

RAILROAD VENUE BILL

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The proposed modification of the venue statute will not only carry out the Congressional aims of the Federal Employers Liability Act (FELA), but will also benefit hundreds of Montanans, who happen to be railroad workers.

A. THIS BILL CARRIES OUT THE PURPOSE OF THE FELA.

Railroad workers are not entitled to Workers Compensation benefits like other Montanans. Their only remedy for workplace injuries is under the FELA.¹

This unique federal legislation requires workers to file a civil lawsuit. Compensation is only allowed if the railroad worker can show the employer negligently caused his or her injuries. The worker's damages can be reduced or eliminated by his own negligence (Thus, it differs from workers compensation laws, allowing benefits regardless of negligence.).

"The FELA was a response to the special needs of railroad workers who are daily exposed to the risks inherent in railroad work and are helpless to provide adequately for their own safety."² To carry out this "humanitarian" purpose,³ the FELA is to be given a "liberal construction" in favor of the injured worker.⁴

In the way it wrote the FELA, Congress showed it wanted the worker to have a level playing field when it came to choosing the place of trial. The worker did not have to sue where the railroad would get the maximum benefit, such as a community where the company's wealth would allow it to influence the jury. Rather the worker was free to sue in any state or federal court where the railroad "shall be doing business"⁵

¹45 U.S.C. 51 et. seq.

²Sinkler v. Missouri Pac. R. Co. 356 U.S. 326, 329, 78 S.Ct. 758, 762 (U.S. 1958)

³Urie v. Thompson 337 U.S. 163, 180-181, 69 S.Ct. 1018,1030 (U.S. 1949).

⁴Atchison, Topeka and Santa Fe Ry. Co. v. Buell 480 U.S. 557, 562, 107 S.Ct. 1410,1413 - 1414 (U.S.,1987)

⁵ 45 U.S.C. § 56.

Thus, all Senate Bill 375 does is make Montana law identical in language to the FELA. Both will now allow the injured worker to file suit in any location where the railroad company is “doing business.”

For close to a hundred years, Montana law was consistent with the FELA. Montanans were allowed to sue in any state court where the railroad was doing business. It was only a few years ago that BNSF was allowed to change the law so BNSF would be allowed to pick the community where suit would be brought. Thus, Senate Bill 375 merely brings the law back to where it was and again, makes it consistent with the FELA’s humanitarian goals.

B. THE BILL PREVENTS BNSF FROM DISADVANTAGING MONTANANS.

Currently, the venue laws provide that BNSF can be sued where its agent for service of process is located. This allows for all types of mischief. BNSF can and has changed the location of its agent so as to disadvantage workers. Recently, it switched its agent from Helena to Billings, where its attorneys have their offices. How convenient.

There is nothing, of course, to stop BNSF from next moving its agent to a remote location like Circle, Montana, to make it even tougher on Montana railroad workers. In the alternative, it could move its agent to Havre or Glasgow, where it has enough presence and power to influence the jury.

C. CONCLUSION.

If this bill passes, hundreds of Montanans, who happen to work for a railroad, will benefit— as they should under the FELA and ordinary standards of fairness, given the difference between their resources and those of these companies. If it fails, only two out-of-state corporations will benefit: BNSF and UP.

All Montana railroad workers are requesting is a return to the level playing field that existed before. We suggest it should not be a close issue.