

MINUTES OF THE MEETING  
BUSINESS AND LABOR COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

January 25, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on January 25, 1985 at 8:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 285: Hearing commenced on House Bill 285. Representative Earl Lory, District #59, sponsor of the bill stated that House Bill 285 adds newspaper advertising salespersons to the list of workers excluded from the overtime requirements of the Montana Minimum Age Act. Representative Lory submitted written testimony which is attached hereto as Exhibit 1.

Representative Kadas asked Representative Lory why on page 6, line 22 of the bill the words "or otherwise" appear. Representative Lory explained that some individuals work on a commission only basis.

There being no proponents or opponents, Representative Lory was excused by the chairman and the hearing on House Bill 285 was closed.

HOUSE BILL NO. 280: Hearing commenced on House Bill 280. Representative Toni Bergene, District #41, sponsor of the bill, stated that this bill includes within the reasons for revocation of a pharmacist's license conviction of violation of the Federal Drug Abuse and Control Act.

Proponent Roger Likewise, Executive Director of the Montana State Pharmaceutical Association, distributed to committee members Exhibit 2. Mr. Likewise explained that a pharmacist or intern's license could be revoked by the board whenever they would obtain it by false representation or fraud; be a habitual drunkard or be addicted to narcotics; be convicted of violating the Federal Food, Drug and Cosmetic Act or the Federal Drug Abuse Prevention and Control Act; or be found guilty by the board of incompetency.

Proponent Geoffrey L. Brazier, attorney for the Department of Commerce, submitted written testimony which is attached hereto as Exhibit 3.

In closing, Representative Bergene told the committee that it is their choice should a pharmacist's license be revoked for violation of the Federal Drug Abuse and Control Act.

There being no further discussion by proponents or opponents all were excused by the chairman and the hearing on House Bill 280 was closed.

ACTION ON HOUSE BILL NO. 280: Representative Brandewie made a motion that House Bill 280 DO PASS. Representative Glaser moved an amendment that would call for an immediate effective date upon passage and approval. The amendment and Representative Brandewie's motion both received unanimous votes. House Bill 280 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 285: Representative Thomas made a motion that House Bill 285 DO PASS. Second was received and House Bill 285 DO PASS unanimously.

Representative Jan Brown, chairman of the subcommittee for House Bill 162, reported to the committee the information which is attached hereto as Exhibit 4.

ACTION ON HOUSE BILL NO. 201: Representative Driscoll made a motion that House Bill 201 DO NOT PASS. A substitute motion was made by Representative Kitselman that House Bill 201 BE TABLED. Representative Ellerd expressed his concern that a monopoly may be created by passing House Bill 201. Representative Brandewie suggested that something needs to be done, that the quota system is not working. Representative Simon explained that \$135,000 is being spent for liquor licenses, that there is a problem and this problem will continue to exist. The system is built to fail and something needs to be done, stressed Representative Simon. He did support the motion that House Bill 201 BE TABLED. Question being called for, House Bill 201 WAS TABLED, with 14 yes votes, 4 no votes, and 1 abstaining.

HOUSE BILL NO. 251: Hearing commenced on House Bill 251. Representative Jack Ramirez, District #87, sponsor of the bill, stated that this bill would amend the Occupational Disease Act. It provides that the statute of limitations for total disability claims arising from an occupational disease runs from the time of discovery. The bill also removed restrictions on filing of claims for silicosis benefits. The intent of House Bill 251 is to liberalize the period of time in which a person can file a claim for occupational disease benefits. The present law provides for a three year period of time from when a person stops working to file a claim. House Bill 251 calls for two years from the date the claimant knew or should have known an occupational disease exists.

Proponent Glen Drake, an attorney representing the American Insurance Association, stated that a change in the statute of limitations is necessary to make a more liberal time period in which a person can file a claim. A person exposed to asbestos can have a break out 20 or 30 years after the initial contact, due to the incubation period, added Mr. Drake.

Gary Blewett, representing the Department of Labor and Industry, stated that the department does not have a position on House Bill 251. Mr. Blewett distributed to committee members Exhibit 5, which is attached hereto. Mr. Blewett suggested to the committee that the following not be deleted: page 4, lines 6 through 17, page 5, line 1 and page 5 lines 15 through 17.

Proponent Karl Englund, representing the Montana Trial Lawyers Association, offered his support of House Bill 251. Mr. Englund feels that subsection two under section two should not be stricken.

Opponent George Wood, Executive Secretary of the Montana Self Insurers Association, stated that this is a complicated issue and that an individual can have a claim years after the initial exposure. The Occupational Safety Act should be rewritten with the medical profession considered. House Bill 251 has one specific purpose which is to shift the cost from insurance companies to Montana Employers and these employers do not have the ability to pay, added Mr. Wood.

In closing, Representative Ramirez stated that changing from the proposed change is a much fairer concept and it is not passing the responsibility from the insurance companies to employers. It shifts the responsibility from an employer to the whole society and this is a legitimate shift. The amendment proposed by Karl Englund is presently in the Workers' Compensation Law and is unnecessary, added Representative Ramirez.

Representative Nisbet asked Representative Ramirez what page 5, line 23 repeals. Representative Ramirez explained that it is the death benefits.

Representative Pavlovich asked Gary Blewett how many claimants are currently receiving benefits under the silicosis act. Mr. Blewett stated that there are 195 silicotics and 157 widows of silicotics.

Representative Driscoll asked Representative Ramirez if an individual has an occupational disease, but does not discover

it until ten years after the initial contact, can they sue the employer. Representative Ramirez explained that they cannot and they will not be eligible for benefits.

Representative Brandewie asked Representative Ramirez if an employer can ask certain questions relating to health conditions prior to hiring. Representative Ramirez explained that an employer can request a physical. Representative Brandewie does not feel it is fair to hold the last employer responsible when the disease could have been contracted during previous employment.

Representative Bachini asked Gary Blewett if a present and past employer could have both contributed to the disease would the present employer be liable. Mr. Blewett answered that that was correct.

Representative Glaser suggested to Mr. Wood that it may be in the best interest of an employer to discriminate and not hire any individual that could have been exposed. Mr. Wood did agree.

Representative Driscoll questioned Representative Ramirez, Karl Englund and Glen Drake as to whether an employee could file a suit against an employer if he had not filed an occupational disease claim within three years from the date he last worked. Representative Ramirez and Mr. Drake agreed that the employer could not be sued and Mr. Englund explained that depending on the fact of circumstances, a suit may be possible.

Representative Wallin asked Gary Blewett if the premium costs and the cost to the department would increase. Mr. Blewett stated there would be no increase.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 251 was closed.

HOUSE BILL NO. 214: Hearing commenced on House Bill 214. Representative Ron Miller, District #25, sponsor of the bill, stated that this bill is at the request of the Board of Speech Pathologists and Audiologists. This bill is intended to provide for registration of speech pathology aides and audiology aides. The bill also changes the date for payment of license renewal fees from July 31 to October 31. Under present law renewal is done every two years in July. The bill requires the Department of Commerce to

include the aides registered along with the licensees in the list published each year. Aides currently work under a licensed speech pathologist or audiologist, added Representative Miller.

Proponent Floyd McDowall, representing the Board of Speech Pathologists and Audiologists, explained that the board does process applications and with House Bill 214 a more self-sustaining process will be established.

Proponent Patti DuBray, representing the Board of Speech Pathologists and Audiologists, offered her support of House Bill 214. Currently, if an aide works without the supervision of a licensee, law is being broken, explained Ms. DuBray.

Opponent Shirley DeVoe, a speech pathologist in Helena had several questions regarding House Bill 214. Ms. DeVoe was concerned as to how much the fee will be to register these aides and why the renewal fee is being changed from every two years to annually.

Representative Kadas asked Patti DuBray what requirements are necessary for an individual to be classified as an aide. She explained that the only requirement is that an aide be supervised by a fully qualified person. Most aides feel slighted and most have a bachelors degree. By requiring an aide to register, will make them feel more a part of the system, added Ms. DuBray.

Representative Kitselman explained to Ms. DeVoe that the information she thought was missing from House Bill 214, is an administrative rule and need not be included in the bill.

Representative Hansen asked Ms. DuBray if the reason for licensing aides, is to prevent aides from working without a licensed person. Ms. DuBray did agree.

Representative Kadas asked Ms. DeVoe if she was satisfied with the answers to her concerns. She explained that she had mixed feelings. The school district currently registers a position not a person. Representative Kadas asked what an average salary is for an aide. Ms. DeVoe stated that an aide will make between \$8,000 and \$14,000 per year.

Representative Kadas asked Ms. DeVoe if an aide is required to continue with their education. She explained that this is in the long range planning of the board.

There being no further discussion by proponents or opponents

all were excused by the chairman and hearing on House Bill 214 was closed.

Mr. Dave Wanzenried, Commissioner of the Department of Labor and Industry, distributed to committee members Exhibits 6, 7, 8 and 9 which are information pertaining to House Bill 284 which will be heard by the Business and Labor Committee on January 29, 1985.

ACTION ON HOUSE BILL NO. 261: Representative Simon made a motion that House Bill 261 DO PASS. Representative Driscoll made a substitute motion that House Bill 261 BE TABLED. Representative Thomas feels that House Bill 261 presents a good way to help face the problem. Representative Simon added that the Montana Tavern Association admits there is a problem and if the state can't allow for a 1% movement per year, something is wrong. Representative Brandewie agrees with House Bill 261 as long as the licenses are distributed evenly. Representative Hansen had spoken with tavern owners in Missoula and their feeling is that there is currently an over abundance of licenses in the Missoula area. Representative Simon asked the committee to defer action on House Bill 261 until House Bill 527 is heard. Representative Pavlovich explained that presently in Silver Bow County, there is a surplus of liquor licenses and he would not like to see more being transferred into the area each year. Question being called, a roll call vote resulted in 18 members voting yes and two voting no, on Representative Driscoll's motion that House Bill 261 BE TABLED.

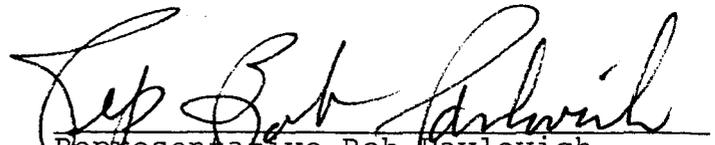
ACTION ON HOUSE BILL NO. 214: Representative Thomas made a motion that House Bill 214 DO PASS. Second was received and House Bill 214 DO PASS with all but Representative's Nisbet, Glaser and Kitselman voting yes.

ACTION ON HOUSE BILL NO. 251: Representative Thomas made a motion that House Bill 251 DO PASS. Representative Thomas then moved the amendments on page 4, lines 6 through 17 and on Page 5, line 1. Said amendment would not delete the language as proposed in House Bill 251. Said amendment did PASS unanimously.

Representative Thomas then moved the following amendment: on page 5, lines 15 through 17 remain. Representative Kitselman moved that additional language be added, which would state that, "the disease be contracted while employed in Montana." Representative Driscoll explained that a legal battle may result due to this language. Representative Driscoll then added that the payment for silicosis is \$200 and it is too little a sum to be denied a person who may have contacted

the disease in another state. Representative Thomas' proposed amendment on page 5, lines 15 through 17 be inserted PASSED unanimously. Representative Kitselman then moved that on page 5, line 11, following "101" insert "which was contracted in Montana". Representative Brown asked if this amendment would apply only to silicosis, which was correct. Representative Ellerd asked the age of the youngest recipient who is presently collecting for silicosis. Representative Pavlovich explained that the person is in their early 60's and that there have not been any recent exposures. Representative Wallin suggested that wording be inserted that would exclude a person from receiving in Montana if they were receiving from any other state. Representative Kitselman then withdrew his amendment. Representative Kadas moved that an amendment on page 2, lines 24 and 25 and on page 3, line 1 through 4, not be deleted. Representative Driscoll stated that Representative Ramirez thought this language may be redundant and he would rather include this language to be safe. Question being called for, a roll call vote resulted in 11 members voting yes and 9 voting no on Representative Kadas' amendment. The amendment PASSED. Representative Thomas' motion that House Bill 251 DO PASS AS AMENDED, received a unanimous vote.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 10:45 a. m.

  
Representative Bob Pavlovich  
Chairman

DAILY ROLL CALL  
 BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date January 25, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

# STANDING COMMITTEE REPORT

January 25

1985

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 280

FIRST reading copy ( WHITE )  
color

## PHARMACY LICENSE REVOCATION FOR VIOLATION OF FEDERAL ACT

Respectfully report as follows: That HOUSE Bill No. 280

### BE AMENDED AS FOLLOWS:

1. Title, line 3  
Following: "MCA"  
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"
2. Page 2  
Following: line 6  
Insert: "NEW SECTION. Section 3. effective date. This act is effective on passage and approval."

AND AS AMENDED,

DO PASS

# STANDING COMMITTEE REPORT

January 25

19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 285

FIRST reading copy (WHITE color)

**EXCLUDING NEWSPAPER AD SALESMEN FROM OVERTIME PROVISIONS**

Respectfully report as follows: That HOUSE Bill No. 285

DO PASS

# STANDING COMMITTEE REPORT

January 25

19 65

MR. **SPEAKER**.....

We, your committee on **BUSINESS AND LABOR**.....

having had under consideration **HOUSE**..... Bill No. **214**.....

**FIRST** reading copy (**WHITE**)  
color

**REGISTRATION OF SPEECH PATHOLOGY AND AUDIOLOGY AIDES**

Respectfully report as follows: That **HOUSE**..... Bill No. **214**.....

DO PASS

# STANDING COMMITTEE REPORT

January 25

19 85

page 1 of 2

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 251

FIRST reading copy ( WHITE )  
color

**PROVIDE 2 YEAR DISCOVERY STAT. OF LIMITATIONS FOR INDUSTRIAL  
DISEASE CLAIMS**

Respectfully report as follows: That HOUSE Bill No. 251

**BE AMENDED AS FOLLOWS:**

1. Page 2, line 12  
Following: "~~it~~"  
Insert: "(1)"
2. Page 3, line 5  
Following: line 4  
Insert: "(2) The division may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years."
3. Page 3, line 14  
Following: "compensation"  
Insert: "(1)"

~~XPXPASS~~

4. Page 4, line 18  
Following: line 17  
Insert: "(2) When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the division may allow compensation on account thereof as it considers just, not exceeding \$10,000."
  
5. Page 5, line 1  
Following: "39-72-405(3)7"  
Insert: "including a claim based on 39-72-405(2),"
  
6. Page 5, line 18  
Following: line 17  
Insert: "(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;"  
  
Renumber: subsequent subsection

AND AS AMENDED,  
DO PASS

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE January 25, 1985 BILL NO. 201 TIME \_\_\_\_\_

NAME	AYE	NAY
Bob Pavlovich	✓	
Les Kitseiman	✓	
Bob Bachini	✓	
Ray Brandewie	✓	
Jan Brown	✓	
Jerry Driscoll	✓	
Robert Ellerd		✓
William Glaser	✓	
Stella Jean Hansen	✓	
Marjorie Hart	✓	
Ramona Howe	✓	
Tom Jones	✓	
Mike Kadas	✓	
Vernon Keller	✓	
Lloyd McCormick	✓	
Jerry Nisbet	✓	
James Schultz	✓	
Bruce Simon	✓	
Fred Thomas		✓
Norm Wallin	✓	

Secretary Debbie Aquil

Chairman Bob Pavlovich

Motion: TABLE

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ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE January 25, 1985 BILL NO. 201 TIME \_\_\_\_\_

NAME	AYE	NAY
Bob Pavlovich		
Les Kitseiman		
Bob Bachini		
Ray Brandewie		
Jan Brown		
Jerry Driscoll		
Robert Ellerd		✓
William Glaser		
Stella Jean Hansen		
Marjorie Hart		
Ramona Howe		
Tom Jones	✓	
Mike Kadas <i>ADSENSE</i>		
Vernon Keller	✓	
Lloyd McCormick		✓
Jerry Nisbet	✓	
James Schultz	✓	
Bruce Simon	✓	
Fred Thomas		✓
Norm Wallin		✓

Secretary Debbie Aquil

Chairman Bob Pavlovich

Motion: TABLED

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ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE 1-25-85 BILL NO. 251 TIME \_\_\_\_\_

NAME	AYE	NAY
Bob Pavlovich	✓	
Les Kitselman		
Bob Bachini		✓
Ray Brandewie	✓	
Jan Brown		✓
Jerry Driscoll	✓	
Robert Ellerd		✓
William Glaser	✓	
Stella Jean Hansen	✓	
Marjorie Hart	✓	
Ramona Howe	✓	
Tom Jones	✓	
Mike Kadas	✓	
Vernon Keller		✓
Lloyd McCormick	✓	
Jerry Nisbet	✓	
James Schultz		✓
Bruce Simon		✓
Fred Thomas		✓
Norm Wallin		✓

Secretary Debbie Aquil

Chairman Bob Pavlovich

Motion: 11-9 Amendment to HB 251 pg. 2, lines 24-27  
& pg. 3, lines 1-4 Amendate

STATEMENT OF REPRESENTATIVE EARL LORY

ON HOUSE BILL 285

House Bill 285 adds newspaper advertising salespersons to the list of workers excluded from the overtime requirements of the Montana Minimum Age Act.

The Bill amends a portion of Section 39-3-406, MCA, containing exclusions from the overtime compensation provisions of the Act. Section 39-3-405, MCA, requires employers to compensate employees working in excess of forty hours a week at one and one-half times the hourly wage rate. HB 285 conforms the statute to the prevailing practice with respect to compensation of newspaper advertising salespeople.

Until recently, newspapers compensated their advertising sales staff on a commission basis. That is, for each dollar of advertising sold, the employee received a commission. The salesperson worked as little or as much as was necessary to produce whatever income level they wished to achieve. Thus, there was no expectation that the salesperson would work any specific number of hours per week. It would be thereby impossible to ascertain whether or not they should be paid any overtime, and, if so, how much.

Recently, newspapers have gone to a commission, commission/ salary, and straight salary basis, with certain checking in and checking out time requirements. The advertising salesperson reports to work in the morning and the rest of the day is utilized however the salesperson wishes to work. At the end of the day, the salesperson checks back into the newspaper office with the ads sold for that particular day. Some newspapers pay advertising salesman on a commission/salary basis and some pay salaries, however, they all maintain the freedom to work whatever hours the salesperson wishes to work so long as the production levels are maintained or improved.

In either of these three cases - commission, commission/ salary, or straight salary - there is no way for the newspaper to ascertain whether any time is spent in excess of forty hours per week. The alternative is to require the ad salesman to "punch a time clock." However, so requiring, is outweighed by the benefits to both the employer and the employee in continuing the practice of permitting the employee to work whatever hours were necessary to keep production at the appropriate levels.

It should be emphasized that newspapers and their salespeople have always dealt with each other as if the overtime requirement did not apply.

However, newspapers are subject to some exposure from a potential claim from a discharged employee claiming to have worked more than forty hours a week and asserting a wage claim for extra pay. This problem was experienced by the Independent Record in 1981. The paper paid the wage claim even though they had no way of establishing whether the individual did or did not work the "overtime."

Again, since the Bill would conform the law to the practice, it would not have any impact on the relationship between newspapers and their advertising salespeople. However, it eliminates a potential for liability under the statute as it is now written.

Further, it places this particular employment relationship into the excluded category of jobs for which overtime would be difficult or impossible to determine.

The present statute exempts:

- Truckers;
- Buyers of poultry, eggs, cream or milk;
- Commission salesman engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, etc.;
- Salesman of trailers, boats and aircraft;
- Delivery person;
- Agricultural employees;
- Country elevator employees;
- Taxicab drivers;
- Houseparents;
- Loggers;
- Sheriff's department employees;
- Municipal or county government employees working seven day periods;
- Health care facility employees working eighty hours in a fourteen day period;
- Firefighters; and,
- Police department employees.

## OFFENSES AND PENALTIES

to dispense and administer in a period of  
thirty-three months in the course of a bona fide  
practice only as much as 35,000 1/4-grain tablets  
of morphine sulphate, as this question was fun-  
damentally objectionable as an attempt to get  
before the jury the fact that in the opinion of the  
defendant was guilty. *Wesson v United  
States* (1947, CCA8 Ark) 164 F2d 50.

amounts of prohibited drugs and none for any  
other drugs. *Melanson v United States* (1919,  
CCA5 Tex) 256 F 783.

Evidence showed sales by a druggist either  
without prescriptions or on forged prescriptions.  
*Montgomery v United States* (1923, CCA7 Ill)  
290 F 961.

Druggist cannot be convicted on proof that he  
sold large quantities of drugs on prescriptions of  
a registered physician, in absence of showing of  
conspiracy. *Eckert v United States* (1925, CCA8  
Mo) 7 F2d 257.

### 7. —Sufficiency

Conviction of physicians for violating and  
conspiring with a druggist was affirmed, where  
evidence showed prescriptions for excessive

## OFFENSES AND PENALTIES

### § 841. Prohibited acts A—Penalties

(a) Except as authorized by this title, it shall be unlawful for any person  
knowingly or intentionally—

- (1) to manufacture, distribute, or dispense, or possess with intent to  
manufacture, distribute, or dispense, a controlled substance; or
- (2) to create, distribute, or dispense, or possess with intent to distribute  
or dispense, a counterfeit substance.

(b) Except as otherwise provided in section 405 [21 USCS § 845], any  
person who violates subsection (a) of this section shall be sentenced as  
follows:

(1)(A) In the case of a controlled substance in schedule I or II which is  
a narcotic drug, such person shall be sentenced to a term of imprison-  
ment of not more than 15 years, a fine of not more than \$25,000, or  
both. If any person commits such a violation after one or more prior  
convictions of him for an offense punishable under this paragraph, or  
for a felony under any other provision of this title or title III or other  
law of the United States relating to narcotic drugs, marihuana, or  
depressant or stimulant substances, have become final, such person  
shall be sentenced to a term of imprisonment of not more than 30  
years, a fine of not more than \$50,000, or both. Any sentence  
imposing a term of imprisonment under this paragraph shall, in the  
absence of such a prior conviction, impose a special parole term of at  
least 3 years in addition to such term of imprisonment and shall, if  
there was such a prior conviction, impose a special parole term of at  
least 6 years in addition to such term of imprisonment.

(B) In the case of a controlled substance in schedule I or II which is  
not a narcotic drug or in the case of any controlled substance in  
schedule III, such person shall be sentenced to a term of imprison-  
ment of not more than 5 years, a fine of not more than \$15,000, or  
both. If any person commits such a violation after one or more prior  
convictions of him for an offense punishable under this paragraph, or  
for a felony under any other provision of this title or title III or other

law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than \$30,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine of not more than \$10,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine of not more than \$20,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$5,000, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than \$10,000, or both.

(4) Notwithstanding paragraph (1)(B) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in subsections (a) and (b) of section 404 [21 USCS § 844(a), (b)].

(c) A special parole term imposed under this section or section 405 [21 USCS § 845] may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section

405 [21 USCS § 845] shall be in addition to, and not in lieu of, any other parole provided for by law.

(Oct. 27, 1970, P. L. 91-513, Title II, Part D, § 401, 84 Stat. 1260.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

#### References in text:

For codification of "this title", referred to in text, see 21 USCS § 801 note, and for codification of "title III", referred to in text, see 21 USCS § 951 note.

For schedules of controlled substances referred to in text, see 21 USCS § 812.

#### Effective dates:

For effective date, see 21 USCS § 801 note.

### CROSS REFERENCES

This section is referred to in 21 USCS § 845.

### RESEARCH GUIDE

#### Annotations:

Narcotics law violation as a crime involving moral turpitude within immigration acts. 95 L Ed 910.

Operation of pure food and drug statutes as "infamous crime" which, under Fifth Amendment must be prosecuted by presentment or indictment of grand jury. 2 L Ed 2d 1971.

What constitutes "probable cause" or "reasonable grounds" justifying arrest of narcotics suspect without warrant. 3 L Ed 2d 1736.

#### Law Review Articles:

Drugs and the criminal law. 12 Crim LQ 254.

Civil commitment of narcotic addicts. 67 Colum L Rev 405.

Drugs for kicks. 16 Crime & Delin 1.

Prior Criminal Record and Adult Marijuana Arrest Dispositions. 62 J Crim L 74.

Pot Full of Discretion: Comprehensive Drug Abuse Prevention and Control Act of 1970. 34 Tex B J 497.

Two Reviews of Kaplan: Marijuana—The New Prohibition. 17 Wayne L Rev 255.

### INTERPRETIVE NOTES AND DECISIONS

#### UNDER PRIOR LAW

- |                               |                     |
|-------------------------------|---------------------|
| 1. In general.                | 8. —Sufficiency.    |
| 2. Construction and validity. | 9. Evidence.        |
| 3. Applicability.             | 10. —Admissibility. |
| 4. Entrapment.                | 11. —Sufficiency.   |
| 5. Separate offenses.         | 12. Instructions.   |
| 6. Indictment.                | 13. Sentence.       |
| 7. —Variance.                 | 14. Review.         |

Judgment and conviction on indictment charging unlawful transfer of marihuana but not naming or identifying the person to whom the illegal transfer was made was not subject to collateral attack under 28 USCS § 2255. *Cochran v United States* (1964, DC Ky) 229 F Supp 57, aff'd 336 F2d 799.

Trial court erred in refusing to give instruction on entrapment where prosecution evidence

showed that police officer supplied government funds for the purchase of the narcotics, through the direct channel of an intermediary to the accused, allowing the accused after the purchase and in the presence of the officer to retain some of the narcotics, and the officer at all times provided transportation for the execution of the plan. *Johnson v United States* (1963) 115 App DC 63, 317 F2d 127.

## § 842. Prohibited acts B—Penalties

(a) It shall be unlawful for any person—

- (1) who is subject to the requirements of part C [21 USCS §§ 821–829] to distribute or dispense a controlled substance in violation of section 309 [21 USCS § 829];
- (2) who is a registrant to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or to manufacture a controlled substance not authorized by his registration;
- (3) who is a registrant to distribute a controlled substance in violation of section 305 of this title [21 USCS § 825];
- (4) to remove, alter, or obliterate a symbol or label required by section 305 of this title [21 USCS § 825];
- (5) to refuse or fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this title or title III;
- (6) to refuse any entry into any premises or inspection authorized by this title or title III;
- (7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to section 304(f) or 511 [21 USCS § 824(f) or 881] or to remove or dispose of substances so placed under seal; or
- (8) to use, to his own advantage, or to reveal, other than to duly authorized officers or employees of the United States, or to the courts when relevant in any judicial proceeding under this title or title III, any information acquired in the course of an inspection authorized by this title concerning any method or process which as a trade secret is entitled to protection.

(b) It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II which is—

- (1) not expressly authorized by his registration and by a quota assigned to him pursuant to section 306 [21 USCS § 826]; or
- (2) in excess of a quota assigned to him pursuant to section 306 [21 USCS § 826].

(c)(1) Except as provided in paragraph (2), any person who violates this section shall, with respect to any such violation, be subject to a civil penalty of not more than \$25,000. The district courts of the United

States (or, where there is no such court in the case of any territory or possession of the United States, then the court in such territory or possession having the jurisdiction of a district court of the United States in cases arising under the Constitution and laws of the United States) shall have jurisdiction in accordance with section 1355 of title 28 of the United States Code to enforce this paragraph.

(2)(A) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (B) of this paragraph, be sentenced to imprisonment of not more than one year or a fine of not more than \$25,000, or both.

(B) If a violation referred to in subparagraph (A) was committed after one or more prior convictions of the offender for an offense punishable under this paragraph (2), or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of \$50,000, or both.

(3) Except under the conditions specified in paragraph (2) of this subsection, a violation of this section does not constitute a crime, and a judgment for the United States and imposition of a civil penalty pursuant to paragraph (1) shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

(Oct. 27, 1970, P. L. 91-513, Title II, Part D, § 402, 84 Stat. 1262.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

#### References in text:

For codification of "this title", and "title III", referred to in this section, see 21 USCS §§ 801 note, and 951 note, respectively.

For schedules of controlled substances referred to in text, see 21 USCS § 812.

#### Effective dates:

For effective date, see 21 USCS § 801 note.

### CROSS REFERENCES

This section is referred to in 21 USCS § 961.

### RESEARCH GUIDE

#### Annotations:

Narcotics law violation as a crime involving moral turpitude within immigration acts. 95 L Ed 910.

Operation of pure food and drug statutes as "infamous crime" which, under Fifth Amendment must be prosecuted by presentment or indictment of grand jury. 2 L Ed 2d 1971.

What constitutes "probable cause" or "reasonable grounds" justifying arrest of narcotics suspect without warrant. 3 L Ed 2d 1736.

Permitting expert medical witness to answer hypothetical questions as to good faith of physician in selling narcotics was prejudicial but conviction was not reversed where error had not been assigned. *Du Vall v United States* (1936, CCA9 Ariz) 82 F2d 382.

In a prosecution of a physician for the illegal sale of narcotic drugs, alleged misconduct of assistant district attorney in referring to defendant as a "peddler of narcotics" was not prejudicial where the evidence was sufficient to convict him of illegal sales not only at his office but also at a hotel, and the count of the indictment on which he was convicted also referred to him as a "peddler of narcotics." *Schmidtberger v United States* (1942, CCA8 Mo) 129 F2d 390.

Where good faith of defendant physician was in issue, and among the many prescriptions offered in evidence by the government were three which were attached to sheets of paper and pinned together, and these bore hearsay handwritten and typewritten statements, evidently drafted by government agents, to the effect that the prescriptions "were purchased" from defendant and "postdated," and it was not until several days after the jury returned its verdict that defendant's counsel first noticed the existence of the legends, denial of his motion for a new trial was reversible error. *United States v Brandenburg* (1946, CCA3 NJ) 155 F2d 110.

### § 843. Prohibited acts C—Penalties

(a) It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 308 of this title [21 USCS § 828];

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this title or title III or

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit substance.

(b) It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this title or title III. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, radio, and all other means of communication.

(c) Any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine of not more than \$5,000,

or both; except that if any person commits such a violation after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine of not more than \$60,000, or both.

(Oct. 27, 1970, P. L. 91-513, Title II, Part D, § 403, 84 Stat. 1263.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

#### References in text:

For codification of "this title", and "title III", referred to in this section, see 21 USCS §§ 801 note, and 951 note, respectively.

For schedules of controlled substances referred to in this section, see 21 USCS § 812.

#### Effective dates:

For effective date, see 21 USCS § 801 note.

### RESEARCH GUIDE

#### Annotations:

Narcotics law violation as a crime involving moral turpitude within immigration acts. 95 L Ed 910.

Operation of pure food and drug statutes as "infamous crime" which, under Fifth Amendment must be prosecuted by presentment or indictment of grand jury. 2 L Ed 2d 1971.

What constitutes "probable cause" or "reasonable grounds" justifying arrest of narcotics suspect without warrant. 3 L Ed 2d 1736.

### § 844. Penalty for simple possession—Conditional discharge and expunging of records for first offense

(a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$5,000, or both, except that if he commits such offense after a prior conviction or convictions under this subsection have become final, he shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than \$10,000, or both.

(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this title or title III, or any other law of the United States relating to narcotic drugs,

(2) the number of hours of continuing education required for license renewal; and

(3) alternative methods for fulfilling continuing education requirements as prescribed in 37-7-304(2).

History: En. 66-1507.2 by Sec. 4, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.2.

### 37-7-306 through 37-7-310 reserved.

#### 37-7-311. Revocation of license issued to pharmacist or intern

The board shall revoke licenses issued by the department to a pharmacist or intern whenever the holder of the license:

- (1) has obtained it by false representations or fraud;
- (2) is an habitual drunkard or addicted to the use of narcotic drugs;
- (3) has been convicted of violating the pharmacy law; or
- (4) has been found by the board guilty of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or intern.

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1911; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1938; Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; L. 1947, 66-1504(2)(g); amd. Sec. 10, Ch. 22, L. 1979; amd. Sec. 4, Ch. 362, L. 1981; amd. Sec. 1, Ch. 379, L. 1981.

#### Compiler's Comments

1981 Amendments: Chapter 362 deleted former subsection (3) that read "has been convicted of a felony".

Chapter 379 deleted "temporarily or permanently" after "revoke" in the first sentence of the section.

Effective Date: Section 6, Ch. 362, L. 1981 provided: "This act is effective on passage and approval." Approved April 14, 1981.

### 37-7-312 through 37-7-320 reserved.

#### 37-7-321. Certified pharmacy license — suspension or revocation.

(1) The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application of a form prescribed by the board and on the payment of an original certification fee prescribed by the board, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted to pharmacies operated by registered pharmacists qualified under this chapter. The annual renewal fee for a pharmacy shall be set by the board. In default in the payment of such renewal fee after the date the same is due, the board shall increase the renewal fee as prescribed by the board. The license shall be displayed in a conspicuous place in the pharmacy for which it is issued and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify his business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(2) The board may suspend, revoke, or refuse to renew a pharmacy license:

- (a) obtained by false representation or fraud;
- (b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;

Exhibit 3  
January 25, 1985  
HB 280  
Submitted by:  
Geoffrey L.  
Brazier

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS  
GEOFFREY L. BRAZIER AND I AM STAFF ATTORNEY FOR DOC  
I AM APPEARING HERE ON BEHALF OF THE BOARD OF PHARMACY TO  
URGE YOUR SUPPORT OF HOUSE BILL 280.

HOUSE BILL 280 IS A BILL TO PLUG A LOOP HOLE IN THE PHARMACY  
PRACTICE ACT (SECTION 37-7-101, MCA, AND FOLLOWING).

IT IS SUBMITTED AT THE REQUEST OF THE BOARD OF PHARMACY FOR  
THE FOLLOWING REASONS:

A WHILE BACK A HEARING EXAMINER FROM THE ATTORNEY GENERAL'S  
OFFICE MADE A RULING IN A LICENSE DISCIPLINARY CONTESTED CASE  
THAT APPALLED THE BOARD OF PHARMACY.

IN THAT CASE, THE BOARD HAD DECIDED THAT THERE WAS PROBABLE  
CAUSE TO REVOKE THE LICENSE OF A PHARMACIST WHO HAD BEEN  
CONVICTED BY A JURY OF TWO FELONY COUNTS OF CRIMINAL SALE OF  
DANGEROUS DRUGS OUT OF HIS PHARMACY.

THE HEARING EXAMINER RECOMMENDED THAT THE LICENSE NOT BE REVOKED  
BECAUSE THE CONDUCT IN QUESTION DID NOT FALL WITHIN STANDARDS  
SET FORTH IN SECTION 37-7-311 AT THE TIME THE ACTIVITY TOOK PLACE.  
THE EFFECT OF HIS RULING WAS THAT, IF THE LICENSEE HAD BEEN  
CONVICTED OF A MISDEMEANOR, HIS LICENSE COULD HAVE BEEN REVOKED.  
BUT IT COULDN'T BE REVOKED FOR A FELONY. THE BOARD REJECTED  
THE RATIONALE OF THE HEARING EXAMINER AND IMPOSED SANCTIONS.  
THE LICENSEE APPEALED TO THE DISTRICT COURT. AT THAT POINT,  
THE FEDERAL DRUG ENFORCEMENT ADMINISTRATION STEPPED IN AND

REVOKED THE LICENSEE'S REGISTRATION TO DISPENSE DANGEROUS DRUGS. THE CASE NOW SEEMS TO BE COMING TO AN END.

DURING THE CONTESTED CASE, STAFF AND THE BOARD COULD SEE WHICH DIRECTION THE HEARING EXAMINER WAS GOING AND THEY RESOLVED TO TRY NOT TO LET THIS SORT OF ABERRATION HAPPEN AGAIN. SO THEY PREVAILED UPON THE 48TH LEGISLATURE TO ADOPT WHAT IS NOW SUBSECTION 37-7-311(3), MCA. THIS IS THE SECTION THAT HOUSE BILL 280 IS DIRECTED AT.

IN THE INTERIM SINCE THE LAST SESSION OF THE LEGISLATURE, IT HAS COME TO THE ATTENTION OF THE BOARD THAT THE FEDERAL DRUG ABUSE PREVENTION AND CONTROL ACT ALSO PROVIDES CONDUCT STANDARDS FOR PRACTICING PHARMACISTS IN MONTANA. THOSE STANDARDS RELATE TO LOCAL DISTRIBUTION AND POSSESSION OF CONTROLLED SUBSTANCES FLOWING THROUGH INTERSTATE COMMERCE, AND PROVIDE A MEASURE OF FEDERAL CONTROL OVER INTRASTATE INCIDENTS OF DRUG TRAFFIC. THE CONDUCT OF PHARMACISTS CONTEMPLATED BY THE FEDERAL ACT IS PRACTICE RELATED.

YOUR BOARD FEELS THAT CONVICTION OF VIOLATING THE FEDERAL ACT IS A SUFFICIENT SHOWING OF A DEVIATION FROM A STANDARD OF CONDUCT FOR PHARMACISTS, WHICH STANDARD IS IMPOSED FOR THE PROTECTION OF THE PUBLIC, AS TO SUPPORT LICENSE DISCIPLINARY TREATMENT, SUCH AS LICENSE REVOCATION.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, YOUR BOARD URGES THAT, WHEN THIS COMMITTEE REPORTS ON HOUSE BILL 280, IT RECOMMENDS THAT THE BILL "DO PASS".

Subcommittee report on House Bill 162:

We agree that the bill is needed, but it needs to be cleaned up considerably. This bill appears to have been drafted basically from the Fire Marshal's administrative rules, and we'd recommend some changes, to include but not limited to the following:

Page 2 - definition of "fire protection equipment" - delete all except "fire extinguishing system" and "fire alarm system." We don't think it should cover portable fire extinguishers, K-mart smoke alarms, etc.

Page 2 (b) - consider Rep. Glaser's recommendation on further breaking down the two members who hold licenses.

Page 3 and further references throughout the bill - we would like to see just one license issued to cover all cases rather than "certificates of registration," "permits" and "licenses." This seems cumbersome and we'd like to see it streamlined.

Pages 3 and 4, duties of the board - we are concerned about the number of staff it might take to do everything that is listed. It also seems to us that the duties of this board fall more logically under the Fire Marshal's office instead of the Dept. of Commerce's Occupational & Professional Licensing Division; and we hope there will be a way to ensure coordination between the two departments.

We have some concerns about the blanket insurance policy on page 10 and other references to insurance and think these should be clarified (see Rep. Thomas for more details).

We believe that the current fees are too low, and if this bill or a committee bill is defeated, we would like some means whereby the Fire Marshall can increase the current fees. We also think there should be a fee for license renewals. The fine provided in this bill is too steep in comparison to the present amount charged for licenses.

We do not think the bill ought to include a "**grandfather** clause."

This bill could be worked on by the sponsor, the drafter, Rep. Glaser and Fire Marshall Kelly and turned into a committee bill.

Rep. J. Brown  
Rep. Keller  
Rep. McCormick  
Rep. Thomas

II-10

OCCUPATIONAL DISEASE ACT

**39-72-404. False representation by employees concerning previous occupational disease.** No compensation shall be payable for an occupational disease if the employee, at the time of entering the employment of the employer by whom the compensation would otherwise be payable, knowingly represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise because of such disease when the contrary is true.

History: En. Sec. 43, Ch. 155, L. 1959; R.C.M. 1947, 92-1342.

**Cross-References**  
 "Employee" defined, 39-71-118, 39-72-102.  
 "Employer" defined, 39-71-117, 39-72-102. "Occupational disease" defined, 39-72-102.

**39-72-405. General limitations on payment of compensation to disabled employee — exceptions.** (1) Except as provided for in this section, compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(2) Except as provided for in subsection (3) of this section, no compensation may be paid for silicosis unless during the 8 years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 1,000 workshifts in employment in this state and unless total disability results within 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(3) A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this chapter is eligible to receive compensation under this chapter when totally disabled if he has 700 actual workshifts since January 1, 1954, for that employer. When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the division may allow compensation on account thereof as it considers just, not exceeding \$10,000.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(1)(a) thru (d); amd. Sec. 4, Ch. 104, L. 1979.

**Cross-References**  
 "Disabling" defined, 39-72-102.  
 "Division" defined, 39-71-116, 39-72-102. "Occupational disease" defined, 39-72-102.  
 "Employer" defined, 39-71-117, 39-72-102. "Silicosis" defined, 39-72-102.  
 "Employee" defined, 39-71-118, 39-72-102.

**Exclusive remedy.** Claimant who was covered by the Occupational Disease Act, but who did not meet the requirements set forth in Sec. 39-72-405, including the number of workshifts required, was precluded from bringing lawsuit to recover for his alleged ailments. *Anaconda Co. v. District Court*, 161 Mont. 318, 506 P.2d 81 (1973).

**Nondisabling occupational disease.** Claimant having an occupational disease caused by his employment and not yet disabling but did require he cease such employment as determined by the medical panel, a wage loss is compensable under 39-72-405 (3), not exceeding \$10,000. *Stammen v. Hank's Body Shop, Inc.*, W.C. Div. No. 2-81-00869 O.D. (1983).

Collateral reference: *IB Larson*, §§ 41.82, 41.87.

**39-72-406. General limitations on payment of death benefits — exceptions.** Compensation shall be paid to the beneficiaries of every employee covered by this chapter in cases where death results from an occupational disease arising out of his employment, subject to the following conditions:

See also related amendment on page 5 of the bill (39-72-211(2)).

HOUSE BILL 284

AN ACT MAKING THE UNEMPLOYMENT TRUST FUND SOLVENT

Section 1. This section authorizes a surtax to pay off principal on loans from the federal government. The rate of the surtax may not exceed .3%. This surtax will enable the Department of Labor and Industry to pay off all monies owed the federal government by January 1986. The authority for the surtax expires on June 30, 1987.

Section 2. Section 2 changes the taxable wage base from 75% to 80% of the annual wage and eliminates the \$200 per year ceiling on tax increases.

Sections 3 and 4. An employer's "experience factor" determines the rate at which unemployment insurance taxes will be paid. The factor is computed based on benefits drawn from and contributions paid into the employer's account. Currently, only figures for the last three years are used to calculate the experience factor. Sections 3 and 4 make benefit charges and contributions payments accumulative in the experience factor calculation throughout the life of the business. This will cause the rates to drop for stable employers that have had a small amount of benefits charged against their accounts.

Section 5. Section 5 modifies the unemployment insurance tax rate structure. It provides for 10 rate classes replacing the 7 existing rate classes. Rate classes for deficit employers would be increased from 6 to 10 classes. The maximum average tax rate is increased from 3.0% to 3.2%. See Attachment 1. (The Job Service assessment (39-51-404(4)) of .1% is in addition to the actual tax paid.) The reserve ratio has been changed to require a greater balance before triggering to a lower rate schedule.

Section 6. Section 6 requires a claimant with a transitional claim (claim spanning two benefit years) to wait a week between benefit years. Benefits would not be paid during the waiting week. See Attachment 2. Montana is the only state in the country which does not provide for a waiting week between benefit years.

Section 7. Section 7 reduces the maximum of an individual's weekly benefit amount from 50% to 49% of his/her average weekly wage. This change would reduce benefit expenditures by approximately \$1.3 million in fiscal year 1986. In addition, the maximum weekly benefit amount is proposed to be frozen at the 1984 level through January 3, 1987.

Section 8. An employee may currently receive unemployment insurance benefits if he/she can show "good personal cause" for leaving his/her employment. Section 8 would require a claimant to demonstrate that the cause of separation from employment is attributable to employment in order to qualify for benefits. This change would reduce benefit expenditures by approximately \$2.5 million in fiscal year 1986.

Section 9. This section permits the department to make rules for this act like it does for other laws it implements.

Section 10. This section puts this act in the law which applies to the rest of unemployment insurance.

Section 11. This section would make the temporary surtax and the new contribution rate schedules effective this calendar year.

Section 12. Because the year for determining benefit rates begins July 1 of every year, this section makes the benefit changes proposed by this act effective July 1, 1985. This section also provides for the termination of the surtax on June 30, 1987 and makes the tax sections effective upon passage.

SCHEDULE OF CONTRIBUTION RATES\*

Minimum Ratio of Fund to Total Wages Average Tax Rate	Sched. I	Sched. II	Sched. III	Sched. IV	Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0150)	(.0145)	(.0140)	(.0130)	(.0120)	(.0110)	(.0095)	(.0075)	(.005)	(.....)	
1.3	1.5	1.7	1.9	2.1	2.3	2.5	2.7	2.9	3.1	
CONTRIBUTION RATES FOR ELIGIBLE EMPLOYERS										
1	0.2%	0.3%	0.5%	0.7%	0.9%	1.1%	1.3%	1.5%	1.7%	1.9%
2	0.4	0.6	0.8	1.0	1.2	1.4	1.6	1.8	2.0	2.2
3	0.7	0.9	1.1	1.3	1.5	1.7	1.9	2.1	2.3	2.5
4	1.0	1.2	1.4	1.6	1.8	2.0	2.2	2.4	2.6	2.8
5	1.3	1.5	1.7	1.9	2.1	2.3	2.5	2.7	2.9	3.1
6	1.6	1.8	2.0	2.2	2.4	2.6	2.8	3.0	3.2	3.4
7	1.9	2.1	2.3	2.5	2.7	2.9	3.1	3.3	3.5	3.7

CONTRIBUTION RATES FOR UNRATED EMPLOYERS:

2.1%	2.3%	2.5%	2.7%	2.9%	3.1%	3.3%	3.5%	3.7%	3.9%
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Rate Class

CONTRIBUTION RATES FOR DEFICIT EMPLOYERS

1	2.2%	2.4%	2.6%	2.8%	3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
2	2.4	2.6	2.8	3.0	3.2	3.4	3.6	3.8	4.0	4.2
3	2.6	2.8	3.0	3.2	3.4	3.6	3.8	4.0	4.2	4.4
4	2.8	3.0	3.2	3.4	3.6	3.8	4.0	4.2	4.4	4.4
5	3.0	3.2	3.4	3.6	3.8	4.0	4.2	4.4	4.4	4.4
6	3.2	3.4	3.6	3.8	4.0	4.2	4.4	4.4	4.4	4.4

\* SB95 seeks to clarify that .1% of the above rates collected from employers is set aside for the Job Service Administrative Fund.

SCHEDULE OF  
UNEMPLOYMENT INSURANCE CONTRIBUTION RATES\*

	SCHED. I	SCHED. II	SCHED. III	SCHED. IV	SCHED. V	SCHED. VI	SCHED. VII	SCHED. VIII	SCHED. IX	SCHED. X
Minimum Ratio Fund to Total	(.0270)	(.0260)	(.0245)	(.0225)	(.0200)	(.0170)	(.0135)	(.0095)	(.005)	(.....)
Average Tax Rate	1.4	1.6	1.8	2	2.2	2.4	2.6	2.8	3	3.2

CONTRIBUTION RATES FOR ELIGIBLE EMPLOYERS

Rate Class	0	.1	.3	.5	.7	.9	1.1	1.3	1.5	1.7	1.9	2.1	2.3	2.5	2.7	2.9	3.1	3.3	3.5
1																			
2																			
3																			
4																			
5																			
6																			
7																			
8																			
9																			
10																			

CONTRIBUTION RATES FOR DEFICIT EMPLOYERS

Rates for Unrated Employers	2	2.2	2.4	2.6	2.8	3	3.2	3.4	3.6	3.8	4	4.2	4.4	4.6	4.8	5	5.2	5.4	5.6	5.8	6	6.2	6.4	
1																								
2																								
3																								
4																								
5																								
6																								
7																								
8																								
9																								
10																								

\*The schedule of contribution rates shown above does not include the .1% Job Service Administrative Fund Tax which is in addition to the above rates.

## TRANSITIONAL CLAIMS

1984

<i>January</i>						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Claimant files a claim effective 1-8-84.

The week ending 1-14-84 is claimant's waiting week.

Claimant receives benefits through March when he returns to work. He is laid off, reopens his claim effective 12-9-84, and continues to receive benefits through the week ending 1-5-85 when his benefit year expires.

<i>December</i>						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

1985

JANUARY						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

He files a new claim effective 1-6-85.

This claim is termed a "transitional claim". The claimant is in a compensable status, that is, being paid benefits, at the end of his prior benefit year and may continue to receive benefits without interruption to serve a waiting week at the beginning of his second benefit year.

Should he be required to serve a waiting week at the beginning of his second benefit year, the week ending 1-12-85 would become his waiting week. This requirement would not reduce the maximum number of weeks to which he is entitled in the new benefit year, but would only delay the receipt of benefits for one week as was the case in his 1984 benefit year.



Significant Provisions of State Unemployment Insurance Laws, January 6, 1985

PREPARED FOR READY REFERENCE, CONSULT THE STATE LAW AND STATE EMPLOYMENT SECURITY AGENCY FOR AUTHORITATIVE INFORMATION

State	BENEFITS									COVERAGE	TAXES		
	Qualifying wage or employment (number X wba or as indicated) <sup>1</sup>	Waiting week <sup>2</sup>	Computation of wba (fraction of hqw or as indicated) 1/3/	Wba for total unemployment <sup>4</sup>		Earnings disregarded <sup>5</sup>	Duration in 52-week period		Benefit for total unemployment <sup>7</sup>			Size of firm (1 worker in specified time and/or size of payroll) <sup>15</sup>	1985 Taxable wage base
				Min.	Max.		Proportion of base-period wages <sup>6</sup>	Min. <sup>8</sup>					
Ala.	1-1/2 x hqw; not less than \$774.01	0	1/24	\$22	\$120	\$15	1/3	11+	26	20 wks.	\$ 8,000		
Alaska	\$1,000; wages in 2 qtrs.	1	3.8-0.95% of annual wages, + \$24 per dep. up to \$72	38-62	188-260	3/4 wages over \$50	Weighted schedule of bpw in relation to hqw	7/16	7/26	Any time	21,800		
Ariz.	1-1/2 x hqw; \$1,000 in HQ.	1	1/25	40	115	\$15	1/3	12+	26	20 wks	7,000		
Ark.	35 x wba; wages in 2 qtrs.	1	1/52 of 2 highest qtrs up to 66-2/3% of State aww <sup>17</sup>	40	154	2/5	1/3	12	26	10 days	7,500		
Calif.	8 wks. employment at \$20 & BP wages of \$900 or total BP wages of \$1,200	1	1/24-1/33	30	166	Lesser of \$25 and 25% of wages	1/2	7/12+	7/26	Over \$100 in any qtr.	7,000		
Colo.	40	1	60% of 1/26 of claimant's 2 highest qtrs up to 50% of State aww	25	206	1/4 wba	1/3	7+-13	26	13 wks or \$500 in CQ	8,000		
Conn.	40	0	1/26, up to 60% of State aww + \$10 per dep. up to 1/2 wba or 5 deps.	15-22	180-230	2/3 wages	Uniform	7/26	7/26	20 wks.	7,100		
Del.	36	0	1/78 of 3 highest qtrs of BP, up to 66-2/3% of State aww <sup>13,17</sup>	20	165	Greater of \$10 or 30% of wba	1/2	18	26	20 wks.	8,000		
D.C.	1-1/2 x hqw; not less than \$900; \$300 in 1 qtr.	1	1/23 + \$5 per dep. up to \$20 <sup>17</sup>	26	206 <sup>4</sup>	1/5 wages	1/2	17	26	Any time	8,000		
Fla.	20 wks. employment at average of \$20 or more	1	1/2 claimant's aww	10	150	\$5	1/2 wks. employment	10	26	20 wks.	7,000		

State	BENEFITS									COVERAGE Size of firm (1 worker in specified time and/or size of payroll) <sup>15</sup>	TAXES 1985 Taxable wage base
	Qualifying wage or employment (number X wba or as indicated) <sup>1</sup>	Waiting week <sup>2</sup>	Computation of wba (fraction of hqw or as indicated) 1/3/	Wba for total unemployment <sup>4</sup>		Earnings disregarded <sup>5</sup>	Duration in 52-week period				
				Min.	Max.		Proportion of base-period wages <sup>6</sup>	Benefit weeks for total unemployment <sup>7</sup>			
								Min. <sup>8</sup>	Max.		
Ga.	1-1/2 x hqw	1 <sup>2</sup>	1/25	\$27	\$125	\$8	1/4	4	26	20 wks	\$ 7,000
Hawaii	30; 14 wks employment	1	1/25 up to 66-2/3% of State aww	5	194	\$2	Uniform	7 <sup>26</sup>	7 <sup>26</sup>	Any time	15,100
Idaho	1-1/2 x hqw; not less than \$1,144.01 in 1 qtr.; wages in 2 qtrs.	1	1/26 up to 60% of State aww	45	173	1/2 wba	Weighted schedule of bpw in relation to hqw	10	26	20 wks. or \$300 in any quarter	15,000
Ill.	\$1,600; \$440 outside HQ	1	48% of claimant aww in 2 highest qtrs. up to 48% of State aww <sup>12</sup>	51	161-209	1/2 wba	Uniform	26	26	20 wks.	8,500
Ind.	1-1/4 x hqw; not less than \$1,500; \$900 in last 2 qtrs.	1	4.3% of high qtr. wage credits <sup>3</sup>	40	84-141	Greater of \$3 or 20% of wba from other than BP employer	1/4	9+	26	20 wks.	7,000
Iowa	1-1/4 x hqw; 3.5 of State aww in HQ; 1.75% of State aww outside HQ	0	3/12/	22-27	143-176	1/4 wba	1/3	11+	26	20 wks.	11,200
Kans.	30; wages in 2 qtrs.	1	4.25% of hqw up to 60% of State aww	43	175	\$8	1/3	10	26	20 wks.	8,000
Ky.	1-1/2 x hqw; 8 x wba in last 2 qtrs; \$750 in 1 qtr. and \$750 in other qtrs.	0	1.185% of BP wages up to 55% of State aww	22	140	1/5 wages	1/3	15	26	20 wks.	8,000
La.	1-1/2 x hqw	1	1/20-1/25 <sup>13,17</sup>	10	205	Lesser of 1/2 wba or \$50	2/5	12	26	20 wks.	7,000
Maine	2 x annual aww in each of 2 qtrs. & 6 x annual aww in BP	1	1/22 up to 52% of State aww +\$5 per dep. to 1/2 wba	22-27	139-208	\$10	1/3	7+-22	26	20 wks.	7,000

State	BENEFITS									COVERAGE  Size of firm (1 worker in specified time and/or size of payroll) <sup>15</sup>	TAXES  1985 Taxable wage base
	Qualifying wage or employment (number x wba or as indicated) <sup>1</sup>	Waiting week <sup>2</sup>	Computation of wba (fraction of hqw or as indicated) $\frac{1}{3}/$	Wba for total unemployment <sup>4</sup>		Earnings disregarded <sup>5</sup>	Duration in 52-week period				
				Min.	Max.		Proportion of base-period wages <sup>6</sup>	Benefit weeks for total unemployment <sup>7</sup>			
								Min. <sup>8</sup>	Max.		
Md.	1-1/2 x hqw; \$576.01 in 1 qtr; wages in 2 qtrs.	0	1/24 + \$3 per dep. up to \$12	25-28	4175	\$35	Uniform	26	26	Any time	\$ 7,000
Mass.	30; not less than \$1,200	1	1/21-1/26 up to 57.5% of State aww, + \$6 per dep. up to 1/2 wba <sup>3</sup>	14-21	196-294	40% not less than \$10 nor more than \$30	36%	9+30	30	13 wks.	7,000
Mich.	20 wks. employment at 30 x State min. hourly wage <sup>10</sup>	0	65% of claimant's after tax earnings (ATE) up to a maximum of 58% of State aww. <sup>17</sup>	54	197	Up to 1/2 wba <sup>5</sup>	3/4 wks. employment	15	26	20 wks. or \$1,000 in CY	9,000
Minn.	15 wks. employment at 30% of State aww	91	<u>12/</u>	52	198	\$25	7/10 wks. employment	11	26	20 wks.	10,300
Miss.	40; \$780 in 1 qtr. wages in 2 qtrs.	1	1/26	30	115	\$5	1/3	13+	26	20 wks.	7,000
Mo.	1-1/2 x hqw; \$300 in 1 qtr; wages in 2 qtrs.	91	4.5%	14	120	\$10	1/3	10	26	20 wks.	8,000
Mont.	20 wks. employment at \$50 or more	1	1/2 claimant's aww up to 60% of State aww	42	171	1/2 wages in excess of 1/4 wba	Weighted schedule of bpw in relation to hqw	8	26	Over \$500 in current or preceding year	8,600
Neb.	\$600; \$200 in each of 2 qtrs.	1	1/17-1/24	12	120	1/2 wba	1/3	17	26	20 wks.	7,000
Nev.	1-1/2 x hqw	0	1/25, up to 50% of State aww	16	162	1/4 wages	1/3	12+	26	\$225 in any qtr.	11,100
N.H.	\$1,700; \$800 in each of 2 qtrs.	0	1.8-1.2% of annual wages	26	141	1/5 wba	Uniform	26	26	20 wks.	7,000
N.J.	20 wks. employment at 15% of aww; or 12 x aww	91	60% of claimant's aww + d.a. up to 56-2/3% of State aww	20	4203	Greater of \$5 or 1/5 wba	3/4 wks. employment	15	26	\$1,000 in any year	10,100

State	BENEFITS									COVERAGE Size of firm (1 worker in specified time and/or size of payroll) <sup>15</sup>	TAXES 1985 Taxable wage base	
	Qualifying wage or employment (number x wba or as indicated) <sup>1</sup>	Waiting week <sup>2</sup>	Computation of wba (fraction of hqw or as indicated) <u>1/3/</u>	Wba for total unemployment <sup>4</sup>		Earnings disregarded <sup>5</sup>	Duration in 52-week period		Benefit weeks for total unemployment <sup>7</sup>			
				Min.	Max.		Proportion of base-period wages <sup>6</sup>	Min. <sup>8</sup> Max.				
								Min. <sup>8</sup>				Max.
N.Mex	1-1/4 x hqw	1	1/26; not less than 10% nor more than 50% of State aww	\$30	\$150	1/5 wba	3/5	19	26	20 wks. or \$450 in any qtr.	\$10,000	
N.Y.	20 wks. employment at minimum average of \$80 or more 10	11 <sub>1</sub>	67-50% of claimant's aww	40	180	<u>11/</u>	Uniform	26	26	\$300 in any qtr.	7,000	
N.C.	1-1/2 x hqw not less than 6 x State aww	1	1/52 of 2 highest qtrs up to 66-2/3% of State aww <sup>12</sup>	15	167	10% aww in 2 highest qtrs.	Weighted schedule of bpw in relation to hqw	13-26	26	20 wks.	8,700	
N.Dak	1-1/2 x hqw	1	1/52 of the 2 highest qtrs; up to 65% of the State aww	60	185	1/2 wba	Weighted schedule of bpw in relation to hqw	12	26	20 wks.	10,700	
Ohio	20 wks. employment at 37 x min. hourly wage	9 <sub>1</sub>	1/2 claimant's aww + d.a. of \$1-\$86 based on claimant's aww and number of dep. <sup>3,16,17</sup>	10	147-233	1/5 wba	20 x wba; wba for each credit wk. in excess of 20	20	26	20 wks.	8,000	
Okla.	1-1/2 x hqw; not less than \$3,000 in BP; \$7,000	1	1/25 up to 66-2/3% of State aww <u>18/</u>	16	197 <u>18/</u>	\$7	50% of taxable wage	20+ <sup>14</sup>	26 <sup>14</sup>	20 wks.	7,000	
reg.	18 wks; not less than \$1,000 in BP	1	1.25% of bpw up to 64% of State aww	47	204	1/3 wba	1/3	7+ <sup>7</sup>	26 <sup>7</sup>	18 wks. or \$225 in any qtr.	13,000	
Pa.	37 + - 40; \$800 in HQ and \$1,320 in BP; at least 20% of bpw outside HQ	1	1/23-1/25 up to 66-2/3% of State aww + \$5 for 1 dep; \$3 for 2d	\$35-40	224-232 <u>18/</u>	Greater of \$6 or 40% wba	At least 16 credit wks. for min., 18 for max.	16	26	Any time	8,000	
P.R.	40 x wba not less than \$280; \$75 in 1 qtr.; wages in 2 qtrs.	1	1/11-1/26; up to 50% of State aww	7	95	wba	Uniform	<sup>7</sup> 20	<sup>7</sup> 20	Any time	All Wages	

State	BENEFITS									COVERAGE Size of firm (1 worker in specified time and/or size of payroll) <sup>15</sup>	TAXES 1985 Taxable wage base
	Qualifying wage or employment (number x wba or as indicated) <sup>1</sup>	Waiting week <sup>2</sup>	Computation of wba (fraction of hqw or as indicated) <u>1/3/</u>	Wba for total unemployment <sup>4</sup>		Earnings disregarded <sup>5</sup>	Duration in 52-week period				
				Min.	Max.		Proportion of base-period wages <sup>6</sup>	Benefit weeks for total unemployment <sup>7</sup>			
								Min. <sup>8</sup>	Max.		
R.I.	20 wks. employment at \$67 or more; or \$4,020	1	55% of claimant's aww up to 60% of State aww, + \$5 per dep. up to \$20	37-42	\$174-194	\$5	3/5 wks. employment	12	26	Any time	\$10,600
S.C.	1-1/2 x hqw; not less than \$900; \$540 in 1 qtr.	1	1/26 up to 66-2/3% of State aww	21	125	1/4 wba	1/3	14	26	20 wks.	7,000
S.Dak.	\$728 in HQ; 30 x wba outside HQ	1	1/26 up to 62% of State aww <sup>17</sup>	28	129	1/4 wages up to wba	1/3	18+	26	20 wks.	7,000
Tenn.	40; \$754.01 in highest 2 qtrs.	1	1/25-1/31 of average 2 highest qtrs	30	120	\$30	1/4	12	26	20 wks.	7,000
Tex.	1-1/2 x hqw not less than \$500 or 2/3 FICA tax base	91	1/25 <sup>16</sup>	29	189	Greater of \$5 or 1/4 wba	27%	12+	26	20 wks.	7,000
Utah	1-1/2 x hqw; bpw of 8 x State aaw	1	1/26 up to 60% of State aww	46	186	3/10 wba	27%	10	26	\$140 in CQ in current or preceding CY	12,100
V.I.	26+-30; not less than \$99 in 1 qtr. and wages in 2 qtrs.	1	1/23-1/25 <sup>13</sup>	15	130	1/4 wages in excess of \$5	Uniform	26	26	Any time	8,000
Vt.	20 wks. employment at \$35 or more	1	1/2 claimant's aww for highest 20 wks up to 60% of State aww <sup>17</sup>	18	146	\$15 +\$3 for each dep. up to 5	Uniform	26	26	20 wks.	8,000
Va.	50; wages in 2 qtrs.	0	1/50 of the 2 highest qtrs.	54	150	\$25	1/3	12	26	20 wks.	7,000

State	BENEFITS									COVERAGE	TAXES
	Qualifying wage or employment (number X wba or as indicated) <sup>1</sup>	Wait-ing week <sup>2</sup>	Computation of wba (fraction of hqw or as indicated) <u>1/3/</u>	Wba for total unem-ployment <sup>4</sup>		Earnings disre-garded <sup>5</sup>	Duration in 52-week period				
				Min.	Max.		Proportion of base-period wages <sup>6</sup>	Benefit weeks for total un-employment <sup>7</sup>			
								Min. <sup>8</sup>	Max.		
Wash.	680 hours	1	1/25 of average of 2 highest qtrs. wages up to 55% of State aww <sup>17</sup>	\$51	\$185	1/4 wages in excess of \$5	1/3	16+- 30	30	Any time	\$10,000
W.Va.	\$1,150 and wages in 2 qtrs.	1	1.5-1.0% of annual wages up to 70% of State aww	18	225	\$25	Uniform	28	28	20 wks.	8,000
Wisc.	18 weeks employment at 30% of State aww	0	50% of claimant's aww up to 66-2/3% of State aww <sup>17</sup>	37	196	67% wages over \$20 <sup>5</sup>	8/10 wks. employment	1-14+	26	20 wks.	9,500
Wyo.	5% of State aaw in HQ and 8% of State aaw in BP	1	4% of hqw up to 55% of State aww <u>18/</u>	34	183	Greater of \$15 or 1/2 wba	3/10	12-26	26	\$500 in current or preceding CY	9,500

<sup>1</sup>Weekly benefit: amount abbreviated in columns and footnotes as wba; base period, BP; base-period wages, bpw; high quarter, HQ; high-quarter wages, hqw; average annual wage, aaw; average weekly wage, aww; benefit year, BY; calendar quarter, CQ; calendar year, CY; dependent, dep.; dependents allowances, da.; minimum, min.; maximum, max.; quarter, qtr.; week, wk.

<sup>2</sup>Unless otherwise noted, waiting period same for total or partial unemployment. In Ga. no waiting week if claimant unemployed not through own fault.

<sup>3</sup>When States use weighted high-quarter, annual-wage, or average weekly-wage formula, approximate fractions or percentages figured at midpoint of lowest and highest normal wage brackets. When da provided, fraction applies to basic wba. In States noted variable amounts above max. basic benefits limited to claimants with specified number of dep. and earnings in excess of amounts applicable to max. basic wba.. In Ind. da. paid only to claimants with earnings in excess of that needed to qualify for basic wba and who have 1-4 depts.. In Iowa, and Ohio claimants may be eligible for augmented amount at all benefit levels but benefit amounts above basic max. available only to claimants in dependency classes whose hqw or aww are higher than that required for max. basic benefit. In Mass. for claimant with aww in excess of \$66 wba computed at 1/52 of 2 highest quarters of earnings or 1/26 of highest quarter if claimant has no more than 2 quarters work.

<sup>4</sup>When 2 amounts given, higher includes da.. Higher for min. wba includes max. allowance for one dep.. In D.C., Md., and N.J., same max. with or without dep.

<sup>5</sup>In computing wba for partial unemployment, in States noted full wba paid if earnings are less than 1/2 wba; 1/2 wba if earnings are 1/2 wba but less than wba.

<sup>6</sup>States noted have weighted schedule with percent of benefits based on bottom of lowest and highest wage brackets.

<sup>7</sup>Benefits extended under State program when unemployment in State reaches specified levels; Alaska, Calif., by 50%; Conn. by 13 weeks. Oreg. (until June 29, 1985), by 25%. In Hawaii benefits extended by 13 weeks when a manmade or disaster causes damage to either the State as a whole or any of its counties and creates an unemployment problem involving a substantial number of persons and families. In P.R. benefits extended by 32 weeks in certain industries, occupations or establishments when special unemployment situation exists. Benefits also may be extended during periods of high unemployment by 50%, up to 13 weeks, under Federal-State Extended Compensation Program.

<sup>8</sup>For claimants with min. qualifying wages and min. wba. When two amounts shown, range of duration applies to claimants with min. qualifying wages in BP; longer duration applies with min. wba; shorter duration applies with max. possible concentration of wages in HQ; therefore highest wba possible for such BP earnings. Wisc. determines entitlement separately for each employer. Lower end of range applies to claimants with only 1 week of work at qualifying wage; upper end to claimants with 18 weeks or more of such wages.

<sup>9</sup>Waiting period compensable if claimant unemployed after 9 consecutive weeks, Mo.; when benefits are payable for third week following waiting period, N.J.; after benefits paid equaling 3 x wba, Tex.; after any 4 weeks in BY, Minn.; after 3d week of total unemployment, (for CY's 1984 and 1985 no benefits will be paid for the waiting week) Ohio.

<sup>10</sup>Or 15 weeks in last year and 40 weeks in last 2 years of aww of \$80 or more, N.Y.; 14 weeks of employment and BP wages equal to 20 x the State aww, Mich.

<sup>11</sup>For N.Y., waiting period is 4 effective days accumulated in 1-4 weeks; partial benefits 1/4 wba for each 1 to 3 effective days. Effective days: fourth and each subsequent day of total unemployment in week for which not more than \$180 is paid.

<sup>12</sup>To 55% State aww if claimant has nonworking spouse; 62.4% if he has dep. child, Ill.; 1/19-1/23 up to 65% of State aww for claimants with dep., Iowa; 60% of first \$85, 40% of next \$85, 50% of balance of individual's aww; max. set at 66-2/3%, Minn. 60% of aww if fund ratio is less than 5.5%; however, the max. wba may not be less than the max. in effect for the previous year, N.C.

<sup>13</sup>Up to 66-2/3% of State aww, La.; up to 50% of State aww, V.I.; 63% until July 1985, Del.

<sup>14</sup>Duration can be as low as 10 wks. for individuals with only one BP ER, Okla.

<sup>15</sup>\$1,500 in any CQ in current or preceding CY unless otherwise specified.

<sup>16</sup>Max. amount adjusted annually: by same percentage increase as occurs in State aww (Ohio) by \$7 for each \$10 increase in average weekly wage of manufacturing production workers (Texas).

<sup>17</sup>Beginning July 1, 1985, the max. will be computed at 60 percent of the 1984 State aww; beginning January 1, 1986, 66-2/3 percent of the 1984 State aww and beginning July 1, 1986, 66-2/3 percent of the State aww for the preceding CY, Ark.. The min. and max. wba's are frozen indefinitely, La. and Wisc.. The max. wba is frozen until July 1985, Del., and Wash.; until January 1986, D.C. and Ohio; until June 1986, Vt.; until January 1987, Mich.; and indefinitely, S.Dak.

<sup>18</sup>The wba may be reduced by 5% depending on the solvency of the fund, Pa.; wba's over \$90 will be reduced to 85% of the computed amount when revenues in the fund are inadequate to pay benefits, Wyo.; the greater of \$197 or 60%, 57.5%, 55%, 52.5% or 50% of State aww of the second preceding CY depending on the condition of the fund, Okla.

## Unemployment Compensation Fund Becoming Solvent Means Paying More

**By Evelyn Pyburn**  
The Employment Security Advisory Council has submitted recommendations to the governor as to how the state can put its Unemployment Compensation Fund back into the black.

Governor Ted Schwinden appointed the council last April, following aborted attempts in the 1981 and 1983 Legislatures to deal with the ever-growing gap and mounting deficit of the fund.

The Council's recommendations include the imposi-

tion of a surtax, the raising of the taxable wage base, raising the "deficit" tax rate and some curbing of benefits.

Governor Schwinden has sent a letter to all Montana legislators endorsing the Council's recommendations, according to David E. Wanzenried, Commissioner of the Montana Department of Labor and Industry.

"The package represents significant concessions that were absent before," commented Wanzenried.

The recommendations do represent a consensus of the Council according to a council member, James Hughes, Director of Government Relations for Mountain Bell, but other aspects of the issue that were not addressed by the council because of their "divided interests," such as strikers' benefits, are also likely to be presented to the Legislature from other quarters, predicted Hughes.

The Council was reluctant to tamper with the over-all structure of the Unemployment Compensation Pro-

gram, according to Hughes, saying that the deficit has been growing due, in large part, to the "extraordinary circumstances encountered by the state's economy during the past few years."

"We tried to deal with the paying back of the federal loans as a problem separate from that of making the fund solvent on an on-going basis," he said. "We felt that it didn't make sense to mess with what has otherwise been essentially a workable

(Continued on Page 6)

## Unemployment Fund Filling the Gap

(Continued from Page 1)

ram."  
The council, comprised of members representing business, labor, and both houses of the legislature has proposed:

—the charging of a surtax to pay off outstanding federal loans. The tax would be set by the Department of Labor and Industry based on need to repay loans, but

limited to a maximum of .3 percent of total wages. The surtax would be sunsetted in 1987.

—the raising of the taxable wage base, currently at 75 percent of the average annual wage with a maximum increase of \$200 per year. The recommendations would increase that limit to 80 percent of the average annual wage base. (The cur-

rent taxable wage base is \$8,400, which would become \$8,600 in 1985, under current law. The proposed change would elevate that figure to \$11,800, retroactively to Jan. 1, 1985, and indexing would be eliminated.)

—increasing the average tax rate, currently at 3.1 percent to 3.3 percent and increasing the maximum tax rate for deficit employers from 4.4 percent to 6.5 percent.

The package of recommendations also includes some curbs to benefits, which include among others:

—a "freeze" on the maximum weekly benefit for the period between July 1, 1985 and December 31, 1986. Currently the law provides that the maximum weekly benefit amount may not exceed 60 percent of the state's average weekly wage. That amount is projected to increase to \$178 for fiscal year 1986 and to \$190 for fiscal year 1987. The freeze would hold the figure at the current \$170.

—the disqualification as being eligible for benefits those employees who quit "with good personal cause." Currently under state law such employees may still draw benefits. The new recommendations require that the cause of separation from employment be attributable to the claimant's employment in order to qualify for benefits.

—reducing the weekly

benefit amount to 49 percent of the claimant's average weekly wage during their base period. Currently benefits equal 50 percent.

The surtax and rate increases will hit hardest the "higher paying employers," pointed out Hughes, who added, "This acts as a sort of balance to other inequities," referring to the fact that many of these are the employers whose employees account for the largest drain in benefits.

However, among those paying the higher rates are also new businesses, who must do so for the first three years in business, until they earn an "experience rating."

Cash flow problems with the unemployment compensation fund is nothing new, according to Wanzenried. The state has frequently had to make temporary loans from the federal government to meet benefit demands, during periods when the demands exceeded payments into the fund.

Those periods are usually during winter months when employment and payments into the fund drop and the numbers of unemployed and their subsequent demand for benefits increase.

Augmenting the situation, however, during the past few years has been the unusual demands placed on the fund as a result of poor economic conditions in the state and major cutbacks in employment due to business failures.

Underscoring the problem deficits, is a change in federal policy which now requires states to pay interest on the money borrowed for unemployment insurance.

The interest rate charged usually hovers around 10 percent, according to Wanzenried.

In 1983 Montana had to borrow \$7.8 million from the federal government to meet demands on the fund. In 1984 the state had to borrow an additional \$7.2 million, making a grand total of \$15 million.

The state has since paid \$680,000 in interest incurred on the 1983 loan and has repaid the principle of the 1984 loan, the interest on which the federal government forgave.

The state's ability to repay the 1984 loan is due to the fluke of an open winter last year, which resulted in higher than usual employment—a situation not to be counted on in the future, pointed out Hughes. Looking ominously before the state, however, is the repayment of the 1983 prin-

icipal of \$7.8 million. According to Wanzenried, federal law requires the repayment of the principle within two years, making it due in 1985.

If the state fails to do something to rectify the current situation, according to Wanzenried, the federal government will reduce the Montana FUTA tax credit by .3 percent per year, applying the \$4 million generated to the principle of the loan.

The 3 percent reduction would reduce the states 2.7 percent rating, to 2.4 percent. Montana employers "save" \$36 million annually as a result of the current rating, according to Wanzenried.

But repaying the principle of the 1983 loan is not all that will be confronting the state.

The fund will probably have to borrow additional

money from the federal government before the end of the 1985 fiscal year.

In fact, if the state does nothing to change the current situation, the Council's projections are that the state's unemployment compensation fund could be in debt from \$10.7 million to \$18.7 million by the end of fiscal year '85, depending on economic conditions—and by the end of 1987's fiscal year from \$23.4 million to \$47.4 million.

However, under the proposed recommendations, the fund is projected to be out of the red by 1986—minus between \$4.6 million and \$12.6 million, again depending on economic conditions by the end of fiscal year '85.

By the end of fiscal year 1987 the fund is projected to be operating in the black between \$12.4 million and \$36.4 million, under the proposed recommendations.

CONTRIBUTIONS PAID, BENEFIT CHARGES, AND NUMBER OF EMPLOYERS  
BY INDUSTRY

1983 and 1984 Rating Periods

Industry	1983 Rating Period			1984 Rating Period			
	10-1-79 through 9-30-82		No. of Employees Total	10-1-80 through 9-30-83		No. of Employees Total	
	Contributions Paid	Benefit Charges		Contributions Paid	Benefit Charges		
Retail Trade	23,797,682.25	8,475,636.05	5,803	25,008,356.19	9,444,934.20	5,901	522
Services	18,990,187.55	9,256,482.05	6,358	20,799,750.03	11,597,149.84	6,686	677
Transportation, Communication	9,972,374.03	3,925,268.94	1,059	10,736,520.22	6,220,281.43	1,152	156
Wholesale Trade	10,529,726.44	4,813,282.09	2,004	10,668,811.20	5,668,657.01	1,985	189
Finance Insurance & Real Estate	6,755,574.15	1,271,936.83	1,825	7,226,907.56	1,595,414.47	1,873	122
Agriculture, Forestry & Fishing	1,261,062.15	427,370.76	439	1,411,370.89	659,738.53	500	54
Non-Classified	250,094.41	97,191.00	161	293,584.23	174,275.20	168	14
Mining	10,560,900.35	11,697,172.70	734	9,362,598.72	17,660,274.33	691	182
Manufacturing	16,055,761.00	21,474,989.75	1,085	17,066,200.39	22,134,902.50	1,191	375
Construction	14,214,041.39	22,269,619.69	2,735	14,943,774.26	26,049,809.64	2,881	968
	112,387,406.72	83,708,949.86	22,203	117,517,873.69	101,205,437.15	23,028	3,259

Exhibit 9  
January 25, 1985  
House Bill 284  
Submitted by:  
Dave Wanzenried

Noncharged Benefits for 1983 Rating Period (10-1-79 through 9-30-82) 23,970,654.25

Noncharged Benefits for 1984 Rating Period (10-1-80 through 9-30-83) 24,986,073.02

WITNESS STATEMENT

Name Shirley McVae Committee On \_\_\_\_\_  
Address 418 Butler Date 1/25/85  
Representing MSHLA Support \_\_\_\_\_  
Bill No. 214 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Currently registers position rather than aid
2. Annual lic. - doubles fees

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.





