

**MINUTES**

**MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By **CHAIRMAN THOMAS KEATING**, on March 11, 1997, at  
3:45 P.M., in 413/415

**ROLL CALL**

**Members Present:**

Sen. Thomas F. Keating, Chairman (R)  
Sen. James H. "Jim" Burnett, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Benedict (R)  
Sen. C.A. Casey Emerson (R)  
Sen. Dale Mahlum (R)  
Sen. Fred Thomas (R)  
Sen. Bill Wilson (D)

**Members Excused:** Sen. Debbie Bowman Shea (D)

**Members Absent:** None

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

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

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 341, HB 345, HB 447; 3-5-97  
Executive Action: None

**HEARING ON HB 341**

**Sponsor:** REP. JOHN MERCER, HD 74, Billings

**Proponents:** Dean Randash, NAPA Auto Parts  
Tom Stephens, NAPA Auto Parts  
Boyd Vandenberg, Polson Auto Parts  
Jay Shepard, Missoula Motor Parts  
Robert Garding, NAPA Auto Parts  
Richard Ike, Polson Auto Parts  
Calvin Flink, Missoula Motor Parts

**Opponents:** None.

Opening Statement by Sponsor:

REP. JOHN MERCER, HD 74, Billings, said HB 341 is a very simple bill. Both the federal and state laws exempt outside salesman, for car dealers who are selling parts, from the overtime laws. People who work at car part stores thought their outside salesman were exempt, and found out they weren't. This bill states they would be.

Proponents' Testimony:

Dean Randash, NAPA Auto Parts, Helena, supported HB 341 (EXHIBIT 1). Mr. Randash also submitted (EXHIBITS 2 & 3).

Tom Stephens, Central Parts Company, Helena, said when he began at Central Parts Company he was on "Wage & Hour" and switched to straight commission after approximately one year. Since then, his earnings have gone up dramatically.

Part of his time spent, on his 8-to-5-out-of-the-store hours, he sometimes spends on personal business. He sometimes spends hours after 5:00 p.m. working with and for his customers. To go back to "Wage & Hour", Mr. Stephens feels would be very unfair and he would lose a lot of earnings in doing that. He does not believe it is a good idea for salesman to go back against their employers for half-time wages. He asked for the Committee's support on HB 341.

Boyd Vandenberg, Polson Auto Parts, was in support of HB 341 (EXHIBIT 4). Mr. Vandenberg also submitted (EXHIBIT 5).

Jay Shepherd, Missoula Motor Parts, submitted (EXHIBIT 6).

Robert Garding, Stevensville NAPA Auto Parts, submitted (EXHIBIT 7).

Richard Ike, Polson Auto Parts, submitted (EXHIBIT 8).

Calvin Flink, Missoula Motor Parts submitted (EXHIBIT 9).

Opponents' Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor:

REP. MERCER thanked everyone who testified for the bill and the Committee for being attentive.

HEARING ON HB 447

Sponsor: REP. JAY STOVALL, HD 16, Billings

Proponents: Perry Eskridge, Department of Commerce  
Gary Gahagan, Guardian Security

Opponents: None.

Opening Statement by Sponsor:

REP. JAY STOVALL, HD 16, Billings, said HB 447 is a housekeeping bill.

When security guards need to hire someone on a temporary basis, their background has to be checked out by the FBI, and sometimes this takes up to four months before they get a return on the background check.

This bill basically allows private security companies to hire security guards on a temporary basis.

REP. STOVALL said there will be some amendments to this bill which will be explained by the Department of Commerce.

Proponents' Testimony:

Perry Eskridge, Staff Legal Counsel, Department of Commerce, said he was present to represent the Bureau of Professional and Occupational Licenses, specifically the Board of Private Security Patrol Officers and Private Investigators.

He said this bill has the full support of this Board. Since HB 518, the Uniform Licensing Act was put into affect. This bill takes care of the problems the security people have experienced since that Act.

Mr. Eskridge said there are two amendments which they would like to propose.

The first is on page 1, line 20. They would like to see a person who makes an application for the temporary security guard submit a completed application so the Department can conduct an in-state background check. These are typically conducted by the Department of Justice and this takes about 7 days.

The second amendment is on page 1, line 29. They would like to change that sentence to state, "Within 2 days of receiving.....etc.", instead of 5 days.

Gary Gahagan, Guardian Security, Billings, said until a year ago, before HB 518 was passed, he was permitted to provide security for his community in a timely manner.

Since HB 518 passed, they have to wait approximately 4 months before they can put a security guard on site. Not too many businesses are willing to wait 4 months for a security guard and not too many potential employees are willing to wait 4 months to go to work. This bill would allow a state background check and would also allow timely security for the community.

The last two weeks, **Mr. Gahagan** said he paid 29 hours in overtime because he waited for background checks and licenses to be approved. A business cannot operate on that much overtime for long. He asked for support of HB 447.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

**SEN. BENEDICT** asked **Gary Gahagan** if there would be some kind of disclaimer to the businesses who have temporary security guards who have not passed the FBI background check if this bill passes?

**Mr. Gahagan** said it has not been addressed to this point but it is totally possible.

**SEN. EMERSON** asked why it takes 4 months for the background check.

**Mr. Gahagan** said the FBI is so backlogged with fingerprint checks, and criminal activity takes priority over employment background checks.

**SEN. WILSON** asked what other type of background checks take place, other than FBI fingerprints. How extensively is the background checked into?

**Mr. Gahagan** said he does a personal background check, he checks with former employers and has the potential employee bring in personal history which is checked through the Sheriff's Department.

**SEN. WILSON** asked if they checked on their own, through court records, etc.?

**Mr. Gahagan** said they do not. That is where the State background check comes in. They wouldn't put these people to work immediately. They would apply for a job and **Mr. Gahagan** would send their application into the state, which does a state background check before they go to work.

**SEN. MAHLUM** asked **Mr. Gahagan** who is a typical person who applies for the job as a security man?

**Mr. Gahagan** said they are from all walks of life, from age 19 to age 65. He just had a gentleman who has a Doctor's degree in physics.

SEN. MAHLUM asked if they can make a profession of this?

Mr. Gahagan said the way the industry is designed, he can pay his people between \$6.00 and \$7.50 per hour, but hopefully as the need arises they would like to raise the rates.

Closing by Sponsor:

REP. STOVALL said he thinks this bill is needed and it is important they have proper security people.

They will offer amendments for the State background checks. The companies will be careful who they hire because their reputations are on the line.

He asked for the Committee's support on HB 447.

HEARING ON 345

Sponsor: GAY ANN MASOLO, HD 40, Townsend

Proponents: Carl Schweitzer, Montana Contractors' Association  
Ben Havdahl, Montana Motor Carriers' Association  
Patrick Hayden, Empire Sand & Gravel Safety  
Bob Worthington, Montana Municipal Insurance  
Authority  
Barbara Martin, Department of Transportation  
Todd Thun, Representing Self  
Dean Gurky, Diamond Construction  
Steve Turkiewicz, Montana Auto Dealers'  
Association  
Don Allen, Montana Wood Products Association  
Cecil Liter, Representing Self  
David Owen, Montana State Chamber of Commerce  
Leslie Brusanti, Pro-Med Services, Butte  
Charles Brooks, Billings Chamber of Commerce

Opponents: Dan Edwards, Oil & Chemical Union  
Darrell Holzer, Montana State AFL/CIO  
Ed Logan, Pipefitter/Welder  
Russell Hill, Montana Trial Lawyers  
Jerry Driscoll, Montana Building Trades

Opening Statement by Sponsor:

Rep. GAY ANN MASOLO, HD 40, Townsend said HB 345 is a safety bill, for the employee, for the co-workers and for the general public.

This is a Workforce Drug and Alcohol Testing Act, which is also safety for a business which could be at a financial risk to the employees, causing injury or death while impaired by drug or alcohol.

This bill changes our current drug testing law. Alcohol has been added as a substance which can be tested. Two types of tests have been added to the list which employers can incorporate into a testing policy, random and follow-up tests. Also, this bill outlines the parameters an employer must follow in creating and implementing a drug and alcohol testing policy. These parameters provide fair and accurate testing and yet protect the employee's rights.

**REP. MASOLO** stated that some people may ask if this is an infringement of a worker's right to privacy. She said this is true, but there is a compelling interest for this infringement, mainly safety. When a worker is under the influence of drugs or alcohol, his fellow workers, the general public, and the business he works for is at risk. If a drug or alcohol test prevents just one injury on a job, then there is a compelling interest to test. The delicate balance between an individual's right to privacy and society's interest in a safe work environment, is tilted toward drug and alcohol testing and when people's lives and careers are jeopardized by another person's foolish and unlawful use of the alcohol or a drug on the job. HB 345 defines the parameters.

This is a voluntary program, not a mandatory requirement. The first parameter is that drug and alcohol testing can only be done on employees who are in hazardous work environments, security or fiduciary positions, or a position affecting public safety, also elected public officials. Each employer will have to evaluate his job descriptions and identify the positions which fit.

**REP. MASOLO** said Section 3, page 3 is the heart of the bill. This outlines the parameters. Employers must have a written drug and alcohol testing policy and procedures. These must be given to employees at least 60 days before implementation of/or being changes. A drug and alcohol testing program must follow the collection, handling, and testing procedures required by the federal government. **(EXHIBIT 11)**

Five types of drugs can be tested for. They are marijuana, cocaine, opium, amphetamines and PCP. Only breath alcohol testing equipment approved by the Federal Department of Transportation is acceptable for testing and breath alcohol concentration must be greater than .04% for a person to be considered having alcohol in their body. Employers must pay for the cost of the test and pay employees when they are being tested.

Section 4 outlines the types of drugs and alcohol tests which can be used.

An employer can test job applicants prior to employment. Also, there are two types of random tests. On a given date, every one on the work site in a hazardous work environment will be required to be blood or alcohol tested. This is a process similar to the

process by the Federal Department of Transportation for selecting who will be tested.

There is post-accident testing. If there is an accident with over \$1,500 in damages, the employee involved in the accident can be tested.

Follow-up testing is allowed if an employee has previously been found to be tested positive and gone through a rehabilitation program, the employer can require follow-up tests.

If there is reasonable suspicion when an employer has reason to believe that an employee is drunk or high on the job, a test can be required. To do a reasonable suspicion test, an employer must comply with the training requirements as outlined in the federal guidelines.

REP. MASOLO said the primary reason she introduced this bill is for safety. The other important considerations are productivity, quality workmanship, absenteeism, and a loss of equipment due to theft.

Every safeguard possible has been incorporated into this bill to ensure testing is done in a fair and accurate process. That individual privacy is protected and most important, the workplace is a safe area for employees, fellow workers, and the public.

(EXHIBIT 10) was distributed to the Committee.

#### Proponents' Testimony:

Carl Schweitzer, Montana Contractors' Association, handed out the federal guidelines for drug and alcohol testing. (EXHIBIT 11) These requirements have been built into the Montana law as more employees who are in hazardous work environments may be tested.

He referred to (EXHIBIT 10) and stated there may be a slight discrepancy in the amendment on line where the amendments are actually placed. The amendments are mostly technical in nature.

Ben Havdahl, Montana Motor Carriers' Association, stated all of the motor carriers, both interstate and intrastate commerce, have to comply with the federal regulations (EXHIBIT 11) in testing for alcohol and drug use, both drivers and mechanics.

However, by the same regulations, other employees are exempted. They support HB 345 because it will give permission to test those other employees.

One problem they have with the bill is on page 2, line 2, in the definition of hazardous work environment, the reference is made to an interstate motor carrier. This may lead to a decision that it be interpreted to mean it would not apply to an intrastate motor carrier. They are offering an amendment to strike the word

"intrastate" and substitute in front the word "commercial", so that it would read "commercial motor carrier". That would include motor carriers operating in both interstate and intrastate commerce. (EXHIBIT 12)

**Patrick Hayden, Safety Director, Empire Sand & Gravel**, said they recently started a program in January. Another business similar to their own adopted a drug and alcohol testing program and Empire Sand & Gravel hired the people they did not want. The people who failed their pre-screen drug test came to Empire Sand & Gravel, so they began the same program.

**Mr. Hayden** stated the problem they are now running into is that these guys are studying for the test. They are not screening anyone, so they aren't catching anybody on the pre-employment test. They have the right to do a first accident test. They have had three accidents this year and one already tested positive on drugs.

They are asking for support to test randomly. **Mr. Hayden** said, "When you are going down the highway and you have our scrapers running alongside the road, with you and your family going through our construction project, we are asking for the opportunity to find out if we have a problem with an operator or somebody on that crew before they have an accident. We find out about it post-accident, instead of before."

**Bob Worthington, Programs Administrator, Montana Municipal Insurance Authority**, stated when this bill was introduced in the House it dealt only with private employers. They had some concerns with that and it has now been amended to deal with both public and private work forces. They encourage the Committee's support.

**Barbara Martin, Montana Department of Transportation**, said they support this bill and the amendments proposed.

**Tye Schulz, Teamster Union Construction Worker, Representing Self**, said regarding unions which may say they are against this bill, not once was he asked how he feels about it. They do not speak for him and they don't speak for a lot of union members. He is for this bill.

**Mr. Schulz** stated there is not much argument for the invasion of privacy because no one's right to privacy is more important than his right to work in a drug-free environment. Right now all he has for protection is a hardhat and that is not going to protect him from a scraper when someone on drugs is operating it. The only protection he feels he would have is the passage of this bill to allow random drug testing. He feels the present drug testing program is good, but it misses a lot of people, including the mechanics who work on the brakes, the steering of all this heavy machinery, it misses the operators running it, it misses everybody except the truck drivers. It is not fair to test truck



drivers and not everyone else. There is definitely a problem in the workforce.

**Dean Gurky, President, Diamond Construction,** urged the Committee to support this bill. There is a real need for it in industry. This is another step and tool which would help.

He stated he did drug testing in the Navy for 30 years and can vouch for the fact when there are requirements of random drug testing, it elevates the level of people you work with and the concern for safety.

{Tape: 1; Side: B; Approx. Time Count: 4:29 p.m.}

**Steve Turkiewicz, Executive Vice President, Montana Auto Dealers' Association,** said they employ approximately 4,000 people throughout the state. They would like to be in a position to assure their employees at the dealerships, as well as their customers, that they have provided a workplace free from drugs. They support this bill.

**Don Allen, Montana Wood Products Association,** supported this bill. He said the nature of the wood products industry in the sawmills with the types of equipment that run there make it very dangerous work in many instances. This is a safety issue and it is too late after an accident.

**Cecil Liter, Billings, Representing Self,** said he runs equipment and sometimes works in administration for companies.

Last year he observed someone who had taken drugs and there was no mechanism to get this person out. He went to the local union couldn't do anything. The result of this was a half-million dollar piece of equipment collided with a quarter-million dollar piece of equipment and caused considerable down-time. No one was injured but it was very stressful to work under those conditions every day or every night. It is time to bring Montana up to date on drug testing.

**Mr. Liter** said there have been over 20 deaths in mines since 1992 and these jobs are a big risk even without employees who take drugs.

**David Owen, Montana Chamber of Commerce,** told about an experience a member of the Chamber of Commerce had when OSHA walked in his office unannounced for six hours, went through his files, talked to his employees and went everywhere in his factory. We would never tolerate in our homes, but to pursue public safety we tolerate that in the business world. We should be careful before we take these kinds of regulations in this bill.

But this bill seems to **Mr. Owen** to have the kinds of conditions in it to compel public interest to its worth of any intrusion which may be portrayed.

**Mr. Owen** said he had also been asked to mention that **Riley Johnson, National Federation Independent Business**, also asked for support of this bill.

**Leslie Brusanti, Pro-Med Services, Butte**, said her company is involved in many phases of the testing process. They have a very close association with several federally certified laboratories that do they type of testing discussed. She works closely with several medical review officers.

She stated this bill is very closely patterned after the federal regulations which have been working very well in the workplace the past several years. There are very good considerations for confidentiality, and there is a safety net regarding the split specimen testing for the gas permatography confirmation process. The testing certification of alcohol equipment and the certification of the testers are all processes **Ms. Brusanti** has been involved in.

This bill does contain safety nets which will not only protect the employee from false accusations, but also give the employer good information which is valid and reproducible and which will hold up in a court of law if positive testing is found.

**Charles Brooks, Billings Chamber of Commerce**, stood in strong support of HB 345.

He said we all need to recognize we have a problem as far as drugs are concerned. We must address this problem.

**Mr. Brooks** quoted The Bozeman Daily Chronicle, March 10th issue, "Drug Craze Invades America's Heartland". A very threatening statement from this article was, "Amphetamine has ruined lives, has filled jails, it has flooded our courts, it has frustrated our law enforcement officers. Years ago he predicted it would be the biggest problems we had but I still didn't realize what it would turn out to be", said Scott County Sheriff, Bill Farrell from Benton, Missouri. "It has snowballed, but it is underground and you do not know what you've got until it's too late".

**Mr. Brooks** said this is part of the problem in the workplace from the testimonies already heard. Drugs ruins careers, both at the executive level and at the hourly rate level. He urges a favorable consideration as it is much needed in our communities.

#### Opponents' Testimony:

**Dan Edwards, International Representative, Oil, Chemical & Atomic Workers International Union, AFL/CIO**, opposed HB 345. (EXHIBIT 13)

**Darrell Holzer, Political Director, Montana State AFL/CIO**, also opposed HB 345. (EXHIBIT 14)

**Ed Logan, Pipefitter Welder, Exxon, Billings,** said he has been with Exxon over 20 years and currently Exxon enjoys the best safety record it has ever had.

He stated this bill is not needed. Currently employers can have a pre-employment test and if somebody appears impaired on the job they can be sent home.

**Mr. Logan** stated this law is not going to do what everybody thinks it is going to do. He works at a refinery and there are numerous contractors in it. If it is voluntarily left up to the employee, half of the contractors in the refinery or in a construction site are going to have a program and the rest are not. It will not do any good because you cannot catch everyone on the job site.

He said it has been amended several times and he noticed elected officials are included so he distributed a handout from the International Union of Police Associations (**EXHIBIT 15**) so the Committee could determine how to have negative testing.

**Russell Hill, Montana Trial Lawyers Association,** said he looked forward to standing up to testify before the revisions were made to this bill. At that time he could read it and now he has not seen the amendments. He stated this is a radical improvement over the bill which was introduced, however the Montana Trial Lawyers still oppose it simply because it is an invasion of privacy without connection to impairment or reasonable suspicion or anything related to that.

This bill requires Montana citizens who hate drugs and alcohol to submit to an invasive procedure. When the proponents state if we can prevent just one injury in the State that is a compelling enough interest to do this procedure, **Mr. Hill** says he disagrees. The compelling interest should be to protect individual privacy.

This bill is still only voluntary for employers and not employees. If drugs are such a serious problems that we are leaving it to the discretion of employers, the fact is it is a cheaper alternative to close supervision and actually terminating impaired employees.

**Mr. Hill** quoted The Helena Independent Record, January 9, 1997 issue. The headline stated "Airline Sues Pilot's Ex-Wife Who Baked With Marijuana". The article said, "The pilot's Ex-wife baked rye bread for him using her own recipe for revenge, allegedly adding marijuana to get him in trouble. Continental Airlines charges in a lawsuit that Debra Leading's baking spree in '94 endangered passengers and resulted in the firing of her Ex-husband, William. Leading, a ten-year pilot, was dismissed after a random drug test in 1994 detected marijuana. The test was done two days after he ate bread baked for him by his Ex-wife, according to the lawsuit filed last week. He was reinstated this last October of 1996, after Mrs. Leading had

admitted what she had done, Continental said. Leading appealed his dismissal through his union's grievance system, denying he used drugs. The first two hearing officers, unaware of Mrs. Leading's wrong-doing, upheld the firing. It wasn't until they found out what she had done that he was finally re-instated."

**Mr. Hill** said this bill jeopardizes the livelihood of people who can't provide a convincing explanation of why something is in their system. That is a huge invasion of individual privacy.

**Jerry Driscoll, Montana Building Trades**, said he would like to call attention to problems in the bill.

Page 1 contains the definition of an employee who is engaged in a performance of work. Page 2 states a perspective employee is anybody who has a written application for work. Page 5 says you can only test perspective employees. **Mr. Driscoll** says if they aren't tested prior to hire, you cannot test them.

**Mr. Driscoll** stated on page 6, lines 9 through 11, states an employee may require follow-up testing if an employee has misused controlled substance or alcohol at the work site. He believes the wording should be changed in this because when someone wants a job, he should be able to start right away. Under this section, they are not able to test someone if they don't do it before they go to work.

**Darrell Holzer** distributed information for **Scott Crichton, Executive Director, American Civil Liberties Union, (ACLU)**.  
(EXHIBIT 16)

Questions From Committee Members and Responses:

**SEN. CASEY EMERSON** asked **Darrell Holzer** in regards to having to a foreman having to let people go because they were impaired on drugs or alcohol, did **Mr. Holzer** ever have any come back and ask to prove they were impaired and if so, how?

**Darrell Holzer** answered all, **SEN. EMERSON** said transpired with the exception that all the folks he terminated in ten years never challenged the termination. He always let them know what was and what wasn't allowed before the employee ever started work for him.

**SEN. BILL WILSON** asked **REP. MASOLO** in regards to the alcohol limit, he heard her state .04%. In reading the federal guidelines, he saw .04 as the threshold and asked if that was correct.

**REP. MASOLO** responded that she did request that because a Senate Bill had come through at .04%. She requested this to make it uniform.

**SEN. WILSON** asked if that is federal guidelines. He said he thinks that is only 2½ beers or drinks. He does not know if that level is what we want.

**REP. MASOLO** said she was comfortable with the .04 after talking it over with people who test. They felt the .02 might possibly show if someone had a beer the night before.

**SEN. WILSON** redirected the question the question to **Leslie Brusanti**. She submitted a alcohol testing chart. (**EXHIBIT 17**) .02% is the federal regulation right now. Anyone who tests at .02% to .39% under federal regulations are mandatorily withdrawn from their position for 24 hours. The next cut off is the .04% threshold. That then requires that employee to go through substance abuse professional counselling guidelines before they are permitted back to their hazardous duty.

**Ms. Brusanti** stated that she believes **REP. MASOLO** was taking that extra step out. If they need counselling they would go through the whole process of federal regulations, then it would be up to the employer in their own policy whether or not they want a zero tolerance law. This would have to be provided in their own policy in addition to the regulation the Montana law would provide.

**SEN. WILSON** asked **Ms. Brusanti** since she does this testing, if a person is employed by someone who tests a sample, is she familiar with that capability?

**Ms. Brusanti** answered the federal regulations right now require all testing be done in a federally certified lab. There are about 70 of those labs in the country.

*{Tape: 2; Side: A; Approx. Time Count: 5:05 p.m.}*

**SEN. WILSON** asked if **Ms. Brusanti** would refer a specimen to another facility.

**Ms. Brusanti** said yes, this law requires that all testing be done at a federally regulated laboratory to provide that safety net. They want to ensure that no false positive are reported. The safety net provides that if this federally regulated laboratory is under such scrutiny, they go through several protocols to ensure the integrity of each sample.

Another safety net, in referring to (**EXHIBIT 15**), under the testing in HB 345, those things do not show a false positive, with the exception of poppy seeds and under gas permatography that can also be ruled out.

**SEN. WILSON** asked **REP. MASOLO** if we are blazing a new trail here and if she has any information regarding what is going on in other states who are going outside of federal random testing.

**REP. MASOLO** said Nevada, Arizona, Maryland and other states nationally are doing this also. Several national people have phoned her and commented on the very restrictive drug testing. We may be blazing a new trail but there are other states who have this.

**SEN. SUE BARTLETT** stated on page 5, it specifies on line 12 that a breath alcohol test result must indicate an alcohol concentration of greater than .04 for a person to be considered as having alcohol in the person's body. Then on page 3, line 23 says that the employer must include a list of controlled substances in a stated alcohol concentration level above which a tested employee must be sanctioned. **SEN. BARTLETT** said those sections appear to be in conflict and asked **REP. MASOLO** if she had looked at that potential conflict.

**REP. MASOLO** said she hasn't. In a subcommittee meeting she said she wanted .04% in the bill.

**Carl Schweitzer** said he didn't think there is a conflict here. On page 5 what is being said is that an employer cannot set something from 0.04 to sanction an employee. Page 3 is allowing that employer to set that limit. He could set it at or .09 or .05. So it is mandated at where the tolerances and limits can be set. It states it cannot be set at .04 or below. That is the relationship between those two sections.

**SEN. BARTLETT** said with all due respect, that may be what is intended but she doesn't believe that is what is accomplished in this bill. They have seen many bills this session which did not accomplish what the very people who brought the bill for wanted to accomplish. What is wrong with the current law? What documented, demonstrated evidence can you give that the current law is so inadequate that only random testing will solve the problem.

**Mr. Schweitzer** said one of the proponents in the House, who was unable to attend this hearing is Mr. Fred Dahlman of Sletten Construction. That company is a good example because they have a workforce in Montana, Nevada and Arizona. When they instituted a drug and alcohol testing program in Arizona, which does include random testing, they had a Worker's Compensation rating in 1990 of about 1.74 mod. factor. This year it is down to .65. Mr. Dahlman attributes that to their drug and alcohol program among other things. The people who work for Sletten Construction know they have the potential for being tested. There are a lot of people who don't apply at Sletten anymore.

There are other companies which also test for drugs right now, such as Copp and JTL, and they want the option of random testing.

**SEN. BARTLETT** said she has never known an employer who didn't want to gain as much control as feasible in order to get the employee to be productive. She said **Mr. Schweitzer** said the Copp

and JTL experienced a good safety record, and they have been told in their testimony that they have a tough testing program under the existing law. What demonstrated evidence do they have that this change would improve their safety records sufficiently to even make them notice it?

**Mr. Schweitzer** responded when Wayne Hall from JTL testified in the House, he had some specific numbers of comparing the truck driving segment of his company, which does have random testing under the federal guidelines and what their safety record was compared with the non-truck drivers. There was a remarkable difference there. Mr. Hall felt if we could now have this random testing on everybody that is in a safety position, we could bring everybody up to that level of safety.

**SEN. BARTLETT** said so basically, **Mr. Schweitzer**, we have people's opinions.

**Mr. Schweitzer** said he thinks there are facts, but he does not have them with him. Mr. Hall could show that between the truck driving and the non-truck driving segment, there was no difference in the safety record.

**SEN. BARTLETT** asked if there were any other factors which might have influenced the safety record of the different occupations.

**Mr. Schweitzer** said the only difference he knew of was the difference in testing.

**SEN. BARTLETT** said apparently that was the only difference which was cited, but that may not be the only difference in the occupations that affect the safety records. Is that possible?

**Mr. Schweitzer** answered that is possible.

**SEN. BARTLETT** asked **Patrick Hayden** in his testimony he said he had instituted a testing program at Empire Sand & Gravel because other people in the same types of business in his area had testing programs when Empire Sand didn't and they were getting people that didn't get hired by the competitors because they had tested positive. She said then **Mr. Hayden** said that no one could be caught with pre-employment testing. That was contradictory.

**Mr. Hayden** said a lot of the employees they had problems with, once they found out other construction companies were doing tests they quit. If they tested positive, for instance, JTL would discharge them and they would go to work at Empire Sand & Gravel.

They train all their employees prior to the program and prior to employment. So when they know when the job will begin, they decide not to take their amphetamine for a certain number of days, or they don't smoke marijuana for two or three weeks the test is easy. Then there is an accident.

This bill will improve the safety end of the program because it will positively identify people with the problem prior to the accident. The bottom line in safety is to be pro-active with the random testing. If they do have a problem, we could get them some help, get them back to work, or if they don't want help and want to take drugs, they can be discharged at that time.

**SEN. BARTLETT** said she does believe **Mr. Hayden** believes that, but he need not wait for an accident under the current law if you have reason to believe that the person's faculties are impaired on the job. She asked if he trains his supervisors and workers to be aware of that provision as well and encourage them to identify people they think are on drugs.

**Mr. Hayden** said they train their supervisors and the problem with that is the supervisors don't want to report these people because they are afraid to call one of their employees on it. When an employee is harassed by other employees when they turn somebody in.

**SEN. BARTLETT** said to some extent, the legislature is suppose to solve your problems by passing a law because your supervisors are unwilling to carry out that aspect of their management responsibilities.

**Mr. Hayden** said these guys sometimes become friends and won't turn their buddy in. There are a lot of things that happen out in the field and he does not agree with **SEN. BARTLETT'S** statement.

**SEN. WILSON** said when he sees members of this Committee he sees people who are predominately involved in supervised white collar positions throughout their careers. He asked **Tye Schulz** to characterize his job and the type of supervision he has.

**Mr. Schulz** said in the companies he has worked for, the people who work on the road, end up getting to be one big family. The ones who drive together during the day drink together at night. **Mr. Schulz** said he was one of those people. He went through treatment in 1985 and has used drugs on the workforce.

On the paving crew that he is currently working, there was a fist fight over \$500 worth of amphetamines which were stolen out of a lunch box. The supervisor on that crew does drugs as well as everybody who works under him. There is no one to go to to report drug users.

**SEN. WILSON** asked, then, if he had the experience of seeing that happen out on the work place, so he imagined **Mr. Schulz** came from another vantage point.

**Mr. Schulz** said people who use drugs spend years figuring out ways not to get caught. The drivers that **Mr. Schulz** used to take drugs with, when they enacted the law that they had to submit to



random drug testing, most quit. They choose their drugs over their jobs. Unless an employee causes an accident, the contractors are too afraid to call someone on using drugs because of law suits.

If someone shows up staggering drunk, it is easy to tell, but on amphetamines, and coke, and speed, it is not so easy to see. If you put on a pair of sunglasses, no one can tell what their eyes look like.

**SEN. MAHLUM** complimented **Mr. Schulz** for coming forward with his testimony as a member of his industry.

**SEN. BARTLETT** asked **Carl Schweitzer** if he could provide a list of the instances and the case names in which the contractors have been sued by employees who have tested positive in a drug test under the current program.

**Mr. Schweitzer** responded he could put out a questionnaire and find out.

**CHAIRMAN KEATING** said regarding the language on page 8, line 21 in which a post-accident test is found and the employee was not a director of proximate cause of the work-related accident. That language is stricken. Also, on page 6, line 28, an employer may require an employee to be tested for controlled substance or alcohol if the employer has reason to believe the employee may have contributed to a work-related accident in excess of \$1,500. Some of the language has been put back in but the language on the test of the person who was not involved in the accident has not been purged. He asked **Carl Schweitzer** if there is a reason for that.

**Mr. Schweitzer** responded that language could be put back in, he has no problem with that. That is the first time this has come up.

**SEN. EMERSON** said he also looked at that and thinks this whole section is already in the law.

**CHAIRMAN KEATING** said Section 8, on page 7, the first several lines are written into the bill and everything else is deleted, so all of Section 8 is amended in the statutes by this page and by being amended, that language is deleted, not from the bill but from the statutes. If all of Section 8 is deleted, that means it is deleted from the bill but not from the statutes.

In order to retain the clause about purging the employees records if he is not involved in the accident, probably should be put back in.

**Mr. Schweitzer** said it would be appropriate to put it back in.

Closing by Sponsor:

REP. MASOLO thanked all who testified. Several people have told her this is a serious problem and they feel endangered. She has visited people in the Capitol from Federal Express and spoke with a man who told her how serious the problem is in the cement business.

She believes in random testing, because if you tell an employee you are going to test him, they will be prepared. REP. MASOLO'S husband is the road supervisor in Broadwater County and has the random drug testing and sees nothing wrong with it.

She has been a union member and hoped the union bosses would have been looking out for her safety.


She also realizes people are afraid of wrongful discharge.

She believes this bill is good and stated if a person is not a user of drugs in the workplace, they won't be a loser with this bill.

ADJOURNMENT

Adjournment: 5:31 p.m.

  
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SEN. THOMAS R. KEATING, Chairman

  
\_\_\_\_\_  
GILDA CLANCY, Secretary

TFK/GC