

BUSINESS REPORT

**MONTANA SENATE
62nd LEGISLATURE - REGULAR SESSION**

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Date: Friday, February 11, 2011
Place: Capitol

Time: 9:00 A.M.
Room: 422

BILLS and RESOLUTIONS HEARD:

SB 272 - Revise laws related to psychologists prescriptive authority
SB 264 - Revise junk vehicle law
HB 57 - Allow informal service of process in Board of Personnel appeals proceedings
HB 84 - Clarify Wage Payment Act - re: definitions - Wage Trust account

EXECUTIVE ACTION TAKEN:

Comments:



SEN. Joe Balyeat, Chair

MONTANA STATE SENATE
ROLL CALL
 BUSINESS, LABOR, AND
 ECONOMIC AFFAIRS

DATE: 2-11-, 2011

NAME	PRESENT	ABSENT/ EXCUSED
Vice Chair Jackson	✓	
Senator Facey	✓	
Senator Steinbeisser	✓	
Senator Moore	✓	
Senator Stewart-Peregoy		✓
Senator Tropila	✓	
Senator Tutvedt		✓
Senator Mowbray	✓	
Senator Vuckovich	✓	
Senator Windy Boy	✓	
Chairman Balyeat	✓	

11 Committee Members

BILL TABLED NOTICE

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

The **SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE** TABLED **SB 243 - General revision of workers' compensation law** **SB 259 - Require impoundment of license plates if driver is uninsured**, by motion, on **Friday, February 11, 2011**.



(For the Committee)



(For the Secretary of the Senate)

2:05 / 2-11-11
(Time) (Date)

February 11, 2011

Linda Keim, Secretary

Phone: 444-4618



SENATE STANDING COMMITTEE REPORT

February 11, 2011

Page 1 of 6

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** recommend that **Senate Bill 242** (first reading copy -- white) **do pass as amended.**

Signed: _____

Joe Balyeat
Senator Joe Balyeat, Chair

And, that such amendments read:

1. Title, page 1, line 5.

Strike: ""CASUAL" through "TO INCLUDE"

Insert: ""EMPLOYEE""

2. Title, page 1, line 6 through line 9.

Strike: "THAT IS" on line 6 through "CERTIFICATES" on line 9

Strike: "SECTIONS" on line 9 through "39-71-417," on line 9

Insert: "SECTION 39-71-118,"

3. Page 1, line 14 through page 8, line 20.

Strike: everything after the enacting clause

Insert: "**Section 1.** Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected

Committee Vote:

Yes 7, No 4

Fiscal Note Required

SB0242001SC.sdr

to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy

naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(e) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in

15-1-101(1)(a).

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is

effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in

this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Insert: "NEW SECTION. **Section 2. Effective date.** [This act] is effective July 1, 2011."

- END -



SENATE STANDING COMMITTEE REPORT

February 11, 2011

Page 1 of 2

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** recommend that **Senate Bill 168** (first reading copy -- white) **do pass as amended.**

Signed: _____

Senator Joe Balyeat, Chair

And, that such amendments read:

1. Title, page 1, line 5.

Following: "COUNCIL"

Strike: ", "

Insert: "AND"

2. Title, page 1, lines 5 through 6.

Following: "COMMITTEE" on line 5

Strike: ", AND THE BOARD" on line 5 through "TECHNOLOGY" on line

6

Following: "DUTIES" on line 6

Strike: "AND"

Insert: "; EXTENDING"

3. Title, page 1, line 8.

Following: "39-11-202,"

Insert: "AND"

Strike: "AND 90-3-1003,"

Following: "REPEALING"

Strike: "SECTIONS 2-15-1819,"

Insert: "SECTION"

4. Page 1, line 8 through line 9.

Strike: "90-3-1005," on line 8 through "90-4-2006," on line 9

Committee Vote:

Yes 7, No 4

Fiscal Note Required

SB0168001SC.sdr

5. Page 7, line 29 through page 10, line 3.

Strike: section 5 in its entirety

Renumber: subsequent sections

6. Page 10, line 17.

Strike: "sections"

Insert: "section"

Strike: "are"

Insert: "is"

7. Page 10, line 19.

Strike: line 19 in its entirety

8. Page 10, line 21.

Strike: line 21 in its entirety

9. Page 10, line 22.

Strike: line 22 in its entirety

10. Page 10, line 24.

Strike: "6"

Insert: "5"

11. Page 10, line 25.

Strike: "6"

Insert: "5"

- END -

MONTANA STATE SENATE ROLL CALL VOTE

BUSINESS, LABOR, AND ECONOMIC AFFAIRS

DATE: 2-11-, 2011

BILL NO. SB 242 DPAA 74

NAME	AYE	NO
Senator Stewart-Peregoy		✓
Senator Vuckovich		✓
Senator Steinbeisser	✓	
Senator Facey	✓	
Senator Tutvedt	✓ <i>pm</i>	
Senator Jackson	✓	
Senator Windy Boy		✓
Senator Moore	✓	
Senator Tropila		✓
Senator Mowbray	✓	
Chairman Balyeat	✓	

11 Committee Members

MONTANA STATE SENATE ROLL CALL VOTE

BUSINESS, LABOR, AND ECONOMIC AFFAIRS

DATE: 2-11-, 2011

BILL NO. *Take SB 168 off Table* *6-4*

NAME	AYE	NO
Senator Stewart-Peregoy	✓	
Senator Vuckovich	✓	
Senator Steinbeisser		✓
Senator Facey	✓	
Senator Tutvedt		
Senator Jackson		✓
Senator Windy Boy	✓	
Senator Moore	✓	
Senator Tropila	✓	
Senator Mowbray		✓
Chairman Balyeat		✓

11 Committee Members

MONTANA STATE SENATE ROLL CALL VOTE

BUSINESS, LABOR, AND ECONOMIC AFFAIRS

DATE: 2-11-, 2011

BILL NO. SB168 DPAA

7-4 past

NAME	AYE	NO
Senator Stewart-Peregoy	✓	
Senator Vuckovich	✓	
Senator Steinbeisser		✓
Senator Facey	✓	
Senator Tutvedt		✓ <i>pm</i>
Senator Jackson		✓
Senator Windy Boy	✓	
Senator Moore	✓	
Senator Tropila	✓	
Senator Mowbray		✓
Chairman Balyeat	✓	

11 Committee Members

MONTANA STATE SENATE
 ROLL CALL VOTE
 BUSINESS, LABOR, AND
 ECONOMIC AFFAIRS

DATE: 2-11-, 2011

BILL NO. Table SB243 8-3

NAME	AYE	NO
Senator Stewart-Peregoy	✓	
Senator Vuckovich	✓	
Senator Steinbeisser	✓	
Senator Facey		✓
Senator Tutvedt	✓	
Senator Jackson	✓	
Senator Windy Boy		✓
Senator Moore	✓	
Senator Tropila		✓
Senator Mowbray	✓	
Chairman Balyeat	✓	

11 Committee Members

MONTANA STATE SENATE
Visitors Register
SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Friday, February 11, 2011

SB 264 - Revise junk vehicle law

Sponsor: Senator Greg Hinkle

PLEASE PRINT

Name	Representing	Support	Oppose
Bob Gilbert	MADRA LKQ Corp + A.R.A		X
Loretta Miller	MADRA		X
KELSEY CHAPMAN	MADRA		X
Ralph Dennis	MADRA		X
Linda Stoll	MT. Public Health Mgmt Assn		X
Ed MAMRE	M DEQ		X
Ela			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Pg 1 of 2

**MONTANA STATE SENATE
Visitors Register
SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE**

Friday, February 11, 2011

SB 272 Revise laws related to psychologists prescriptive authority

Sponsor: Senator Terry Murphy

PLEASE PRINT

Name	Representing	Support	Oppose
GARY MICHOUEN	NAMI-MT		✓
Math Kuntz	NAMI Montana		✓
Jeanne Worcester	DLI (INFORMATION)		
Donald Harr	mt Psychiatric Association mt Medical Association		✓
David Carlson	self		✓
Dan Aune	Montana Health Access Mt	✓	
Evelyn Driscoll	Montana Psychiatric Assoc.		✓
Barb Swebke	MT Nurses Assoc.	✓	
Tom Rasmussen	MT Psychological Assoc	✓	
Geraldine Mourman	self	✓	
Clinton Hall MD	Private citizen	✓	
Kary Szymanski PhD	Private Citizen	✓	
Chadler PhD	Prescribing Psychologist	✓	
Laura Wendlandt PhD	Private Citizen	✓	
Penny Hill, MD	Montana Psychiatric Association		✓
Cheryl Wilkerson			✓
Ronald Erickson MD	SELF		✓
MICHAEL BROWN, MD	SELF		✓
Rae Hughes	MT Health Care Assn	✓	
Michael Dietz, PhD	Montana Psychological Assoc	✓	
Nanette Dowling, DO	Montana Medical Assoc		✓
" "	Montana Psychiatric Assoc		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

SB 272

Revise laws related to psychologists prescriptive authority
Pg 2 of 2
Sponsor: Senator Terry Murphy

Name	Representing	Support	Oppose
William Patenaude	MT Psychological Ass	✓	
Marta Wang Beirao Sippy	MT Psychological Assoc self as an M.D.	✓	✓