



Economic Affairs Interim Committee

58th Montana Legislature

SENATE MEMBERS

GLENN ROUSH--Vice Chair
SHERM ANDERSON
JEFF MANGAN
MIKE TAYLOR

HOUSE MEMBERS

JOE MCKENNEY--Chair
NANCY RICE FRITZ
JIM KEANE
SCOTT MENDENHALL

COMMITTEE STAFF

PATRICIA MURDO, Research Analyst
BART CAMPBELL, Staff Attorney
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

MINUTES

July 1, 2004

Room 137, State Capitol
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

REP. JOE MCKENNEY, Chair
SEN. GLENN ROUSH, Vice Chair

SEN. SHERM ANDERSON
SEN. JEFF MANGAN

REP. JIM KEANE
REP. SCOTT MENDENHALL

MEMBERS EXCUSED

SEN. MIKE TAYLOR
REP. NANCY RICE FRITZ

STAFF PRESENT

PATRICIA MURDO, Research Analyst
BART CAMPBELL, Staff Attorney
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

AGENDA AND VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Committee:

- approved taking no action on the insurance stacking issue at this time;
- approved two bill drafting requests by the Montana State Fund;
- approved bill drafting for all of the Department of Labor and Industry legislative proposals;
- approved drafting of LC 5555, as amended; and
- approved drafting of LC 5560.

CALL TO ORDER AND ROLL CALL

REP. MCKENNEY reconvened the Committee at 8:30 a.m. The Secretary noted the roll, SEN. TAYLOR and REP. RICE FRITZ were excused.

REP. KEANE asked to address the Committee. He said workers' needs must be a priority when considering what types of economic development will be encouraged in Montana. A company that will hire Montana workers at a fair and decent wage and will offer good benefits and retirement should be welcomed, versus a company that does not demonstrate its willingness to hire local workers and contribute to the local and state economy. Montana must carefully consider what each company can offer to Montana workers, as well as to the economy.

DISCUSSION ON INSURANCE STACKING PROPOSED LEGISLATION

Bart Campbell, Staff Attorney, Legislative Services Division (LSD), reviewed the effect of the Montana Supreme Court decision in Hardy v. Progressive Specialty Insurance Company. The Court termed a portion of 33-23-203, MCA, unconstitutional because a prohibition on stacking of insurance premiums resulted in "illusory coverage" that violated substantive due process. Mr. Campbell told the Committee that Legislative Services policy is to draw attention to decisions that strike down statutory language as unconstitutional and to identify possible solutions. He outlined several options for the Committee:

- to leave the statute as is, recognizing that certain language is held to be unenforceable;
- adopt LC XXXX - An Act providing that an insurer may not include an anti-stacking provision in an insurance policy with respect to underinsured motorist coverage; and amending section 33-23-203, MCA, (EXHIBIT #1); or
- adopt LC YYYY - An Act providing that an insurer may not charge a premium for coverage that is not provided and amending section 33-23-203, MCA., (EXHIBIT #2).

Mr. Campbell asked the Committee to refer to LC XXXX (EXHIBIT #1) and said this approach deletes the specific statutory language that the Supreme Court said is unenforceable. This version makes it appear that a policy has been made to allow stacking and likely is not the intent of the Legislature that passed the original statute.

Mr. Campbell discussed LC YYYY (EXHIBIT #2) and explained that this proposal inserts language into Section 3. This approach would attempt to cure the Supreme Court's concern. Under this statute, an insurer insuring three cars under one policy would not charge three separate premiums. It could still prevent stacking, which may reflect legislative intent.

Mr. Campbell said he has not received input from the State Auditor or from the insurance industry but that there were representatives of the insurance industry ready to comment at the day's meeting. He said it is his opinion, that regardless of what action the Committee takes, this issue will be raised in the 2005 Legislature.

Greg Van Horsen, State Farm Insurance Company, commented that this is a long-standing debate of over 20 years, that the Legislature has decided stacking should not be allowed, and understands that that isn't the intent of the product or the agents. The Legislature also understands that by not stacking, the product is more affordable. On the other hand, the Supreme Court has voiced its displeasure with the Legislature's position and in an equal number of times, has said no, stacking is allowed. Attempts have been made to get the right statutory language to withstand the scrutiny of the Supreme Court. The Committee should take no action on this issue at this time because this issue will be presented to the 2005 Legislature.

Jacqueline Lenmark, American Insurance Association, agreed that this is a long-standing debate and also asked that the Committee defer any action, in order to allow the Legislature to address it in its full regular session.

Roger McGlenn, Executive Director, Independent Insurance Agents Association of Montana, said this Supreme Court decision has been the most significant event in recent years and is severely affecting the availability and affordability of the product and that is affecting both personal and commercial vehicles. He also supports no action by this Committee.

REP. KEANE agreed with the comments made and **moved** that the Committee take no action on the insurance stacking issue at this time. The **motion passed** on a unanimous voice vote.

REPORTS -- DEPARTMENT-ADMINISTERED OR AUDIT STUDIES

SB 315 - Feasibility Study on Railroad Freight Competition -- Dave Gibson, Governor's Office of Economic Development (GOED)

Mr. Gibson updated the Committee on the status of rail freight competition and its impacts on economic development in Montana (EXHIBIT #3). He said wheat farmers were identified by the Advisory Committee as the group most harmed by this problem and that work has begun to identify reasonable solutions.

REP. MCKENNEY asked if any preliminary solutions had been identified. Mr. Gibson said Senator Burns and Senator Baucus are both working on federal solutions. At a state level, solutions are limited to dealing with abandoned lines, assisting in consolidated shipping, building a spur line, buying abandoned lines, and connecting with other rail carriers in the state. Real solutions to this problem are going to be expensive.

HJR 20 - Legislative Audit Review of Professional/Licensing Boards -- Angus McIver, Legislative Audit Division (LAD)

Mr. McIver provided a summary of the Performance Audit of Professional and Occupational Licensing conducted by the LAD (EXHIBIT #4). The audit was conducted in response to HJR 20 and reviewed aspects of professional and occupational licensing. Montana has 32 boards

regulating approximately 90,000 licensees. The overall conclusion reached by the Advisory Committee was that Montana's self-regulatory system is functioning as intended.

SEN. MANGAN referred to the full LAD Performance Audit Report, under *Licensing Fees and Board Finances* (EXHIBIT #5), and asked if the Boards are returning money to licensees in a timely manner. Mr. McIver said the LAD found inconsistencies among the Boards in the way excess balances were being handled and that measures have been taken to remedy this.

SB 270 - Study of Independent Contractors -- Kevin Braun, Department of Labor & Industry (DLI)

Mr. Braun summarized the impact Supreme Court decisions have had on independent contractors and said a working group has been meeting to address this issue. A significant amount of work remains to be done but a preliminary bill draft is taking shape. This draft tries to address the decision in *Wild vs. Fregein Construction* by modifying the public policy statement of the Workers' Compensation Act, revising the use of affidavits to certify independent contractor status, revising the exemption process, and most significantly, creating an exemption to the no waiver of benefits language in 39-71-409, MCA.

John Andrew, Department of Labor & Industry, distributed copies of the key elements of the conceptual changes identified to date by the working group (EXHIBIT #6) and said while the majority of the changes have wide spread support among the working group, it is still working to iron out the details and must be considered a work in progress. Mr. Andrew discussed the nine concepts, particularly focusing on #2, which is establishing an objective set of criteria to meet independent contractor exemption requirements. He referred to Page 2 of EXHIBIT #6 and explained the Independent Contractor Certificate Point System. Mr. Andrew said the working group would continue to meet and that the Committee would be kept informed of the progress made.

REP. KEANE asked who would be liable in the case of a hiring agent not carrying Workers' Compensation. Mr. Braun said if a true independent contractor is injured at a job site and it is determined that there is negligence or safety violations, the general contractor on the job or potentially, the property owner, would be held liable. As far as Workers' Compensation liabilities, there will be no workers compensation implications if the person is truly an independent contractor. Because the conclusive nature of an independent contractor exemption is no longer in place, the independent contractor may dispute whether or not they are truly independent or an employee, which could raise workers' compensation implications. If the person truly is an independent contractor, then there should be no workers' compensation liability.

REP. MCKENNEY asked who is involved in the working group. Mr. Braun said the group consists of representatives from the business community, organized labor, insurer groups (Plans One, Two, and Three), and independent contractors.

REP. MCKENNEY asked how independent contractors are being informed about what is going on with the working group. Mr. Andrew said websites, organizations' newsletters, and individuals attending the meetings on their own are the main avenues of communication between the group and independent contractors. REP. MCKENNEY said that because the

independent contractor issue is fairly contentious, keeping the stakeholders informed is very important.

Laurence Hubbard, President/CEO, Montana State Fund (MSF), said the SB 304 Study Committee was assigned by the 2003 Legislature to study the role of the Montana State Fund, to evaluate the feasibility of the sale of all or part of the New or Old Fund and the feasibility of creating an assigned risk pool in Montana. Mr. Hubbard recapped the actions taken to date by the Study Committee and discussed future agenda items:

- March 26, 2004, meeting - The Study Committee members determined that there should not be a sale of the New Fund, that an assigned risk pool should not be established in Montana, and that draft legislation should be created to include those two items.
- May 11, 2004, meeting - The Study Committee met to consider what other options are available and what additional New Fund and Old Fund issues should be addressed. It deferred action on the Old Fund until the next meeting. With regard to the New Fund, the Study Committee focused on what the continuing role of the MSF should be and on what other regulatory or legislative changes should be recommended:
 - ▼ The SB 304 Committee determined that the MSF should continue to serve in its role as a guaranteed market for Montana employers. Employers who cannot obtain coverage in the voluntary market cannot be refused coverage unless the employer has an obligation to or owes a debt to MSF.
 - ▼ The Study Committee decided to create a 2.75% premium tax on the MSF. This tax will be phased in over three years and will be deposited into the general fund. The tax will generate approximately \$3-4 million per year, depending on the level of premiums written by the MSF.
 - ▼ The Study Committee decided to allow state agencies an option regarding who will insure their liability for workers compensation. Current law mandates that all state agencies must insure workers compensation liability through the MSF. Several years ago, the University System was allowed to self-insure or to insure with private companies. The University System elected private coverage the first year, came back to MSF the following year, and then, as of July 2003, elected to self-insure. Self-insurers are regulated by the Department of Labor and Industry. State insurance policies amount to approximately \$12-13 million worth of business. The MSF has asked the Study Committee for a transitional period in order to adjust to the potential loss of business.
 - ▼ The MSF also asked the Study Committee to allow the Montana State Fund to operate as a third party administrator for public entities, including the state agencies, should they decide to self-insure. A third-party administrator services the claims of a self-insured entity or private companies. The SB 304 Committee supported the request. Mr. Hubbard emphasized that the permission addresses only public entities and not claims administered by private companies.
 - ▼ The SB 304 Committee decided not to allow the MSF to be exempt from the Information Technology Services Division (ITSD) of the Department of Administration (DOA) requirements for submitting its Information Technology (IT) plans and its procurement requests. SB 131 in the 2001 session required all state agencies to present an IT plan to ITSD for approval. The MSF believes that it is important to have choice in the marketplace as to what hardware and software it acquires, in order to remain a competitive insurance company. Although MSF has done very well in working with ITSD, the process can cause

delays. Mr. Hubbard said one of the critical things for the MSF is speed to market with products and services for customers.

- ▼ The MSF also asked for exemption from the procurement requirement to run all of its Request For Proposals (RFPs) through the DOA. The MSF already has a limited exemption for insurance-related services that the Legislature granted, which has worked very well. MSF believes the exemption would allow flexibility to achieve MSF business needs. The Study Committee voted to decline that request on a vote of 5-4. MSF has asked the Study Committee to reconsider this issue because the decision was rendered before the Study Committee decided to allow state agencies a choice regarding procurement of insurance. The MSF is asking for the same opportunity to procure its services. The MSF plans to request that the Economic Affairs Committee draft legislation allowing the MSF to do this if the Study Committee does not support the request for reconsideration.
- ▼ The Study Committee also considered allowing Montana State Fund to purchase or acquire its own facilities. That item was deferred and the Committee voted to work with the DOA to achieve fair market rental value. The MSF presented evidence of the cost of service and maintenance of the building that the MSF occupies. The MSF lease expires in 2005 and the objective is to negotiate with the DOA for extension of that lease.
- ▼ A bill draft in the 2001 Session, designed to allow the State Fund to be regulated by the Insurance Department with certain exceptions, was not introduced but the issues of State Auditor oversight remain. The Study Committee agreed with the MSF position that now is not the time for a transition to State Auditor oversight. The fact that the MSF is a guaranteed market dictates that it cannot be treated exactly like a private insurance company.
- ▼ The Study Committee needed more information to determine if there is any value left in the Old Fund. There is currently an unfunded liability of about \$500,000, which is within the normal ebbs and flows of the financial balance sheet of the Fund. The Old Fund has approximately \$113 million of undiscounted liabilities and current law requires that those liabilities be discounted for purposes of transfers to the general fund. At this time, there is not going to be available, at least in terms of actuarial projections as of the third quarter of FY 2004, any funds available for transfer to the general fund this year. These claims can last a very long time and usually involve a catastrophic claim. Supreme Court decisions have impacted claims and resulted in reopening cases to address liabilities the MSF thought did not exist. MSF staff has testified that the Old Fund is leveraged and that all the surplus, excess, and contingent reserves are gone. The MSF plans to present further information to the Study Committee on loss portfolio transfer protection to decide if something can be done to limit the liability or the potential liability for the State's general fund if the Old Fund were to be sold. The MSF has engaged a reinsurance broker to provide information and to the extent possible test the marketplace to see what is available. The MSF believes there is very little value in the Old Fund at this time but this could change, due to factors such as a decline in medical inflation.
- ▼ The SB 304 Committee directed MSF to prepare an inventory of all mechanisms that could address the sale of the Old Fund and asked for an estimate of costs

and results for any of the mechanisms identified. This will be taken up at the August meeting.

REP. MENDENHALL asked for additional information regarding the 2.75% premium tax. Mr. Hubbard said in Montana, there is a 2.75% premium tax charged on all private carriers. Because of the concern that Montana State Fund enjoys a competitive advantage by virtue of its status as a state entity, the issue of requesting a tax on MSF premiums was raised as a potential means for addressing that advantage. It is the cost of doing business and quite likely would be a cost of doing business built into MSF expenses and ultimately, into MSF premium rates.

REP. MENDENHALL asked if an analysis has been done to determine what the actual impact will be on premium rates for small businesses. Mr. Hubbard said depending on the level of premium and that tax, the internal estimates indicated there would be a 1%-2% impact on premium rates.

REP. MENDENHALL asked if the recent interest rate bump-up by the Federal Reserve Board would impact the Old Fund unfunded liability. **Mark Berry, Vice President, Montana State Fund**, responded that a quarter point upward change in interest rates would likely wipe out the \$500,000 deficit but there are other factors involving claims payouts, reserves, medical trends, and court decisions that also play a part. Mr. Berry asked to comment on the 2.75% premium tax, saying that, because MSF is a nonprofit entity, the premium tax is currently not in the cost structure, which means the full 2.75% increase would be treated as a pass-through cost to MSF customers.

Mr. Berry also provided information on the remaining open Old Fund cases:

- There are approximately 1,244 Old Fund claims that remain open. 1,100 of them are injured employees and another 95 are spouses of fatalities or a spouse receiving either lifetime benefits depending on the law that was in place at the time, or benefits to the same degree as the injured employee.
- There are about 500-600 injured employees with lifetime benefits in the age range of 40-60 years old, so there is great potential under this situation for MSF to be paying out for 30-plus years.

REP. MENDENHALL asked for a status report on the retroactivity issue rulings from the Supreme Court. Mr. Hubbard said two cases (Schmill and Stavenjord) are currently winding their way through the system that are of particular importance to both New Fund and Old Fund liabilities. Both cases relate to interpretation of the Occupational Disease Act and have the potential for far-reaching and costly impacts if the Supreme Court makes them retroactive.

PUBLIC COMMENT

Jerry Driscoll, AFL-CIO, commented on SB 270 (Independent Contractors Study) and expressed his opinion that the proposals made to date by the SB 270 working group would not adequately address the problem. Mr. Driscoll said the affidavit process is still in need of work and that critical to the success of any proposal is educating workers and employers as to what a true independent contractor is.

AGENCY PROPOSED LEGISLATION/COMMITTEE COMMENTS

! Montana State Fund - Laurence Hubbard, President

Mr. Hubbard said his earlier discussion covered his request to allow Montana State Fund to be free from a procurement requirement through the DOA as well as the information technology exemption. If the Study Committee does not agree to the IT exemption, the MSF plans to ask the Economic Affairs Interim Committee to allow MSF to go forward with draft legislation to allow this.

The two pieces of legislation that State Fund would like the Economic Affairs Committee to consider are:

1. To permit insurers, particularly Montana State Fund, in a case where there is criminal fraud and restitution ordered, to deduct any restitution from any future benefits, except for medical benefits to which the individual may be entitled. It is not clear in the law if that can be done and the MSF thinks it is appropriate, should someone be convicted and restitution ordered, that MSF be allowed to recover full restitution before paying any further benefits.
2. To establish a deadline on medical providers for submitting bills to insurance carriers for payment. In some cases, bills have been submitted up to one year after the date of service. This impedes MSF's ability to manage a claim effectively and to have timely closure of claims. Delays also create inefficiencies in the administration of medical benefits. The legislation would put a limit or a forfeiture on medical bills if the providers do not get them to the insurance companies for payment on a timely basis.

Public Comment

Sen. Vicki Cocchiarella, SD 32, Missoula, commented on timely bill payment for medical claims and said in her experience as a workers compensation claims adjuster, often times those bills do come in a year or two after the fact and there are legitimate reasons for this, such as out-of-state payers. Enacting this type of requirement will punish providers and could result in them refusing to take on workers' compensation cases.

Regarding the State Fund being allowed to bid on private entities as a third party administrator, Sen. Cocchiarella cautioned the Committee that it must remain a very limited proposal because if it is expanded even a small amount, private-sector businesses in the State could be put out of business.

Committee Discussion

SEN. MANGAN **moved** to allow the drafting of State Fund bills of the two requests as explained by Mr. Hubbard. The **motion passed unanimously** by a voice vote.

! Department of Labor and Industry - Kevin Braun and DLI Staff

Mr. Braun said the DLI has 10 bill proposals that have received approval from the Governor's Office and briefly described the proposals as listed by departmental priority on pages 1 - 4 of EXHIBIT #7:

- Page 1, #02-001 - Unemployment insurance housekeeping bill;
- Page 1, #05-002 - to revise building code enforcement provisions and boiler fees;
- Page 1, #04-003 - to revise contractor registration laws;
- Page 2, #05-004 - to revise professional and occupational licensing laws per audit or board suggestion;
- Page 3, #05-005 - to clarify responsibilities of licensing boards vs. the Department's authorities and responsibilities;
- Page 3, #04-006 - to revise workers' compensation laws -- department housekeeping bill;
- Page 3, #05-007 - to address on-farm scales in Weights & Measurements Division licensing -- housekeeping bill;
- Page 4, #04-008 - to revise professional employer organization laws-- housekeeping;
- Page 4, #05-010 - to amend requirement for licensed physician at a boxing event; and
- Page 4, #04-011 - to modify description of fund for wage and hour trust fund.

Mr. Braun distributed copies of two preliminary bill drafts regarding the unemployment insurance housekeeping bill (#02-001 - EXHIBIT #8) and the revision of building code enforcement provisions and boiler fees (#05-002 - EXHIBIT #9) and provided information regarding each proposal.

Mr. Braun noted that #05-002 - revising building code enforcement provisions and boiler fees (EXHIBIT #9) - would be of particular interest to the Committee because of the increase in fees to support the boiler inspection function. It has come to the attention of the Department that insurance companies, which are allowed by statute to conduct boiler inspections, are no longer conducting inspections and as many as 600 boilers are in need of inspection. The burden falls back to DLI. Because the program is no longer self-supporting, the draft legislation seeks to address this need.

Mr. Braun said the building code provisions reflect what has happened over the course of time with regard to statutory changes. Building code sections now reflect codified state electrical code provisions, state plumbing code provisions, and elevator inspection codes. These are more housekeeping in nature to make the law consistent within these programs (Parts 1-7, Title 50, Ch.60, MCA.)

SEN. ANDERSON asked how the DLI determined the amount of fees. Mr. Braun said the amount of the increase was determined by identifying the needs of the program in order to make it self-supporting, so the fee generated provides the needed income to conduct the inspections.

SEN. MANGAN asked Mr. Braun to explain why the DLI is allowed to sell lists of licensees and said he was uncomfortable with this practice. Mr. Braun deferred the question to Lisa Addington. **Lisa Addington, Bureau Chief, Healthcare Licensing, DLI**, said there is a statute that permits licensing boards to release lists for continuing education purposes and that is typically the only reason a list would be released.

REP. MENDENHALL **moved** to authorize all of the Department of Labor and Industry legislative requests to be drafted, as explained by Mr. Braun. The **motion passed unanimously** on a voice vote.

SJR 17 - WORKERS' COMPENSATION STUDY AND LEGISLATIVE PROPOSALS

Diana Ferriter, Department of Labor & Industry, said LC 5555 and LC 5560 were previously one bill known as LC 5555 but after the last meeting of the workers' compensation ad hoc working group, it was decided that the proposals should be split into two bills. The LC 5555 bill draft (EXHIBIT #10) now represents what is considered to be less significant changes for simplification and the LC 5560 bill draft (EXHIBIT #11) contains the more significant changes. Ms. Ferriter referred the Committee to the one-page summary sheets provided for each proposal (LC 5555 Summary - EXHIBIT #12 and LC 5560 Summary - EXHIBIT #13)). Ms. Ferriter began her discussion with LC 5555 and discussed each of the changes as described on the summary sheet for LC 5555 (EXHIBIT #12), including the repeal of Part 8- Compensation for Occupational Deafness. She noted that this change had received only tentative consensus from the working group.

Ms. Ferriter addressed concerns expressed earlier in the meeting by Jerry Driscoll regarding deleting the definition of "reasonably safe tools and appliances". This was intended to clean up the language because the definition is in the Act, but a search of the Act revealed that the terms weren't used anywhere within the Act. If the Committee thinks deleting the language would create a problem or if there is not a consensus on this issue, it can be left.

Ms. Ferriter said there was consensus among working group members on the LC 5560 proposal as well and discussed the rationale for the proposals (EXHIBIT #13).

Public Comment

Jerry Driscoll, AFL-CIO, said several sessions ago, the Legislature passed a legislation stating that the tax for the Uninsured Employers Fund and the regulatory fee to operate the Department had to be stated separately on bills sent to insurers. The legislation also allowed forwarding the money once a year. Mr. Driscoll stated he would like to see an amendment on page 8 of LC 5560 (EXHIBIT #11) that once the money is collected, there is mandatory 30-day period in which it must be turned in.

Regarding the deletion of language referring to "reasonably safe tools", Mr. Driscoll said the language is not in the bill or any other place, but that it has been used. The Act also says that the employer must furnish a reasonably safe workplace. This language is important for injured workers, Mr. Driscoll said.

COMMITTEE DISCUSSION/ACTION- WORKERS' COMPENSATION

SEN. MANGAN **moved** to approve LC 5555 to be drafted into bill form. SEN. MANGAN **moved** to amend LC 5555 by striking the deletion of "reasonably safe tools and appliances". SEN. MANGAN said if Mr. Driscoll feels it is necessary language and the DLI didn't have a problem with letting it remain, there is no reason to take it out.

Ms. McClure said the defined term must be used somewhere in the Code and because it is a defined term that is never used in the Code, it should be deleted. The Committee could redefine it, but as it stands now, it should be deleted.

Ms. Murdo said the logical course of action would be to look to see where reasonably safe location and reasonable safe tools are used and plug in the necessary language. The changes can be reviewed at the August meeting. SEN. MANGAN asked that his amendment reflect that language.

The **motion to amend LC 5555, as discussed, passed unanimously** on a voice vote.

The **motion to approve LC5555 for drafting, as amended, passed unanimously** on a voice vote.

Ms. Murdo said LC 5560 contained the language regarding the timeliness of compensation payments (Page 8, EXHIBIT #11). The Committee may wish to consider Mr. Driscoll's comments when approving this draft. SEN. ANDERSON asked Mr. Driscoll to further explain his concerns. Mr. Driscoll said the two funds referred to in Section 3 must be shown separately on the bill and then that is paid by employers to the insurance company. The insurance company can keep it from six months to a year, depending upon how they pay. Mr. Driscoll said this is not fair and that he would like to see a requirement that the payments be made in a more timely manner, like every other tax.

REP. KEANE **moved** that LC 5560 be approved for drafting. REP. KEANE **moved** to amend LC 5560, Section 3. 6 (b) to change the language to reflect a timely payment.

SEN. ANDERSON said according to the way LC 5560 is drafted, that work comp insurers appear to have the option of paying annually or semiannually. Mr. Driscoll said payments are due July 1 or December 1. He said the employer pays monthly but insurers don't have to pay until either July or December.

Keith Messmer, Bureau Chief, Workers' Compensation Regulation Bureau, DLI, clarified that the surcharge, to which Mr. Driscoll was referring, can be paid monthly or quarterly or annually by the insureds; however, that surcharge is required to be paid quarterly to the Department and is due 20 days after the end of each quarter. There is an annual or semiannual requirement for assessment purposes. This only deals with the smaller insurers in the state who no longer have any premiums that are being collected in the State but that are still paying compensation and indemnity benefits. This could be done on a monthly basis, but certainly a quarterly payment eliminates some of the burden on the Department for some of those collections.

SEN. ANDERSON asked if this meant that this could be handled under administrative rule, rather than in statute. Mr. Messmer said the surcharge is in the statute (Section 3. (7)(d), page 10, EXHIBIT #11). SEN. ANDERSON asked if this language would help to satisfy Mr. Driscoll's concerns about the timeliness of payments. Mr. Driscoll said it did. REP. KEANE **withdrew his motion to amend LC 5560**.

The original motion to approve LC 5560 to be drafted **passed unanimously** on a voice vote.

SEN. MANGAN asked that staff research for the next meeting if a true consensus has been reached on the occupational deafness issue, since information presented by Ms. Ferriter indicated that consensus is tentative at this time. REP. MCKENNEY instructed staff to do this.

Sen. Cocchiarella, SD 32, Missoula, said she had sponsored a bill in the past which would have placed occupational deafness in the Occupational Disease Act. She explained some of the intricacies of the previous bill and concluded her comments by saying it is a complicated issue but still needs to be done so workers know which direction they need to go when filing a claim.

REP. KEANE related a personal story relating to occupational deafness and agreed that worker deafness is a problem in need of a solution.

Ms. McClure, staff attorney for SJR 17, informed the Committee that the work group is asking for a delay until the August meeting in order to allow more work to be done so the group can present its proposals as a consensus proposal. At the last meeting, the work group presented three proposals addressing Supreme Court rulings. One proposal was to do nothing. The Committee asked the working group to bring forth a bill dealing with the court decisions and a bill dealing with a merger between Occupational Disease and Workers' Compensation. At the June 10 work group meeting consensus was not achieved, but the working group believes it can reach consensus with additional time.

Jacqueline Lenmark, American Insurance Association (AIA), reiterated points made by Ms. McClure, saying that the AIA and other insurers had originally opposed the merger bill, were lukewarm on the codification bill, and favored mostly the concept of doing nothing. At the last working group meeting, the stakeholders found a different way of discussing the concept of resolving the occupational disease issues that have arisen out of the Supreme Court decisions. The group believes that there is a possibility, and perhaps even a strong likelihood, that the differences of opinion amongst the insurers can be resolved and the group can bring a bill to the Committee as a merger bill. Ms. Lenmark asked the Committee's indulgence for the additional time and pointed out that the original bill is still an option, should efforts fail. She added that the codification bill has been drafted by Nancy Butler and herself, and that Ms. McClure has not gone forward with her bill draft because of this new possibility.

REP. MCKENNEY agreed to grant the working group additional time to continue its work and said the Committee looks forward to a consensus bill. He thanked the work group for its good work.

Ms. Murdo referred the Committee to bill draft LC 9896 (EXHIBIT #14), *Explanation for LC 9896 - Consolidation Option 4 under SJR 17 Work Comp Study* (EXHIBIT #15), LC 9899 (EXHIBIT #16), and *Explanations of Option 5 -- LC 9899* (EXHIBIT #17). Ms. Murdo then provided a thorough explanation of both Option 4 and Option 5 regarding simplification of references to exemptions and exclusions under the Workers' Compensation Act. Option 4 would move certain exclusions under 39-71-401(2) into the definition of employees, 39-71-118. This has proved to be more complicated than initially perceived, because many of the workers to be moved could be considered employees. The working group has not commented on this version of legislation, which recognizes some persons as employees who are exempted and others who are not employees. Option 5 moves definitions of volunteers out of 39-71-118, and consolidates similar references from 39-71-401 and 39-71-118 into a new section. It unclutters 39-71-401 by moving one subsection to a new section.

Ms. Lenmark called attention to fact that there are possibly 10 or 12 different bills attempting to amend the Workers' Compensation Act, and that not all of the same sections are in the same bill and that there are many different amendments to the same section in the different bills. Ms. Lenmark said she would not speak to the content because the substantive and policy decisions are for the Committee to make. She said what concerned her was making sure the law is easily understood and easily interpreted by adjustors when they adjust a claim. She said it is her hope that as the work moves forward on this issue that the Committee will continue to hear insurers' comments, so the end product is clear and doesn't create new areas of unnecessary litigation.

Nancy Butler, Montana State Fund, concurred with remarks made by Ms. Lenmark and said she is confident that a solution can be found, if additional time is granted to the working group.

REP. MCKENNEY asked if these bills could be combined into one bill. Ms. Butler said she thought they could be, but that was one of the reasons the working group requested additional time. REP. MCKENNEY recommended to the working group to continue its work on this issue and suggested that if at all possible, the drafts be combined into one bill for presentation at the next meeting.

After discussion, the Committee decided to change the next meeting date from August 19, 2004, to September 7, 2004.

SEN. MANGAN asked DLI staff to provide information to him regarding the distribution of board and professional licensee names. Mr. Braun said he would follow up on this issue with SEN. MANGAN.

ADJOURN

Having no further business to discuss, REP. MCKENNEY adjourned the Committee at 11:40 a.m.

CI0429 4231dfxd.