SB 238.

Lars Erickson, MSU Carpenter, Bozeman, MT, stated support or SB 238, as amended. The university has experienced problems getting qualified temporary help, especially in the big boom construction area, Bozeman. Carpenters refuse to work in the university system because it jeopardized their health benefits. **Mr. Erickson** urged support of SB 238.

Ron Van Diest, Montana Coalition of Electrical Workers, stated the coalition supplies workers to the university system. **Mr. Van Diest** stated support for Sb 238, as amended.

Don Judge, Montana AFL-CIO, Helena, MT, supported SB 238. **Mr. Judge** stated the average hours worked in the retail service sector is 28 hours per week, and the unemployment in Idaho is currently six percent and has been raising for the previous four months.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR AKLESTAD asked why SB 238 will not cost anymore or why would it cost less. **SENATOR VAN VALKENBURG** stated the amendment addresses the agreed on benefit package between the temporary employer and the employees cannot exceed the cost of state benefits that would be otherwise paid. If the state government is paying PERS for the employee that will never vest or collect, the amount is of actuarial minuscule effect to the PERS system. It is unfair to apply the PERS deduction to the temporary employee who will not invest. **SENATOR AKLESTAD** asked if current temporary employees have benefits that will now be negotiated. **Mr. Morris** stated the union has negotiated an agreement, which covers permanent, temporary employees which are beyond the contract.

Closing by Sponsor:

SENATOR VAN VALKENBURG closed the hearing on SB 238. **SENATOR VAN VALKENBURG** stated the bill will exempt temporary university system employees who have negotiated an alternative benefits package with the university system from the requirements to pay certain state-mandated benefits. **SENATOR VAN VALKENBURG** urged the committee to return a DO PASS recommendation on SB 238.

HEARING ON SB 264Opening Statement by Sponsor:

SENATOR DEL GAGE, SD 43, Cut Bank, stated SB 264 establishes licensing and regulation of Professional Employer Organizations (PEOs). **SENATOR GAGE** defined the PEO to be: An organization that provides an integrated and cost effective approach to the management of critical human resource responsibilities and employer approach to the management of critical human resource responsibilities and employer risks for its clients. The PEO delivers these services by establishing and maintaining an employer relationship. The worker is assigned to a client and by contractually assuring substantial employment rights, responsibility and benefits. The thrust of SB 264 is to identify that the PEO are management specialists, especially for small businesses. Ninety-two percent of all businesses are small businesses.

Mr. Howard Recht, Recht & Recht, Attorneys, representing United Staffing Alliance of Utah, stated he helped author SB 264. A joint legislative committee worked on Workers Compensation Alternative. **SENATOR JOHN HARP** requested information focusing on the PEO industry. SB 264 defines the co-employment relationship. A PEO approaches the small business owner and enters into an agreement to assist the owner in employing existing employees. The PEO does not bring in employees from the outside; does not have separate employees that are utilized. The PEO uses the established employees to help take over administrative

responsibilities associated with employment relationships. PEOs assist in satisfying regulations, laws on state and federal levels. PEOs do the payroll and give the owner/manager the opportunity to focus attention on making money instead of fighting administrative rules and regulations. PEOs assist in providing benefits to the employees that would not otherwise be available because of economies of skill that a PEO brings to the workplace. PEOs can offer some benefits the small business owner cannot match at the same rate. In particular, the rate of insurance benefits can be provided and provided with better rates and better coverage.

Mr. Recht stated SB 264 recognizes the relationship existing in the state, which has given foundation to state agencies dealing with the PEO industry. Senate Bill 264 addresses state agency concerns about the ability of PEOs to circumvent laws, and to make sure PEO businesses are economically sound, viable, and complies with laws. An outside, independent CPA is required to audit the business periodically. Senate Bill 264 does not affect the national labor relations act or parallel other Montana legislation. Workers' Compensation laws cannot be circumvented. The Workers' Compensation system exclusive remedy applies to both traditional employers and PEOs. **Mr. Recht** urged the committee to pass SB 264.

Byron McCurdy, National Association of Professional Employer, Board of Directors, and Northwest Chapter President, stated the association represents more than 400 companies in the industry and over a quarter million employees. **Mr. McCurdy** stated he has been part of the industry for 13 years, and has served in the Idaho State Legislature. He sponsored PEO legislation in Idaho, Utah and Oregon. **Mr. McCurdy** stated he owns a PEO and employs over 3,500 employees in 8 western states. SB 264 is based on the national association's model legislation. The bill goes beyond the model legislation, Labor unions have opposed similar legislation, viewing PEOs as competition. **Mr. McCurdy** said he has never ran into collective bargaining agreement, or seen a client who has had a collective bargaining agreement. **Mr. McCurdy** urged support of SB 264.

Terry Keating, President, United Staffing of Montana, Billings, MT and Regional Vice-president of Idaho, Montana, and Utah Association, stated without state laws and regulations, PEOs work within an atmosphere of uncertainty. PEOs cannot forecast their business operations, recruit new business, and are unable to tell prospective customers whether or not their company is bonded. Financial strength cannot be revealed. Senate Bill 265 focuses on these issues. Since August 1994, state agencies have worked with the PEO industry to write a consensus bill. **Mr. Terry Keating** stated he is one of many organizations who hope to do business or expand business in Montana. Competition is appreciated. Competitive PEOs are apprehensive to do business in Montana because of the lack of governing regulations. **Mr. Terry Keating** urged support of SB 264.

Laurence Hubbard, State Fund, Helena, MT, stated support of SB 264. **Mr. Hubbard** addressed the "Less than Desirable" issue. **Mr. Hubbard** said individuals or other entities may come to do business in Montana as leasing entities. This causes concern. **Mr. Hubbard** distributed handouts (**EXHIBIT 8**). Senate Bill 264 is a comprehensive regulatory bill intended to insure only legitimate leasing enterprises do business in Montana. Abuses can and do occur in leasing arrangements. Senate Bill 265 applies to all entities coming to Montana to do business and to be employers. Montana needs regulations that will adequately protect Montana's business interest. **Mr. Hubbard** described the "Rent a MOD" or "MOD laundry" problems encountered at State Fund. **Mr. Hubbard** explained that every employer, subjected to Workers Compensation, develops an experience rating that is part of the process to insure that all industrial losses are attributable to both the industry and the employers. The Workers' Compensation System has hundred of classifications, which are designed to cover a myriad of business operations. The basic rate is called a manual rate. Every employer has a classification code and rate, particular to the individual industry.

Mr. Hubbard described employers within select industries who have different hire loss experiences. Many have better safety and lower loss experiences than other employers. The good safety record employers are rewarded with credit. Businesses with bad safety records pay a debit mod, which is a higher premium. The potential leasing industry problem occurs when an employer with a bad experience joins a leasing company with a good experience. The employer with a bad experience can potentially launder their modification experience. A good loss experienced employee may be penalized for the bad business arrangement, and their good experience may not be tracked. Consequently, they may be penalized for being part of the questionable business.

Mr. Hubbard discussed that insurers of PEO entities must report to the Workers' Comp all data, by individual client, including payroll by classification. They also must report by abilities. On page 11, line 27, SB 236 inserts "insurer" for the word "provider". The permissive "may" is replaced with "shall". The intention is to insure the client's experience and exposure in the workplace, which is reported and tracked through the system. There needs to be an incentive or requirement so that insurers can obtain information on a per client basis. Experience, loss history and premium classifications are reported. If the State Fund cannot tract losses indirectly, all employers through the rate system will suffer the consequences of loss histories. According to page 4, line 21, a PEO group can meet reporting and financial obligations on a consolidated basis. The concern is the co-mingling of specific client information or specific loss histories.

Mr. Hubbard pointed out the issue of exclusive remedy, which is a valuable employer's tool. SB 264 allows a co-employment relationship. The PEO is the employer, as well as the client for

the purpose of exclusive remedy. According to the Montana Constitution, no person shall be deprived of the full redress for injuries incurred in employment for which another person may be liable, except to fellow employees and the immediate employer who hires the employee. The State Fund believes there is a legal challenge potential for dual exclusive remedy protection, between the PEO and the client firm. This committee needs to be aware of the potential problem. The bill distinguishes between professional employer arrangements and the employee leasing arrangements. On page 10, line 17, the employee leasing arrangement says only the PEOs are entitled to the exclusive remedy protection. The fear is if there is an employee leasing arrangement, and not the special employer arrangement, will the client be exposed to a third party law suit, resulting from the injury that may occur to a leased employee.

Stan Kaleczyc, National Council of Compensation Insurance (NCCI), stated the council provides a classification system, establishes advisory classification rate for Montana employers, as well as calculates MOD factors. The Council supports SB 264 and agrees the amendment is necessary to make certain the experience tracts back to the actual work place, where the employees are located. If this is done, the integrity of the rating and classification system will remain intact. NCCI supports their organizational concept and model language. **Mr. Kaleczyc** urged support of SB 264.

Rod Sager, Administrator, Unemployment Insurance Division, Department of Labor and Industry. **Mr. Sager** said the department has worked with the sponsors, and they support PEO legislation. **SENATOR GAGE'S** amendment rectifies departmental concerns. Group reporting of client information for tracking purpose will make sure the UI Tax is assigned properly. The client company would be liable for taxes in case the PRO goes out of business. The department must be able to track such information. **Mr. Sager** also expressed concern for the PEO leaving the state without paying taxes. In order to show credibility, the bill addresses the need for the PEO to establish a \$50,000 net worth. If the workers are true employees, they need to be paid for being out of work. There may be no employer to go back to. Therefore, the department is concerned over the protection of the UI Trust Fund. Other states have considered security deposits, based on the amount of annually adjusted payrolls; surety bonds, based on payroll; or monthly or prepaid UI tax payments.. New York State requires a \$50,000 bond (**EXHIBIT 9**).

Jacqueline Lenmark, American Insurance Association, Helena, MT stated the association advises private workers compensation insurance companies. PEOs are unique business entities. Insurance concerns need to be dealt with carefully. AIA proposes that the NAIC language is used to address these concerns. The language is tailored to meet insurance problems of the PEOs. **Ms. Lenmark** directed the committee attention to page 11, subsection 9. There are responsibilities that are the insurers, not the

PEOs. The PEO's licensing should not be jeopardized because of the PEO responsibilities. AIA suggests the insurers' responsibilities and the insurance specific requirements are moved to a separate section in the bill, so the requirements are not directly affecting the insurance licensing.

James Tutwiler, Montana Chamber of Commerce, Helena, MT, stated support of SB 264.

Chuck Hunter, Department of Labor and Industry, Helena, MT, submitted written testimony (EXHIBIT 10).

Opponents' Testimony:

Don Judge, AFL-CIO, Helena, MT, stated if the bill remains in the current form, the union opposes the legislation. Worker Compensation problems need to be corrected. **Mr. Judge** pointed out another problem. PEOs must not be allowed to engage in the activities of professional strike breakers. The AFL-CIO offered an amendment to prohibit the use of professional strike breakers when there is a labor dispute in progress.

Questions From Committee Members and Responses:

SENATOR AKLESTAD asked who are the "less than desirable" entities **SENATOR GAGE** stated certain people may want to start a PEO, but do not have financial backing. Licensing requirements are necessary. **Mr. McCurdy** stated in his last week testimony that his company made a quarter million federal tax deposit for one day's worth of payroll. There are also concerns about companies abusing the modification rating system. The current bill addresses the abuse. A modification fact will be assigned after the client's experience rating is checked. Companies have gone into other states and have "taken" better modification factors. A company may have a 1.5 MOD factor, but chooses to come back into the system as a new leasing company. This is a blatantly fraudulent act.

SENATOR BARTLETT asked for comments on **Mr. Hubbard's** explanation about the employee leasing arrangement provision. The exclusive remedy is received by the temporary agency, and not the business where the temporary employee is working. The employee, subjected to an employee leasing arrangement, is solely the employee of the PEO. The PEO is the sole employer, and receives the sole benefit. Usually, leased employees are assigned to do a particular task. An example would be a company who specializes in mail room employees. Such employees do not become the client customer's employees.

SENATOR BARTLETT asked **Mr. Sager** about the amendment on page 10, line 24, which proposes that the words "or group" be struck. The phrase is used throughout the bill. **Mr. Sager** remarked he does not want the words struck. **Mr. Sager** stated the words are a compromise. The department does not want to lose track of

pertinent information by having information consolidated. Most PEOs keep very detailed records. If the legislation requires specific information, there would be no hardships in providing the information.

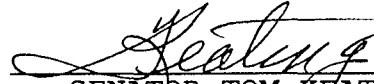
CHAIRMAN KEATING asked **Mr. Hubbard** about the employee leasing arrangements, as identified in the bill. From an insurers perspective, would there be a potential exposure for clients, instead of the PEOs. **Mr. Hubbard** answered there are potential problems. The national professional employer leasing organizations prefer to retain the distinction between the temporary service contractors and the leasing type contractors. The primary distinction is the emphasis between temporary employment versus on going, or permanent type employment. **Mr. Hubbard** expressed confusion concerning the definition of the word "staff" or "management". He stated the words could mean the line workers or could mean the top management. **Mr. Hubbard** submitted written testimony. (SEE EXHIBIT 8).

Closing by Sponsor:

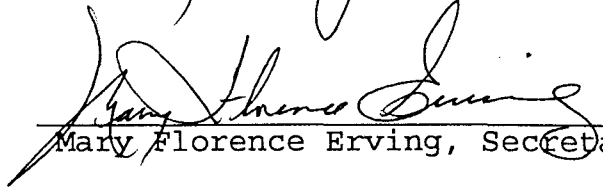
SENATOR GAGE closed the hearing on SB 264. **SENATOR GAGE** stated there are 12 states that have passed similar PEO legislation. In addition, approximately 26 states legislatures are currently considering similar legislation. Certainly, PEOs are an organization and a business service that is needed in the state of Montana. **SENATOR GAGE** stated he will review all the amendments to analyze how they fit into the purpose of the legislation.

ADJOURNMENT

Adjournment: There being no further business, the meeting was adjourned at 2:45



SENATOR TOM KEATING, Chairman



Mary Florence Erving, Secretary

TK/mfe

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

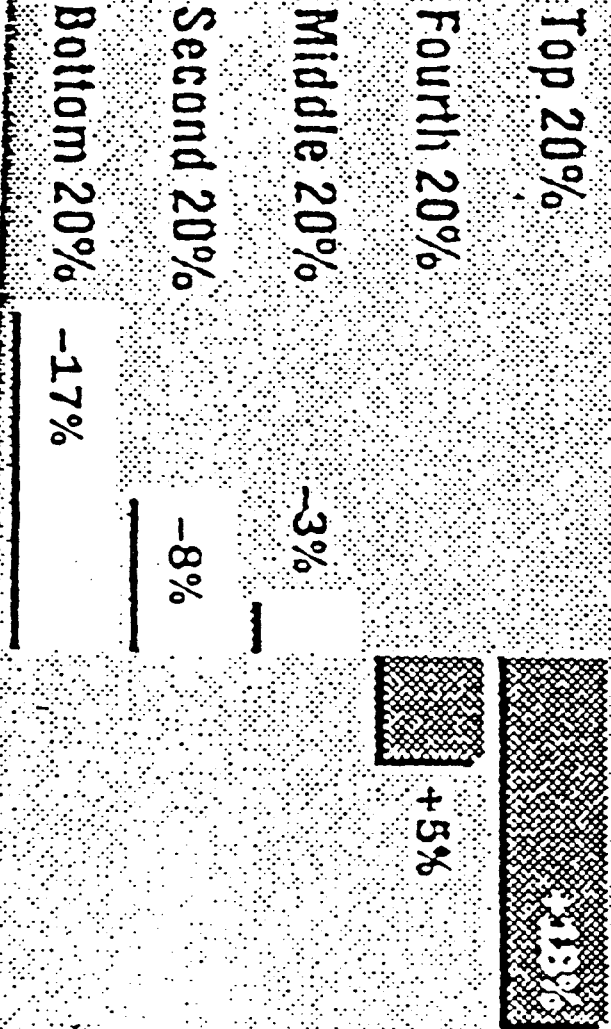
ROLL CALL

DATE *February 7, 1995*

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	*		
SUE BARTLETT	*		
STEVE BENEDICT	*		
JIM BURNETT	*		
CASEY EMERSON	*		
FRED VAN VALKENBURG	*		
BILL WILSON	*		
GARY AKLESTAD, VICE CHAIRMAN	*		
TOM KEATING, CHAIRMAN	*		

Growing Apart

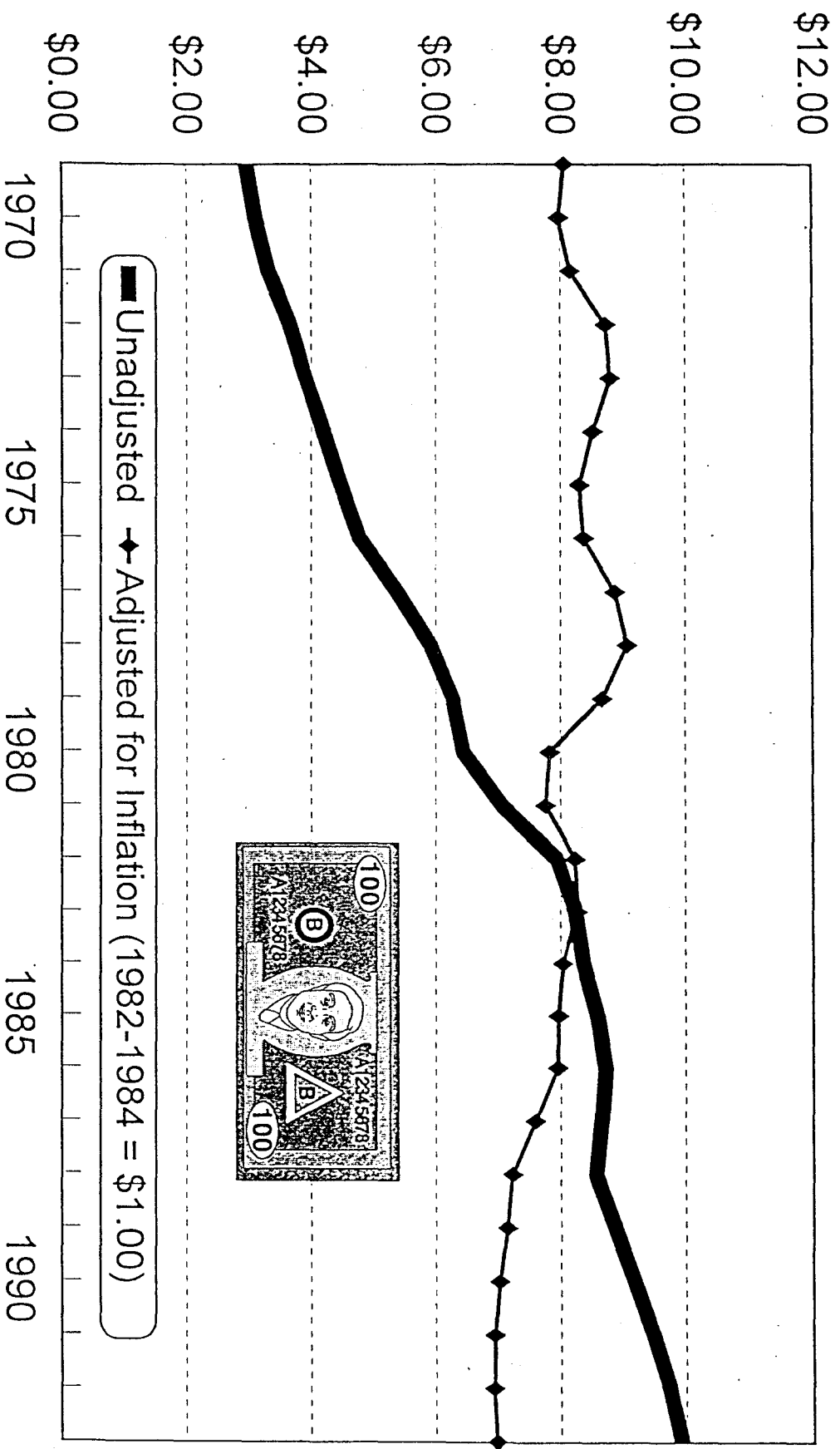
Real family income growth by quintile, 1979-1993 (in 1993 dollars)



ANNUAL AVERAGE HOURLY EARNINGS

Montana Non-Farm Wage & Salary Jobs

1969-1993



Production workers' wages are not keeping up with inflation.



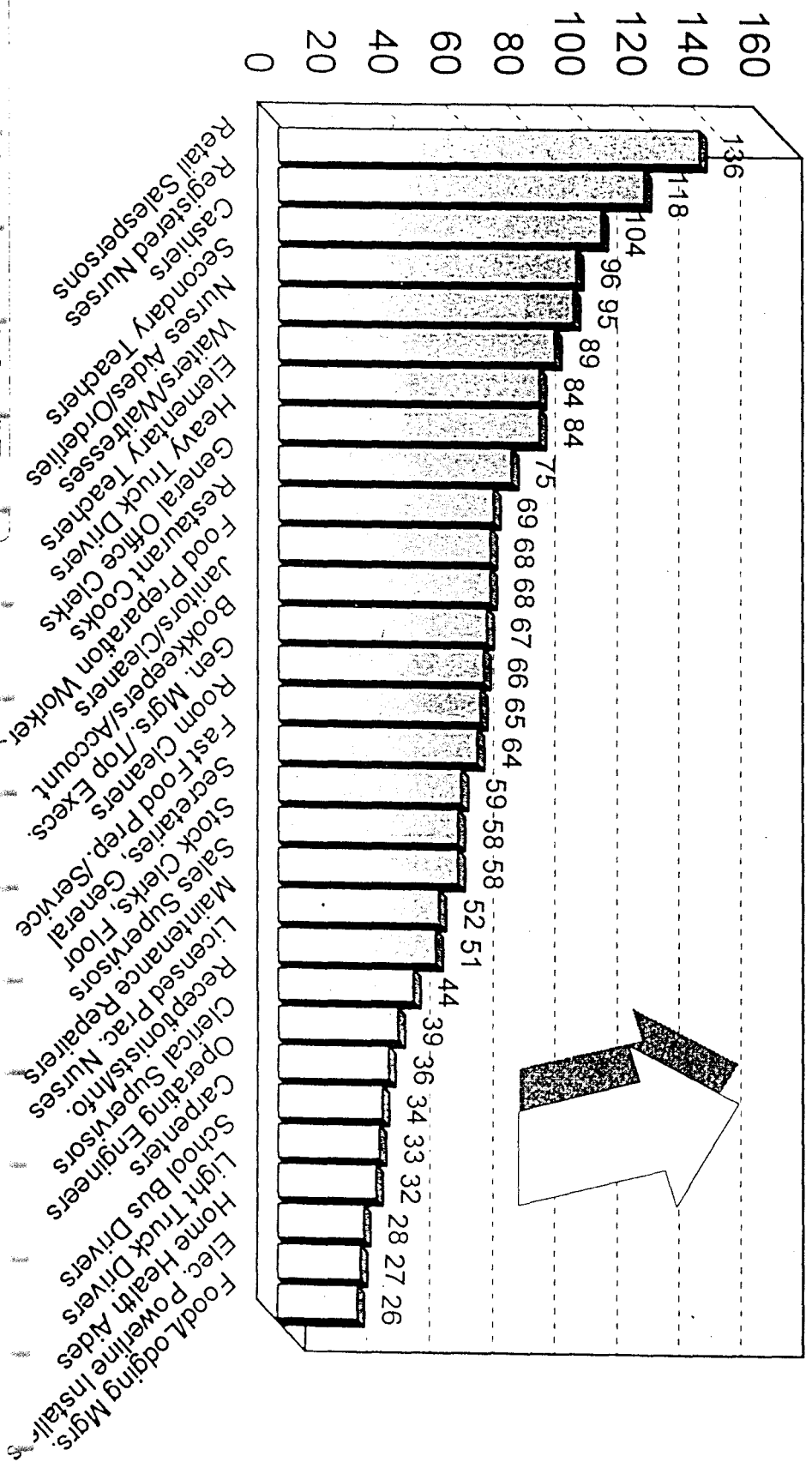
■ Unadjusted ◆ Adjusted for Inflation (1982-1984 = \$1.00)

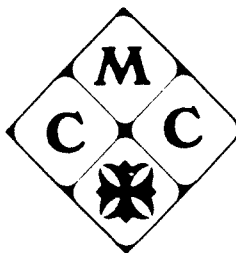
Data from CES Series
 Montana Dept of Labor & Industry, Research & Analysis Bureau

1 343
 2-7-95
 SB 179

MONTANA'S GROWING OCCUPATIONS

Projected Annual Jobs Gained Due to Growth 1990 - 1997





Montana Catholic Conference

February 7, 1995

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2 10/3
DATE Feb 7, 1995
BILL NO. SB 179

PUBLIC TESTIMONY -- SB 179
INCREASE MINIMUM WAGE

Mr. Chairman, members of the Senate Labor and Employment Relations Committee for the record, I am Sharon Hoff representing the Montana Catholic Conference. In this capacity, I serve as liaison for Montana's two Roman Catholic Bishops on issues of public policy.

The Fair Labor Standards Act of 1938 set up minimum standards relating to wages, overtime, and child labor. The language in the Act requires that the minimum wage rate be set high enough to guarantee "a minimum standard of living necessary for health, efficient and general well-being."

From its inception, the purpose of the minimum wage has been "to prevent exploitation and to provide a living wage." The minimum wage reflects a general social and moral conviction that there should be a floor beneath which wages should not be permitted to fall. For the sake of human dignity and decency, society should not permit wages that are insufficient to support a minimally decent standard of living.



From the Catholic Church's point of view, the minimum wage is an issue that must be considered in the broad context of social justice. In Catholic social teaching work is seen as an exercise of self-expression and self-realization. It is also the ordinary way people meet their material needs and participate in the economy.

Traditionally, the Church has supported the minimum wage and has said that it should be at a level that is adequate to meet one's material needs. In their pastoral letter, Economic Justice for All, the U. S. Bishops say all workers have a right to "wage and other benefits sufficient to provide individuals and their families with a standard of living in keeping with human dignity."

Some opponents imply that raising the minimum wage increases unemployment. Depending on whose numbers you consider and the ideological background of the group, you will get different answers. The U. S. Chamber of Commerce and other business groups cite studies which argue that such action will have an extremely negative impact on employment, throwing hundreds of thousands out of work. Labor unions, on the other hand, point to other studies arguing that no such negative impact will occur. Indeed, some say it may have a positive effect on adult employment.

The positive employment effect of raising the minimum wage is because the increased earnings of the state's working poor would provide an economic stimulant to the economy as a whole.

It would increase the buying power of low-wage workers, thereby increasing the demand for goods and for workers to produce those goods.

In the end, it seems unclear whether raising the minimum wage will significantly increase unemployment. Even if we assume that some workers would be priced out of the job market by a higher wage rate, it would be a small number compared to the millions of workers who would benefit. And many of the jobs lost would be offset by jobs gained at better wages as a result of the stimulus effect of raising the minimum wage.

When we look back over time and compare the level of the minimum wage with the rate of unemployment, we see that there is no direct correlation between raising the minimum wage and increased levels of unemployment. When the wage standard rose in real terms during the 1950s and 1960s, the unemployment rate was low and remained so. For example, when the minimum wage went from \$2.30 an hour in 1977 to \$2.65 an hour in 1978, civilian employment went up from 92.0 million to 96.1 million, a rise of 4.5 percent. In contrast, while the wage standard went down during the 1980s, unemployment rose. We urge your support of SB 179.

Thank you for the opportunity to testify.



Montana State AFL-CIO

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

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2 14/2
DATE Feb 7, 1995 Donald R. Judge
BILL NO. SB 179 Executive Secretary
406-442-1708

TESTIMONY OF DONALD JUDGE
EXECUTIVE SECRETARY, MONTANA STATE AFL-CIO
BEFORE THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE
ON SENATE BILL 179
TUESDAY, FEBRUARY 7, 1995

Mr. Chairman, members of the committee, for the record my name is Don Judge, executive secretary of the Montana State AFL-CIO. On behalf of Montana's working families, we strongly endorse SB 179 and encourage you to approve it.

Given the high-level rhetoric at both the state and national levels about whether to raise the minimum wage, it seems appropriate that our discussion begins with some clarification of what we're **NOT** talking about.

First of all, we're **NOT** talking about throwing a bunch of people out of work simply because low-income wages go up a notch. Studies have shown conclusively that there is no correlation between raises in minimum wages and job loss. Let me stress that: there is **NO** significant correlation between the two.

We're **NOT** talking about putting a bunch of stores and cafes out of business. Again, studies have shown that closures, layoffs and shift reductions have a great deal to do with inventories and consumer demand, and practically nothing to do with how little the workers are being paid.

We're **NOT** talking about what has been called "walking-around money," "jingle money," "pin money," or other such characterizations of the money in teenagers' pockets. It may have been true years ago that the minimum wage was primarily for new workers, most of whom were teenagers, but that is absolutely not the case today. Studies at both the state and federal level show that the vast majority of minimum-wage workers are adults, and many are heads-of-households.

Finally, we're **NOT** talking about giving union members an automatic pay raise, as was stated this past weekend by the U.S. Chamber of Commerce. Union members' wages are set by contracts negotiated between workers and employers. These wages won't simply go up automatically because minimum wage goes up. That's just another of the **many** fallacies out there in the national and local discussions on minimum wage.

Now, let's take a look at what we **ARE** talking about.

We **ARE** talking about the working poor, people who work and toil every day to try to make ends meet. We're talking about 6.4 million people nationally, and over 150,000 Montanans.

We **ARE** talking about single parents trying to put food on the table and clothes on the backs of their children.

We **ARE** talking, in too many cases, about working women, 4 million of whom are paid at or below minimum wage. Mr. Chairman, that's 63 percent of all minimum-wage workers — nearly two-thirds of all minimum wage workers are women, many with children.

Many minimum-wage earners are also eligible for state and federal assistance for economic support. It's simple math to see why that happens: at \$4.25 an hour times the average Montana work-week of 32 hours, you earn \$7,072 a year, or \$590 a month. The poverty rate for a family of three is \$1,026 a month. Clearly, minimum-wage workers are working poor.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3 2 of 2

DATE Feb 7, 1995

BILL NO. SB 179

They qualify for SSI, AFDC and general assistance checks, and they qualify for supplements such as food stamps, low-income energy assistance, state and federal housing assistance, and so forth.

Studies by the University of Montana and the Montana Hunger Coalition show that the working poor are not improving their lot in the "new" economy — it's actually going down.

Because of changes in the state, national and world economies, too many new jobs are in the lower-paying retail and service sectors. Too many of those new jobs are a lot closer to minimum wage than they are to national or state average wages.

Minimum-wage laws were originally proposed to set a floor for low-income workers at roughly half the average hourly rate. In recent years, we have fallen behind to the point that minimum wage equals only 37 percent of average hourly wages. Meanwhile, inflation has eaten away at workers' paychecks at all levels of the income ladder, and it is especially harmful to those on the lower rungs. Increased housing costs have been devastating, not to mention the rising cost of health care, food, utilities and other necessities of life.

Despite the simple mathematical evidence of the erosion of workers' wages, opponents of raising the minimum wage have argued that the free market should set minimum wages, just as it sets maximum wages. In a perfect world in which all employers were fair and considered things like inflation, that might be OK. But, we live in an imperfect world, one in which some employers will take advantage of workers by paying as little as possible.

Were it a perfect world, we would not need wage-and-hour enforcement personnel at the state and federal labor departments, but we do. The fact that those departments collect millions of dollars annually in back pay and overtime for minimum-wage workers is proof that some employers just aren't fair.

Critics of the minimum wage want to burn the candle of opposition from both ends.

On one end, they argue that minimum wage hikes put people out of work, despite proof to the contrary. On the other end, they argue that because of the short supply of workers, practically no one pays the minimum wage because the workers will simply go elsewhere. That's just not true. Many low-income workers are trapped in a non-mobile economy: they can't afford to move, and unfortunately, they're stuck with the lowest of the low-paying jobs in our society: minimum-wage jobs.

When workers earn a decent wage, they circulate that money back throughout our economic system. They shop in local stores, they rent or buy homes, they buy cars, and they patronize our local entertainment establishments. Workers earning a decent wage live more healthy, their kids do better in school, they commit fewer economic crimes, they pay their creditors more regularly. When workers earn a decent wage, they are tax **pay**ers — not just tax users. And, when workers earn a decent wage, our communities are more stable, our churches are more prosperous, our economy is more robust.

Mr. Chairman, members of the committee, there are clear and convincing economic arguments for raising the minimum wage. There are clear and convincing arguments for raising it for humane reasons, and for societal reasons, as well.

Now, we encourage you to go ahead and act on those arguments and to raise the minimum wage by voting "yes" on Senate Bill 179.

Thank you.



SENATE LABOR & EMP.
EXHIBIT No. 4
DATE: FEB 7, 1995
BILL No SB 179
MONTANA STATE CHAPTER

National Association of Social Workers

555 Fuller Avenue

Helena, MT 59601

(406) 449-6208

To the Senate Committee on Business and Industry:

POSITION ON SB 179: "Increasing minimum wage..." Introduced by Sen. Bill Wilson

We support senate bill 179. We believe it would help Montana as a whole by supporting the minimum value and dignity we hold for our neighbors who are willing to work. This proposal seeks to adjust Montana's standard. It is a reasonable attempt to adjust for inflation and other economic factors since the minimum wage was last fixed at \$4.25/hr.

Sustaining the lowest acceptable value for labor supports the idea that it still makes sense to "work for a living". It is a benchmark for our leaders. It measures their sense of the value and dignity of the individual who holds that principle.

Setting minimum market values including minimum values for labor has been a necessary responsibility of government since civilizations were first organized. These measures were critical for the establishment of a stable economy and to provide for the security of society as a whole. They are still critical for stability and security today. By passing senate bill 179, the state would be upholding its responsibility to all of its working citizens.

The positive effects of sustaining the minimum wage are many. It allows more income to remain in a local economy. It does not increase inflation. It lessens stress on wage earners, and therefore lessens negative impacts on families and communities. It helps local economies be more stable and secure.

It also helps people avoid utter poverty by helping them keep pace with inflation and be taxpayers. This last point is important to all of Montana's citizens. The more we are able to avoid public assistance rolls, the less all of our tax burdens will be. Reasonable minimum wages will help us achieve that result.

We also support the idea that minimum wages be indexed to a measure of average wages in Montana. That way changes in the minimum wage would be periodical, gradual and definite. This would lessen the impact on small businesses, and guarantee that inflation would not again erode the worth of the minimum wage earner.

The levels of wages and poverty however, go beyond the affect on the economy. They show the level of respect our leaders have for the value of labor. That affects the spirit of our society in a profound way. It reaches to the self-esteem and pride of individuals and this is passed on to the next generation.

We hope Montana's elected representatives take a stand and support the basic dignity of all people who are able and willing to work. We ask that you support senate bill 179. Thank you.

Respectfully submitted,

Robert L. Torres, Lobbyist, Mt. Ch. NASW

Raeley Johnson

JAN 25 '95 02:43PM NFIB

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. P. 1/2 5 142
DATE Feb 7, 1995
BILL NO. SB 179

SB179

TO: ST DIRS;
FR: TIM WEIDMAN

TO: Mr. Faris, FGR, Public Affairs
FROM: Nelson *(ML)*
RE: Minimum Wage Hike

FVI - FACT SHEET/
TALKING POINTS ON
MINIMUM WAGE

I have received several calls from offices regarding President Clinton's proposed minimum wage increase. I thought I'd put together some talking points that might help you respond to questions.

* Only 3.7% of the entire workforce are in minimum wage jobs. Or nearly 96% of workers earn over the minimum wage.

* Less than 2% of workers age 30 and over are on the minimum wage. The largest group earning the minimum wage are teenagers (30%). 55% of minimum wage workers are under 25 years of age.

Does raising the minimum wage cost jobs?

* The Minimum Wage Study Commission found that raising the minimum wage reduces employment by 1-3%.

across the board

* It is simple "Economics 101". Small businesses survive on cash flow and have very narrow profit margins. When the federal government comes in and tells them they must raise wages, the small business owner has few choices. He/she can either pass on the price to the consumer (but this is tough these days because small businesses are having trouble competing with the Wal-Marts of the world) or he/she must cut back wages or eliminate jobs. The small business owner must find the money somewhere to offset these wage increases.

Should we raise the minimum wage to help workers get above the poverty line.

* Increasing the minimum wage hurts the exact people it is intended to help -- the low-skilled worker.

* By increasing the minimum wage, it has the effect of pricing the low-skilled worker out of the market. For example, you do not see many gas attendants these days filling your cars with gas. This is because service station owners have found it more economical to set up computerized self-serve stations.

* Low wage single parents make up only 7% of those earning the minimum wage. Furthermore, 0.3% of all low-wage workers are single parents with three or more children. Many of these people already receive the Earned Income Tax Credit (NFIB does not have a position on whether the EITC is better than the minimum wage in fighting poverty.)

(over)

JAN 25 '95 02:43PM NFIB

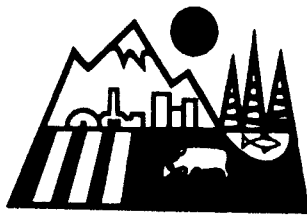
Is this what America wants?

* Small business owners spoke loud and clear on November 8. They said get the government off our backs, out of our pockets and off our land so we can do what we do best -- create jobs. Increasing the minimum wage is just another old government mandate that ignores the message small business owners sent.

* Raising the minimum wage causes higher level wages to be increased, thus, increasing inflationary pressures in the economy.

* This is another government attempt at a one-size-fits-all policy. Unfortunately, what works, in Boise, Idaho doesn't work in Peoria; doesn't work in New York City. *and*

*Certainly doesn't work in ~~Boise~~, ~~Bigfork~~ or ~~Princeton~~. That
Leather, ~~Blaine~~, Bigfork*



MONTANA CHAMBER OF COMMERCE

P. O. BOX 1730

• HELENA, MONTANA 59624

• PHONE 442-2405

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6
DATE Feb 7, 1995
BILL NO. SB 179

TESTIMONY BY
JAMES TUTWILER
ON SB 179

TUESDAY, FEBRUARY 7, 1995

My name is James Tutwiler and I am here today representing the Montana Chamber of Commerce. The Chamber appreciates the opportunity to address this bill.

The Chamber opposes SB 179 for the following reasons:

- SB 179 doesn't begin to solve the problem most commonly cited by critics of the minimum wage. One of the most common criticisms of minimum wage laws is that they are inadequate to support a family. This argument assumes that every job should be a "head-of-household" job and ignores the value of supplemental income and entry level wages. The U.S. Chamber has cited 1992 Department of Labor statistics that conclude 30% of those working at the minimum wage were teenagers and 20% of those working at the minimum wage come from households with income in excess of \$50,000.

- Montana employers agreed in 1991 to link the state's minimum wage with the federal minimum wage. This agreement put into law an automatic increase when the federal standard goes up. The Chamber can find no reason for a state dominated by the smallest of businesses to get ahead of the national law on minimum wage. An increase in the minimum wage has an effect on wages above that level causing a ripple effect and driving wage costs higher. It is an undeniable fact of the market place that when something becomes more expensive the demand goes down. Montana may have more jobs now than before the last minimum wage increase but there is no measure of jobs not created.

- The non-wage costs associated with having employees is rising. The work force of Montana should be alarmed at the rising costs of health insurance, workers compensation and other non-wage costs because these factors are robbing the money that used to go to higher wages. During three tours of 21 Montana cities business owners/managers constantly told the Montana Chamber that they are not interested in expanding the number of jobs because of the costs and hassles of providing those jobs. If the legislature wants to help workers earn more money it could do more by reducing employment costs than by raising the minimum wage.

- It is reasonable to conclude that there is a logical link between the level of wages in general in a state and the minimum wage paid.

(over)

E _____
DATE _____
BILL NO. _____

EXHIBIT NO. 202
DATE Feb 7, 1995
BILL NO. SB 179

Wages, per se, are an indicator of a state's economic vitality. Montana, unfortunately, ranks poorly compared to most other states in terms of per capita income. In sum, our economic engine just doesn't at present provide the level of higher paying jobs we would like to see. Given this circumstance, it makes no sense to mandate a minimum wage that would far exceed the federal minimum wage or the minimum wage paid in almost any other state.

The human need of low income people is compelling and Senator Wilson is to be commended for wanting to help them and other workers. Unfortunately SB 179 does little to help them while doing much to make it harder to create and expand job opportunities that may offer real help.

The Montana Chamber urges the committee to oppose SB 179.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7 10/1
DATE Feb 7, 1995
BILL NO. SB 179

AMEND SENATE BILL 238 AS FOLLOWS:

Page 1, amend lines 14 and 15 as follows:

(2) As used in this section, "temporary employee" means an employee of the university system hired into a position which is not permanent who has negotiated an alternative benefits package through a labor organization certified to represent employees of the university system in accordance with Title 39, Chapter 31. The employer contribution to such alternative benefits package may not exceed the cost of the state benefits which the employee would otherwise be entitled to through employment.

SB 264

TESTIMONY OF THE STATE COMPENSATION INSURANCE FUND

Mr. Chairman, members of the Committee, my name is Laurence A. Hubbard appearing today as a representative of the State Compensation Insurance Fund.

I would like to premise my comments today by stating the State Fund is not opposed to the concept of legitimate employee leasing arrangements. We support legitimate forms of business enterprise designed to support or expand existing businesses. The sponsors of this Bill have dedicated considerable effort in its drafting. The State Fund supports appropriate regulation of the employee leasing industry and believes this Bill accomplishes much of that goal.

You have heard testimony in support of SB 264 from representatives of the employee leasing industry which have exalted the virtues of employee leasing to Montana business. While we agree many benefits exist, there are some areas concerning employee leasing that create opportunity for potential fraud and abuse. We generally support the appropriate regulation of the employee leasing, but the Bill as written fails to adequately address areas of potential abuse and fraud that are of most concern to workers' compensation insurers. The State Fund acknowledges the willingness of the Bill's proponents to incorporate some changes that begin to deal with our concerns. Nonetheless, we believe the Bill needs to be amended to provide reasonable protection against potential fraud and abuse.

One of the most important elements of workers' compensation insurance is the tracking and reporting of an employer's loss experience. The loss experience of a particular industry is reflected in the basic or manual rate for that industry. For instance, the manual rate for the radio or television

broadcasting industry (7610) is \$1.11 per \$100 dollars of payroll. On the other hand, the manual rate for the sawmill industry (2710) is \$38.73 per \$100 dollars of payroll. The manual rates for these two industries reflect among other factors the loss history of those industries.

Within those industries there are many types and sizes of employers with varying hazards from employer to employer. The workers' compensation insurance system attempts to acknowledge those variations within an industry and reflect losses of individual employers within that industry through the experience rating plan. The experience rating plan penalizes employers with unsafe operations and provides an incentive to improve work-place safety. When an employer qualifies for an experience rating, it is assigned what is commonly called an experience modification factor, or MOD. FACTOR. The system must be able to collect and segregate the losses of each individual employer in order to properly administer the experience rating plan and assign an experience modification factor. If the system is unable to track an employer's loss experience then the experience rating plan is defeated. The end result means losses will indirectly be reflected in the manual or basic rate for all industries. It would be unfair for the broadcast industry to subsidize the manual rate for the saw mill industry.

The employee leasing industry creates a substantial risk that business owners will take advantage of schemes intended to avoid their loss experience. Common schemes include what is termed "mod laundering", or "rent a mod." The rent a mod scheme results when an employer with an experience rating of above 1.0 merely contracts with a leasing company. The leasing company, if newly formed, typically is given a 1.0 experience rating for the first three years of operation. The employer or "client" can essentially "rent" the leasing company's experience rating without any change in safety practices, and thereby circumvent the experience rating process. Mod laundering

can occur where an employer splits its payroll; keeping the old policy intact and reporting lower risk employees through that policy and the remaining employees payroll is funneled through a leasing arrangement. Thus, over time, the original experience rating is laundered. Conversely, an employer that has a good experience rating prior to entering into a leasing type arrangement could lose that favorable rating when the employer leaves that arrangement. That employer might be unfairly penalized when purchasing insurance outside the leasing context.

The State Fund encourages amending page 11, line 30, after the word "arrangement" to read:
The insurer of a licensee must report to its workers' compensation rating organization all data, by client, including payroll by classification and liabilities for each client during the term of the policy."
We believe this language will go a long way to preventing premium fraud and abuse.

We also suggest two additional amendments to those proposed by Sen. Gage. At page 11, line 27, instead of the word "provider" we suggest using the word "insurer". At page 12, line 1, we suggest replacing "may" with "shall".

Another concern regarding the Bill as proposed relates to apparently contradictory provisions. At page 4, line 21, a leasing group is permitted by the Bill to satisfy reporting requirements of Section 9 on a "consolidated basis". A "group" may consist of separate legal entities. In addition, a "group" may apparently obtain its own license to operate as a leasing business. In that event, the State Fund would not only need to separately track "client" employer payroll and losses but also each leasing entities separate experience if applicable. This language interferes with the ability to distinguish between the business operations of each professional employer company within a group. Regulatory authorities will be prevented from tracing responsibility for benefits or taxes if the trail is obscured by commingling separate business operations within a "group". We ask that this

sentence be stricken.

Lastly, we feel obligated to point out issues relating to the exclusive remedy protection of the Workers' Compensation Act. SB 264 provides for what is termed "co-employment" of the leased workers'. A provision in the Bill artfully states that both the professional employer organization AND the "client" are the immediate employer of an employee supplied under a professional employer arrangement. That language parallels Art. III, Sec. 16 of the Montana Constitution which reads in relevant part: "Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such employer provides coverage under the Workers' Compensation Laws of this state." The sponsors did a very commendable job in drafting the Bill to conform to the Constitutional language. However, there may be a legal challenge to the provision of exclusive remedy for both the professional employer organization and the "client" business. For example, page 10, line 17 provided only that the PEO is entitled to the exclusive remedy protection, not the "client". The client may be exposed to third party claims for injury caused to a leased employee.

In addition, the Constitution grants fellow employees of an injured worker exclusive remedy protection for injury caused to co-workers. The Bill provides only that the PEO and client are entitled to the exclusive remedy in a professional employer arrangement. Again, in an employee leasing arrangement the PEO is the employer. Therefore, an injury to a leased employee caused by a non-leased employee could expose the non-leased employee to a personal injury lawsuit. The distinction between the two types of leasing arrangement are not absolutely clear, and we see

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 8 5 of 5
DATE Feb 7, 1995
BILL NO. SB 264

potential exposure to lawsuits that may not be avoidable.

The State Fund supports passage of SB 264 with the amendments I have suggested.

PROPOSED AMENDMENT TO SENATE BILL No. 264^{-b1}
Introduced Copy (White)

Senate Committee on Labor and Employment Relations

1. Page 10, line 24.

Following: "organization"

Strike: "or group"

2. Page 10, line 25.

Following: "39-51-201"

Insert: "and shall keep separate records and submit separate quarterly wage lists for each of its clients."

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 10 1 of 2
DATE Feb 7, 1995
BILL NO. SB 264

TESTIMONY ON SENATE BILL 264
CHUCK HUNTER, DEPARTMENT OF LABOR AND INDUSTRY

Mr. Chairman, my name is Chuck Hunter, representing the Department of Labor and Industry. We stand as proponents of Senate Bill 264.

For a number of months, we have been working with representatives from the leasing industry to bring some clarity and definition to this emerging industry. While I would hesitate to call it a marriage made in heaven, I will describe it as recognition, both by the leasing industry, and by the department, that some basic regulation is needed to protect both the leasing industry and employers and workers in Montana.

This bill sets into place the basic mechanics of regulation, and represents a compromise effort between the leasing industry, government, and the insurance industry. We would like to complement the leasing industry for seeking this legislation, and for being receptive to our ideas on the bill.

We, like the leasing representatives, didn't get everything we wanted in this bill. But we all got a framework for ensuring good business practices which includes licensing, proper disclosure of information to clients and workers, and procedures for dealing with improper practices.

As with any new industry, it is difficult to know how much regulation is enough. There are areas of the bill, including the provisions about professional employer groups, solvency standards for PEOs and licensing of PEOs from other states, where we may eventually need regulation is excess of what is contained in this bill.

But it is our view that this bill provides the basic foundation needed, and that other problems should be addressed when, and if, they arise. We encourage a do pass recommendation from the committee.

DATE February 7, 1995

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: SB 179 * SB 238 * SB 264

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Don Judge	MT STATE AFL-CIO	SB 179 SB 238	X	
LARS ERICSON	CARPENTERS	SB 238	✓	
Riley Johnson	N FIB	SB 179		✓
Curt Laingen	MT MOTOR CARRIERS ASSN	SB 238	✓	
Byron M Curdy	National Assoc of Post Emp Org	SB 264	✓	
Howard F. Ketch	United Staffing Alliance	SB 264	✓	
ROD SAGER	DEPT. LABOR + INDUSTRY	SB 264	✓	
Brad Martin	MT Democratic Party	SB 179		
Jim Tutwiler	MT CHAMBER	SB 179		✓
Ron Van Dier	F. B. E. W	SB 238	✓	
TERRY KEATING	United Staffing of MT	SB 264	✓	
SHARON HOFF	MT CATH CONF	SB 179	✓	
Terry Minnow	MFT	SB 179	✓	
CHUCK HUNTER	DEPT OF LABOR	SB 264	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE February 7, 1995

SENATE COMMITTEE ON Labor and Employment Relations

BILLS BEING HEARD TODAY: SB 179 * SB 238 * SB 264

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Robert White	Bozeman Chamber	SB179		✓
Bob Torres	NASW	SB179	✓	
Ed Caplis	M SCA	SB 179	✓	
Melissa Case	HERE	SB 179	✓	
Brad Griffin	MT Retail Assoc.	SB 179		✓
Don Judge	MT STATE AFL-CIO	SB264		X/analyst

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY