

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN THOMAS KEATING**, on January 7, 1997,
at 1:00 P.M., in 413/415

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: Sen. James H. "Jim" Burnett, Vice Chairman (R)

Members Absent: None

Staff Present: Eddy McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Committee Business Summary:

Hearing & Date Posted: SB3; 12/30/96
Executive Action: None

Introductory Meeting and Procedures Discussion

The committee discussed the handling of absentee votes and proxies. **SENATOR STEVE BENEDICT** stated he preferred to use written proxies which are dated along with the bill and any amendments so there is a resolution to the action taken the same day. This way those who are present knows what action is taken on the bill. **SENATOR SUE BARTLETT** said there are occasions on which amendments are offered at committee that are not known about prior to the hearing which would be an exception to the rule that **SENATOR BENEDICT** commented on. **CHAIRMAN TOM KEATING** stated the reason for the absence would also be taken into account or the time that the member is absent. If it is a case of illness and the committee needs to proceed then there will not be a vote by that person, they will be excused from voting and the members present will determine the outcome of the bill. **SENATOR BENEDICT** moved that the committee not have a 24 hour rule, that the proxy votes are in writing if anyone is excused from a hearing. Only when members are present during executive actions will decisions be made. The motion passed.

{Tape: 1,; Side: A; Approx. Time Count: 13 Minutes.}

Pat Haffey, Commissioner Department of Labor, introduced the purpose of the Department of Labor. Its primary purpose is to promote the well-being and opportunity of Montana's employers and employees and to uphold their rights and responsibilities. The Department of Labor is divided into four different divisions and its responsibilities covers the regulation and enforcement of Workers' Compensation insurance programs. They deal with labor standards issues and are involved with unemployment insurance and job training as well as enforcement of health and occupational safety laws and provide judication services for labor management disputes.

Ms. Haffey presented the concerns of the Department of Labor. The Employment Security Account is an account which revenues are generated from the Unemployment Insurance Fund and is an account which has been used to fund one-time-only programs in the past. In 1995 and 1996 this account ended with a 'fund balance'; however, the Labor Agency understands they will not receive the funding that they have received in the past as part of the Employment Security Account, there is a chance it may remain the same but there is a chance it may diminish. They are also dealing with the reality that the funding for the Job Service program is declining so what they have recently done is cover those Job Service operations with the Employment Security Account funding. They realize this is going to be a key issue because that funding is being reduced.

However, the Labor Department is not upset or concerned about providing the services which have been provided in the past, but these service may have to be provided in a different form. **Wendy Keating, Division Administrator of Job Service**, is working with the staff and anticipates working in great detail with employers, employees, people who receive unemployment, job placement and training and going out to the communities to find out which of the services are being provided and which should be continued and which may need to be refined, also which may need to be eliminated.

Ms. Haffey explained devolution occurring in which changes at the federal level that will result in states assuming more responsibility for unemployment insurance enforcement and regulations and oversight. The Department of Labor is contemplating innovative ways to provide services that constituents expect. **Denny Zieler, Administrator Unemployment Insurance Division**, is able to inform anyone on this issue. **Ms. Haffey** states the Department of Labor and Department of Revenue Unemployment Insurance Division have collaborated efforts to find a more streamlined process for reporting withholding and payroll claims and also the unemployment insurance claims, so as a result of HB550 during the last session, the legislature directed our two agencies to explore possibilities for combining responsibilities to streamline services to employers to reduce

costs. There are many benefits to all agencies and employers to combining these systems.

The Department of Labor is working on simplifying and streamlining the appeals process that is available for employees who have lost their employment and are pursuing their rights to certain coverage under Unemployment or Workers' Compensation or Human Rights appeals.

Ms. Haffey would like to supply committee members with a biennial report from the Department of Labor and Industry to the Governor, Legislators and Citizens of Montana. These reports give a more in-depth view of the infrastructure of the Department of Labor and Industry. (EXHIBIT 1).

Wendy Keating, Administrator Job Service Division, explained the purpose of Job Service. Ms. Keating discussed the fact Job Service has not undergone many changes in the past 60 years, however, but is facing enormous changes now which will result in much better service to Montana citizens and employers. Because of constant increase in work load demand and constant decrease of federal funding, Job Service is no longer able to meet the expectations of local customers, so Job Service has developed a computerized job-match system that is a national job bank. This can be accessed through the Internet. America's Talent Bank has also been created which is an electronic resume' system whereby an individual applicant can enter a self-guided resume'. Once that resume is input into the computer system on the Internet an automatic match takes place between that resume' and job orders in America's Job Bank. By the turn of the century over 80% of America's work force will be using this electronic job match system. This will result in shortened unemployment and U.I. taxes which employers pay will be reduced. This provides great economic development opportunities for states like ours which help Job Service to focus on helping employers on issues of hiring and personnel issues and also helping citizens with job training and education. The Job Service Division is concerned about funding available to continue to provide these services to the community.

Denny Zieler, Administrator Unemployment Insurance Division, gave a brief overview of purpose of Unemployment Insurance. They are organized into three bureaus, a Contributions Bureau which is responsible for collecting the U.I. tax from the employers, assign rates to employers, collect and administer the U.I. tax and the U.I. Trust Fund. They also audit employers and provide services to employers. The Benefits Bureau receives and processes claims, pay benefits to claimants and judicate claims which have issues. The Support Bureau contains accounting and budget functions, management analysts, and computer support. U.I. Division is funded by two sources, the U.I. tax which is deposited in the U.S. Treasury and placed in a Trust Fund in an account for the State of Montana and can only be used to pay benefits to eligible claimants. The Federal Unemployment

Insurance Tax which is collected by the I.R.S. and used to provide operations of the U.I. Division. The Federal Unemployment Tax is the source of over 90% of the funding for the U.I. Division.

Mr. Zieler explained the new automated telephone claims reporting system. This helps reduce data entry tasks and problems with mail service. Also, U.I. Division has implemented W.A.R.P., the Wage Automated Reporting Program which is provided to employers. This is a free software which allows employers to send quarterly wage reports in an automated manner. The U.I. Division has also implemented a telephone pilot project in the Billings area in which claimants can use phones to file claims and employers can also benefit as well as reduced tasks in form handling for the staff.

In terms of issues, currently employers file a payroll reporting and withholding forms and send payments through the two separate agencies which is basically the same reporting information. Under the initiative this would be combined into one form and one check which would be mailed into the Department of Revenue. This will eliminate redundant processes. While the U.I. Division has funds to pay up-front costs of this consolidation, they do not have funds for the cost of the new integrated automated system. This cost is estimated at \$2.5 Million. The U.I. Division and Department of Revenue have agreed to share this expense equally. Automation grants are no longer available from the Federal government so the only source is the U.I. Grant Funds and there is not that kind of money available in those funds. The Division is depending upon the Information Technology Bond.

Another issue is the benefits issue which is an antiquated system built in 1985 using late '70s technology. It is expensive to maintain and doesn't do all the functions needed and is not compatible with new technology. The Division's hope is to develop a new benefits system which will automate all processes and they are again depending upon the Information Technology Bond to fund this. **Mr. Zeiler** distributed copies of The Unemployment Insurance Division's organizational chart along with a copy of SB115. (EXHIBIT 2).

David Scott, Administrator of Centralized Legal Services, introduced himself.

Chuck Hunter, Department of Labor & Industry, stated he will be before the committee several times with issues dealing with Workers' Compensation, independent contractors, and wage an hour. He explained the functions of the Division. Mr. Hunter mentioned that in the event of his absence, **John Andrew, Bureau Chief of Labor Standards Bureau,** and **Jim Hill, Bureau Chief of Regulations,** will be available for issues which committee members need information.

Anne MacIntyre, Administrator Montana Human Rights Commission, introduced her Division.

{Tape: 1; Side: B; Approx. Time Count: 46 Minutes; Comments: Beginning approx. 30 sec. of conversation not recorded..}

The Montana Human Rights Division's primary function is to enforce Human Rights Laws regarding discrimination in employment, housing, public accommodations, finance, credit, education, government services and insurance. In these areas discrimination is prohibited on the basis of race, color, national origin, sex, including issues of sexual harassment and pregnancy discrimination, marital status, age, physical or mental disability, religion, political belief in the government sector and having children in the household in the area of housing discrimination. See (EXHIBIT 1), page 29 for a summary of the types of issues which have been before the Commission in the past two years.

They have seen some increase in Commission productivity in the past two years, the number of complaints they have been able to resolve on an annual basis has increased 14% over the prior two year period and as of the end of last year they saw a reduction in open inventory cases from this time a year ago of 17%.

The Human Rights Commission is continuing focus on improving productivity and further case-load reduction and those will be the primary focus objectives for discussion in the budget process in the legislature at this time.

Judge Mike McCarter, Workers' Compensation Judge, introduced himself. He is available to answer questions regarding the court or court procedures. He will not be taking any position concerning any legislation that involves Workers' Compensation or Occupational Disease. If the committee does have questions about the court or its procedures feel free to phone him. If he is not available please contact **Clarice Beck, Hearing Examiner.**

Eddye McClure, Legislative Attorney, presented an amendment to SB3. (EXHIBIT 3)

HEARING ON SB3

Sponsor: Senator Linda Nelson

Proponents: Bob Stevens, Montana Grain Growers' Association
David Owen, Montana Chamber of Commerce
Ben Havdahl, Montana Motor Carriers' Association
Don Chance, Montana Building Industry Association
Carl Schweitzer, Montana Contractors' Association
Don Allen, Coalition Workers' Compensation System Improvement

Opponents: George Wood, Montana Self-Insurers' Association
Jacqueline Lenmark, American Insurance Association
Chuck Hunter, Department of Labor & Industry

Opening Statement By Sponsor:

SENATOR LINDA NELSON, SD 49, MEDICINE LAKE referred to the Independent Contractor Exemption. This goes back to SB354 in the 1995 session. The Independent Contractor Exemption and the Independent Contractor Registration are separate issues. **SENATOR NELSON** addressed the Independent Contractor Exemption only and stated she is addressing this from an agricultural standpoint but it also addresses other businesses. Senate Bill 3 does two things; first it repeals the need for independent contractors to renew their filing annually, paying the \$25 tax every time they renew. Once it is on file, it will stay on file. Next, it removes the 'C' portion of definition of independent contractor from the 'ABC' test.

SENATOR NELSON gives an example of a Montana farmer who needs to get his crop in the ground and harvest into the bins. If he finishes sooner than expected and his equipment is still in good shape and there is rain in the forecast, he may roll his combine over to help his neighbor. Sometimes money is involved with this and sometimes not. Since this is not a planned occurrence and it happens rarely, then filing for an annual exemption is just not going to happen nor is the neighbor who is doing the hiring going to plan ahead and purchase Workers' Comp. just in case he might be in need of help that year and just in case help might be available to arrive. This amendment would take the law back to where it was pre-1995. It is intended to lighten the bureaucratic load which people are sick of. It doesn't negate the fact that a person is liable for Workers' Comp. on people they employ, it doesn't mean a person doesn't need to file for an exemption. It just means they file for the exemption once and then it stays on the record. By removing 'C' from the definition, if a person is a bonafide independent contractor but for some error or omission has not applied for the exemption, he won't be guilty of breaking an additional law that doesn't need to be there in the first place.

Proponents' Testimony:

Bob Stevens, Montana Grain Growers' Association, introduced himself in support of the bill.

David Owen, Montana Chamber of Commerce, supports this bill because he realizes the problems filing for this exemption has caused people. We need to come up with a good definition for independent businesses working together. It is becoming more difficult to employ people and more people are working by themselves instead of working together to achieve things and we don't want government structuring inhibitions to that. He encourages the committee to work with the effective parties during this process.

Ben Havdahl, Montana Motor Carriers' Association, supports Senate Bill 3. (EXHIBIT 4).

Don Chance, Montana Building Industry Association, is in support of this bill. He confirms prior comments on this amendment.

Carl Schweitzer, Montana Contractors' Association, stated this committee and the legislature needs to take a hard look at the term 'independent contractor', how to determine who is one. The exemption needs to be read by a farmer or rancher who wants to hire a neighbor to determine if they didn't have it and someone gets hurt it may be proof they might have been an employee if they hadn't signed a form independently stating they are an independent contractor. There are a lot of different angles to look at this issue to sort it all out.

Don Allen, Coalition Workers' Compensation System Improvement, stated this issue has been one in the past which has been very confusing. In view of this, this bill needs to be passed.

Opponents' Testimony

George Wood, Montana Self-Insurers' Association, discussed to avoid confusion the Self-Insurers Association are consumers of Workers' Compensation and not vendors. They are under Plan 1 of Workers' Compensation. He is in a quandary about this bill because it is difficult for him to say he supports this bill but wants it amended. He thinks he supports this bill but there is a provision that bothers him and that is the removal of the financing. See page 4, paragraph 3 you'll see that the exemption procedure still exists and that the employee, sole proprietor, etc. can apply for the exemption and I would recommend to members of my group they receive the exemption when they hire an independent contractor. But there is a fee there that says \$25 for the application. If you remove the financing from this, these people who are asking to be exempt from the act, the administration of the program which exempts them will be paid by those who are in the act. Somehow it doesn't seem correct that we who comply with the act and are actually members providing the coverage should have to pay for those people who don't want to have coverage. He would much rather this bill be passed with the wording that appears on page 1, paragraph 2 if that happens to be the contractor's registration act. What we like is that the Department shall set the fees by administrative rule and the fees must cover the full cost of issuing the certificate. The rest of the bill we can certainly live with but we are not very happy about complying and having those who want to be exempt receive the benefit. For that reason he states he is a proponent.

Jacqueline Lenmark, American Insurance Association, spoke in opposition to SB3. She is representing many companies which are under Plan 2 of Workers' Compensation. She is hoping the committee will take this bill and hold it and perhaps work with it more. She's realizes the difficulty which this has created for agriculture, the Department of Labor and many consumers of Workers' Compensation insurance after the passage of SB354 last session. From the perspective of her companies, however, there

were some very positive benefits as a result of the passage of SB354. One is for audit purposes. They had an employer who chose not to be covered, he chose to work outside of they system. They had that employer making an affirmative declaration that they wanted to be outside of the system making it more difficult for that employer to change their mind after an injury occurs. That does happen on occasion and has led to a good deal of litigation. Litigation is not good for Workers' Compensation. The system was designed to operate without litigation. We felt that 'C' requirement was a positive aspect of that bill. This bill seems to carry within it an internal inconsistency. The bill is still requiring an application for exemption. It is simply removing the fact of that application from the definition. The bill still requires the Department of Labor to act upon the application but then says the applicant does not need to have a piece of paper that says the Department has done that. It appears to her that if we continue to require the Department to stay in the process of acting on those applications, it is not a great burden to hand a piece of paper to the applicant. **Ms. Lenmark** believes this is a protection for the people with whom the applicant, the independent business person, contracts. If the paperwork is not going to be required she suggests the committee should look again at the entire exemption.

Ms. Lenmark's other concern with the bill is the one Mr. Wood stated. As a representative of the insurance industry and taxpayer who funds this particular Department's budget for the purpose of protecting the integrity of the Workers' Compensation system, she objects on behalf of her companies to funding the ability of those who don't want to work in that system. If this is something they choose to do and Montana chooses to allow them to do it then she believes the program should be self-funding and those who do not want to be in the Workers' Compensation system pay for that privilege or that exemption to be out of it. She urged the committee to hold this bill and work with it more. **Ms. Lenmark** states this bill is well-intended but cannot wholeheartedly endorse the bill as it is currently written.

Chuck Hunter, Department of Labor, realizes this is a complicated package and it will be difficult without hearing all the related bills in advance to know what action to take on this bill. HB200 placed the annual registration fee in the law as well as the \$25 fee which was not there prior to this. The Department would like to say should there be an exemption process that remains, they do feel that it is appropriate to have a fee for service for that. In addition, they also feel the annual process people need to update their status. They also concur with the idea of eliminating part 'C' from the definition.

Questions From Committee Members and Responses:

Senator Benedict asked **George Wood** if a fee was not charged for the first registration and a \$25 fee is charged for subsequent annual registrations, where the conflict is. **Senator Benedict**

asked if they register on time and the Department has not received their \$25 for the first one, what is the problem?

George Wood said the objection they have is that the cost of the procedure of granting the exemption is paid by us instead of the person that is applying for the exemption. There is no annual renewal and they think that's great, the renewal lies until it is affirmatively rejected by the one who receives the exemption and they like that feature.

SENATOR BILL WILSON questioned **Chuck Hunter** what kind of money has been taken in on this \$25 registration fee and what has been going on with that money.

{Tape: 2; Side: 1}

Chuck Hunter stated that those who had been independent contractors in the past wanted to renew the first time, so for the 5,000 to 6,000 contractors who were already in the system the first year there was no charge the first year. There was no charge for the new 8,000 independent contractors who applied in that first year that the program was run on a service fee basis. Starting as of July 1, 1996, anyone who had been an independent contractor who wished to reapply had to pay that \$25 fee. In addition, there was also a clause in the construction contract registration provision which said construction contractors who wanted to register who also wanted the independent contractor exemption would be charged the \$80. fee which is the basic contractor registration fee and in essence get a twofer, they would get both the independent contractor exemption and a construction contract registration fee. Beginning July 1 of this year the total of 15,000 to 16,000 independent contractors who have been in the program in the past and want to reapply this coming year will be paying that \$25. fee. Approximately 35% to 40% of independent contractors are in the construction business to the extent that they are applying in conjunction with their construction contractors' registration. They will only be paying their registration fee. The Department has put together a fiscal note on this bill in terms of what we sent to the budget office which may not be the final fiscal note. We put together what we thought was a \$120,000 impact on a annual basis from the loss of those \$25 fees that we would have had.

Closing Statement By Sponsor:

SENATOR NELSON stated that she believes we are confusing registration and exemption and she would like to reiterate this bill still requires the exemption but is eliminating the annual renewal. Workers' Compensation was intended for employers and employees, it was not intended for independent self-employees. It is taxing people that it should not be taxing. We have enough provisions in the existing law to enable Workers' Comp. to determine who is an independent contractor. This is bureaucracy at its worse and should be repealed.

ADJOURNMENT

Adjournment: 2:27 p.m.



SENATOR TOM KEATING, Chairman



GILDA CLANCY, Secretary

TK/GC