

## **MINUTES**

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

#### **COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By **CHAIRMAN TOM KEATING**, on January 24, 1995, at 1:05 P.M.

#### **ROLL CALL**

**Members Present:**

Sen. Thomas F. Keating, 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:** Sen. Gary C. Aklestad, Vice Chairman (R)

**Members Absent:** None.

**Staff Present:** Eddye 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 151  
Executive Action: HB 31 and SB 125

#### **HEARING ON SB 151**

**Opening Statement by Sponsor:**

**SENATOR SUE BARTLETT, SD 27, Helena**, stated SB 151 changes the definitions of temporary service contractor and temporary worker in the definition section of the Workers' Compensation Law. The changes are shown on page 4 of the proposed legislation. The rest of the bill is existing law. The impetus for the bill arose from changes or the definitions that were originally entered into the section in 1991. As the temporary service industry tried to work with the definition, they encountered a number of problems, which came to light during interim subcommittee meetings on Workers' Compensation issues.

**Proponents' Testimony:**

**Jim Nye, Temporary Help Service, Helena,** spoke in support of SB 151. **Mr. Nye** described how the definition problem arose from 1991 State Fund legislation, which narrowly defined the temporary help industry. Currently, the lawfulness of many business practices could be questioned. The uninsured employer program became involved because of situations created by inappropriate charge classifications. The incorrect charge classifications, in turn, caused defiant action charges. **Mr. Nye** presented written testimony (**EXHIBIT 1**). The uninsured employer program got involved because of situations such as the following: A worker was referred to a client, and the person then worked for the client. Because the definition had not been satisfied, a problem arose. For example, a print-up mission states a person who is a permanent employee can be replaced. Other narrow circumstances and interpretations also apply. Because the temporary worker does not fit the definition of having to have the client be an uninsured employer, a defiance action could be possible. This is true, even if people performing the duties are employees and are fully covered by Workers' Compensation. The definition exists and creates problems. The clarification wordage is necessary. **Mr. Nye** stated his company worked with Organized Labor, State Fund and State Chamber of Commerce to complete the proposed legislation and to solve the alleged problems.

**Lynne Johnson, Manager, Express Personnel, Helena, Montana,** representing seven temporary agencies in Montana. **Ms. Johnson** submitted verbal and written testimony to redefine the temporary worker definition versus the definition of a leasing company. (**EXHIBIT 2**) Statistical information was also submitted. A temporary worker means "a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a work force in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects." **Ms. Johnson** questioned the law guidelines and urged support of SB 151

**Jim Tutwiler, Montana Chamber of Commerce, Helena,** stated support of SB 151. The legislation is important to business and addresses changes in the market place. Business people find hiring is becoming more and more difficult. Talented people are in the labor pool, but the cost of employing people, due to federal, state regulations, are increasing. Businesses, that are concerned with the cost of employing people, find it difficult to meet salaries, let alone raise salaries. Businesses are actively resisting hiring new people. Recent responses to a Chamber questionnaire reported businesses predict positive business growth. Markets will increase. Higher sales are anticipated, but business are not contemplating hiring new employees. The value and importance of well-trained temporary service people in the market place can definitely promote competitive business.

Chuck Hunter, Department of Labor and Industry, Helena, MT, stated agreement with the language, which provides clarity to law. The Department of Labor and Industry is the regulatory agency. The Department worked with Mr. Nye to clarify the proposed legislation.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR AKLESTAD stated concern about the language on page 4, line 20. SENATOR AKLESTAD asked if the wordage will create potential dissention concerning what businesses are in what categories. SENATOR AKLESTAD asked the repercussions of placing a period "." after the words "client work force". SENATOR BARTLETT stated, if the change was made, there would be strong opposition from the Department of Labor and Industry and the State Fund. The concern is about the definition of the Professional Employers Organization (PEO), which is considered a spin off of leasing companies. Legislation concerning PEOs will be heard in the Labor and Employment Relations Committee. The real and legitimate concern is about how to tell the difference between temporary service agencies and leasing companies. Leasing companies have been recently entering Montana. The language on page 20 has been written by representatives of the Temporary Service Industry, the State Fund, and the Department of Labor and Industry.

SENATOR AKLESTAD stated if the business does not fall into the designated categories on line 20, the business may not be a temporary service contractor. SENATOR AKLESTAD expressed concern there may be businesses that do qualify. By the law being specific, there may be more confrontations by businesses, not listed on line 20, who may claim temporary service contractor status. SENATOR BARTLETT replied the definitions of contractor and worker are not exactly synonymous in part, because there are instances where the individual employer has a short term need for an employee. For example, an employer knows someone who can fill a certain need and hires the person directly or from the job service. The definition of a temporary worker was needed to address the cited example. The definition was also needed for those people who will be placed by the temporary service agencies.

SENATOR BARTLETT asked Mr. Nye to address possible confrontations. Mr. Nye stated the most likely issue will be the small business, a typical, sole proprietorship, that occasionally needs a person. But, the need is relatively "forever". This puts a limit on the specific project scenario. The industry would have to give up support to such businesses who need one person, twenty hours a week, forever.

**SENATOR VAN VALKENBURG** asked **Lynne Johnson** about employment statistics. Apparently, **SENATOR VAN VALKENBURG** queried, the Express Personnel Services pays unemployment insurance on the 4,400 employees. How are the rates set for Workers' Compensation and Unemployment Insurance. Is there a fixed temporary service employee rate, or does the rate depend of the job they are doing. **Ms. Johnson** replied the premium is paid according to the Workers' Comp rate, according to job description. **SENATOR VAN VALKENBURG** asked if the Express Personnel Services business provide health insurance coverage to their employees. **Ms Johnson** replied no, but there is a purchase option for medical benefits, but the employee must pay the costs. **SENATOR VAN VALKENBURG** asked if the respective employees are ever covered by the employer. **Ms. Johnson** replied no. **SENATOR VAN VALKENBURG** asked if any of the same employees are covered by collective bargaining organizations. **Ms Johnson** replied that Express Personnel Services' employees are not covered by unions, but she could not speak for other similar companies.

**SENATOR EMERSON** inquired about a fictitious "young" company. The new owner does not know if the company will succeed or not, but decides to hire an Express employee. Does this person qualify. **Mr. Nye** stated he currently has such an employee and if the legislation passes, the business relationship with his company will terminate. **Mr. Nye** stated that very often new businesses are not in a position to take out health insurance policies, etc. The cost is prohibited.

**Informational Testimony:**

None.

**Closing by Sponsor:**

**SENATOR SUE BARTLETT** stated the definition of "temporary service" needs to include limited liability companies, page 4, line 16. Working out deep seated concerns between the Temporary Service Industry, Labor and Industry and State Fund was a successful undertaking. **SENATOR BARTLETT** stated is important to read the entire definition. The intent of SB 151 is to clarify that temporary service contractors provide employees to support or supplement their client's work force. **SENATOR BARTLETT** stated great effort was taken to complete acceptable language. **SENATOR BARTLETT** urged the committee to support SB 151.

**EXECUTIVE ACTION ON HB 31**

**Motion:**

**SENATOR VAN VALKENBURG MOVED TO AMEND HB 31.**

Discussion:

**SENATOR VAN VALKENBURG** stated the purpose of the amendment is to clarify the intent of the bill. The clarification would allow a sixteen year old minor or older to officiate at adult events. Sixteen year old kids or older work as officials in adult basketball, softball, or other sport leagues. The type of employment provides for wonderful summer jobs and excellent work opportunities. It is difficult to find people to officiate at adult sport events. (EXHIBIT 3)

**SENATOR GARY AKLESTAD** asked if young people, sixteen or younger, could officiate. **SENATOR VAN VALKENBURG** fifteen years old or under could not officiate. Sixteen year old kids could officiate. **SENATOR BENEDICT** stated, in the Hamilton area and other small Montana communities, many younger kids are interested in working sport events. **SENATOR BARTLETT** stated the House amended the original bill. The original bill simply allowed minors to officiate at nonprofit, athletic events. Clarification is needed to make sure young people, sixteen and older, could officiate at adult events. The House amended bill stated that kids of "no age" until they were 18, could officiate. The age needed to be identified.

**SENATOR EMERSON** stated that from a coaching experience perspective, there is "no magic" in the age of 16. Twelve year old kids can do an excellent job of refereeing adults. Age, sometimes, makes no difference, except for the very, very young children. **SENATOR EMERSON** stated the people running the events have a better sense of what is best for their particular situations. **SENATOR BURNETT** asked if any current statutes govern age compliance issues. **SENATOR BARTLETT** stated the reason **REP. EWER** sponsored the bill was that the city could not pay young girls to referee soccer leagues, given the provisions of the Montana Child Labor Act. The current law was passed in 1993, and modeled after the child labor provisions in federal law.

**SENATOR EMERSON** asked if the proposed legislation will override the current law. **SENATOR BENEDICT** stated yes. Without the bill, no minors can be paid for officiating. Without the amendment, no one under the age of 18 could be paid to officiate at an adult event. The amendment brings the age down to sixteen years of age. **SENATOR VAN VALKENBURG** stated if the committee agrees that age 16 is too high an age, the age can be lowered. **SENATOR WILSON** stated age 16 is the age posted at gyms for weight lifting or other dangerous activities. Otherwise, younger kids are supervised by adults. Age 16 is a good age. **SENATOR BENEDICT** stated by the time kids become sixteen and seventeen, they are working, etc,. The fourteen and fifteen year old kids are still interested in the Saturday afternoon sport events. **SENATOR VAN VALKENBURG** stated there are divisions in the current Child Labor Law, and the divisions are based on age categories. Heavy

machinery is above age sixteen. No one can work under fourteen years of age. There is a laundry list of employment for fourteen to sixteen year olds. There should be consistency in the codes.

**Motion:**

**SENATOR VAN VALKENBURG** moved to amend the bill to 14 years of age. The motion to amend HB 31 **CARRIED UNANIMOUSLY.**

**Motion/Vote:**

**SENATOR BARTLETT** moved HB 31 **DO PASS AS AMENDED.** The motion **CARRIED UNANIMOUSLY.** **SENATOR BARTLETT** will carry HB 31 in the Senate deliberations.

**EXECUTIVE ACTION ON SB 125**

**Eddye McClure** stated **SENATOR KEATING** requested the amendment in response to **SENATOR VAN VALKENBURG's** comments. Additional language defines "independent contractors." On line 14, page 4, the definition reads, "A petroleum land professional means a person who is engaged primarily in negotiation for acquisition or investiture of mineral rights..." It was not necessary to say that the professionals are paid directly or perform services... The wordage was overkill. The definition is put into Worker's Comp exemptions and the UI exemptions. **(EXHIBIT 4)**

**Motion:**


**SENATOR VAN VALKENBURG** moved to **AMEND SB 125.**

**Motion/Vote:**

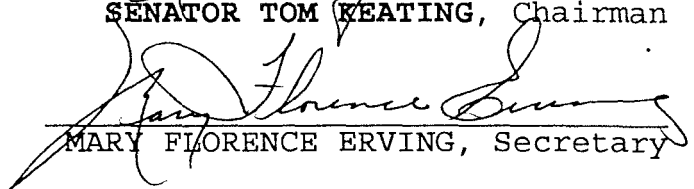
**SENATOR AKLESTAD** moved SB 125 **DO PASS AS AMENDED.** The motion passed with **SENATOR BARTLETT** voting NO.

ADJOURNMENT

**Adjournment:** The meeting was adjourned at 1:40 P.M.



SENATOR TOM KEATING, Chairman



MARY FLORENCE ERVING, Secretary

TK/mfe





SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
January 24, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration SB125 (first reading copy -- white), respectfully report that SB125 be amended as follows and as so amended do pass.

Signed:   
Senator Thomas F. Keating, Chair

That such amendments read:

1. Page 4, lines 15 and 16.

Page 6, lines 27 and 28.

Following: "who"

Strike: ": (i)"

2. Page 4, lines 17 through 20.

Following: "minerals" on line 17

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

3. Page 6, line line 29 through page 7, line 2.

Following: "minerals" on page 6, line 29.

Strike: remainder of line 29 through "contract" on page 7, line 2.

-END-


Amd. Coord.  
Sec. of Senate

201440SC.SPV

**Written Statement on SB 151**  
**James A. Nys**

My name is Jim Nys, I am the owner of a temporary help service in Helena. I appear today on my own behalf and as a representative of several other temporary operators in Montana.

Over the past two years, the temporary employment industry in Montana has run into a number of problems which are, I believe, unintended consequences of a 1991 change to workers' compensation statutes. If not corrected, I believe the continued existence of the temporary help industry in Montana is threatened.

Based on a review of the legislative committee minutes from 1991 and discussions with officials at both the Department of Labor and State Fund, the intent of the 1991 legislation was to:

- 1) ensure that all employees are covered for workers' compensation
- 2) prevent employers from circumventing experience ratings of benefits policies by transferring current employees to employee leasing firms.

In the committee minutes from 1991, it is clearly stated that the intent of the sponsor was to allow "businesses who furnish temporary employees to other employers to continue to provide the required worker's compensation coverage" (House Labor and Employment Relations Committee Minutes, March 13, 1991, page 3)

The legislature adopted a State Fund proposal that defined a *temporary service contractor* and a *temporary worker*:

39-71-116 (27) defines a **temporary service contractor** as one who employs individuals for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

39-71-116 (29) defines a **temporary worker** as a worker who services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

These definitions become important in the following two sections of the work comp act: 39-71-117 (1)(c)(2) defines a temporary service contractor as the employer of a temporary employee for premium and loss experience purposes.

39-71-117 (1)(c)(3) states that if a person utilizes a worker from an organization other than a temporary services contractor (emphasis added) the person using the worker is the employer for premium and loss experience ratings unless the organization furnishing the services retains control over the worker and the organization furnishing the service covers the employee for work comp purposes.

These definitions, which were adopted without input or review from the affected industry have proven too narrow in that they are being interpreted to prohibit Montana

businesses from utilizing the flexibility that temporary employees provide to businesses in the other 49 states. Based on my research, no other state has restricted the use of temporary employees as Montana currently does.

The Department of Labor's Uninsured Employer Program has taken the position that if a client uses temporary workers for seasonal or projects lasting longer than a few months, the client employer is "uninsured" with respect to the assigned temporaries even though the temporaries are my employees and proper workers' compensation insurance premiums are being paid by my firm for the work involved. This policy forces us to turn down longer projects or arbitrarily "cut off" a client's trained worker before project's end. Such arbitrary rules can result in loss of clients who then are mad at us for pulling a critical temporary employee six months into a seven month project. I believe it is important to note that as an industry, temporary service contractors have always covered their employees for workers' compensation purposes. Because the employees are covered, I frankly am hard pressed to see any valid public policy reason to apply such arbitrary rules.

State fund is apparently worried that temporary contractors will allow its services to be used by firms "mod shopping" (i.e., seeking to avoid a high "premium modification factor). State fund is apparently unaware that most temporary services, myself included, have strong risk management programs which would prohibit them from taking on customers with excessive loss ratios.

Senate Bill 151 is the product of meetings between Temporary Industry representatives, the Montana Chamber of Commerce, Department of Labor and State Fund Officials. While the language still puts more restrictions on our industry than does any other state, it clarifies that the use of a temporary by a client for an assignment of specific duration does not create an uninsured employer situation for the client.

I urge your support of this bill and would be happy to answer questions for committee members.

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Senate Bill 151 is the product of meetings between Temporary Industry representatives, the Montana Chamber of Commerce, Department of Labor and State Fund Officials. While the language still puts more restrictions on our industry than does any other state, it clarifies that the use of a temporary by a client for an assignment of specific duration does not create an uninsured employer situation for the client.

I urge your support of this bill and would be happy to answer questions for committee members.



SENATE LABOR & EMPLOYMENT  
EXHIBIT NO. #2  
DATE Jan 24, 1995  
BILL NO. SB 151

## **Senate Bill 151 - Redefining the Definition of a Temporary.**

**Lynne Johnson, Manager  
Express Personnel  
Helena, Montana**

"Temporary Worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

### **Facts concerning Express Personnel of Montana:**

1. There are seven (7) Express Personnel offices in Montana. The seven (7) Montana cities are Billings, Kalispell, Butte, Helena, Missoula, Bozeman, and Great Falls.
2. In 1994 Express Personnel Employed 4400 Montanans.
3. In 1994 Express Personnel paid out \$6.7 million in salary.
4. In 1994 Express Personnel paid \$182,000 in State taxes.
5. In 1994 Express Personnel paid \$493,000 in Worker's Compensation premiums.

Express Personnel is not a leasing company and have no plans to become one. We are one of Montana's largest employers. We provide businesses with the opportunity and ability to employ Montanans that would otherwise be unable to do so. We provide Montanans with employment opportunities that would otherwise be unemployed. Redefining the definition of a Temporary will protect not only Montanans, but also Montana's Businesses.

Amendments to House Bill No. 31  
Third Reading CopyRequested by Senator Van Valkenburg  
For the Senate Committee on Labor and Employment RelationsPrepared by Eddy McClure  
January 19, 1995

1. Title, line 6.

Following: "ACT;

Insert: "PROHIBITING A MINOR UNDER THE AGE OF 14 FROM OFFICIATING  
AT AN ADULT EVENT OR ACTIVITIY;"

2. Page 1, lines 26 and 27.

Following: "organization" on line 26Strike: "PROVIDED" through "OFFICIATING" on line 27Insert: ". A minor who is under the age of 14 may not officiate  
at"

Amendments to Senate Bill No. 125  
First Reading Copy

Requested by Senator Keating  
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure  
January 19, 1995

1. Page 4, lines 15 and 16.

Page 6, lines 27 and 28.

Following: "who"

Strike: ":(i)"

2. Page 4, lines 17 through 20.

Following: "minerals" on line 17

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

3. Page 6, line line 29 through page 7, line 2.

Following: "minerals" on page 6, line 29.

Strike: remainder of line 29 through "contract" on page 7, line  
2.

DATE

January 24, 1995

SENATE COMMITTEE ON

Labor + Employment Relations

BILLS BEING HEARD TODAY:

SB 151

&lt; ■ &gt;

PLEASE PRINT

&lt; ■ &gt;

Check One

Name	Representing	Bill No.	Support	Oppose
Jim NYS	Personnel Plus	151	✓	
Lynne Johnson	Express Personnel	151	✓	
KATHY Bigliardi	Interim Personnel <sup>Butte</sup>	151		
Jim Twilley	MTCHAMBER	151	✓	
Mary Butler	State Fund	151		
DENNY ZEILEN	DOLI	151		
MARY C ALLEN	CWCSI		—	—
Jaqueline Denmark	Am. Ins. Assoc	151	✓	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY