

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, on February 8, 1995,
at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: Rep. Alvin Ellis
Rep. Jack Herron
Rep. Bob Keenan

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

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

Committee Business Summary:

Hearing: HB 414, HB 409, HB 408
Executive Action: HB 414, HB 409

HEARING ON HB 414

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Lewis and Clark County, explained that
this bill revises the name and duties of the Workers'
Compensation classification and rating committee; revises funding
requirements for the committee; requires the committee to

establish and revise Workers' Compensation classifications pursuant to the Montana Administrative Procedure Act; eliminates the requirement for the committee to establish Workers' Compensation advisory premium rates; allowing any policyholder or insurer to file an objection to a classification assigned to a policyholder pursuant to rules governing the issuance or application of classifications; revises the procedure for a hearing to review classifications or rules relating to classifications; allows an additional hearing before seeking legal redress through a court; changes the venue and jurisdiction for judicial review to the Workers' Compensation court from the district court for appeals from decisions of the classification review committee.

Proponents' Testimony:

Stan Kaleveyc, National Council on Compensation Insurance said his company does the classifications, classification rates and mod factors for the state. NCCI by statute is the secretary to the classification and rating committee. He said the employer and the insurer felt compelled because of the process to have an attorney present. What could have been an informal opportunity for an employer to come in and explain his problem but has turned into trial-like proceeding. This bill attempts to put a mediation process on the front end of that process. This bill would provide an opportunity for the employer to come in first informally before the committee, explain why he or she thinks the classification is incorrect. If the parties don't agree, either the insurer or the employer then has the opportunity to go into the formal process as a second step. This bill also makes the appeal not to the state district court but to the state Workers' Compensation court which has more expertise and logically should be dealing with this matter. Since this process began, no cases have been appealed to the state district court. They have all been resolved at the state level. This will allow cases to be resolved more expediently and less expensively for the employers as well as the insurers. He then discussed the technical amendments. **EXHIBIT 1**

Lawrence Hubbard, State Compensation Insurance Fund, said he had a considerable amount of personal experience representing the State Fund before the Classification and Rating Committee. It is far too cumbersome and far too technical and unfortunately it is required to be that way because this is the only hearing of record for both parties to establish the facts of the case that would go through the appeals process. He has also had the experience of mediating claims. Informal, non-binding mediation or alternative dispute resolution is an excellent vehicle for parties to have their day in court. This bill goes a long way of achieving a good purpose and the State Fund encourages a do pass.

Jacqueline Lenmark, American Insurance Association, said that all parties must work together for a system to work for all parties, and she supported this bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

The sponsor closed.

HEARING ON HB 409

Opening Statement by Sponsor:

REP. JOE BARNETT, HD 32, Gallatin County, said this bill is an act revising the law regarding detached facilities of banks.

Proponents' Testimony:

Riley Johnson, Montana Banking Coalition, said they supported this bill. EXHIBIT 2

Bill Leary, Montana Bankers Association stated they supported this bill. This bill has absolutely nothing to do with interstate branching or interstate banking. It is simply a consumer bill to offer the services of the parent bank to the people in the outlying suburbs. This is a very important bill for the major cities but also could be expanded to the minor cities.

Bruce Gerlock, Senior Vice President, First Security Bank of Bozeman, said, that, as Bozeman has grown over the years, so has his bank. There are nine commercial banks, savings banks and credit unions plus a loan productions office soon to be a full service branch from another savings bank in the community. This bill allows customers convenience in banking by providing full banking services at detached facilities.

Fred Flanders, President, Valley Bank of Helena, said he supported this bill. Through a very simple change in the existing law, Montana banks will be able to provide a full plate of banking services to their customers. These services are currently restricted. The existing law allow banks to reach out to customers who live in the suburbs in Montana's larger cities.

Casey Hill, Chief Financial Officer, AAA Montana, said he supported this bill.

Bob Waller, Vice Chairman, First Interstate Bank of Commerce of Billings, said he supported this bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. LARSON asked for a clarification of the difference between a cash facility and a branch bank. **Mr. Leary** deferred the question to **Annie Bartos, Department of Commerce** said the difference between a detached facility and a branch bank is, under the present law, a branch bank must go through an application process before the banking board. There is a need to file a notice by the bank of the need to establish a branch bank. At that time, a hearing is scheduled and the board will make a determination as to whether or not there is a reasonable public necessity to establish a branch bank in that community. **REP. LARSON** then stated that the legislature was allowing them to create a branch bank; he said that, in fact in this bill, would they not be able to perform all of the functions in this detached facility of a branch bank; **Ms. Bartos** said they were going to be able to perform all of the functions. The bank which is detached will be operating and will be approved by the state banking board. They are then a federal regulatory agency. There has been that improvement which was established by the banking board. **REP. LARSON** asked if it were agreed that they were in fact creating those branch banks without a public hearing concerning need and necessity. **Ms. Bartos** said she did not think that was the case. Statute currently allows the establishment of a detached facility at any certain distance from the main bank if the main bank has been determined by the banking board to be in need. **REP. LARSON** asked if an interstate bank branch in Montana or a bank with a holding company outside the state branch must be within the state of Montana. **Ms. Bartos** said that presently they could not.

CHAIRMAN SIMON said a bank creating a detached facility is limited as to the number of detached facilities they can create within a community. **Ms. Bartos** said that was correct. **CHAIRMAN SIMON** then said that limitation was based upon population. **Ms. Bartos** said that was correct. Under present law, a population of 20,000 or more may establish a detached facility.

Closing by Sponsor:

The sponsor closed.

CHAIRMAN SIMON relinquished the chair to **VICE CHAIRMAN PAVLOVICH**.

HEARING ON HB 408

Opening Statement by Sponsor:

REP. PAUL SLITER, HD 76, Flathead County said this bill is an act to provide for payment, by the state, of costs and attorney fees of small businesses that prevail against the state in certain court and administrative proceedings.

Proponents' Testimony:

Jim Tutweiler, Montana Chamber of Commerce said he supports this bill. This bill really addresses a sore spot among small businesses in Montana. The Montana Chamber received that impression by attending meetings in little places where people spoke out. People in rural areas said they had become involved in disputes filed between employers and employees and the case gets bound up in state agencies.

Russ Ritter, Envirocon/Westtran/Water Machinery, said this is a good positive pro business piece of legislation and will relieve the fears of small businesses in getting into the circumstances involving state government.

Riley Johnson, National Federation of Independent Businesses, supported this bill.

Beth Baker, Department of Justice, presented amendments and explained them. EXHIBIT 3

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. LARSON asked why this legislation has been unsuccessful in the past. REP. SLITER said this was not offered in the last session; it was offered in 1989 and he did not know the circumstances. REP. LARSON asked for an example of unreasonable state action. REP. SLITER said he wanted to keep state agencies and boards focused on their actual regulatory functions and not see the state go after people frivolously. He did not have a specific example. REP. LARSON asked for examples of frivolous actions. Mr. Tutweiler said that having conversed with Chad Smith, he had been involved with hundreds of cases involving administrative hearings and boards.

REP. MCKEE questioned the loophole where action could be tied up indefinitely. Ms. Baker said she had been drawing an analogy about some federal laws that had spawned litigation over when someone is entitled to recover attorneys' fees.

TAPE 1, SIDE B

REP. COCCHIARELLA questioned the impact of states' charges for environmental violations. **REP. SLITER** said this is not going to keep the state from bringing an action against anyone for any reason including environmental problems. Regarding environmental actions, if the state is justified in its action, it won't have any effect on the state. If the state were to bring an action against a dry cleaner, for example, that would be appropriate. If the dry cleaner had done something wrong, the state would need to show that. As long as the state acted in bad faith or harmed the environment that would not be considered a frivolous case.

REP. EWER talked about the business community's concerns and the help this bill would bring. The state would have a role as a disinterested party to solve disputes. The theory is to reach resolutions before the necessity of court. These boards would be the body to help this process along. He asked if this bill was supported. **Mr. Tutweiler** said that in all of the discussions held around the state, they concerned employer/employee grievances. The strong majority of the cases centered around the Human Rights Commission.

REP. TUSS asked whether the definition of an internal process is to avoid frivolous and punitive lawsuits. **Ms. Bartos** said if a particular complaint is filed with a board involving a licensee there is a determination made by a committee of the board whether or not there should be an investigation involving that complaint. Once there is an investigation completed of the licensee, a report is provided to the attorney and to the representing attorney of the board and a decision is made as to whether or not that case should proceed to a contested case hearing. That decision is made by the board at a board meeting; and once the case is noticed, the licensee is given an opportunity to appear before a hearing examiner. The hearing examiner hears the licensee position, hears the board's position, and will render a decision. That decision is then reviewed by the board and they make the final determination as to whether or not that particular order should be reinstated regarding that licensee.

CHAIRMAN SIMON said that in addition to costs awarded by the statute the court shall award prevailing small businesses reasonable fees and expenses incurred by the small business in a civil action brought by the state or a judicial proceeding to review an administrative hearing decision of the state unless the court finds the state was substantially justified. The language which is being offered is well grounded in fact and awarded by existing law or a good faith argument for the extension or modification of existing law. The state losing does not automatically put them in a position that because the argument was lost, it was not well grounded and there is entitlement to fees. **Ms. Baker** said that was correct. She then said she was concerned about extended litigation. If a party's position is going to be that just because the case was lost, the position is not substantially justified. That is not the intention. The

word "frivolous" is not found in this bill either. The amendment's clarification is not that the loser pays the bill.

CHAIRMAN SIMON then said an automatic award will not be made just because the case may have been lost. There would need to be a finding by the court that the action by the state, either civil or judicial proceeding reviewed by the state, was not well grounded and warranted by existing law. **Ms. Baker** said yes. **CHAIRMAN SIMON** said that was a much higher standard than losing. He then asked for an example where there might be a proceeding where the court might say the case was lost and not well grounded. **Ms. Baker** said she was not aware of any sanctions of that nature. There have been Rule 11 sanctions imposed against attorneys in cases by the Montana Supreme Court as well as the federal court, but she did not have specific examples.

REP. EWER asked if there were a precedent for the state to pay costs under Rule 11. **Ms. Baker** said she did not know.

CHAIRMAN SIMON said that on page 3 each agency, commission, board, department that pays an award shall report to the legislature during the first week of the regular session. **REP. SLITER** said if this bill were to pass and if he were here in the next session, if there were a stack of these reports on his desk he said he would be a little upset. It would mean there were awards put out and actions taken against small businessmen that were not substantially justified.

Closing by Sponsor:

The sponsor closed.

EXECUTIVE ACTION ON HB 414

Motion: **REP. PAVLOVICH MOVED HB 414 DO PASS. REP. PAVLOVICH MOVED THE AMENDMENTS TO HB 414.**

Vote: Motion to adopt the amendments to HB 414 passed 18-0.

Discussion: **REP. COCCHIARELLA** questioned the need to remove language. She was concerned because it takes the rate considerations that could be brought before that committee out of the process. She said again she was concerned about not having rates a part of the consideration in this committee. There may be some employers who may not like the fact there is informal process to talk about rates although the rates which are achieved are NCCI rates or rates which go through a peace office.

Motion/Vote: **REP. PAVLOVICH MOVED HB 414 DO PASS AS AMENDED. Motion carried 18-0.**

EXECUTIVE ACTION ON HB 409

Motion: REP. MILLS MOVED HB 409 DO PASS.

Discussion:

REP. DEVANEY stated the difference between the detached facility offering full service banking versus branch bank. A branch bank must be approved by the commissioner's office. The branch bank maintains its own daily statement, its own capital structure and its own board of directors. It is also examined as a entity unto itself. A detached facility does not have a daily statement nor a board of directors.

REP. LARSON said he did not like the bill. Bankers approached the legislature last session wanting to pass an interstate banking bill which was done. Now the bankers want a branch bank. They did not want the interstate banks to branch. They further expanded their branching capabilities with this bill. He wondered whether this is a branching expansion without a review of the facility or whether there is a real need.

Vote: Motion carried 16-2 with REPS. LARSON and TUSS voting no on HB 409.

ADJOURNMENT

Adjournment: 10:15.


BRUCE T. SIMON, Chairman


ALBERTA STRACHAN, Secretary

BTS/ajs

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 2-8-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	✓		
Rep. Norm Mills, Vice Chairman, Majority	✓		
Rep. Bob Pavlovich, Vice Chairman, Minority	✓		
Rep. Joe Barnett	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Charles Devaney	✓		
Rep. Jon Ellingson	✓		
Rep. Alvin Ellis, Jr.			✓
Rep. David Ewer	✓		
Rep. Rose Forbes	✓		
Rep. Jack Herron			✓
Rep. Bob Keenan			✓
Rep. Don Larson	✓		
Rep. Rod Marshall	✓		
Rep. Jeanette McKee	✓		
Rep. Karl Ohs	✓		
Rep. Paul Sliter	✓		
Rep. Carley Tuss	✓		



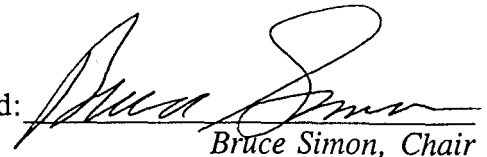
HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 414** (first reading copy -- white) **do pass as amended.**

Signed:


Bruce Simon, Chair

And, that such amendments read:

1. Page 3, line 2.

Following: "~~director~~"

Strike: "president"

Insert: "executive director"

2. Page 4, line 13.

Following: "committee"

Insert: ", or by the refusal of a party to be bound by the
committee's advisory decision"

3. Page 4, line 15.

Following: "the"

Strike: "written advisory decision is mailed"

Insert: "expiration of the 30 day notice deadline specified in
subsection (2)(a)"

-END-

Committee Vote:
Yes 8, No 0.

331257SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 8, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 409** (first reading copy -- white) **do pass**.

Signed:

A handwritten signature in cursive script, appearing to read "Bruce Simon", is written over a horizontal line.

Bruce Simon, Chair

Committee Vote:
Yes 16, No 2.

331258SC.Hbk

Amendments to HB 414

1. p. 3, line 2

strike "président" and reinsert "executive director"

2. p. 4, line 13

after the phrase "decision of the committee"

insert: "or the refusal of a party to be bound by the committee's advisory decision"

3. p.4, line 15

after the phrase "within 30 days after"

strike: "the written advisory decision is mailed"

and insert in lieu thereof:

"expiration of the 30 day notice deadline specified in subsection (2) (a) "

Subsection (b), lines 13 - 21 shall read as follows:

(b) A party who is aggrieved by the advisory decision of the committee OR THE REFUSAL OF A PARTY TO BE BOUND BY THE COMMITTEE'S ADVISORY DECISION rendered after a hearing conducted pursuant to subsection (2) (a) may, ~~petition for judicial review of the decision pursuant to Title 2, chapter 4, part 7 within 30 days after the written advisory decision is mailed,~~ EXPIRATION OF THE 30 DAY NOTICE DEADLINE SPECIFIED IN SUBSECTION (2) (A), initiate an informal contested case proceeding pursuant to 2-4-604 before the committee, and the committee shall hear the matter in a de novo administrative proceeding as provided in Title 2, chapter 4, part 6. The committee may, in its discretion or at the request of any party, appoint a hearings examiner. If a hearings examiner is appointed, the examiner shall take evidence and prepare proposed findings of fact and conclusions of law that the committee may accept, reject, or modify, in whole or in part, based on the evidence produced during the informal contested case proceeding.

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TESTIMONY

before

THE BUSINESS & INDUSTRY COMMITTEE
MONTANA HOUSE OF REPRESENTATIVES

February 8, 1995

by Riley Johnson

on behalf of

THE MONTANA BANKING COALITION

Mr. Chairman and members of the committee:

My name is Riley Johnson and I rise before you this morning on behalf of the Montana Banking Coalition. The coalition consists of five small and intermediate banks in the communities of Kalispell, Helena, Bozeman and Billings. These members ask for your favorable consideration of HB-409.

As Rep. Barnett pointed out, HB-409 is a **consumer** bill. HB-409 will give people easier and more time-efficient access to their neighborhood banking facilities. Under current banking law, in a detached facility you can't open a new checking account, take out a simple credit-card loan or conduct any financial business that would require a specialized bank individual. This mandates that consumers needing to conduct any such normal banking business to schedule their time, get into their cars and travel to the main office their family bank. In today's high-tech, convenience-oriented and time conscious society, that is asking a lot of our customers....not to mention the crippling effect it can have on the competitiveness of our community banks. Another example is weekend and extended hour banking. Consumers are demanding such services of their financial institutions in Montana, but they want full service....not just the services they can obtain in any ATM machine they can get in a Mini-Mart or grocery store.

Rep. Barnett's second point was that HB-409 was a **fairness** bill. As he stated, any savings and loan office or credit union has the privilege of offering full service in any of their detached facilities. In today's competitive financial world, this doesn't make for a very level playing field. HB-409 will give our community banks the defensive tool to compete and to play in the same ball game as any other financial institution in Montana. That's fairness! The day is upon us in

Montana where savings and loans and credit unions are opening small, more economically operated detached facilities with extended hours and full service and surrounding our commercial banking facilities. This is developing into a very formidable competitive problem. We do not decry this competition. We merely ask for justice in the banking laws of Montana.

And, finally, Rep. Barnett's bill is an economic bill. To aggressively compete with the savings and loans and credit unions extended services and hours, we need the ability to offer the same hours and services without having to shoulder the burden of opening our main bank offices and be subjected to all the extra personnel and overhead costs to meet this competition. I might point out, too, that HB-409 doesn't mandate that every detached facility offer full banking services. It merely allows those community banks that find the consumer demand for full service to easily and economically satisfy those needs.

In closing, I will recap. HB-409 is a consumer bill....a fairness bill....and an economic bill. HB-409 will level the playing field and offer better service and better banking in Montana.

Thank you Mr. Chairman and members of the committee for your attention.

-30-

Amendments to House Bill No. 408
First Reading Copy

Requested by Rep. Sliter
For the Committee on Business and Labor

Prepared by Stephen Maly
February 7, 1995

1. Page 2, lines 11 and 12.

Following: the first "hearing" on line 11

Strike: the remainder of line 11 and line 12 in its entirety

Insert: "on a preponderance of the substantive issues in the proceeding."

2. Page 2, line 14.

Following: "with"

Strike: "a net worth of less than \$3 million and"

Following: "than"

Strike: "250"

Insert: "100"

3. Page 2, line 19.

Following: "means"

Strike: "reasonable in both law and fact"

Insert: "well-grounded in fact and warranted by existing law or a good faith argument for the extension or modification of existing law"

4. Page 2, line 24.

Following: "by"

Strike: "or against"

BILL NO. 414 SPONSOR(S) _____

DATE 2-8-95

BILL NO. 514 SPONSOR(S)

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[illegible]

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

DATE 2-8-95

BILL NO. 408

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Riley Johnson	NFIB	X	
Bill Leary	11/BA	X	
Tom Ellis	Norwest	X	
Jim Twilgel	MT Chamber	X	
Bob Baker	Dept of Justice		Informational
G. Van Hornen	Montana Housing Provider	X	
KONDA CARPENTER	MT Housing Providers WMLA, MLA, IPM	X	
Russ Rittel	Udash Corp		

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

DATE 2-8-95

BILL NO. 409

SPONSOR(S) _____

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Riley Johnson	Mont. Banking Coalition	X	
Bill Leary	MT. Bankers	X	
Bruce Gulick 1st Security Bank - Bozeman		X	
BOB WALLER 1st INTERSTATE BANK BILLINGS		X	
FRED FLANDERS	Valley Bank Helena	X	
KCHILL	AAA MT	X	

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