

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on January 13, 1999 at
3:15 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. John C. Bohlinger (R)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)

Members Excused: Sen. Chris Christiaens

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 114, SB 116, SB 101,
1/9/1999
Executive Action: SB 93, SB 76

HEARING ON SB 114

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: Hank Hudson, Department of Public Health & Human Services
Kate Choleva, Montana Women's Lobby
Betty Waddell, Montana Association of Churches
Carson Strege-Flora, Montana People's Action
Christine Schweitzer, Montana Trial Lawyers Assn.

Opponents: Don Judge, AFL/CIO
Wendy Young, Working for Equality & Economic Liberation

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, said this bill dealt with the problem of a FAIM (Families Achieving Independence in Montana) client or participant at the site of employment with the issue of workers compensation. If that FAIM worker was injured, it could influence the business person's Workers' Compensation future rates; therefore, there was some risk at hand. He said they didn't want a risk for that employer. They wanted this to be risk-free; neither did they want this to be a hurdle for those gaining experience in the work force. He said folks in both industry and the Department got together to craft **SB 114**. Some details of the bill include: (1) DPHHS, and not the business owner, buying workers comp on FAIM participants; (2) Both the state and business owner would have exclusive remedy protection via this legislation.

Proponents' Testimony:

Hank Hudson, Department of Public Health & Human Services (DPHHS), said **SB 114** was introduced at the request of the Department and supported and attempted to advance the goals of FAIM, a program to assist individuals who needed public assistance to gain the experience and skills needed to become employed and self-sufficient. He said the bill really addressed a situation that arose from the last Legislative Session, that being a bill which would have clarified Workers' Compensation was not necessary because individuals enrolled in the FAIM program and engaged in training activities weren't employees earning wages. However, in case of individual injury and in an effort to protect FAIM individuals, the training sites and the state of Montana, the bill that emerged required the site to purchase coverage for the individual who was being trained there. ge for the individual who was being trained there. The Department would reimburse that site. It wasn't the outcome they wanted but it was a compromise they agreed to. He said the biennium revealed an increasing number of sites which refused to participate in the FAIM program because they weren't comfortable with this

arrangement of Workers' Compensation. This dissatisfaction stemmed from: (1) These people were distinctly not their employees. Many of the sites were non-profit organizations and the FAIM people who went there to gain experience frequently gained experience in relating to other employees, being timely to work, etc.; (2) It was a paperwork and accounting burden because it was unclear how many hours the FAIM participants would actually be there and how many hours the premium should be based on and paid in advance; (3) They were nervous if an injury would occur their premiums would go up. **Mr. Hudson** explained their solution to this was embodied in **SB 114**, which basically said the state would purchase the coverage for these individuals and then ??? at that training experience, the exclusive remedy provided under this provision would extend to both the state and the site where the people were receiving their training. He said they recognized that dual exclusive remedy was a policy decision that was somewhat exceptional; however, they also believed that was a type of effort required to assist in the success of welfare reform. They also recognized there were sites which didn't use the State Fund. For those, the state might have to be buying policies from other insurers, which could be a complicating factor. He referred to the part in the bill which said the premiums and benefits would be based on minimum wage. Since there was no wage and the people who were there were receiving a public assistance check, they felt minimum wage was the most realistic approach. He said the folks at the State Fund would want to consider other factors and they were prepared to pay premiums that reflected the actual risk and cost of coverage. He closed by saying this was an instance where dealing with time limits and restrictions of welfare reform made it necessary to take those steps to ensure the people whose time clocks were ticking were getting the absolute best shot they had to become employable and acquire skills to have a decent quality of life.

Kate Choleva, Montana Women's Lobby, said they had unenthusiastic support for the bill because if these people were required to work, it was important they have protection through workers comp. She said they were worried about the section that defined wages because these people were required to work for money but it wasn't wages because the Department was paying the money and not the employer. She said currently there was a growing mass of poor workers as a result of welfare reform; not only were there the working poor but also the welfare eligible working poor who were choosing to work and get some support for things like child care and food stamps as opposed to going onto a system they no longer wanted to be a part of. **Ms. Choleva** stated there was also now the working welfare recipient which this system was trying to make work. The shift from welfare to working poor called for reforms, child support, unemployment insurance and Workers' Comp.

She agreed **SB 114** helped make the welfare program work, though she didn't know if it helped the growing mass of working poor.

Betty Waddell, Montana Association of Churches, said they had been working hard to understand and participate in welfare reform in whatever way they could to make FAIM work. She felt **SB 114** was an excellent way of protecting the different entities involved in welfare. She urged the Committee's support.

Carson Strege-Flora, Montana People's Action, said they were a low-income advocacy organization and supported the bill, though they had some concerns, i.e. the minimum wage level on which Workers' Comp compensation was set. They thought this was an unoptimistic view of the potential of these folks because most of the folks in the program were women in their mid-20's who hopefully, someday would have a larger earning power. It seemed unfair to put their benefits at the minimum wage level because if they were injured on the job, they would have minimal benefits in the future. She said they were also concerned about the precedent it could set in not viewing these workers as workers because they were trading their labor for money. She suggested the Committee consider amending Section 2, Part 2, Subsection (e), to include "for purposes of Workers' Compensation only"; if the bill was amended they would feel much more confident about supporting the bill.

Christiana Schweitzer, Montana Trial Lawyers Association, said they also stood in hesitant support of **SB 114** and explained they had the same concerns as expressed by Montana People's Action, i.e. minimum wage section of the bill.

Opponents' Testimony:

Don Judge, AFL/CIO, said they were an opponent but they didn't object to what the Department was attempting to do with this legislation in addressing the concerns they had about Workers' Compensation. However, they had problems with: (1) Exclusion of income from wage category. These were workers who had fallen on unfortunate times and were being thrown back into the workplace. If they didn't work, they wouldn't get the benefits. There was no difference (2) Legislation setting the benefits at minimum wage category. The legislature would hear from them throughout this session about what was happening to Workers' Compensation. A minimum wage worker who was injured on the job was automatically excluded from rehabilitation benefits, permanent partial disability benefits and many other provisions of protection of Workers' Compensation. He stated the bill language said the benefits would be paid based on minimum wage. Right off the top it was saying they were not worthy of equal protection under the

law. He felt a smart attorney would challenge that and say the legislature had no right to do that, based on the fact these workers would be working in different occupations, some of which would be above-minimum wage jobs. He didn't think the Legislature would want to get into a position of passing a law which would more than likely be thrown out by the courts because it was an arbitrary exclusion of equal protection under Montana Constitution; (3) Page 9, Lines 29-30, said

".....employment.....is not for the purpose of providing paid employment for the individual." He wondered why it was being done. His next objection was Page 10, Lines 1-2, "Placement of the individual.....should last no longer than is necessary to achieve the employment training purposes of the FAIM project." He said he thought the purpose was a "hand up", not simply going through the rigors of having to comply with going to work. He agreed the state's willingness to pay the premiums for Workers' Compensation was a good idea, but to include the other factors was inappropriate.

Wendy Young, Working for Equality & Economic Liberation (WEEL), said they were uncomfortable supporting **SB 114** because of the wage issue. Because it wasn't giving workers actual working rights. She agreed the people needed Workers' Comp but she requested the bill look at workers as workers.

Questions from Committee Members and Responses:

SEN. DON HARGROVE asked if the purpose of the positions was to get something done, to get training and experience on the job or something in between. **Hank Hudson** said the purpose was clearly training and not employment; in fact, the language on Page 10 explicitly said these people were not to be there any longer than necessary to obtain that experience. In other words, they were not providing workers for employers but an opportunity for participants.

SEN. SUE BARTLETT referred to the provision for dual exclusive remedy coverage and said it reminded her somewhat of a professional employer organization arrangements and knew it provided some level of concern. She asked for comment from a Workers' Compensation insurer's perspective on the dual exclusivity proposed by **SB 114**. **Nancy Butler, State Fund**, said they provided coverage for whoever had the policy but the Constitution also provided exclusive remedy to what was termed "the immediate employer." She said that could be interpreted that only one (1) employer could get the exclusive remedy protection. She stated, to pass a statute allowing dual coverage puts risk on employers who thought they were covered, but were not.

SEN. BARTLETT asked how that was addressed in regard to the PEO's. Was there adequate response to the situation. **Ms. Butler** said it was put into the leasing or PEO language at the time concerns were raised about desired protection not being provided. She said, to date there have been no issues of which she was aware.

SEN. BARTLETT asked if they would use the experiences of DPHHS or the state of Montana, etc., or would they be looking at the individual work site. **Nancy Butler** said it was a little awkward right now because one department was purchasing a policy for another employer, and at this point she wasn't quite sure how it would work. It was her opinion if a department purchased a policy, it would be its modification factor that would go with the policy; however, it was not all that clear because the law clearly said the on-site employer was the employer for Workers' Compensation purposes. The premium and wage benefits were clearly in the law and what they would say the rate would be based on the class code of the work.

SEN. DOROTHY ECK said the work study legislation passed several years ago made the school responsible for Workers' Comp for the work study students; this seemed similar. **Nancy Butler** said as she recalled, it addressed voluntary coverage for students who were on a specific type of work study program for the schools going out to employers. She suggested it would allow the employers to endorse those workers onto their policy and thereby provide them Workers' Compensation coverage under the on-site employers policy.

SEN. ECK said she was told in some cases the school district liability policy picked up the responsibility for the kids. **Ms. Butler** said that would probably be the case if there were an injury but no Workers' Compensation endorsement.

SEN. ECK asked if there were a better and more Constitutional way to address the dual issue. **Ms. Butler** said they had worked on the issue for a number of legislative sessions and it was hard to come up with a solution that met all the needs.

{Tape : 1; Side : A; Approx. Time Counter : 24.2}

Closing by Sponsor:

SEN. FRED THOMAS said he appreciated the hesitant support and suggested it was a philosophical issue; perhaps compromising would work. He said the Department's whole intent and desire was to try to make the bill into something that would work.

CHAIRMAN AL BISHOP asked if **SB 114** could be patched up to satisfy both sides and **SEN. THOMAS** said it could be.

{Tape : 1; Side : B; Approx. Time Counter : 0}

HEARING ON SB 116

Sponsor: **SEN. BILL GLASER, SD 8, Huntley**

Proponents: **Denzel Davis, DPHHS**
Jerry Loendorf, Montana Medical Association
John Flink, Montana Hospital Association

Opponents: **None**

Opening Statement by Sponsor:

SEN. BILL GLASER, SD 8, Huntley, said he brought the bill at the request of Roy Kemp, DPHHS, and Mr. Kemp was someone he trusted. He said he tried to understand the legislation and it didn't appear to be too mammoth. He hoped the Committee could also find they could trust Mr. Kemp as well as his superior, Denzel Davis.

Proponents' Testimony:

Denzel Davis, DPHHS, read his written testimony
EXHIBIT (phs09a01) .

Jerry Loendorf, Montana Medical Association, said they supported the bill and had a friendly amendment which he had discussed with Mr. Davis who approved it. He referred to Page 3, Line 16, and said the definition for "ambulatory surgical facility" was inadvertently deleted. He referred to: (1) The second sentence of the definition, "facility may include observation beds for patient recovery from surgery or other treatment."; (2) Page 7, Line 20, which was the replacement definition for what was the surgery facility, now called the outpatient center for surgical services. The definition was generally the same but didn't include observation beds. The amendment would add a sentence which would say the facility may include observation beds. He said that was important because after surgery some patients may need to lie down before going home.

{Tape : 1; Side : B; Approx. Time Counter : 7.4}

John Flink, Montana Hospital Association, said they supported the SB 116 as well.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. WILLIAM GLASER said he transferred his trust of Roy Kemp and the people he worked with to the Committee.

EXECUTIVE ACTION ON SB 93

Motion/Vote: **SEN. HARGROVE** moved that SB 93 DO PASS. Motion carried unanimously.

HEARING ON SB 101

Sponsor: **SEN. EVE FRANKLIN, SD 21, Great Falls**

Proponents: **Drew Dawson, DPHHS**
Douglas Neil, Montana State Firemans Association
Pam Bragg, Governor's AIDS Advisory Council
Bill Fleiner, Montana Peace Officers
John Flink, Montana Hospital Association

Opponents: None

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD 21, Great Falls, said **SB 101** was designed for better notification of individuals, primarily emergency workers who were first responders in providing emergency services prior to hospitalization, if they had an exposure to infectious diseases. She said the notification would be done in such a way that would result in a workable plan. She referred to the bill and said one of the major issues was currently every infectious disease known to man had to be reported; however, the issues originally were hepatitis B, C, D, pneumococcal pneumonia, and meningitis. She said as the law stood right now, it was so broad that people weren't even utilizing the process because it was too unwieldy. The intent of **SB 101** was blood-borne pathogens and several air-borne pathogens known to be risks to first responders. **SEN. FRANKLIN** said **SB 101** also clarified protocol: who was the designated officer and how would the line of

communication follow. She said she had a friendly amendment from the Governor's AIDS Advisory Council which she wanted to offer to the Committee.

Proponents' Testimony:

Drew Dawson, DPHHS, said **SEN. FRANKLIN** mentioned exposure to infectious diseases was a constant worry to emergency medical services providers. Even though they took good precautions, occasionally there was a time when they sustained exposure to infectious diseases. He said current law established certain requirements under which a hospital must report back to the emergency services providers if they had been exposed to an infectious disease. He said the providers also had to submit a form to the hospital which indicated they may have had an exposure. He reiterated when this was originally adopted, there was a flurry of amendments to the legislation at the last minute which resulted in problems with the current law. Part of the problem was the definition of "infectious disease" was so broad that technically the hospital would have to report back to the emergency services providers almost every conceivable infectious disease there was, which exceeded the need to know for the emergency services providers. **SB 101** was about balancing the need and right to know by limiting the definition to four or five major infectious diseases capable of being transmitted by blood-borne pathogens which would pose significant risks to emergency services providers. It also provided for the Department to adopt other diseases by administrative rule if it determined they might be a problem. **SB 101** also ensured the designated person would notify the person(s) actually exposed. He said there were some technical amendments.

Douglas Neil, Montana State Firemans Association, said each day when he went to work he knew he would have to take acceptable risks for himself but didn't feel his family should have to be at risk also. He said he would like to be notified in case his family wouldn't contract it. He stated **SB 101** was a very good bill and he urged the Committee's support.

Pam Bragg, Governor's AIDS Advisory Council, said they supported **SB 101** and offered an amendment which would be added under Section, Paragraph 2, after "health care facilities shall".

{Tape : 2; Side : A; Approx. Time Counter : 0}

Bill Fleiner, Montana Sheriffs & Peace Officers Association, said they supported all the arguments which had been presented and gave an example of one day he was driving down the street when a

person flagged him down. There was an elderly gentleman lying on the sidewalk so he went over to check his status and summoned the fire and medical people. The next day he went back to the office where he found an incident report on his desk and among the writing was the phrase "we think he has AIDS." He said he thought the case was made for looking out for responders. He said the corrections and detentions officers were also at risk.

John Flink, Montana Hospital Association, said they also supported the bill because their facilities provided emergency services around the state.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. BOB DEPRATU referred to **Bill Fleiner's** story and asked if it had been him, would he have been notified that the gentleman had AIDS. **Bill Fleiner** said if had done CPR they would have had that information and could have notified him, it would have been part of the investigation.

SEN. DEPRATU wondered if the "Good Samaritan Act" should also be covered by the bill. **Drew Dawson** said the bill applied only to emergency services providers and it was difficult to recognize the need to know vs. the confidentiality of the patient. The original consideration of the legislation produced strong testimony this should apply only to emergency services providers. He said one of the problems might be how it was handled in terms of who actually filed the form, what did they need to know, did they sustain exposure, etc. Those questions made it difficult to identify this legislation to members of the general public.

SEN. DEPRATU said he thought a person who acting as a Good Samaritan or doing first aid in some form would normally be able to leave their name, etc., with the rescue unit or hospital unit. He said he felt the public had just as much right as the confidentiality issue. **Mr. Dawson** said in terms of the legislation it would require fairly major restructuring because the way it currently worked was if the emergency services provider had sustained an exposure, the designated officer from their organization would be notified. The purpose of that would be a system of checks and balances to ensure there indeed was an exposure. The designated officer from the emergency service would then contact the infectious disease control officer at the hospital and from there the communication would be between the designated person for the emergency services organization and the designated person at the hospital.

SEN. DUANE GRIMES referred to Page 2, Subsection 8, the definition of "infectious disease" and wondered if there was any likelihood there would be items that would need to be included any time in the near future. **Mr. Dawson** said it was conceivable there could be and that was one of the reasons the capability to provide additional diseases was added by the administrative rules.

SEN. JOHN BOHLINGER expressed concern regarding the time allowed to report exposure (Page 3, Line 13 & 16) and wondered if it was enough time. **Drew Dawson** said that section applied only to air-borne diseases. The folks who worked on the original legislation agreed 48 hours was reasonable in terms of getting notification back to the service and the providers while still being able to provide appropriate medical attention to those folks.

{Tape : 2; Side : A; Approx. Time Counter : 8.1}

Closing by Sponsor:

SEN. EVE FRANKLIN said the bill was designed to not deal with every ethical issue that came up with infectious disease, but with a fairly prescribed issue, i.e. day-to-day working EMS first responders involved in this as part of their life's work. She said they deserved some remedy and a good system to work with. She cautioned the Committee not to try to deal with all the ethical issues inherent in **SB 101**. She said it got into the whole issue of transmission which could take a long time to work on. **SEN. FRANKLIN** asked the Committee to pass **SB 101** so there would be decent legislation to satisfy immediate concerns.

EXECUTIVE ACTION ON SB 76

Motion: **SEN. JOHN BOHLINGER** moved DO PASS ON Amendments.
SB007601.asf EXHIBIT (phs09a02)

Susan Fox explained the amendments. **Amendment #1** cited Page 3, Line 28, and made specific keeping applicants of security numbers confidential except for purposes of federal codes. It didn't compromise the compliance with any federal requirements at this time. **Amendment #2** appeared on both Pages 7 & 8, with the same provision in both the Fish, Wildlife & Parks license application area. This language was intended to dump the social security numbers after a certain period of time so both in the application license (Section 4) and the conservation license (Section 5). It would leave the applicants' social security numbers in any electronic database five (5) years after the date the application was made for the most recent license. She said a third question was raised on the death certificate and there was a spot for

social certificate numbers on death certificates but it was discretionary to give the information. It would be on the virtual pavilion but would not be available to the general public, just basically to clerks and recorders. There was more of a fraud problem with birth certificates than with death certificates because the federal government had a social security index which was updated monthly for deaths.

Vote: Motion that AMENDMENTS ON SB 76 DO PASS carried unanimously.

Motion: SEN. BOHLINGER moved that SB 76 AS AMENDED DO PASS.

Discussion:

SEN. FRED THOMAS encouraged the Committee to pass the bill, explaining it was following the package passed last year which dealt with finding parents to take care of kids. He said this was a targeted area which made them comply with federal statutes but did endeavor to have parents who are not taking care of their kids do just that.

SEN. DON HARGROVE said it was important to move ahead and use technology, rather than fear it. These sorts of things were part of our life whether we liked it or not. He said the amendments by **SEN. BARTLETT** were probably appropriate because they were ways to be in charge of this; however, it would not be a good idea to let it die and go back, they had to move forward. He said he supported the legislation.

Vote: Motion carried 9-1 with Bartlett voting no.

EXECUTIVE ACTION ON SB 36

Motion: SEN. THOMAS moved TO AMEND SB 36.

Discussion:

SEN. DUANE GRIMES commented the medical profession never gave any feedback and he wasn't comfortable in being hasty in taking executive action. He asked if it would be permissible for **Mary McCue** to present information.

{Tape : 2; Side : A; Approx. Time Counter : 24.4}

Mary McCue distributed copies of **EXHIBIT (phs09a03)**, and said she represented the Montana Academy of Family Practitioners. She stripped both paragraphs (both old Subsections 1 and 2). She

explained another reason she did it this way, to also represent the dentists. She said it seemed the old language granted this immunity to the dentists and the new language seemed to say "medical practitioner except for a dentist has immunity". This seemed confusing. She went on to read through the amendments. She said the concepts were: (1) Scope of their license; (2) At a clinic or referred out; (3) Being voluntarily without compensation except for reimbursement for supplies.

SEN. GRIMES suggested briefly discussing and understanding the amendment but holding executive action until later.

SEN. GRIMES referred to the Committee discussion they were looking at ensuring this would reinforce the good actors in that it would truly be charitable care, i.e. in some instances charitable care could be claimed, though it wasn't originally intended to be such. He offered Amendment SB003601.asf

EXHIBIT (phs09a04) and referred to subparagraph 3. He explained "at any site" got away from the original intention which was "at a free health clinic or referral from a free health clinic."

Mary McCue said perhaps that language should be after Subsection 2 so it referred to the clinics because it was their intent this care originated in a clinic.

SEN. GRIMES asked what the definition of "clinic" was and how was it different from "free clinic." **Jerry Loendorf** said the entire sentence had to be read together, each of the things had to apply as opposed to looking at them independently. It was a free clinic because it had to be without compensation in every instance or the immunity didn't apply; however, it needed to be at any site because often the work could not be done at this particular clinic so they either took them away or referred them away. He said it seemed a bit clumsy because it was all in one sentence. He had one suggestion for Item 2 -- change "at" to "of".

SEN. GRIMES asked if the language would allow not only for referrals but also for subject treatment that would be necessary after referral. **Mr. Loendorf** said as long as the treatment was provided without compensation, it would.

SEN. THOMAS asked if the compensation was solely tied to the individual providing the service or to the clinic as well.

{Tape : 2; Side : B; Approx. Time Counter : 0}

SEN. THOMAS said if the patient came to the dentist for service but the dentist was not paid, and if the clinic billed Medicare

or Medicaid and was compensated, there would be no immunity.

Jerry Loendorf agreed.

Motion Withdrawal: SEN. FRED THOMAS WITHDREW HIS MOTION TO PASS AMENDMENTS ON SB 36.

(Executive Action on SB 36 would take place at a later date).

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. AL BISHOP, Chairman

MARTHA MCGEE, Secretary

JANICE SOFT, (Transcriber)

AB/MM

EXHIBIT (phs09aad)