

**MINUTES**

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

**COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By CHAIRMAN TOM KEATING, on February 14, 1995, at

**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: HB 152  
HB 216

Executive Action: HB 152  
HB 216

*{Tape: One; Side: One}*

**HEARING ON HB 152**

**Opening Statement by Sponsor:**

REPRESENTATIVE VICKI COCCHIARELLA, HD 64, Missoula,, stated HB 152 is a consensus bill between the Montana self-insured industry and the Department of Labor in an effort to reduce the Security Deposit Fund. House Bill 152 does nothing with the Guaranteed Fund, there is no risk. All claims are covered. When an self-insurer employer can prove there are fewer claims, less liability, less loss ratio,

They can have some of the security fund returned. In turn, the capital can be used to encourage economic growth.

**Proponents' Testimony:**

**George Wood, Executive Secretary, Montana Self Insurer Association and Executive Secretary, Montana Self Insurer and Guarantee Fund**, stated HB 152 is an Guarantee Fund bill. The association introduced the bill to change statute. Current law requires every self-insured employer put up a security deposit, which is the three year average incurred liability or \$250,000, whatever is greater. The law allows the Guarantee Fund and the Department of Labor to increase the security deposit should the incurred liability increase. The law does not allow any decrease of the security deposit amount, even if no liability incurs. **Mr. Wood** spoke of an insurer who has not incurred any liability for the past five years. House Bill 152 allows concurrence between the Guarantee Fund and the Department of Labor to reduced the security deposit below \$250,000; a reasonable showing must be made to give reasons why the amount is unnecessary. The requirement will be to furnish a reasonable security deposit. **Mr. Wood** explained the original security deposit remains at \$250,000 for at least three years, so the self-insured experience can be rated. The Department of Labor and Guarantee Fund will be allowed to reduce the security deposit only at the end of three years. The Guarantee Fund is a Montana organization, a group of Montana employers, and a member of the private self insurers, who guarantee liability of other self-insurers. In the event a self-insurer becomes bankrupted, the other self-insurers, through the guarantee fund, pay the claim. The liability is with the guarantee fund. **Mr. Wood** urged the committee to accept HB 152.

**Chuck Hunter, Department of Labor and Industry**, stated the process is two fold. The Department of Labor and the self-insurers Guarantee Fund are responsible for dealing with security deposits issues. Positive benefits amount to freeing up working capital of those self-insurers who have deposits in excess of what is necessary to cover liability. **Mr. Hunter** urged the committee to accept HB 152.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

**SENATOR AKLESTAD** questioned the sponsor, **REPRESENTATIVE COCCHIARELLA**, asking if there would be a floor, restricting how low the deposit could actually be. **REPRESENTATIVE COCCHIARELLA** stated the law still requires certain limits. **Mr. Wood** explained current law states that if a security deposit is required, the amount is \$250,000. The self-insurer do not have to require a security deposit, which is part of the problem. Montana Power does not have a security deposit. **Mr. Wood** stated the Guaranteed

In such a case, the Guaranteed Fund would like to set the security deposit at \$100,000.

**CHAIRMAN TOM KEATING** asked if the present law has a "floor", and will the new law have a "floor". **CHAIRMAN KEATING** stated there will be a security deposit. The bill requires the security deposit to be equal to or greater than \$250,000 or be the average of three years liabilities. If the liability averaged more than \$250,000 per year for three years, self-insurers would have to come up with more than \$250,000. Will everyone be required to have a minimum of \$250.00. **Mr. Wood** answered if the liability is justified. We don't admit anybody to self-insurers, unless they put up \$250,000. Under law, the amount can be increased. If the insured had \$250,000, \$250,000 and \$250,000, it is likely that the security deposit would be \$750,000. **Mr. Wood** stated the Guarantee Fund has the right to increase the amount now, and does so. The self-insurers do not want to pay anything out of the fund, but does not have the right to reduce the deposit. If the liability had been \$70,000, \$70,000, and \$70,000, and only \$70,000 is outstanding, the fund is still requires \$250,000.

**CHAIRMAN KEATING** stated the department concurs with the self insurers guarantee fund, according to the rules, to reduce it to a reasonable level. **CHAIRMAN KEATING** asked **Mr. Wood** to explain the self insurance pool. Does the pool have a certain amount of security or reserve, like an insurance company would. When claims are filed, are benefits paid. Safety is a big issue, as is financial statements. Self-insurers operate independently. They are given by law the right to pay the benefits off. There is no fund or any pool. All there is a group of self insurers that are not public. Public agencies are excluded. All the private agencies are jointly and severally liable for the liabilities for all the others. The guarantee fund is a Montana claimant guarantee that the payments and benefits are paid if the self-insurer goes bankrupt. There is no pool or fund and we pay no benefits. There has been only one bankruptcy, in 1989, since the fund was created. The security deposit was sufficient to pay all the liabilities, so the fund did not have to pay. The fund has the right to assess all other self insurers, up to five percent of the compensation they paid in the previous year to a fund to allow the department or wherever they want to put the money, to see that the claims are paid.

**CHAIRMAN KEATING** asked what the five percent is assessed against. **Mr. Wood**, stated the five percent is assessed against the compensation paid in the previous year. **CHAIRMAN KEATING** asked if those were the liabilities that were satisfied. Compensation paid \$13M, so the fund could be assessed five percent of \$13M, if anyone went broke. The Association or the Department of Labor, depending how the claims are worked out for payment. The insurer who went bankrupt and the person who provided the security deposit, hired a third party administrator to pay off the amount.

deposit, hired a third party administrator to pay off the amount.

**SENATOR BENEDICT** stated the way he understood the Guarantee Fund is another safety net in addition to the fact the liabilities will be paid by all the self-insurers, anyway. Is the Guarantee Fund another bank account, a secondary. **Mr. Wood** agreed. The first payments are under the security deposit. The second payment is the individual members of the Guarantee Fund, the businesses listed on the exhibit (**EXHIBIT 1**). If three members would go broke, the others would have to make up the difference.

**CHAIRMAN KEATING** asked from where the administration costs are taken. **Mr. Wood** stated the cost are assessed against the members of the Guarantee Fund, based on the amount of the payroll. Last year the assessment was .0015%. The cost is somewhat less than \$15,000.

**SENATOR EMERSON** asked about the first three years of operating as a self-insurer employer. We have to have the employee secured for the first three years. After the three years, the fund and the department, together, could approved a reduction in the amount of the security fund. For the first three years, there is the floor of \$250,000. **Mr. Wood** stated the self insurers have new admissions that come in. But, because of their liability, they may have a three year average of \$500,000. We could set their security deposit, in conjunction with the department, at \$650,000. So, we try to keep sufficient money at all times in the security deposit, in order to pay any incurred claims.

**SENATOR EMERSON** asked why the Montana Power did not have to pay a security deposit. **REP. COCCHIARELLA** stated the Montana Power grandfathered in before the Guarantee Fund came into effect and before the Department of Labor became involved.

**CHAIRMAN KEATING** stated a couple of years ago, The Labor and Employment Relations Committee discussed in detail historic information about market share, state fund, private insurers, etc. What is the current market share of the private insurers. **Mr. Wood** replied the private insurers can't be judged in the same way because some are on premiums and some are on payrolls. There are about \$6 billion worth of payroll for private Montana Employers, all subjected to the Old Fund Liability Tax. The self insurers, listed on the handout paid \$1,400,000,000 in 1983 for payroll. The self insurers are approximately 25% of all payroll expenditure. **CHAIRMAN KEATING** asked the self-insurers about their regard for environmental risk, a situation which could drive premiums to another level. **Mr. Wood** stated the premiums are blended across the payroll for low risk and high risk insurers. The payroll is a function of "knitting into self-insurer", but the amount is based on audited financial statements. The self-insured must list if there are environmental problems, but since there is no liability on the fund itself, there is no attempt to blend or to use the insurance technique of

numbers. The liability is on the individuals.

Closing by Sponsor:

**REPRESENTATIVE COCCHIARELLA** stated the reason why it takes three years to establish experience is because the figure is devised from three years worth of data. The loss ratio is calculated, according to how much premium came in and how much loss was distributed. **REPRESENTATIVE COCCHIARELLA** urged the committee to pass HB 152.

HEARING ON HB 216

Opening Statement by Sponsor:

**VICKI COCCHIARELLA, HD 64, Missoula,** stated the idea to exempt spouses from Work Comp coverage started because of confusion in dealing with certain employers. These employers occasionally had their spouses work for them. Some of the spouses worked on a continual basis. In current law, the employment of the dependent family member is already exempt from coverage. House Bill 216 clarifies statutes to designate spouses are also exempt.

**REPRESENTATIVE COCCHIARELLA** described a situation brought to her attention. A custodial service employer had his wife cover for a sick employee for a night. He was audited, and a determination was made that Workers' Compensation should have been paid on the spouse. The employer understood the dependents were listed in the law, and his wife should have been considered a dependent. In which case, the wife should have been considered exempt. House Bill 216 clarifies the fact that the spouse is exempt, like dependent family members. **REPRESENTATIVE COCCHIARELLA** passed out a document to committee members, which defined the federal definition of the word, "spouse" (**EXHIBIT 2**).

Proponents' Testimony:

**Riley Johnson, National Federation of Independent Businesses,** stated support of HB 216. **Mr. Johnson** offered mid-80's legislative history concerning **REP. BOB MARKS** putting through a bill to exempt dependents. The reason the exempt dependent wordage was included at that time was for farm related reasons. When the children came home from school and did farm chores, they were supposed to be covered under Workers' Compensation. At the time, the intent was to cover farm families or small businesses. Evidently, the intent did not prove to be the case. **Mr. Johnson** stated there are many small business who have a spouse, both genders. These people work vacations, odd days, and when other employees are sick. **Mr. Johnson** urged passage of HB 216 to prevent possible trickle down workers' comp costs and problems, such as withholding tax, etc.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

**CHAIRMAN KEATING** asked **REP. COCCHIARELLA** whether or not the man whose wife filled in for the absent worker was an independent businessman. Was he the owner of the business. **REPRESENTATIVE COCCHIARELLA** stated the man was the owner, who had an employee work for him. When the employee could not come to work, the employer's wife came in place of the employee. The wife was paid wages.

**SENATOR EMERSON** asked if HB 216 worked for the married partner of the female. The language in the bill is gender biased. **CHAIRMAN KEATING** stated the law will be gender free.

Closing by Sponsor:

**REPRESENTATIVE COCCHIARELLA** urged passage of HB 216. The new law will help to encourage big and little Montana businesses.

EXECUTIVE ACTION ON HB 216

**CHAIRMAN KEATING** asked if any committee member objected to taking Executive Action on **REP. COCCHIARELLA's** bills, HB 216 and HB 152.

**SENATOR BARTLETT** agreed if the bills could be entered into second reading after the transmittal date. **CHAIRMAN KEATING** stated the Labor and Employment Relations Committee will place House Bills on the board on Monday, after transmittal.

Motion/Vote:

**SENATOR AKLESTAD** moved HB 216 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 152

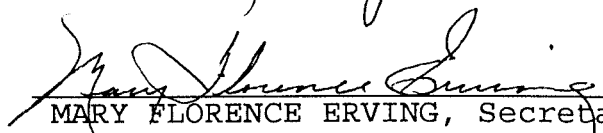
Motion/Vote:

**SENATOR AKLESTAD** moved HB 152 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

**Adjournment:** The meeting adjourned at 1:47 P.M.

  
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SENATOR TOM KEATING, Chairman

  
\_\_\_\_\_  
MARY FLORENCE ERVING, Secretary

TM/mfe

MONTANA SENATE  
1995 LEGISLATURE  
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

## ROLL CALL

DATE February 14, 1995

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 14, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 152 (third reading copy -- blue), respectfully report that HB 152 be concurred in.

Signed:   
Senator Thomas F. Keating, Chair

  
Amd. Coord.  
578 Sec. of Senate

  
Senator Benedict  
Senator Carrying Bill

381714SC.SPV


SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 14, 1995

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We, your committee on Labor and Employment Relations having had under consideration HB 216 (third reading copy -- blue), respectfully report that HB 216 be concurred in.

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Senator Thomas F. Keating, Chair

  
Amd. Coord.  
SR Sec. of Senate

  
Senator Carrying Bill

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# MONTANA SELF-INSURERS ASSOCIATION

GEORGE WOOD, Executive Secretary  
SENATE LIAISON

EXHIBIT NO. 1

DATE Feb 14, 1995

BILL NO. HB 152

## DIRECTORS

President ..... Jerry Woods, Montana Power Company  
Vice-President ..... Colleen Dunlop, Stone Container Corp.  
Directors ..... Marilyn Dauber, Golden Sunlight Mines  
..... James Connelly, Champion International  
..... Dan Walker, US WEST Communications

## MONTANA SELF-INSURED EMPLOYERS

1/1/95

No.	Organization	No.	Organization
2	ASARCO	37	Union Oil
3	AT&T	38	US WEST
4	Albertson's	39	Western Fruit Express
5	American Drug	40	Town Pump, Inc.
6	Ash Grove Cement	42	Plum Creek
7	Borden's, Inc.	43	Ryder Systems
8	Browning Ferris	44	Federal Express Corp.
9	Champion International	45	Columbus Hospital
11	Cominco American	46	St. Patrick Hospital
12	Con Agra	47	St. Joseph Hospital
13	Conoco Pipeline	49	Northwest Health Care Corp.
14	Conoco, Inc.	50	St. Thomas Child & Family Center
15	Consolidated Freightways	51	Montana Hospital Association
16	Continental Baking	52	J. C. Penney
18	Entech	53	Dayton Hudson Corp. (Target)
19	F. H. Stoltze Land & Lumber	54	Horizon Health Care Corp.
20	Georgia Pacific	55	Holy Rosary Hospital
21	Golden Sunlight	56	J.H. Kelly, Inc.
22	Holly Sugar	57	Harvest States Cooperatives
23	K-Mart	58	International Paper
24	Louisiana-Pacific	59	Stillwater Mining Co.
25	Montana Deaconess Medical Center	60	Montana Contractors
26	Montana Health Network	61	Plum Creek Management Co.
27	Montana Power	62	MT Electric & Telephone Systems
28	Peabody Coal		WC Pool
29	Rosauer's	63	Montana Resources (Partnership)
30	Shell Pipeline	64	Holnam, Inc.
31	Shell Western E & P		
34	Stan Watkins Trucking		
36	Stone Container		

### Public Entity - Self-Insured

- \* 1. Montana School Group
- \* 2. Montana Association of Counties
- \* 3. Montana League of Cities & Towns
- \* 4. Missoula County

1993 Payroll ..... \$1,412,068,026  
Compensation Paid ..... \$13,819,230  
Employees ..... 72,521

Feb 14

H0216

## Ch. 79 DEFINITIONS

"(C) is exchanged within 3 months after such date of enactment for a life insurance contract which meets the requirements of section 7702A(b) [subsection (b) of this section].

the contract which is received in exchange for such contract shall not be treated as a modified endowment contract if the taxpayer elects, notwithstanding

ing section 1035 of the 1986 Code [section 1035 of this title], to recognize gain on such exchange.

"(5) Special rule for annuity contracts.—In the case of annuity contracts, the amendments made by subsection (d) [amending section 72(e) of this title] shall apply to contracts entered into after October 21, 1988."

## WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

## § 7703. Determination of marital status

(a) General rule.—For purposes of part V of subchapter B of chapter 1 and those provisions of this title which refer to this subsection—

(1) the determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(b) Certain married individuals living apart.—For purposes of those provisions of this title which refer to this subsection, if—

(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 151(c)(3)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for paragraph (2) or (4) of section 152(e)),

(2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and

(3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household,

such individual shall not be considered as married.

(Added Pub.L. 99-514, Title XIII, § 1301(j)(2)(A), Oct. 22, 1986, 100 Stat. 2657, and amended Pub.L. 100-647, Title 1, § 1018(u)(41), Nov. 10, 1988, 102 Stat. 3592.)

RECEIVED 1/15/89

DATE February 14, 1995

SENATE COMMITTEE ON Labor and Employment Relations

BILLS BEING HEARD TODAY: HB 152 HB 216

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PLEASE PRINT

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Check One

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# VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY