MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 7, 1995, at 3:00 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: 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:	HB 100	HB 200
Executive Action:	HB 100	BE CONCURRED IN

HEARING ON HB 100

Opening Statement by Sponsor:

REPRESENTATIVE JEANETTE MCKEE, HD 60, Hamilton and Corvallis, stated HB 100 is referred to as the Unemployment Insurance housekeeping bill because it contains a variety of statute changes. The changes are needed. The first change is to conform state law to meet the requirements in federal law. The second is to clarify, in statute, the issues that have been or have the potential of being disputed in appeals and other legal actions. The third is to enable or to reinforce the state's ability to perform required functions in the most efficient and economical manner. The bill addresses nine general areas. Three areas address conformity issues, which are critical in the sanctions

imposed by the federal programs. The sanctions can be severe. Three areas address provisions that would insure or add efficiencies. The changes would result in the Unemployment Insurance Division's, UI, ability to do the job better and do the job more economically. Three areas are provisions, intended to clarify statutory requirements in order to minimize disputes, so the UI program can better accomplish the work. **REPRESENTATIVE MCKEE** stated **Rod Sager, Unemployment Insurance Division**, will offer technical testimony.

Proponents' Testimony:

Rod Sager, Administrator, Unemployment Insurance Division, Department of Labor, explained the details of the bill. The overview was given by subject matter **(EXHIBIT 1)**.

David Owen, Montana Chamber of Commerce, stated he is a proponent, but wanted to ask questions to clarify the topic of who is responsible if a report is not filed, and what is the difference in a member managed liability company being treated like a partnership, as opposed to corporations. The chamber's position is the difference is the very reason limited liabilities companies are set up, to begin with. According to Steve Balls, the language is acceptable, so that probably answers the Chamber's concern. He referred to page 13 and asked what is the meaning of the phrase "liable corporate officer" in the section pertaining to collection of unpaid taxes by civil action. The phrase comes up a couple of times on pages 13 and 14 and is referenced with "this is only during the time when corporate papers aren't filed." **Mr. Owen** stated he does not interpret the phrase in the same manner. Specifically, the concern has been whether or not liable corporate officers make members liable and responsible on a civil basis. It opens up the liability and responsibility beyond what the Chamber thought to this point of time. It could make serving on a board disadvantageous.

Opponents' Testimony:

Jerry Driscoll, representing the Montana Building Construction Trades Council, stated his main objection is to section 12, page 15 and 16. The concern is that one can draw unemployment and the pension at the same time. The language had been struck in the original bill, 1993's SB 184. The bill was the state's general revision of the unemployment law. Amendments were made in Committee, but were deleted after the House Floor debate. Basically, what happens in the unemployment situation was this: If the employee is laid off the job, the employee can draw the pension and unemployment at the same time. If you are available for work, actively seeking work, and are able to work. Normally, the people effected by the bill are those people who are 70½ years old. The IRA says at age 70½, the employee must take the pension, even if the employee is still working. Pay the pension, and keep working. Then if the employee loses the job, through no fault of the employee, the employee will get the pension, and the

employee gets a reduction on unemployment. This is correct, especially if the employee is a construction worker, working with ERISA Trust Funds. The employee cannot make contributions. The way the bill is put together is if the employee works for the government, the employee can draw unemployment and pension at the same time. People that work under those types of pensions should be able to draw employment and pension at the same time, as people in the private sector. Federal government says that they cannot make a contribution to an ERISA Trust directly out of pocket. The department tax bond and the loss of tax credits are two important factors, if the employee is not in conformity. The federal government sends back eight tenths of one percent to the state for administrative purposes. The federal government has penalized two or three states for lack of conformity over the money. There has never been a state who has lost FUTA tax and went for eight tenths of one percent of 65.2%. So, the hundred million dollar loss, the Department referenced, has never happened in any state. There have been many challenges as to whether or not the federal law was complied with. When a person signs up for unemployment, the person receives a biweekly card. There are nine questions on the card. Are you actively seeking work? Are you drawing a pension, or have you changed pension during the two weeks period? In January, they took the questions off the card. Now people are going to be "trapped". They will not know whether to answer the question or not. For people who are drawing a small disability veterans pension, they will take an off-set on the unemployment, according to the language in the bill. **Mr. Driscoll** urged the committee to reject HB 100.

Informational Testimony:

None.

Questions From Committee Members and Responses:

SENATOR STEVE BENEDICT explained a limited liability partnership bill is currently moving through the legislative process. Will the section of the law have to be redone, if the other bill passes, in the next legislative (1997) session, to address the limited liability partnership issues. **Mr. Sager** replied yes. In the interim, the Department could develop a policy. The interim approach would be a positive step. **SENATOR BENEDICT** asked if the two year wait was necessary, or could language be written now to include limited liability partnerships, contingent on passage of HB 100. **Mr. Sager** replied new language could be written, although it would be involved. All the sections need to be referenced. An amendment was drafted this session, but it was withdrawn. House Bill 100 passed the House 79 to 20. **Mr. Sager** stated he would prefer the bill to be concurred in by the Senate, so it does not have to be debated again in the House.

SENATOR BENEDICT asked **Mr. Sager** to respond to **Mr. Driscoll's** concerns about section 12. **Mr. Sager** replied the regional Federal Department of Labor's Office information is tied strictly

to national approval. The Department has been informed that Montana is out of conformity with the Federal Unemployment Tax Act. **Mr. Sager** stated he discussed the topic with **Mr. Driscoll. Mr. Sager** stated he does not want to debate particular pension plans and payments. The FUTA law reads if the individual contributed anything towards the pension plan, and there doesn't have to be an off-set. If the individual was involved in a pension plan, then laws requires to be an offset. This affects a small number of people.

It is a problem in Montana, so it must be a major problem in urban states. The National Labor Organization, for some reason has not moved to change the federal law.

SENATOR WILSON asked **Rod Sager** about page 13, line 22. He noted David Owen raised the question about who is a liable corporate officer. **Mr. Sager** referred the question to David Scott, Department of Labor, Legal Services. **Mr. Scott** stated the liable corporate officers would be the president, vice-president, secretary treasurer, whoever fails to file an annual report through the Secretary of State. The Department is only liable for such a period of time that they fail to file with the Secretary of State.

CHAIRMAN KEATING asked about contributions to a retirement or pension fund and asked if a 401K or an IRA would be exempt. **Mr. Sager** stated yes, since you as an individual contributed to a plan that is providing a pension and directly contributed to the plan. Then, it is exempt from an offset requirement. **CHAIRMAN KEATING** asked if a company allows an employee to make a contribution to a pension plan and, attached the amount. This is a personal contributions. **CHAIRMAN KEATING** asked for an example of what is not a personal contribution. **Mr. Sager** stated in some labor organizations there are labor workers who are involved in pension plans where employers make the entire contribution. One of the issues of the 1993 session was how to try to indicate in those renegotiations. It is a federal FUTA requirement and should be resolved at the federal level, rather than the state level. **CHAIRMAN KEATING** asked about the ERISA plan, page 4, line 6. The "colleges" word is deleted notwithstanding subsection 15A. All institutions in the state are institutions of higher learning for the purpose of the legislation. **CHAIRMAN KEATING** asked if this meant that community colleges are not institutions of higher learning or would the community colleges fall under the proposed changes. **Mr. Sager** stated he believed the change was made by the Legislative Council, as they were going through that section of law. Consistency and references to colleges and universities was the reason. **Ms. McClure** stated the reason may have to do with the Board of Regency's Bill, dealing with the university system, which is now being called the colleges. The drafter was trying to match all the terms through the legislation. The Regent's Bill dealt with community colleges. **SENATOR AKLESTAD** asked about the employer paying approximately 6% and got credited for approximately 5%. **Mr. Sager** stated the

current FUTA amount is 6.2%. States are given credit to employers in states that are in conformity with the federal compliance. They are credited with 5.4%. So employers are only charged .8%, as long as they have a UI program in place and are in compliance. **SENATOR AKLESTAD** asked about **Mr. Driscoll's** question "that the government employees can draw full unemployment and full pension, but private sector can only draw partial unemployment and full pension under the proposed legislation. **Mr. Sager** replied the difference has nothing to do with whether it is public employment or state employment, local government or private. The difference has to do with whether the pension plan is providing the pension payments was contributed to by the individual directly or not. In the case of state employees, who pay in 6.7% and the employer, the state pays in 6.7%. The employees are contributing. If the employee retires on PERS payments and goes out and works again and creates job credits, and then are laid off, they could, in theory, draw unemployment. They would have to meet the test of able, available, actively seeking work, just like anyone. If they went to work and two years later they could not find suitable work, they could, in theory draw benefits and not have a pension offset. The same thing would apply if they worked where they contributed to a pension plan.

SENATOR BARTLETT asked **Mr. Sager** about the proposal that some of the UI Administration money would no longer be devoted to funding the apprenticeship program. Are there plans in the works that would draw funding for the apprenticeship program from other sources. **Mr. Sager** stated the Department is proposing to change the law back to the way it was, where the penalty and interest fund is used, not the Administrative Tax. There is a Trust Fund, Administrative Tax, and Penalty Interest money; sometimes, the three different amounts become intertwined. The penalty and Interest Funds run about $230K a year and are only available for UI administrative purposes. In the last session, **FORMER REPRESENTATIVE WANZENRIED** asked the Department for one more year, one more biennium. Approximately $140K per year to be funded out of the P & I to help furnish the apprenticeship instruction training program. Two or three years previously, there had been a reduction in College Perkins Funds. They agreed for one more biennium, but that was all. The automated benefit system and the UI program need money to maintain a downhill trend. The agreement was fine, but **FORMER REP. WANZENRIED** is not at the 1995 session. There are other funding sources being pursued. One is called the Perkin's Funds, through OPI or higher education. Those funds, as **Mr. Sager** stated he understands, were reduced. There was a decision a few years ago by OPI to take the reduction, or part of it, and reduce the apprenticeship instruction training. At that point in time, people were looking for funding sources, and they discovered P & I money.

SENATOR EMERSON asked if there is something in the bill about after so long on unemployment the worker had to go back to the employment office. Do the workers have to go to the unemployment

office every week to seek employment? **Mr. Sager** said they have to go back every week to seek employment. The profiling system requires a particular program be set up to identify the likelihood of an individual exhausting benefits. In other words, the individual is entitled to draw for 26 weeks. Instead of putting the person on; having the person come in every couple of weeks to verify looking for work, but not finding work, the system has been changed. There are problems for such individuals working in the logging business that shuts down. These people are living in the area, but there is no logging business available. The problem is waiting for the 26 weeks to be up. Then the logging people are told they have to find some other source of income. They have no other skills, but probably exhausted the job possibilities early on, two, three, or four weeks into the process. The difficult factors could be solved by bringing the person in for a list of employment services, based on their particular needs. Find out what the person is interested in, maybe a change in occupational areas would solve the problem. The person needs education, assistance, etc. so they can become reemployed, without losing benefits. The program is a federal requirement, passed in November, 1993. All states are required to implement the program. Montana will implement the program in the Fall, 1995.

Closing by Sponsor:

REPRESENTATIVE JEANETTE MCKEE stated the changes are important changes to enhance the Montana Unemployment Insurance Program. There would be no cost for administering the program, resulting from the provisions. The Unemployment Trust Fund is not negatively effected. The legislation gives the Montana program, and **Mr. Sager** the ability to enhance the mandated duties and do a better job. In response to **SENATOR BENEDICT's** comment about pending amendments she stated she would not be terribly disappointed if the bill does not return to the House for debate. **REPRESENTATIVE MCKEE** urged the committee to vote yes.

HEARING ON HOUSE BILL 200

Opening Statement by Sponsor:

REPRESENTATIVE ELLEN BERGMAN, HD 4, Miles City, stated HB 200 is an act generally revising the Workers' Compensation Act. The bill was introduced at the request of the Department of Labor and Industry and is part of the administrative package. The bill is lengthy. Most of the provisions are true housekeeping measures. There are several more substantive sections dealing with contracting relationships under Workers' Compensation, which the Department will explain in detail. The Department has been working with effected parties for a number of months. There is substantial consensus on HB 200. There has been some amendments

attached in the House, and the amendments are non-controversial. **(EXHIBIT 2)**

Proponents:

Chuck Hunter, Department of Labor and Industry, stated the synopsis information (**EXHIBIT 3**) is true housekeeping information. In the Department of Labor's Workers' Compensation regulatory role, the Department works with clients, employers, injured workers, and provider insurers. Often times the clients come to the Department with proposals for minor changes, which need to be based in law. We have achieved minor corrections.

Section 6, 7, 11, and 12 deal with important issues. Section 6 in the current form, before the amendments, adds clarification about the limited liability companies that have been addressed by HB 100. Worker's Compensation System, like the UI System, have updated provisions that deal with limited liability companies. The limited liability companies were identified during the 1993 Session. The amendment deals with the independent contractor process and is designed to dovetail the provisions of **SENATOR FORRESTER'S** Bill about contractor registration. Under this amendment, the Independent Contractor Exemption Process would become an annual process, rather than the current lifetime process. Now, an Independent Contractor comes to the Department and gets the exemption. The exemption stays in effect forever, or until the independent contractor lets the Department know the status has changed. The process would make the independent contractor come in on an annual basis, give an updated status, give more verification that they are truly a operating independent contractor. It would also implement a $25 application fee for the exemption. The changes bring several benefits. There is regular, updated information about who is operating as an independent contractor. The fee would have the effect of encouraging those who are operating as independent contractors to come get the exemption. It would weed out the folks that are not truly independent contractors. The legislation will place the cost of administering the program on the IC, as opposed to issuers and employers who currently pick up the tab.

Section 7 deals with the liability of prime contractors for benefit claims that arise from an uninsured subcontractor the prime contractor hires. Under current law, when there is an uninsured subcontractor and an injured worker working for the uninsured subcontractor, the benefit costs can be transferred from the uninsured sub to the prime contractor. A recent Workers' Compensation Court decision altered that is some respect. The prior practice was no matter how many unemployed subcontractors there were in the "totem pole chain", the Department would find where there was coverage, starting at the bottom and going up. The Workers' Comp. Court decision said the Department can only go up one level. In the original HB 200 proposal, the Department would go to the last past practice. The

idea was somewhat controversial. Insurers and employers alike felt like they were exposed to liability they could not address or even know about upfront. On the House Floor, a complicated, bureaucratic amendment was discussed. The language said, "provided contractors, to some degree of protection, if they went through the tiered process of verifying and getting certification about the IC and subs." The Senate proposal takes Section 7 out of the bill entirely and gets rid of the controversy. The wanted liability protection concern is corrected with amendments to **SENATOR FORRESTER'S** Bill. There is consensus to get the language back into the bill, so the protection is restored.

Section 11 deals with the current cap of liability on the Uninsured Employer's Fund, UEF. Currently, the UEF has two functions, to bring uninsured employers back into compliance and to pay benefits to workers who are working for an employer who does not have insurance coverage. THE UEF acts like a mini insurance company that picks up the benefits. People can recover from employers. Available benefit monies come from the fund and are capped at $50K. The amount puts the Department into some financial pain because many times the problems prove to be more costly than $50K. Current Department claims are in excess of $100K, some in excess of $200K. The Department proposes to remove the cap which would allow the Department to go back to the uninsured employer and recover, dollar for dollar, the paid out benefit costs.

Section 12 would allow the Department to provide notice to prime contractors, when it is discovered that there is an uninsured sub working the job. The Department would require the prime insurer to make sure the uninsured sub had proper Worker's Compensation coverage. The alternative would be to get the uninsured sub off the job. The Department would notify the prime, give the prime three days to allow the uninsured sub to comply or get off the job. If nothing happens within three days, the Department could go to the prime and shut down the work site until compliance was reached. The language was developed in conjunction with the Montana Contractor's Association. Proposals were studied, and the new language was written.

George Wood, Executive Secretary, Montana Self Insurers Association, expressed support of HB 200. The amendment to strike section 7 is unintelligent and impractical. By striking and adding the information to section 6, and making the final change on notification of prime contractors, a good change occurred in the bill. The Department has been very fair about the legislation. The Association worked closely for about a half year with **Mr. Hunter** and their suggestions were treated fairly. The Association urged approval of HB 200, with the amendment.

Steve Shapiro, Montana Nurses Association, read his written testimony, offered an amendment, and submitted a letter from an Advanced Practice RN. **(EXHIBIT 4)**

Jacqueline Lenmark, representing the American Insurance Association, stated AIA thanks the Department of Labor for allowing participation in the drafting of HB 200. Association members believe the bill to be a "good bill" and support the amendment presented by **Mr. Hunter**. AIA would strongly resist the **Shapiro** Amendments to included advanced practice nurses in the definition of "treating physician". AIA participated at every stage of the amendments presented and enacted for Workers' Compensation Act in the 1993 session. The omission of advanced practice nurses was not inadvertent. The Association resists the inclusion of advanced practice nurses.

Nancy Butler, Chief Legal Counsel, State Fund, stated the advanced practice nurses were not inadvertently overlooked in the last session. Physician assistants were added to the list of treating physicians in areas where there are no physicians treating. There is a distinction between the two. PAs are supervised by a physician, where an advanced practice nurse does not necessarily have a supervising physician. This is important because the treating physician list is meant to be the "gate keeper". There is an advanced practice RN with a wide scope of practice, who can coordinate care. It is important the person is seen by a doctor, and the doctor sends them down the right path. The legislation is not intended to include all other types of medical personnel who are treating injured workers. They are still very much a part of the team effort. The PAs are not on the "gate keeper" list. They are at a treating level. Also, an advanced practice RN in a rural area can still see an injured worker for treatment, if the patients are just injured. The State Fund does not get involved in dealing with the fact they are seeing a treating physician on the list, until after the State Fund is aware of the claimant. The immediate care can still be given and paid for. Once the worker sees a treating physician, the care can be delegated to the advanced practice nurse in that area.

Don Allen, Coalition of Workers' Compensation System Improvement, stated support of HB 200. The Coalition agrees with the proposed amendments to clarify parts of the bill. The Coalition has concern over how to deal with the independent contractor issue, particularly in the construction industry. House Bill 200 is a step in the right direction, as is some of the content in **SENATOR FORRESTER'S** Bill.

Russ Cater, Chief Legal Council, Department of Social and Rehabilitative Services. The Department requests the Committee adopt an amendment **(EXHIBIT 5).** The amendment is the means of assisting the Department of SRS to implement the development of the Workers' Compensation components of the Welfare Reform Proposal. Currently, Workers' Compensation Law is unclear as to whether or not a worker's participation in the programs can be covered under Workers' Compensation Laws. Because of the great uncertainty, the Department is concerned. Some employers will be reluctant to participate in having people on welfare participate

in the program and become involved in the work. The amendment offered has the option of the employer and the employer's insurer to whether or not they want to be covered by Workers' Compensation Laws. Otherwise, they would run the risk of having workers sue them for general damages and liability for negligence.

Mr. Cater stated last week the Department met with attorneys from Worker's Compensation, **Nancy Butler** and **Minnie Hibbard.** They suggested using the language, currently used in HB 462, regarding volunteer workers. In HB 462, the employer has the option to cover the workers. The Department thought it appropriate to include the amendment for HB 200 and to include AFDC recipients, rather than HB 462 because HB 462 has already been heard in committee. The amendment is the means of assisting the Department of SRS in implementing the development of the Welfare Reform Proposal. Currently, Workers' Compensation Law is unclear as to whether or not a worker, participating in the program can be covered under the Worker' Compensation Law. Because of the uncertainly, the Department is concerned that some employers will be reluctant to participate and have people on welfare work in their businesses. The amendment offered has management option to participate or not participate.

Questions from the Committee Members and Responses:

SENATOR BENEDICT asked **Mr. Hunter** how much the $25 would raise. **Mr. Hunter** replied the amount would be between $35K to $40K annually. **SENATOR BENEDICT** asked if the amount would be in addition to **SENATOR FORRESTER'S**, SB 354's $70 contract/registration fee. **Mr. Hunter** replied that the amount would be in addition to the fee for those who are in the construction field. Although, if the applications are obtained together, the construction contractor, who is also the independent contractor, would only have to pay one fee. Since the paper work is about the same, the department would do the work for the $70.

SENATOR BENEDICT asked **Mr. Shapiro** how many bills he had tried to amend with the advanced nurse language. **Mr. Shapiro** stated he has tried to amend the definition of the treating physician into two bills, SB 375 and HB 200. **SENATOR BENEDICT** asked **Mr. Shapiro** what the reaction was when he tried to amend SB 375. **Mr. Shapiro** stated SB 375 was considered. Suggestions were made that the amendment be coordinated with the State Fund. He tried to talk to **Mr. Swanson** and has not been successful. **SENATOR BENEDICT** stated he understood executive action was taken on SB 375, and the provision was rejected.

SENATOR EMERSON stated his wife is a registered nurse. In the days she was going to school, there were registered and practical nurses. Shortly after, training took place on a college level in the university system. **SENATOR EMERSON** asked exactly what is a Advanced Practice Registered Nurse. **Mr. Shapiro** replied that the

advanced practice registered nurse goes back to college, after receiving the RN license, for a masters degree and takes a specialized national examination. These RNs are certified for a higher level of nursing practice. **CHAIRMAN KEATING** asked if the RNs go through medical school and are allowed by the Board of Medical Examiners to be diagnostic-type physicians. **Mr. Shapiro** stated the advanced practice nurse does not go to medical school, but rather goes to a School of Nursing were they receive the upper level education in the nursing field. The amendment gives information about the nursing process. **Mr. Shapiro** stated he could not say the nurses are practicing medicine, since practicing medicine has its own definitions. There are similarities in being able to see a patient, evaluate the patient's needs and begin treatment, with follow through.

SENATOR BARTLETT asked Nancy Butler about prior testimony concerning specialized physician assistant being included in the list, when there is not a physician in the area where the PA is located. What would your response be if the Committee names either an advanced practice registered nurse or a physician assistant who are in areas where physicians are not available. **Ms. Butler** stated it is one of those hard decisions because one can understand the problem of a worker being in an area without a physician where there may be a advanced practice nurse in that area. The State Fund's concern is the gatekeeper concept, where the doctor is up front, dealing with the problems and coordinating care with the other providers. Nurses may or may not have a standard supervisory position. The PA's are supervised by a medical doctor. Patients will have the initial care, then see the nurses. Workers' Compensation pays the bills. **Ms. Butler** stated she did not know how big the problem was. **SENATOR BARTLETT** said not all PAs in the state could qualify as a treating physician, by definition. It is only those who are working in areas where there is not a physician available, that could be the treating physician. **Ms. Butler** replied yes. The treating physician fulfills the role of the treating physician when the PAs are treating the injured worker in a clinic. The PA is under the supervision of the treating physician.

SENATOR BARTLETT asked **Ms. Butler** to assume that there is not a physician that could qualify as a treating physician under the definitions. What role would the PA play in Workers' Compensation cases. **Ms. Butler** stated they would have the right to take the worker and treat through the full course of their injury. The PA would obviously make any necessary referrals for additional treatment. A Managed Care Organization might overlap small towns, at some point. The worker may ultimately find his/herself in a Managed Care Organization (MCO). If there was not an MCO, the particular PA would be qualified to handled the not too complex patient. **Ms. Butler** stated it is not clear if the PAs could do impairment rating, which would be a limiting factor.

SENATOR AKLESTAD referred to section 28 and asked for an explanation of the retroactive definition. **Mr. Hunter** explained there are two retroactive sections that deal with funds: the Subject and Entry Fund and the Uninsured Employer Fund. The bill's provisions stipulate the interest from the funds are to be invested by the Board of Investments, and the interest stays within the funds. So, the retroactive provision applies to the two sections to continue the practice and to allow generated interest to be invested and remain in the fund. **SENATOR AKLESTAD** asked if the funds are to be generated from the date indicated in the bill until present. **Mr. Hunter** replied the funds will be from Oct. 1, 1977 until present. A case came from the Legislative Auditor's Office about funds generated as interest. The monies had been reinvested back into the fund, but there was no specific statutory language dealing with interest provisions. The Legislative Auditor suggested taking all the money, generated over the time period and putting it into the General Fund. **SENATOR AKLESTAD** stated he has never been a real advocate of additional fees, fines, or penalties. The fiscal note showed the need to raise additional funds for a computer system. Is there a time when the state agencies could try to get by with the system in place. **CHAIRMAN KEATING** clarified the question was why the Department was getting $37.5K, election of coverage for certain corporate offices. **SENATOR AKLESTAD** said if the legislature did not allow the fee and the fiscal note monies, how would the Department take care of needed computer funds. **Nancy Butler** answered the State Fund could possibly modify the computer system to deal with the extra data fields for limited liability companies. The budget uses premiums to manage any changes and operate within the cap of the legislature. It would not require an appropriation to deal with the program. The State Fund would work internally to enhance the computer system to track changes and have the appropriate data fields. **SENATOR AKLESTAD** asked if the revenues come out of the insurance and not directly from the legislature. She replied actually, it takes premium dollars. **CHAIRMAN KEATING** stated the amount would be the businesses' expense. **SENATOR AKLESTAD** asked if the $25 was not allowed. **Mr. Hunter** replied the $25 is coming in the form of an amendment.(**EXHIBIT 1A**) It is not reflected in the fiscal note. The effect will not be any net increase in revenue. The Department would collect the fees from the application from those parties who apply. The Department would not charge the same amount of money that is currently being charged to run the exemption process. It is a wash, in terms of Department of Labor dollars.

CHAIRMAN KEATING asked if the Labor Department estimates what the expense are going to be, then receives an appropriation from the legislature and then assess the amount to the Workers' Compensation Premium and the Self Insured Funds. **Mr. Hunter** replied that was correct.

SENATOR VAN VALKENBURG asked **Mr. Hunter** if he had an objection to the amendment proposed by **Mr. Cater, SRS**. **Mr. Hunter** said no.

SENATOR VAN VALKENBURG asked about section 5, contested case hearing to be conducted by telephone or video conferencing. Would it be the intention the hearing could be done by telephone or video without the consent of the injured worker or effected parties. **Mr. Hunter** stated the Department currently does the hearings by teleconference. The Department holds a prehearing conference where both parties are on the phone. The Department makes sure what the issues are and talks over the witness list to make sure the hearing is set up the way it is needed to be set up. Typically speaking, when people feel there is a real need for a face-to-face meeting, the parties will drive to Helena. The Department makes every accommodation. Most of the parties are satisfied with telephones because they do not have to leave their business or residence for a hearing. **SENATOR VAN VALKENBURG** asked if the Legislature could amend to provide the hearing could be conducted in that fashion, as long as all parties agree. (**EXHIBIT 6**) **Melanie Symons, Department of Labor and Industry**, stated the Department objects to that proposal. Often, one party might use the option against the other party. For instance, an injured worked who can't afford to have an in-person hearing, but an employer might insist on an in-person hearing. The injured worker would then be forced to spend their limited income to come to Helena for a hearing.

SENATOR VAN VALKENBURG stated the change applies not only to hearings that the Department would conduct, but would apply to hearings that the Workers' Compensation Court would conduct. The language says "a hearing under this chapter", and the Workers' Comp. Court is under the chapter. Has the Workers' Comp. Court indicated a desire to have the provision apply to the proceedings. **Mr. Hunter** stated he does not believe the Court intends to use the potential mechanism, but to continue their current side-wide hearings in the locations where the cases arise. **SENATOR VAN VALKENBURG** asked **Mr. Hunter** if he had objection to an amendment that would exempt the Workers' Comp. Court from the particular change. Mr. Hunter stated he would not but the Court may.

CHAIRMAN KEATING stated, as he understood the amendment, section 7 would be deleted from the bill, and the deletion restores current statutory language. What was the effect of the House Amendment. **Mr. Hunter** stated the issue with Section 405 was the possibility, under the draft, when there was a general contractor, who had several layers of uninsured subcontractors, should a claim arise at one of the lower levels the language would have allowed the Department to transfer the benefit claim up to where there was coverage. The general contractors believed the action exposed them to liability that they did not know about because they might hire a sub, and they would not know the sub had also hired a sub. The amendment that was added from the House Floor would have provided had a general contractor verified and gotten a legal document from the sub contractor that they are going to do all the work personally, or if they did hire an employee, they will have the proper coverage. That provided the

general with insurance that no claim could bounce up the line and bite the general contractor. The complaints from both the employers and insurer about the language was that a bureaucratic mechanism was needed. At the same time, there is **SENATOR FORRESTER'S** Bill moving through the legislative process. The Building Industry Association and **SENATOR FORRESTER** are working on an amendment and have agreed that would do the same thing in the construction field when there is the registered construction license in place. If the general contractor hires subs and verifies they have the registration, they will be protected from the claim bouncing up. The Department wants the solution simple.

CHAIRMAN KEATING asked for verification about the new program. At the end of the AFDC period, the person is supposed to go to work, if they do not find a job, they have to do community service. Community service, then, becomes voluntary under the amended language. If the employer accepts them to do the community work the employer can list them as volunteer and may or may not cover them under Workers' Compensation. **Mr. Cater** replied yes, it would allow the employer to have the option to decide whether or not the employer wants to pay the premium to cover the employee. Subsection 3 addresses that they also have to have the approval of the insurer. The largest number, the bulk of people who would be covered, would be the people who after the two year period of time would have to work in the programs or the benefits would be discontinued. Even during the course of the Welfare Reform Proposal, the Department is trying to find people work in work placement programs. So, the coverage would be for some people during the course of the welfare reform period. **CHAIRMAN KEATING** asked if they go to a permanent job, then they would have to be covered. **Mr. Worthington, State Fund**, stated if the people would have a job outside the AFDC paid the recipients benefits, the employer actually is not paying in terms of wage or benefits. If the worker finds a job, that employer would have to cover the employee. **CHAIRMAN KEATING** asked **Mr. Cater** if he was advised by the people in the Department who are the employers that would accept the workers for this kind of service. The Department would be paying for the service, but the employers would be volunteers for purposes of Workers' Compensation. What types of employment would the program offer? **Mr. Cater** replied the types could be varied, from clerical work to maintenance work. **CHAIRMAN KEATING** asked who would be the employer. **Mr. Cater** replied the employer would be the on-site business, it could be private sector or public sector.

SENATOR BARTLETT asked **Mr. Wood** about the amendment. **Mr. Wood** replied as written the language does present problems. The businesses will have volunteers, who are required to work for part of their benefits. The benefits will come from another Department, Labor and Employment Relations. It is much like the armed service volunteer program. The volunteers would be limited to AFDC. There are other welfare programs who may be required to have work activity. If the legislature expects the private insurers to hire, the Workers' Compensation should pay for the

Workers' Compensation Insurance. The rate would vary greatly, from clerical to heavy equipment construction. If the legislation passes, all the programs should be left alone to do whatever they want. If the legislature expected the self insurers to hire the workers, the legislature should send the workers with the Workers' Compensation. From the self insurers point of view, the self insurers can make the decision a lot easier than can those Plan 2 or Plan 3 groups where they are once removed, an insurer taking on a liability and not the employers. **Mr. Wood** emphasized that he had real questions concerning the extent of coverage and the effectiveness of the program if they are put into a unique class of volunteers.

CHAIRMAN KEATING stated he would open up the hearing to other interested parties. The amendment is far reaching with ramifications to both employees and employers. **CHAIRMAN KEATING** stated he would not want to have an AFDC person get injured and not be covered. At the same time, **CHAIRMAN KEATING** did not want an employer's experience rating to go up, or to have an increase mod factor happen because of an injury. Especially not happen in a situation where a beneficial happening is the intent. The legislation should be in a separate bill, but not in an amendment. **SENATOR VAN VALKENBURG** explained SRS intends to give employers some kind of assurance. If the entity decides to take on volunteers, they will be under the Workers' Compensation Law. This is the reason why they are tying to put on the amendment. Otherwise, an employer in the position of taking on volunteers and being subject to common law remedies being brought against the employer. **CHAIRMAN KEATING** again stated concern over who will pay the premium. **SENATOR VAN VALKENBURG** stated the employer is going to pay the premium. **CHAIRMAN KEATING** asked for comments from interested parties.

Nancy Butler, State Fund, gave background information to clarify the legislation. The State Fund heard about the bill early in the session and understood the section could be an issue for Workers' Compensation down the road. State Fund encouraged SRS to study the problem, if the problems are not solved, litigation is certain. Litigation cost would be an issue and the program could be drastically impacted. The problem is the workers received welfare benefits, but they work for no wage. The standard employee/employer relationship is not met. Because the worker would be in a work place providing services to an employer, questions are raised. State Fund encouraged SRS to make an affirming decision to clarify rights and obligations of both employees and employers. The problem is cost, who pays the premium. The legislation language must be sensitive to the question of who gets the exclusive remedy.

Jacqueline Lenmark, American Insurance Association, stated she was not aware of the amendment until the hearing. **Ms. Lenmark** stated she is inclined to agree with **Mr. Wood's** comment. The better approach is to fully develop the problem and develop a solution, rather than to deal with a last moment amendment. The

issue is complex with competing issues on both sides. A full discussion of the stated issues has not been accomplished, and the discussion should take place. **Ms. Lenmark** requested the Committee defer action on the amendment at this time. **Russ Cater** apologized for bringing the amendment to the Committee at a late date. The Welfare Reform Proposal is complex, and the Department is in the process of developing work sites and encouraging employers to accept AFDC recipients the Department wants to place. SRS thought by giving the employer an option of coverage, the employers would be encouraged to take AFDC recipients. Another option that was discussed was "could the SRS cover the Workers' Compensation premiums. Could the SRS pay just the premiums." The option would not necessarily mean the on-site employer would be covered and protected from all liabilities. If the employer paid the premium, then the employer can definitely say the employee did not have any right to sue, whatsoever. The employees have to accept the remedies covered by Workers' Compensation Laws. The SRS would encourage more employers, but at the same time, SRS is considering the impact on insurers. The amendment gives the insurers the option to say "no" to the employer. The employer and the insurer would have to agree.

CHAIRMAN KEATING asked **Russ Cater** to describe the program. The Department would end up paying the wage or salary for the AFDC person, the employer actually gets the worker free of charge. **Mr. Cater** replied positively. **CHAIRMAN KEATING** asked if the Department pays the employer or the worker. **Mr. Cater** stated the Department pays the AFDC benefit, so in a sense, the Department is paying the worker, or agreeing to continue their welfare benefits. **CHAIRMAN KEATING** paraphrased the information clearly. The Department is paying welfare benefits as a wage, and the employer is giving the worker a place to function. **Mr. Cater** agreed.

David Owen, MT Chamber of Commerce, stated he reviewed the amendments yesterday and deliberated on the school to work transition regarding Workers' Compensation issues. The problem extends to cities and towns. Questions abound whether or not these kinds of worker-volunteers should be working for competitive businesses.

Closing by Sponsor:

REPRESENTATIVE ELLEN BERGMAN thanked the Committee for the lively hearing. **REPRESENTATIVE BERGMAN** stated she placed trust in the Committee for their deliberations towards an Executive Action decision. **REPRESENTATIVE BERGMAN** explained that the amendments impact the legislation and the entire welfare reformation.

EXECUTIVE ACTION ON HB 100

Discussion: **CHAIRMAN KEATING** asked if anyone proposed an amendment to SB 100. **SEN. VAN VALKENBURG** noted **Mr. Driscoll** had proposed striking Section 12. **Ms. McClure** stated she was asked to make sure that the language on page 4 was in tandem with the University System Bill. **CHAIRMAN KEATING** stated he was sure of the entire impact, since the deletion was written into the body of the bill and there has been no opposition, the bill will be considered. There are no proposed amendments.

Motion: **SENATOR STEVE BENEDICT moved DO CONCUR on HB 100.**

Discussion: **CHAIRMAN KEATING** stated the bill must be written as it is because of federal requirements. It is a federal requirement that a person may withdraw benefits from a pension fund to which that employee has made contributions. In the case where the employer is making the full contribution, the employee cannot draw a pension and unemployment at the same time. The bill is written in compliance to the federal regulation.

Vote: **The BE CONCURRED IN motion PASSED unanimously. CHAIRMAN KEATING** will carry the bill to the floor.

ADJOURNMENT

Adjournment: The meeting was adjourned at 5:45 p.m.

SENATOR TOM KEATING, Chairman

MARY FLORENCE ERVING, Secretary

TK/mfe

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE March 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	✓		

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SENATE STANDING COMMITTEE REPORT

March 8, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 100 (third reading copy -- blue), respectfully report that HB 100 be concurred in.

Signed: _____
Senator Thomas F. Keating, Chair

Amd. Coord.
Sec. of Senate

SEN. KEATING
Senator Carrying Bill

541102SC.SRF

EXHIBIT 1
DATE March 7, 1995
SB HB 100

SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS
Testimony on House Bill 100
March 7, 1995

Mr. Chairman and Members of the Committee:

For the Record, I am Rod Sager, Administrator of the Unemployment Insurance Division, Department of Labor and Industry.

I will proceed to explain the details of House Bill 100.

ELECTION JUDGES Amend section 13-4-106, MCA.

This first change pertains to an unemployment insurance exemption on compensation paid to election judges. We are requesting that the unemployment insurance exemption on election judges be repealed.

To help explain our reasoning for this, it might be helpful if give you some background information. The Unemployment Insurance (UI) program is a federal-state partnership. The U.S. Department of Labor has oversight responsibility over every state's UI program. If a state UI law does not conform to specific federal requirements, they are deemed to be out of conformity.

If a conformity issue is not resolved, the state may lose administrative funding and/or Montana employers may lose their state unemployment insurance credit on their Federal Unemployment Tax Return, Form 940.

> i.e. The FUTA tax is 6.2%, however, employers are credited with 5.4% for paying their state UI taxes. Employers would be liable for the entire 6.2% tax should the U.S. Department of Labor impose this "penalty" for the state's failure to correct the conformity issue.

The original bill to exempt election judges from UI coverage was introduced in the 1991 Legislature. The UI Division spoke before a legislative committee at that time to explain that adoption of such legislation would result in a conformity issue with the U.S. Department of Labor.

The conformity issue in this case is that state UI law is prohibited from exempting UI coverage to individuals working for a governmental entity, unless the Federal Unemployment Tax Act (FUTA) has a similar exemption. Since election judges perform services for a county government, which is not exempt from FUTA, the state cannot exempt this employment from UI coverage.

At the hearing, the legislative committee agreed to remove the

exemption from the bill, however, when the legislative council amended the bill, the exemption was inadvertently only removed from Title 39 (UI) and not from Title 13 (Elections). Consequently, there are now two conflicting statutes.

Since then, the U.S. Department of Labor has raised the exemption of election judges as a conformity issue. The state needs to remove this exemption or face consequences of loss of federal funding or elimination of the 5.4% state UI credit employers receive on their Form 940.

AUDITING OUT OF STATE RECORDS Amends section 39-51-603, MCA.

Of the 26,700 employers in Montana, we estimate that 10% maintain their business records out of state. Our statute, in its current form, does not require that employers make their records available to us in Montana. Some of these firms provide us with copies of their records, however, many refuse to.

We, like other state UI programs, are not adequately funded to travel out of state to conduct audits on businesses who chose to maintain their business and payroll records outside Montana. As a consequence, most firms who maintain their records out of state are not audited. These include big conglomerates as well as smaller operations. Though we do not know this is currently happening, our inadequate law may influence some employers to intentionally maintain their records out of state to avoid being audited and paying their fair share of the UI taxes.

We propose to provide a fair playing field by requiring employers, who maintain their payroll records out of state, to produce a copy of those records to us in Montana or to pay costs associated with conducting the audit out of state. This will result in equity to Montana's businesses, a better UI tax program, while at the same time hold down operating costs in auditing out-of-state employers' records.

PENALTY & INTEREST - USE OF AND TRANSFER TO TRUST FUND Amends section 39-51-1301, MCA.

The department proposes to amend section 39-51-1301(3), MCA, penalty and interest on past-due taxes, to provide appropriation of these funds to the department only for administrative purposes under this chapter (Title 39, Chapter 51 - UI laws).

Penalty and interest collected would no longer fund apprenticeship instruction programs under 39-6-103, MCA.

Federal funding levels aren't adequate to meet the expanding technology needs to stay current with service to employers and

claimants. It is a common practice for state UI program's to use their penalty and interest funds for their own administrative purposes.

Current annual P&I revenues run about $230,000. In FY95 $140,000 was appropriated for Apprenticeship Instructor Training and about $50,000 for UI Division Collection Activities, for a total appropriation of about $190,000.

The UI Division budget request for the 1997 biennium includes a base budget request of $46,917 each year for UI collection activities, $100,000 each year for enhancements to maintain the aging benefits system, and a proposal to provide a toll-free telephone line for employers to call the Division for forms, rates, and other information ($14,775 each year). In addition, there is a separate proposal (HB100) to fund the UI share ($125,000 biennial appropriation) of a cost/benefit analysis intended to help the UI Division and the Department of Revenue move toward integrated wage reporting in an effort to streamline and simplify employer reporting to government. These potential UI Program obligations alone would utilize almost all of the projected P&I revenue.

By using these funds for UI activities, the Department can better meet its customers' needs and Federal demands, and make the changes to our systems that are needed and expected.

The mainframe benefits system is nearing its capacity. New programs are being developed at the national level which the current system will not be able to accommodate. (These programs include already passed legislation such as claimant profiling, the Benefit portion of the North American Free Trade Act and the Trade Adjustment Act, and a new extended benefits program should Montana reach a trigger point). The date logic needs to be upgraded in the near future to accommodate claims that will be active in the year 2000. In addition, the last two Legislative Audits have included recommendations that we should improve our automated benefits system.

In meeting with various employer groups over the past few years, a frequent suggestion for improving service to employers was the installation of a toll-free telephone line. This will certainly help to improve communication and understanding of the laws, and ultimately, should improve compliance over time.

In addition, we have another minor change to this section. We are proposing that any penalty and interest funds collected that are not appropriated would be transferred to the UI trust fund at the end of each fiscal year, rather than at the end of the biennium.

There are two different sections in the UI law that address transfer of penalty and interest money to the trust fund. (39-51-1301(3) and 39-51-3201(2)) One section (39-51-3201) requires the

transfer at the end of each fiscal year and the other section (39-51-1301) requires the transfer at the end of each biennium. This legislation is to provide consistency on transfer of penalty and interest money. In addition, transferring these funds on a fiscal year basis will coincide with state fiscal year accounting procedures.

CORPORATE OFFICER LIABILITY Amends sections 39-51-1303 and 39-51-1304, MCA.

The change to Section 39-51-1303 (1) COLLECTION OF UNPAID TAXES BY CIVIL ACTION, and Section 39-51-1304 (1) LIEN FOR PAYMENT OF UNPAID TAXES LEVY AND EXECUTION is needed to clearly define the department's legal remedies against officers of a corporation [and managers of a limited liability company. The change to this statute was originally directed at corporate officers, however, with the addition of LLC language, we needed to address the managers of LLC's in this area as well.]

I shall begin by first going over some background on how corporate officers are notified of their potential liability. Section 39-51-1105 LIABILITY OF CORPORATE OFFICERS FOR TAXES, PENALTIES, AND INTEREST OWED BY A CORPORATION is the basis for extending liability to corporate officers. This section states that when a corporation is delinquent in filing its annual report with the Secretary of State, that the department (Labor and Industry) shall hold the president, vice president, secretary and treasurer jointly and severally liable for any taxes, penalties, and interest during the period of delinquency.

The process used by the department to collect a debt is to contact the debtor when the debt occurs, explaining the amounts due either by phone or through a Notice of Amounts Due. This is followed with additional Notices of Amounts Due each month.

If this effort is not successful, a lien is filed against the corporation, and an inquiry is made to the Secretary of State's office to determine if the corporation has a period where they are delinquent in filing their annual report. If the corporation is delinquent in filing their annual report, letters are sent to the officers advising them of their portion of the liability. They are given 15 days to respond with payment or to supply proof that they were not officers during the period of corporate filing delinquency. If no response is received, liens are filed against the officers as the first step of the enforced collection process.

The proposed change would clarify the collection remedies we have available in regard to corporate officers [as well as managers of LLC's]. We have pursued corporate officer debts in this manner, and therefore, no new revenue will be generated.

EXHIBIT 1
DATE 3-7-95
HB 100

LIMITED LIABILITY COMPANY - UI TAX TREATMENT Amends sections 39-51-201, 39-51-203, 39-51-204 and 39-51-1105, MCA.

Throughout this bill, we address Limited Liability Companies in relation to Unemployment Insurance coverage and tax liability.

Some of you might recall that the last legislative session passed a bill establishing a new type of business entity - limited liability companies or LLCs. That statute did not address issues revolving around payroll taxes and coverage requirements for unemployment insurance purposes. This is being clarified in our bill.

Limited liability companies choose their management style at the time they register with the Secretary of State. They can choose to be member-managed or manager-managed. The manager-managed LLC's operate in the style of corporations and member-managed LLC's operate like partnerships.

With this bill, we are proposing that the manager-managed (corporate-like) LLC's report to UI in the manner as corporations report their officers - with managers reported as employees. We also propose that member-managed (partnership-like) LLC's report to UI in the same manner as partnerships - with the "members" (like partners) not being reported - and reporting only employees who are not members.

We have a number of good reasons to propose this legislation:

1. This proposal keeps in step with the current UI statute on coverage for partnerships and corporations.

2. This proposal adopts the interim policy which was enacted by the Department of Labor and Industry. This policy states, "Limited Liability Companies who have filed with the Secretary of State with 'member managers' will be presumed to be like partnerships. If the Limited Liability Company has filed with the Secretary of State as a 'manager only' entity, it will be presumed to be like a corporation."

3. This interim policy was endorsed as being the correct procedure for UI coverage in an article in the Montana Law Review written by Steven C. Bahls who served as the Chair of the Limited Liability Company Subcommittee of the State Bar of Montana's Tax, Probate and Business Law Section. The Limited Liability Company Subcommittee drafted the Montana Limited Liability Company Act. This article went on to state "The best alternative for the Montana Legislature is to enact the department's interim policy that treats member-managed limited liability companies as partnerships and manager-managed limited liability companies as corporations." The article also states "New statutory language that focuses on

whether the entity is member-managed or manager-managed properly would consider whether members are effectively both employers and employees."

4. This approach will mirror similar policies adopted by the State Fund, IRS and Department of Revenue. The Department of Revenue's rules state the "taxation of a limited liability company in Montana depends upon its federal classification as a corporation or a partnership as determined by the Internal Revenue Service."

5. A limited liability company which files with the IRS as a corporation will be required to report corporate officer (manager) wages for Federal Unemployment Tax Act (FUTA) purposes. If the manager's wages are not reported to state UI as wages, the LLC will be required to pay the full FUTA tax rate of 6.2%. If manager wages are reported to Montana UI, the LLC will receive their state tax credit, reducing the FUTA tax rate to .8%.

In our bill, we propose that the liability of a LLC for unpaid taxes, penalty and interest reflect the current UI statute for liability of corporations and partnerships.

CHANGES TO PENSION PROVISIONS Amends section 39-51-2203, MCA.

Senate Bill 184 passed by the 1993 Montana Legislature put Montana out of compliance with Section 3304 (a) (15) (A) of the Federal Unemployment Tax Act (FUTA), which requires that amounts equal to pension payments be deducted from unemployment benefits if such payments are made under a plan maintained or contributed by a base period or chargeable employer.

A U.S. Department of Labor Regional Office memorandum addressing this issue was received by Montana DOL April 12, 1993. According to U.S. DOL's policy, the memorandum clearly spells out that the contested wording of SB 184 places Montana DOL out of compliance with federal regulations. A more recent letter spells out the seriousness of this language being out of conformance. The Montana UI program can be sanctioned in two ways. First, Montana employers can lose the state unemployment insurance tax credit, currently 5.4%, on their federal tax return. The tax credits amount to nearly $100 million per annum for Montana employers. Second, the state UI program can lose its administrative funding.

CHANGES DUE TO PROFILING Amend section 39-51-2104, MCA.

The Unemployment Compensation Amendments of 1993, P.L. 103-152, require States to establish a system of profiling all new claimants for regular Unemployment Insurance (UI) benefits.

EXHIBIT 1
DATE 3-7-95
HB 100

Profiling is designed to statistically identify claimants, who are likely to exhaust their regular UI entitlement, early in their claim and refer them to reemployment services such as testing and job search assistance to make a successful transition to new employment. States are also required to make ineligible for benefits any "profiled" claimant who fails to participate in reemployment services, unless there is a justifiable cause for the claimant's failure to participate in such services.

Profiling is a federally sponsored program that will be implemented nationwide in various stages. Statistics show that an increasing number of individuals are permanently being displaced from employment. USDOL sees unemployment insurance as a system designed to deal with workers who are on short term layoff and who expect to return to their former employment. Since displaced workers will not return to their former jobs, reemployment services are necessary. Profiling will ensure that displaced workers on unemployment insurance rolls will participate in reemployment services. In order to comply with all the requirements inherent in profiling, however, Section 39-51-2104, MCA, must be amended to reflect the responsibilities assigned to those unemployed workers affected by the program.

ACCESS TO GOVERNMENTAL RECORDS Adds a new section.

Recently the Department was subject to a routine audit conducted by the Legislative Auditor's Office. The results uncovered some potential fraud cases involving individuals attending a university and not informing the UI Division of their student status. Due to institution policies, the auditors could not turn the potentially fraudulent claim information over to the Unemployment Insurance Division. This legislation will allow the Department access to student records so the Division can establish a cross match to prevent future fraudulent claims for UI benefits.

CONDUCT HEARINGS AND APPEALS BY TELEPHONE
Amend sections 39-51-1109, 39-51-2403, 39-51-2404 and 39-51-2407, MCA.

This legislation will permit the department to continue its practice of conducting telephonic hearings in 95% of its unemployment insurance benefit hearings. Telephone hearings are far less expensive for the Department and for the parties than are in-person hearings. Hearings officers and parties need not incur the expense of traveling to other towns. Parties are not precluded from calling witnesses in remote locations. Less travel time by the hearing officers allows for larger individual work loads and more time for issuing decisions.

This legislation is designed to reduce or avoid the significant financial impact required in-person hearings would have on the Department and the parties to our hearings.

If in-person hearings were mandated, and if the Department does not have the resources to travel to the hearing site, claimants (who have lost their jobs, have found no other job and are seeking unemployment benefits) could be forced to travel to Helena or another location to attend their benefit hearings. They would also be required to pay the travel costs of their witnesses. Travel time would lengthen the time required for a decision to be issued, further delaying the possible receipt of unemployment insurance benefits. The inherent delay caused by travel would result in the Department not meeting federally mandated timeliness goals, thus reducing federal money available to the Department for unemployment insurance purposes.

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2
3-7-95
HB 200

Amendments to House Bill No. 200
Third Reading Copy

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

Prepared by Eddye McClure
March 7, 1995

1. Title, lines 11 and 12.
Following: "COMPANIES;" on line 11
Strike: remainder of line 11 through "OUT;" on line 12

2. Title, line 25.
Strike: "39-71-405,"

3. Page 13, lines 15 through 17.
Following: "department" on line 15
Insert: "and must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program"
Following: "."
Strike: remainder of line 15 through "contractor." on line 17

4. Page 13, lines 20 through 23.
Following: "(d)" on line 20
Strike: remainder of line 20 through "status." on line 23
Insert: "The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of October 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption."

5. Page 15, line 6 through page 16, line 16.
Strike: section 7 in its entirety
Renumber: subsequent sections

6. Page 27, line 18.
Strike: "10"
Insert: "9"

7. Page 27, line 20.
Strike: "18"
Insert: "17"

8. Page 27, line 22.
Strike: "25"
Insert: "24"

9. Page 27, line 25.
Strike: "13, 22, and 25 through 28"
Insert: "12, 21, and 24 through 27"

10. Page 27, line 27.
Strike: "12, 14 through 21, 23, and 24"
Insert: "11, 13 through 20, 22, and 23"

#3
March 7, 1995
HB 100

WC HOUSEKEEPING BILL
SECTION SYNOPSIS

Section 1: Definitions

Section 2: Revises the definition of "employer" to include limited liability companies, a new business entity authorized by the 1993 Legislature.

Section 3: Adds persons who are managers in manager-managed limited liability companies and corporate officers of quasi-public and private corporations as employers who may elect to include themselves as employees within the provisions of the Workers' Compensation Act.

Section 4: Excludes medical providers who have an ownership interest in managed care organizations from the prohibition of referring injured workers for treatment or diagnosis at a facility wholly or partly owned by the medical provider.

Section 5: Permits workers' compensation contested case hearings to be conducted by telephone or videoconference.

Section 6: Exempts working members of member-managed limited liability companies, managers in manager-managed limited liability companies, and officers in quasi-public and private corporations from the provisions of the Workers' Compensation Act. In addition, this section imposes a penalty on persons who make false statements or misrepresentations concerning their independent contractor status.

Section 7: Imposes liability for injuries of workers employed by an uninsured subcontractor on the first insured contractor or subcontractor. There is an increasingly common situation of the creation of a chain or a "totem pole" where a principal contractor will contact with a subcontractor who also subcontracts with a another subcontractor, etc. resulting in multiple subcontractors. Also, this section provides a mechanism for an employer to be relieved of liability for injuries by anyone working for an independent contractor provided the employer obtains a copy of the independent contractor's current exemption for the type of work to be performed for the employer, and the employer obtains a statement from the contractor that the contractor will personally perform all the without hiring any persons who are not covered by workers' compensation insurance.

Section 8: Definitions

Section 9: Clarifies that a group certified under this section may add new members without the approval of the department.

Section 10: Codifies the long standing practice of utilizing the board of investments to invest the money of the Uninsured Employer Fund. The proposed language will also clarify that the investment income from the fund must be deposited in the fund and cannot be utilized for other purposes.

Section 11: Removes the $50,000 limitation on employer liability under this section.

Section 12: Authorizes the department to issue cease and desist orders to prime contractors who utilize uninsured subcontractors.

Section 13: Authorizes district court judges to request the workers' compensation court judge to determine the amount of recoverable damages due an employee.

Section 14: Removes the reference to "wage supplement" since those benefits were eliminated during the last legislature.

Section 15: Adjusts cited reference numbers/letters to align them with changes made in Section 39-71-116.

Section 16: Adjusts cited reference numbers/letters to align them with changes made in Section 39-71-116.

Section 17: Removes the reference to "wage supplement" since those benefits were eliminated during the last legislature.

Section 18: Codifies the long standing practice of utilizing the board of investments to invest the money of the Subsequent Injury Fund. The proposed language will also clarify that the investment income from the fund must be deposited in the fund and cannot be utilized for other purposes.

Section 19: Excludes treating physicians who have ownership interests in managed care organizations from the prohibition of referring injured workers for treatment or diagnosis at a facility wholly or partly owned by the treating physician.

Section 20: Includes limited liability companies with other types of business entities referenced in this section.

EXHIBIT 3
DATE 3-7-95
HB 100

Section 21: Shortens, from 45 days to 20 days, the time allowed for a party to respond to the recommendation made by a Workers' Compensation Mediator.

Section 22: Authorizes district court judges to request the workers' compensation court judge to determine the amount of recoverable damages due an employee.

Section 23: Language made gender neutral; clarifies selection of the Occupational Disease Panel Chair.

Section 24: Language made gender neutral; clarifies examination and reporting process of physicians on Occupational Disease Panel to reflect fluid makeup of the Panel.

Section 25: Permits workers' compensation contested case hearings to be conducted by telephone or videoconference.

Section 26: Saving clause

Section 27: Severability

Section 28: Applicability

Section 29: Effective dates

March 7, 1995

SENATE LABOR & EMPLOYMENT
EXHIBIT # 4
DATE 3-7-95
BILL NO. HB 200

Steven J. Shapiro
Montana Nurses Association

Testimony on House Bill 200
regarding the Workers Compensation Act

I am Steven Shapiro representing the Montana Nurses Association. MNA is composed of 1,400 registered professional nurses working in all phases of health care across the State of Montana.

Senate Bill 347 was passed in the 53rd Legislature amending various health care provisions in the Workers' Compensation Act. Section 39-71-116, MCA, was amended with a definition of "treating physician" to include a medical doctor, chiropractor, physician assistant, osteopath or dentist. Since the bill was enacted, it has been noted that advanced practice registered nurses were apparently inadvertently omitted from this definition.

Advanced practice registered nurses have masters degrees and provide primary health care in a variety of settings in Montana and the United States. Many of them are authorized by the State Board of Nursing as independent health care practitioners, some including the authority to prescribe medications. However, they have been denied reimbursement by workers' compensation insurers because of the oversight in Senate Bill 347 (1993).

We ask the committee to adopt the attached amendment to House Bill 200 which would add in advanced practice registered nurses in the definition of "treating physician" in Section 39-71-116, MCA.

March 7, 1995

Steven J. Shapiro
Montana Nurses Association

Amendment offerred to House Bill 200

Section 1. [amending 39-71-116, MCA]

Subsection (34)

Page 6, line 7; following "Title 37, chapter 5;" *strike* "or"

Page 6, line 8; following "Title 37, chapter 4."

insert : " ; or

"(f) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8."

-END-

OHS Occupational Health Service

A Division Of Claims Management Services

February 27, 1995

Mr. Steven Shapiro, Attorney-at-Law
Box 169
Clancy, Montana 59634

Dear Mr. Shapiro:

Thank you for taking such an active interest in Advanced Practice Nurses in the State of Montana. I am writing to you in regard to our telephone conversation of February 27, 1995 during which you asked me if I could give you examples of the Worker's Compensation injuries that I see. Before I list specific examples, I thought I would give you a little background information.

I am an Advanced Practice Nurse who is masters prepared, certified nationally as a Nurse Practitioner, been in practice for twelve years, eight of those dealing primarily with Worker's Compensation patients in an occupational health setting. Currently, I am employed by Applied Health Services, which is the for-profit arm of Northwest Healthcare (including Kalispell Regional Hospital) and work in the Occupational Health Service located in the hospital. I see corporation employees for both work related and non-work related health problems at no charge to the individual employee and independent of a physician.

Examples of work related injuries that I see are back injuries; lacerations; fractures; shoulder, ankle, and wrist strains; cumulative trauma, such as carpal tunnel syndrome, sick-building syndrome, exposure to HIV/AIDS, falls, etc. As a Nurse Practitioner, I take a health history from the patient to find out how and when the injury occurred, perform a physical examination, and determine if additional studies are needed to make a diagnosis, such as blood work to rule out arthritis or x-rays to rule out a fracture. Based on the results, I determine a treatment plan. This would include, but is not limited to, health education and counseling, writing prescriptions for medications, prescriptions for physical, occupational, or chiropractic therapy, and referrals to specialists (usually orthopedists if there is a fracture or surgery is indicated). This is all within the scope of practice of a Nurse Practitioner and done without consulting a physician.

In addition, I determine if the employees can return to work and if so, in what capacity. Perhaps modifications in the employee's job, such as a lifting restriction, needs to be made to keep the

310 Sunnyview Lane - Kalispell, MT 59901

received
3-3-95

employee safely at work and to allow them to recover from their injury. This prevents the employee from missing time from work and collecting Worker's Compensation benefits. It also shows the employee, by keeping him at work even though he is not at 100%, that he is still valuable to the corporation and not easily replaced. I follow the employee on a weekly basis in my office, sometimes more frequently, adjusting medications, treatment plans, and work restrictions depending on the employee's progress and independent of a physician. I communicate often with their supervisor and other health care providers, such as therapists, to facilitate the employee's return to pre-injury status.

In summary, Nurse Practitioners currently are providing cost effective care for the Worker's Compensation population that requires intensive management, not only of medical issues but socioeconomic and psychological concerns that affect their injuries and can prolong their entry back into the work force. Nurse Practitioners work well in interacting with other medical providers to coordinate optimum care and services for injured workers. To not include Nurse Practitioners as providers, yet to include Chiropractors and Physician's Assistants, most of whom have less training than Nurse Practitioners, does a great injustice to the public and to the taxpayer.

If I can be of any further assistance in helping you to understand the role of the Advanced Practice Nurse and specifically how this role relates to Worker's Compensation, please do not hesitate to contact me.

Sincerely,

Ann K. Ingram

Ann K. Ingram, R.N., M.S.N., C.A.N.P.
Occupational Health Service
Applied Health Services
Telephone: (406) 752-5111, Ext. 2036
Fax: (406) 756-4717

AKI/je

SRS

Amendment to House Bill #200
(RE: Workers' Compensation)
Third Reading Copy as Amended

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 3-7-95
BILL NO. HB 100

1. Title, line 9.
Following: "ELECTION;"
Insert: "EXEMPTING VOLUNTEERS FROM COVERAGE UNDER THE WORKERS'COMPENSATION ACT UNLESS THE EMPLOYER ELECTS TO COVER THEM;"

2. Page 7, line 22.
Following: "worker,"
Insert: "**volunteer,**"

3. Page 8.
Following: line 30
Insert: "(c) performing service as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), 'volunteer' means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123, and includes recipients of assistance under the aid to families with dependent children program who are performing community service work in the community service program component of the families achieving independence in Montana project and recipients of assistance under the aid to families with dependent children program participating in a work experience program."

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c)."
Renumber: subsequent sections

-End-

#6
3-7-95
BILL NO. HB200

Amendments to House Bill No. 200
Third Reading Copy

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

Prepared by Eddye McClure
March 8, 1995

1. Page 11, line 12.
Following: "**conduct**"
Insert: "-- **exception**"

2. Page 11, line 14.
Following: "(2)"
Strike: "A"
Insert: "Except for a hearing before the workers' compensation court, a"

DATE March 7, 1995

SENATE COMMITTEE ON Labor Labor & Employment Relations

BILLS BEING HEARD TODAY: HB 100 HB 200

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Name	Representing	Bill No.	Check One: Support	Oppose
Russ Cater	SRS	200		
~~Linda [illegible]~~	~~[illegible]~~			
Charles R. Brooks	Yellowstone Count.	HB 100	✓	
George Wood	MT. Self Insurers Assn	200	✓	
Rod Sager	Dept. of Labor + Industry	100	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/7/95

SENATE COMMITTEE ON LABOR

BILLS BEING HEARD TODAY: ~~HB~~ HB 100, HB 200

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
CHUCK HUNTER	DEPT. OF LABOR	HB 200	✓	
Don Allen	CWCSF	HB 200	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10