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IN THE WORKERS' COMPENSATION COURT
FOR THE STATE OF MONTANA

CATHERINE E. SATTERLEE, Petitioner, v. LUMBERMAN'S MUTUAL CASUALTY COMPANY, Respondent/Insurer	WCC No. 2003-0840
JAMES ZENAHLIK, Petitioner, v. MONTANA STATE FUND, Respondent/Insurer	WCC No. 2003-0840
JOSEPH FOSTER, Petitioner, v. MONTANA STATE FUND, Respondent/Insurer	WCC No. 2003-0840
DORIS BOWERS, Petitioner, v. PUTMAN & ASSOCIATES, Respondent/Insurer	WCC No. 2003-0840

LUMBERMAN'S MUTUAL CASUALTY COMPANY'S RESPONSE BRIEF ON CONSTITUTIONALITY ISSUES RELATING TO § 39-71-710

I. INTRODUCTION

A. Statement Of The Case

Lumberman's Mutual Casualty Company (Lumberman's Mutual) has been named as a Respondent/Insurer with respect to the claim of Catherine E. Satterlee, WC Claim No. 788CU041791. On behalf of Satterlee and the other Petitioners an Amended Petition for Hearing was filed, dated July 25, 2003. Satterlee has now filed a Motion and Brief in Support thereof, dated February 18, 2005.

With regard to Lumberman's Mutual, Petitioner Satterlee asserts on pages 2 and 3 of her brief that Respondent Lumberman's Mutual, by its Answer to Amended Petition for Hearing, has admitted the following facts:

> 1. Petitioner Catherine E. Satterlee ("Satterlee") was injured attempting to turn over a 40-45 pound [sic] of dog food on the bottom of a shopping cart on July 25, 1992, while in the course and scope of her employment at Buttrey Food & Drug, an employer under Plan II pursuant to the Montana Worker's Compensation Act.
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> 2. Lumberman's accepted liability for the claim as an industrial injury and paid medical and indemnity benefits for various periods of time.
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> 3. On January 25, 1996, this Court ruled that, although Satterlee was totally disabled on account of her emotional and psychological condition, she was not permanently totally disabled as a result of her July 25, 1992, industrial accident.
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> 4. Satterlee appealed this Court's decision to the Montana Supreme Court. On December 10, 1996, the Montana Supreme Court issued its opinion and reversed this Court's denial of Satterlee's claims for total disability benefits and remanded the case for entry of judgment in Satterlee's favor. *Satterlee v. Lumberman's Mutual Casualty Company* (1996), 280 Mont. 85, 929 P.2d 212.
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> 5. Satterlee turned age 65 on September 30, 1999. On or about that date, Lumberman's ceased paying permanent total disability payments in the amount of $235.55 pursuant to § 39-71-710, MCA.

By her Motion, Satterlee seeks "an order declaring the age limitation on permanent total disability and rehabilitation benefits set forth in § 39-71-710, MCA, to be unconstitutional" based upon two separate theories. This brief is submitted by

Lumberman's Mutual in opposition to Satterlee's motion. Lumberman's Mutual asserts that Satterlee is not entitled to the relief she seeks and that § 39-71-710, MCA (1991), is constitutional.

B. Satterlee Cites The Wrong Version Of § 39-71-710, MCA

In her brief, Satterlee cites the 1995 version of § 39-71-710, MCA. The 1995 statute is not applicable to her. Satterlee was injured on July 25, 1992. Section 39-71-710, MCA (1991), as it existed on July 25, 1992, as amended by the 1987 Montana Legislature, applies to Satterlee not the 1995 statute Satterlee cited in her brief.

In *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 730 P.2d 380, 384 (1986), it was recognized that the workers' compensation statutes in effect on the date of the injury determined the benefits that the injured worker is entitled to receive. In effect, the Court reaffirmed that the date of injury set the contractual right between the injured worker and employer. The Court stated that the substantive rights between the parties are determined by the law in effect on the date of injury. The Court went on to hold:

> "The liability of Montana Deaconess Hospital, employer, to Buckman, employee arises out of the contract between them and the Workers' Compensation statutes in effect on the date of the Buckman injury are part of that contract." *Buckman*, 730 P.2d at 385.

The 1995 statute, with the changes from the 1987 version noted, is as follows:

> 39-71-710. Termination of benefits upon retirement. (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement ~~benefits~~, the claimant is considered to be retired. When the claimant is ~~considered~~ retired, the liability of the insurer is ended for payment of ~~wage supplement~~, permanent partial disability benefits other than the impairment award, payment of permanent total disability, and rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.
>
> (2) If a claimant who is eligible under subsection (1) to receive ~~social security~~ retirement benefits and ~~is~~ while gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits.

The 1987 Montana Session Laws provide in Chapter No. 464, Section 72(2), that the 1987 version of § 39-71-710, MCA, applies "to injuries, diseases, and events occurring after June 30, 1987." Satterlee was injured on July 25, 1992. Section 39-71-710, MCA (1991), was amended again in 1995 by two separate bills. Montana Session Laws 1995 provide amendments to this section in Chapter No. 242, Section 14, and Chapter 516, Section 13. However, neither amendment made the 1995 changes retroactive. The changes made by Chapter No. 242 became effective as of July 1, 1995, while the changes made by Chapter No. 516 became effective October 1, 1995.

As set forth above, the 1987 version of § 39-71-710, MCA, as it remained unchanged by the 1991 legislature, is the statute that applies to Satterlee and Lumberman's Mutual with respect to Satterlee's motion.

II. LAW AND ARGUMENT

A. Satterlee Has Waived Any Right To Make A Constitutional Challenge

Satterlee's argument that Section 39-71-710, MCA is unconstitutional is based upon Article II, § 4 and Article III, § 1 of the 1972 Montana Constitution. Those provisions have not been amended since 1972.

Satterlee was injured on July 25, 1992. If Section 39-71-710, MCA (1991) is unconstitutional for any reason, it was just as unconstitutional on July 25, 1992, as it allegedly is today. Satterlee recognizes in her brief that on January 25, 1996, this Court ruled that she was not permanently totally disabled as a result of her July 25, 1992, industrial accident and that she appealed that decision to the Montana Supreme Court. Satterlee further recognizes that on December 10, 1996, the Montana Supreme Court issued its opinion and reversed this Court's denial of Satterlee's claims for total disability benefits and remanded the case for entry of judgment in Satterlee's favor. *Satterlee v. Lumberman's Mutual Casualty Company* (1996), 280 Mont. 85, 929 P.2d 212.

Constitutional issues should generally be raised at the earliest opportunity. *In Re Savings and Loan Activities in the State of Montana by Gate City Savings and Loan Association of Fargo, North Dakota,* 182 Mont. 361, 597 P.2d 84, 88 (Mont. 1979), citing *Johnson v. Doran*, 167 Mont. 501, 511, 540 P. 2d 306, 311 (Mont. 1975). In *Johnson*, supra., 540 P.2d at 311, the Montana Supreme Court stated:

> As to Doran's contention that section 66-1940(c), R.C.M.1947, is unconstitutional, this issue was raised for the first time on appeal. This Court has consistently ruled that a constitutional issue is waived if not presented at the earliest opportunity. Union Interchange, Inc. v. Allen, 140 Mont. 227,

370 P.2d 492. While Doran argues the issue was raised on the motion for new trial, we have examined the language of the motion and find it does not raise the question of the constitutionality of this statute, and therefore decline to rule upon such contention.

Satterlee was before this Court once before and appealed her claim to the Montana Supreme Court. A review of the Montana Supreme Court's decision shows that Satterlee never raised any constitutional challenges over eight years ago although that would have been the earliest opportunity to do so. Satterlee had the ability and the obligation to raise any constitutional challenges in her first go-round with this Court and the Montana Supreme Court. Since she failed to do so, Satterlee has waived any right to make this constitutional challenge and her claim should be dismissed.

B. Section 39-71-710, MCA (1991) Is Constitutionally Sound

1. History of Section 39-71-710, MCA (1991)

Prior to 1981, there was no limitation on permanent total disability benefits. Section 39-71-702, MCA (1973), provided that "total permanent disability benefits shall be paid for the duration of the worker's total permanent disability." To be considered permanently totally disabled, an injured worker had to suffer "a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured worker is as far restored as the permanent character of the injuries will permit and which results in the worker having no reasonable prospect of finding regular employment of any kind in the normal labor market." § 39-71-116(13), MCA (1975). Pursuant to these provisions, permanent total disability benefits did not cease once a worker reached the age of retirement. *Skrukrud v. Gallatin Laundry Co., Inc.*, 171 Mont. 217, 557 P.2d 278 (1976).

In 1981, however, the Montana Legislature enacted Senate Bill 64 which provided the original version of § 39-71-710, MCA. (See 1981 Mont. Session Laws, Chapter 386.)

Section 39-71-710, MCA (1981), originally provided as follows:

> **39-71-710. Termination of total disability benefits upon retirement.** If a claimant is receiving total disability compensation benefits, and the claimant receives retirement social security benefits or disability social security benefits paid to the claimant are converted by law to retirement benefits, the claimant is considered to be retired and no longer in the open labor market. When the claimant is considered retired, the liability of insurer is ended for payment of such compensation benefits. This section does not apply to permanent partial disability benefits. Medical benefits are expressly

reserved to the claimant.

In the legislative history supporting Senate Bill 64, proponents of the bill stated that the purpose of the amendment to the Workers' Compensation Act was that the Workers' Compensation Act was meant to provide benefits to those who suffered a loss in their earning capacity, but it should not become a "pension program." (Minutes of Senate Bill 64--Labor and Relations--January 13, 1981--page 2, attached hereto as Exhibit 1).

The legislative history of § 39-71-710, MCA, (1981) reflected the legislature's recognition that injured workers were deemed to have retired are no longer in the labor market. The legislative history further recognized that at the age of retirement, social security disability benefits were converted to social security retirement benefits. (See MEMORANDUM BY THE WORKERS' COMPENSATION DIVISION REGARDING SENATE BILL NO. 64 . . . , Exhibit 2 to the Montana Legislative History, attached hereto as Exhibit 1.) When § 39-71-710, MCA (1981) was first enacted, it recognized that it had no effect on an injured worker's right to temporary total or permanent partial disability benefits. Likewise, the injured worker remained entitled to medical benefits, as well.

In 1987, there were significant changes to the Workers' Compensation Act. Governor Schwinden commissioned the Workers' Compensation Advisory Council which studied the workers' compensation system for a period of two years to make recommendations to the governor given the extreme deficits faced by workers' compensation insurance carriers, self insureds and the Montana State Fund. After serious debate and careful consideration, significant changes were made to the Workers' Compensation Act.

One of the significant changes made by the 1987 Montana Legislature to the Workers' Compensation Act pertains to § 39-71-710, MCA (1987). The amended version provided as follows:

> **39-71-710. Termination of Benefits Upon Retirement.** (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the claimant is considered retired, the liability of the insurer is ended for payment of wage supplement, permanent total and rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.
>
> (2) If a claimant who is eligible to receive social security retirement benefits and is gainfully employed suffered a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and

medical benefits.

The policy behind this amendment was similar to the policy of those changes made in 1981. The change in the law recognized that once a worker is considered retired, he is no longer in the labor market. Therefore, an injured worker's right to permanent total disability benefits should end when he receives or is eligible to receive social security retirement benefits. Likewise, the injured worker's entitlement to rehabilitation benefits ends because there would no longer be a need for vocational rehabilitation as the worker is no longer in the labor market. The injured worker's right to wage supplement benefits ends, but he retains his right to an impairment award and continued medical benefits. § 39-71-710, MCA (1987). This policy is consistent with *Rausch II*, where it is recognized that PTD benefits were meant for the "work life" of the injured worker. *Rausch v. State Compensation Ins. Fund,* 2005 MT, ¶ 24, ____ Mont. _____, ____P. 3d ____ (2005) (hereinafter *Rausch II*). Subsection (2) of § 39-71-710, MCA (1987), specifically addresses the situation and identifies an injured worker's entitlement when the injured worker is eligible to receive social security benefits and was gainfully employed at the time the worker suffers a work-related injury. The 1987 version of the statute, unchanged by the 1991 legislature, remained in effect at the time Satterlee was injured. (*See* § 39-71-710, MCA (1991).

2. Constitutionality Is Presumed

Satterlee asserts that § 39-71-710, MCA violates Article III, § 1, of the 1972 Montana Constitution and violates the equal protection clauses of the Fourteenth Amendment to the United States Constitution and Article II, Section 4 of the Montana Constitution. In simplest terms, these constitutional provisions require that the law treat persons alike under like circumstances. *Heisler v.Heinz Motor Co.*, 282 Mont. 270, 278, 337 P.2d 45, 50 (1997).

The Montana Supreme Court has recognized that a court must act cautiously in analyzing the constitutionality of a statute. The constitutionality of a legislative enactment is *prima facie* presumed, and every intendment in its favor will be presumed, unless its unconstitutionality appears beyond a reasonable doubt. The question of constitutionality is not whether it is impossible to condemn, but whether it is possible to uphold the legislative action which will not be declared invalid unless it conflicts with the Constitution, and the judgment of the Court, beyond a reasonable doubt. *Stratemeyer v. Lincoln County*, 259 Mont. 147, 150, 850 P.2d 506, 508-09 (1993) (citing *Fallon County v. State of Montana*, 231 Mont. 443, 445-46, 753 P.2d 338, 339-40 (1989)).

Every possible presumption must be indulged in favor of the constitutionality of a legislative act. *Davis v. Union Pacific R.R. Co.*, 282 Mont. 233, 240, 937 P.2d 27, 31 (1997) (citing *State v. Safeway Stores*, 106 Mont. 182, 199, 76 P.2d 81, 84 (1938)). The

party challenging a statute bears the burden of proving it is unconstitutional beyond a reasonable doubt and, if any doubt exists, it must be resolved in favor of the statute. *Grooms v. Ponderosa*, 283 Mont. 459, 467, 942 P.2d 699, 703 (1997) (citing *Heisler*, 282 Mont. at 278, 937 P.2d at 50.)

Accordingly, this Court shall construe § 39-71-710, MCA (1991), so as to render it valid "unless its violation of the fundamental law is clear and palatable." *State ex rel. Berthot v. Gallatin County High School*, 102 Mont. 256, 58 P.2d 264, 267 (1936).

3. Constitutional Analysis Of A Statute Is A Three-Step Process

The first step of constitutional analysis requires the identification of a class or classes. As the Court explained in *Powell*, "when addressing an equal protection challenge, this Court must identify the classes involved and determine whether they are similarly situated. If the classes at issue are not similarly situated, then the first criteria of proving an equal protection violation is not met and we need look no further." *Powell*, ¶ 22 (citing *Henry*, ¶ 27).

The second step in the constitutional analysis of a statute is to determine the appropriate level of scrutiny to apply to the challenged legislation. Clearly, the rational basis test is the proper test, as the provisions of the Montana Workers' Compensation Act neither infringe upon the rights of a suspect class nor involve fundamental rights. *Reesor v. Montana State Fund,* 104 MT. 370, 325 Mont. 1, _____ P.3d _____, at ¶ 15.; *Henry v. State Compensation Ins. Fund*, 199 MT. 126, 294 Mont. 449, 982 P.2d, § 33; *Powell* at ¶ 21 (citing *Stratemeyer*, 855 P.2d at 509).

The third step involves whether the government's stated objective bears a rational relationship with the statutory classification adopted by the legislature. *Reesor*, 204 MT. 370, ¶ 15, 325 Mont. 1, ¶ 15 _____ P.3d _____, ¶ 15. The constitutional challenge is defeated if the statute which causes the unequal treatment bears a rational relationship to a government interest. *Henry*, ¶ 13 (citing *Heisler v. Heinz Motor Co.* (1997), 282 Mont. 270, 937 P.2d 45-50; *Matter of S.L.M.* (1997), 287 Mont. 23, 951 P.2d 1365, 1371.

4. The Classes Are Not Similarly Situated And There Is No Equal Protection Violation

One of the most significant steps in constitutional analysis is to properly identify the classes at issue. In her brief, Satterlee identified two classes as follows: "(1) PTD or rehabilitation compensation benefits eligible claimants who receive or are eligible to receive social security retirement benefits; and (2) PTD or rehabilitation compensation benefits claimants who do not receive and are not eligible to receive social security benefits."

(Petitioner's brief, ¶7.) The classes identified by Petitioner are virtually identical to those identified in *Reesor* except she has interchanged PTD or rehabilitation benefits for permanent partial benefits. Petitioner's attempt to piggy-back the *Reesor* decision is not helpful or warranted here. The issue in *Reesor* was whether it was "fair to deny men and women full PPD benefits simply because their age makes them eligible to receive social security retirement or similar benefits." *Reesor*, 2004 MT. 370, ¶ 10, 325 Mont. 1, ¶ 10, _____ P.3d _____, ¶ 10. Here, permanent partial disability benefits are not at issue.

In *Reesor*, there were two distinct classes, those who were permanently totally disabled and were not entitled to permanent partial disability benefits, and those who were not permanently totally disabled and were entitled to permanent partial disability benefits. In *Reesor*, the Court found it was in violation of equal protection to deny permanent partial disability benefits because a person may be able to receive, or is eligible to receive, social security retirement benefits. Importantly, a claimant who is permanently totally disabled is not denied benefits as in *Reesor*. Under § 39-71-710, all injured workers are entitled to permanent total disability benefits until they receive or become eligible for social security retirement benefits.

The legislature, using its broad powers, simply identified when an injured worker's entitlement to permanent total disability benefits ceases. This is no different than the legislature deciding that temporary total disability benefits end at a point of maximum medical healing. This is no different than the legislature determining that there are limits on permanent partial disability benefits. This is similar to the legislature determining that after a certain point in time, death benefits end for beneficiaries. By simply identifying a particular point in time when the entitlement to a particular type of benefit ceases, the statute does not violate equal protection. All persons within that class who are entitled to permanent total disability benefits are treated similarly. They are all entitled to permanent total disability benefits until they receive or become eligible to receive social security benefits. In *Powell*, the Court found that the classes were not similarly situated; therefore, it determined that the unequal compensation scheme was constitutional. *Powell*, ¶ 24-26.

Here, there is no proof that § 39-71-710, MCA (1991) adopts a classification which affects two or more similarly-situated classes in an unequal way. The equal protection clause does not preclude different treatment of different groups or classes of people so long as all persons in a group or class are treated the same. *S.L.M.*, 287 Mont. 23, 32, 951 P.2d, 1365, 1371 (1997). A change in the amount of entitlement to a benefit does not create a different class for equal protection purposes.

As held in *Shea v. North-Butte Mining Co.*, (1919), 55 Mont. 522, 179 P. 499, an act of the legislature should not be declared invalid unless it is repugnant "and invalidity is made to appear beyond a reasonable doubt." *Shea*, 179 P. at 501. To follow the reasoning of Petitioner, any time there is a change in an entitlement to a particular type of

benefit under the Workers' Compensation Act, or whenever the legislature limits benefits as compared to previous statute, an equal protection violation has occurred. This is not the holding in *Reesor* and, in fact, would essentially mean that on the many occasions the Montana Legislature has amended the Workman's Compensation Act over the years to change the amounts of benefits, its actions were unconstitutional.

In *Reesor*, the Court found there was no rational basis to deny a class of injured workers a category of benefits based on their age. *Reesor* at ¶ 23. The *Reesor* decision recognized that eligibility for social security retirement was contingent upon working the requisite number of quarters and reaching the retirement age as specified by federal statute. *Reesor* at ¶ 22. The *Reesor* Court concluded:

> both classes are similarly situated because both classes have suffered work-related injuries, are unable to return to their time-of-injury jobs, have permanent physical impairment ratings and must rely on § 39-71-703, MCA, as their exclusive remedy under Montana law. *Reesor* at ¶ 12.

In this situation, Petitioner cannot prove she is similarly situated to all claimants who are permanently disabled and is denied permanent total disability benefits or rehabilitation benefits solely because of her age. Petitioner's entitlement to permanent total disability benefits ended because she became eligible to receive social security retirement benefits. The Petitioner's entitlement to permanent total disability benefits is determined by the statute in effect at the date of her injury. *Buckman*, supra. Every injured worker's entitlement to permanent total disability benefits is determined by the law in effect on the date of their injury. *Buckman*, supra.

Respondent asserts that if the Court follows Petitioner's argument regarding different classes, it must recognize Petitioner's argument is flawed. While Respondent believes § 39-71-710 treats those similarly situated the same, if the Court determines there are classes within the statute, it must recognize that there are three classes that are not similarly situated. The first class contains those permanently totally disabled claimants who receive or are eligible to receive social security retirement benefits. The second class contains those permanently totally disabled workers who are not eligible to receive social security benefits. The third class contains those workers who work past the age they become eligible to receive social security benefits and then are injured.

With these three classes, all claimants within each class are treated similarly. There is no requirement that the members of the three separate and distinct classes must be treated similarly for purposes of equal protection.

In this case, Satterlee falls within the class of permanently totally disabled claimants who receive or are eligible to receive social security benefits. Satterlee has been treated

the same as everybody else in her class. She was an injured worker who was covered under the Workers' Compensation Act. As a result of her injuries, she was found to be permanently totally disabled. She received permanent total disability benefits until she became eligible to receive social security retirement benefits. On the date she became eligible for social security retirement benefits, her entitlement to permanent total disability benefits ceased. In her brief, Satterlee has not established that anybody else who is in her class is treated differently.

The second class are those who are not eligible or who do not receive social security retirement benefits. These workers are not eligible because they have not worked the requisite number of quarters or have been in a labor market that is not required to pay social security taxes. All claimants in this class are not eligible to receive social security retirement benefits. Therefore, everybody in this class is treated the same. Members of this class receive life-time permanent total disability benefits.

The third class contains those injured workers who are eligible to receive social security retirement benefits but are gainfully employed and become permanently totally disabled. Since the workers in this class are injured after they are eligible for social security retirement benefits, they are entitled to benefits set forth in Section 39-71-710(2), MCA (1991). Section 39-71-710(2), MCA, specifically provides the benefits that each person in this class is entitled to receive. In essence, the statute recognizes some workers may work past the age they are entitled to social security retirement benefits. With the holding in *Reesor*, a worker who is eligible to receive social security retirement benefits, and who is injured and becomes permanently totally disabled, is entitled to receive his permanent partial disability benefits. All persons who fall within this class are treated similarly. But as to the three classes involved, they are not similarly situated and § 39-71-710, MCA (1991) is constitutionally sound.

5. Even If The Classes Were Similarly Situated, There Is A Rational Basis To Limit Permanent Total Disability Benefits

As previously set forth, Respondent contends there are three classes that are not similarly situated. If, however, the Court is inclined to accept the classes as identified in Petitioner's brief and determines that the classes are similarly situated, the Court should still conclude § 39-71-710, MCA (1991) is constitutional.

a. Legislative History.

In the early 1900s, Montana, along with other states, adopted a statutory scheme for the compensation of workers who were injured in the course and scope of their employment. Montana first enacted the Montana Workers' Compensation Act in 1915. The constitutionality of Montana's Workers' Compensation Act was upheld in *Shea v.*

North-Butte Min. Co., 55 Mont. 522, 179 P.2d 99 (1919).

Historically, it was recognized that the purpose of workers' compensation law was to limit the burden of work-related injury on the injured worker and shift it to the employer. It was realized that an employer could pass the increased costs of the workers' compensation insurance to customers. In theory, the public and commerce would help finance the cost of work-related injuries. *Murray Hosp. v. Angrove*, 92 Mont. 101, 10 P.2d 577 (1932); *Kerns v. Anaconda Copper Min. Co.*, 87 Mont. 546, 289 P. 563 (1930); *Betor v. National Biscuit Co.*, 85 Mont. 481, 28 P. 641 (1929); *Dawson v. East Butte Copper Min. Co.*, 78 Mont. 579, 254 P.2d 880 (1927).

It is within the power of the legislature to enact workers' compensation laws. *Shea*, 55 Mont. at 534, 179 P.2d at 509. Likewise, it has been recognized that it has always been left to the Montana legislature to determine the entitlement that an injured worker is entitled to receive under the Workers' Compensation Act. *Ingraham v. Champion Int'l*, 243 Mont. 42, 793 P.2d 772 (1990).

The Montana Supreme Court has consistently applied the rational basis test to equal protection challenges in workers' compensation cases. *Reesor*, 204 Mont. 370, 370 ¶ 14, 325 Mont. 1, ¶ 14, _____ P.3d _____, ¶ 14; *Powell v. State Compensation Ins. Fund*, 302 Mont. 518, 15 P.3d 877 (2000); *Henry v. State Compensation Ins. Fund*, 294 Mont. 449, 982 P.2d (1999); *Grooms v. Ponderosa Inn*, 283 Mont. 459, 942 P.2d 699 (1997); *Zempel v. Uninsured Employers' Fund*, 282 Mont. 424, 938 P.2d 658 (1997); *Heisler v. Heinz Motor Co.*, 282 Mont. 270, 937 P.2d 45, 50 (1997); *Stratemeyer v. Lincoln County*, 259 Mont. 147, 151, 855 P.2d 506, 509 (1993). To pass the rational-basis test, the challenged legislative enactment "must implicate legitimate goals, and the means chosen by the legislature must bear rational relationship to those goals." *Heisler*, 282 Mont. at 937 P.2d at 50 (quoting *Lyng v. Automobile Workers*, 485 U.S. 360, 375, 108, S.Ct. 1184, 1194, 99 Legal Ed. 2d 380, 394 (1988)).

As previously shown, when § 39-71-710, MCA, was first enacted in 1981, the proponents of the bill stated that the purpose of the amendment was to further the purpose of the Workers' Compensation Act which was meant to provide benefits to those who suffer a loss in their earning capacity, but that it should not become a "pension program." (Minutes of Senate Bill 64 - Labor and Relations - January 13, 1981, attached hereto as Exhibit 1). The legislative history further recognized that at the age of retirement, social security disability benefits were converted to social security retirement benefits. While government statistics show that a small minority of workers may continue to work past the age of retirement, the statistical evidence shows that a high percentage of workers are retired by age 65. Therefore, by and large, most workers retire by the age they are entitled to social security retirement benefits. The availability of the social security retirement benefits was certainly considered by the legislature when it decided that permanent total

disability benefits should end and not become a pension program.

In *Rausch II*, the Court fully recognized that permanent total disability benefits were meant to replace wages for the "work life" not the "life" of an injured worker. *Rausch II*, ____ Mont. ____, ¶ 24, 25. To allow benefits to continue until death, as argued by Petitioner in this case, would contradict a purpose of the Worker's Compensation Act and would create a pension program for those who are permanently totally disabled. The Montana Legislature carefully considered and debated the issue and decided that permanent total benefits should end when a worker receives or becomes eligible for social security retirement benefits. This is well within the Montana Legislature's power and authority.

b. Financial Interest.

As held in *Stratemeyer*, this Court can rely on any rational basis, not just legislative history, to determine whether there is a reasonable basis to support the governmental interest in enacting a particular statute. Beyond the legislative history, there is a financial interest in having permanent total disability benefits cease at the point in time a person receives or is eligible to receive social security benefits. It has been held on numerous occasions and recognized that it is a legitimate state goal to have a viable workers' compensation program for the State of Montana. *Stratemeyer*, supra. And, while cost control alone cannot justify disparate treatment, it must be recognized as a factor supporting a rational basis behind terminating permanent total disability benefits as described in § 39-71-710, MCA *Heisler*, supra, *Powell*, supra. Certainly, requiring the payment of permanent total disability benefits for the "life" of a worker would create an enormous unfunded liability for employers and workers' compensation insurers.

c. Public Policy.

The expressed public policy of the Workers' Compensation Act with regard to wage loss benefits provides a rational basis to support § 39-71-710, MCA. In the declaration of public policy for "interpreting and implying the Workers' Compensation Act, the legislature clearly identified its 'legitimate government interests'." In § 39-71-105, MCA (1999), the legislature declared:

For the purposes of interpreting and applying Title 39, Chapters 71 and 72, the following is the public policy of this state:

> [1] It is an objective of Montana's workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. **Wage-loss benefits are not intended to make an injured worker**

whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage loss benefits should bear a reasonable relationship to actual wage lost as a result of a work-related injury or disease.

* * *

[3] Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimant should be able to speedily obtain benefits, and employers should be able to provide coverage at **reasonable constant** rates. . . .

* * *

[5] . . . it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system . . . (emphasis added.)

As set forth in the declaration of public policy for the Workers' Compensation Act, wage loss benefits have been considered and recognized as not being intended to make an injured worker whole. Rather, these benefits are intended to assist a worker at a reasonable cost to the employer. Moreover, it is the expressed policy of the legislature to define the limits of workers' compensation benefits. With regard to wage loss benefits at issue here, the legislature after debate and careful consideration and through its proper authority, enacted legislation identifying when permanent total disability benefits would cease. This public policy is fully supported by *Rausch II*, which recognized that PTD benefits were meant to be paid for the "work life," not the "life" of the injured worker as argued by Satterlee. *Rausch II*, ¶ 24, 25. Therefore, an expressed public policy provides a rational basis for the legislature to identify when permanent total disability benefits should cease under § 39-71-710, MCA.

Furthermore, statutes have been upheld which provide different amounts of benefits to similarly-situated persons where there is a rational basis supporting the legislation. *Gulbranson v. Kerry*, 272 Mont. 494, 503-505, 901 P.2d 573, 579-580 (1995). If Petitioner's reasoning is followed, the legislature's authority to set the amount and manner of payment of benefits would be undermined. *Ingraham*, 243 Mont. 42, 793 P.2d at 772. Such a result would ignore the well-established principle that imperfection in classification relating to benefits does not, in and of itself, render a legislative enactment unconstitutional on equal protection grounds. *Gulbranson*, 272 Mont. at 503-505, 901 P.2d at 579-580. As held in *Stratemeyer*, "[T]he legislature is simply in a better position to develop the direction of economic regulation, social and health issues." 259 Mont. at 153, 855 P.2d at

510. Moreover, if Satterlee's argument is adopted, once a PTD claimant's social security benefits switch from disability to retirement benefits, theoretically the workers' compensation insurer would no longer be entitled to offset benefits as allowed in § 39-71-702, MCA (1991) resulting in a windfall for the claimant.

6. Despite *Reesor*, § 39-71-710 Is Constitutional.

The *Reesor* decision should be limited to its holding. In its decision, the Court was very careful to state the only issue on appeal is "Whether the age limitation of PPD benefits set forth in § 39-71-710, MCA, violates Article II, Section 4, of the Montana Constitution." *Reesor,* 204 MT. at 373, ¶ 7, 323 Mont. 1, ¶ 7, _____ P.3d _____, ¶ 7. The Court believed that it violated equal protection where a whole class of benefits, permanent partial disability benefits, were denied to those who were entitled to permanent total disability benefits. This Court can still follow *Reesor* and find the remainder of § 39-71-710, MCA, constitutional. For example, Chapter 464, Section 71, Mont. Session Laws of 1987, provides a severability clause which states:

> **Section 71. Severability.**
> If a part of this act is invalid, all valid parts are severable from the invalid parts and remain in effect. If a part of the act is invalid in one or more of its applications, the parts remain in effect and all valid applications are severable from the invalid applications.

Unlike *Reesor*, no injured worker who is entitled to PTD benefits is precluded from obtaining permanent total disability benefits. All persons who meet the definition of permanently totally disabled are entitled to benefits under the Act. Furthermore, with the *Reesor* decision, those people who are permanently totally disabled will now be entitled to permanent partial disability benefits at the point they become eligible to receive social security retirement benefits. Therefore, the economic impact upon persons reaching the age of eligibility for social security retirement benefits will be softened as they will be entitled to permanent partial disability benefits once they become eligible for social security retirement benefits and their permanent total disability benefits end.

C. § 39-71-710, MCA, Does Not Impermissibly Delegate Legislative Powers

Article III, Section 1, provides as follows:

> **Section 1. Separation of Powers.** The power of the government of this state is divided into three distinct branches -- legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or

permitted.

In support of her claim that § 39-71-710, MCA is an unconstitutional delegation of legislative authority, Satterlee cites only one case, *Lee v. State* (1981), 195 Mont.1, 635 P. 2d 1282, cert. denied 456 U.S. 1006, 73 L. Ed. 1300, 102 S. Ct. 2295, 1982 U.S. LEXIS 2331, 50 U.S.L.W. (1982). In *Lee*, the statute at issue, § 61-8-304, MCA, provided in pertinent part:

> The attorney general shall declare . . . a state speed limit . . . whenever the establishment of such a speed limit by the state is required by . . . the Federal Aid Highway Act of 1973 and all acts amendatory thereto or any other federal statute. The speed limit may not be less than that required by federal law . . .

As to the unconstitutionality of § 61-8-304, MCA, the Montana Supreme Court stated:

> Thus we come to the essential invalidity of section 61-8-304, MCA. The authority conferred upon the attorney general in that statute is clearly an impermissible delegation of legislative authority. 1972 Mont. Const., Art. III, § 1; *Matter of Auth. to Conduct Sav. & Loan Act. Etc.* (1979), Mont. 597 P.2d 84, 36 St. Rep. 1207; *Bacus v. Lake County* (1960), 138 Mont. 69, 354 P. 2d 1056.
>
> Lee concedes that the legislature has the authority to adopt existing federal statutes or regulations in its enactments. We agree. See *Wallace v. Commissioner of Taxation* (1971), 289 Minn. 220, 184 N.W. 2d 588 (the statute adopted the federal definition of adjusted gross income for state income tax purposes.)
>
> The constitutional infirmity of section 61-8-304, MCA, arises out of its mandatory directions to the attorney general to proclaim a speed limit "not . . . less than that required by federal law," "whenever the establishment of such a speed limit by the state is required by federal law" to receive highway funds. Under the 1974 act, and under the act as it now exists, the attorney general is also required to terminate such proclaimed speed limit "whenever such a speed limit is not longer required by federal law." Section 61-8-305 (2), MCA. A more blatant handover of the sovereign power of this state to the federal jurisdiction is beyond our ken.
>
> Almost without exception, the cases which recognize the right of a legislature to adopt as a part of its enactments existing federal laws and regulations also

except from that right any adoption of changes in the federal laws or regulations to occur in the future. *Wallace v. Commissioner of Taxation*, supra: *People v. DeSilva* (1971), 32 Mich.App. 707, 189 N.W.2d 362 (statute upheld on ground of severability); *Cheney v. St. Louis Southwestern Railway Co.* (1965), 239 Ark. 870, 394 S.W.2d 731; *Idaho Savings & Loan Association v. Roden* (1960), 82 Id. 128, 350 P.2d 225; *Seale v. McKennon* (1959), 215 Or. 562, 336 P.2d 340; *Dawson v. Hamilton* (Ky. 1958), 314 S.W.2d 532; *State v. Urquhart* (1957), 50 Wash.2d 131, 310 P.2d 261; *Brock v. Superior Court* (1937), 9 Cal.2d 291, 71 P.2d 209, among others.

Three states have upheld legislation similar to Montana's and denied constitutional challenges to statutes incorporating federal speed limits. *Masquelette v. State* (Tex. Crim. 1979), 579 S.W.2d 478; *State v. Dumler* (1977), 221 Kan. 386, 559 P.2d 798; *State v. Padley* (1976), 195 Neb. 358, 237 N.W.2d 883. All three can be distinguished from this case by the terms of the Montana statute. In the other three cases, either the legislature pegged the speed limit, or the power granted to a state official or body to adopt speed limits was couched in permissive instead of mandatory terms. No state that we can find has approved a delegation of sovereign power involved here for mandatory action in the future, based upon the federal law. *Lee*, 635 P.2d at 1286-87.

With regard to the delegation of powers, the decision in *Lee* is distinguishable from Satterlee's situation. In *Lee* the Montana Supreme Court recognized that the legislature has the authority to adopt existing federal statutes or regulations in its enactments. The constitutional problem in *Lee*, however, was that § 61-8-304, MCA, essentially gave the federal government the power to direct the activities of the executive branch of Montana government by requiring the Montana Attorney General to proclaim a certain speed limit as dictated by the federal government. Lee was thereby aggrieved by the actions of the Montana executive branch being dictated by the federal government.

There has been no such delegation of power by § 39-71-710, MCA with respect to Satterlee. The cases cited in the *Lee* decision explain the application of the separation of powers doctrine and how it may be violated. It takes only a review of a few of those cases to see that Satterlee has misconstrued the application of the separation of powers doctrine, and, in fact, there has been no unconstitutional delegation of authority under Section 39-71-710, MCA (1991).

In *Matter of Authority to Conduct Sav. & Loan Act., Etc.* (1979) Mont. 597 P.2d 84, 36 St. Rep. 1207, the constitutionality of § 32-2-231, MCA was questioned as being an unconstitutional delegation of power under Article III, Section 1, of the 1972 Montana Constitution. Under that statute, the legislative branch of Montana government gave authority to the executive branch of Montana government, through the Department of

Business regulation, to determine whether two savings and loans could consolidate and merge into one. The language of the statute provided no criteria for making the determination, but rather only said ". . . Any two (2) or more building and loan associations, by and with the consent and approval of the superintendent of banks, (now known as the Director of the Department of Business Regulation) . . . " This delegation was so overly broad as to provide unascertainable limits of legislative power to the Department of Business Regulation in the executive branch, in violation of the separation of powers doctrine.

In *Bacus v. Lake County*, 138 Mont. 69, 354 P.2d 1056 (1960), the statute in question provided power to county and district boards of health (the executive branch) to enact rules and regulations "pertaining to the prevention of disease and the promotion of public health." The Montana Supreme Court held that the quoted language impermissibly gave legislative authority to a part of the executive branch because the statutory language provided arbitrary or uncontrolled discretion as to health matters. *Bacus*, 138 Mont. 354 P.2d at 81.

In *People v. DeSilva*, 32 Mich. App. 707, 189 N.W. 2d 362 (Mich. App. 1971), the legislature conferred authority upon the Michigan Department of Agriculture, in the executive branch, to adopt rules and regulations necessary for the enforcement of weights and measures. The statute directed the department to use the specifications and regulations of the national bureau of standards. The Court had no problem with the constitutionality of this part of the statute, noting that it has been consistently held that statutes which incorporate existing federal statutes, rules, and regulations by reference are valid and constitutional. However, the Michigan Court did have a problem with the statutory language requiring the department adopt handbook 44 "and supplements thereto, or in any publication revising or superseding handbook 44 . . ." The court noted that it has been the majority holding "that adoption by reference of future legislation and rules are unconstitutional." *People*, 189 N.W. 2d at 365.

Section 39-71-710, MCA (1991) in no way delegates any legislative function to the executive branch as occurred in *Lee* and *Bacus*. Section 39-71-710, MCA (1991) merely incorporates by reference federal law as it existed at the time of Satterlee's injury. This is acceptable under *Lee.*

Quite unlike *People v. DeSilva* and *Lee*, § 39-71-710, MCA (1991), does not require the incorporation of any future changes in the social security laws to the applicability of a claim governed by § 39-71-710, MCA (1991). There simply is no language in § 39-71-710, MCA (1991), which empowers the federal government to change Satterlee's status. In fact, there is no language in § 39-71-710, MCA (1991), which requires any branch of Montana government to do anything as it relates to Satterlee.

Finally, Lumberman's Mutual is not a branch of government and plainly is not listed

in Article III, Section 1, of the Montana Constitution. Any action Lumberman's Mutual took pursuant to that statute was not at the direction of the federal government to Mrs. Satterlee's detriment, but was merely the permissible use of a lawfully enacted statute of the Montana Legislature. As the *Lee* decision clearly states, a legislature is free to adopt as a part of its enactments existing federal laws and regulations. That is all that § 39-71-710, MCA (1991), does. Section 39-71-710, MCA (1991) does not violate Article III, Section 1 of the Montana Constitution.

III. CONCLUSION

In conclusion, § 39-71-710, MCA (1991), is constitutional. The basic premise for permanent total disability benefits was to provide benefits for loss of earning capacity for the "work life" of an injured worker. The purpose for permanent total disability benefits was not to create a "pension program" for those who are permanently totally disabled. Clearly, there is a rational basis for setting forth a time frame when permanent total disability benefits will end.

This situation is not similar to the facts presented in *Reesor* in which the legislative statute denied an entire class of benefits to all permanently totally disabled workers. Certainly, the Montana Legislature has legal authority to determine when an injured worker's entitlement to permanent total disability benefits ends. The Legislature has also determined the circumstances under which each and every other type of workers' compensation benefits ends as well. By doing so, the legislature enacted law that provides benefits to assist a worker at a reasonable cost to the employer. Accordingly, Respondent respectfully requests that the Court find that § 39-71-710, MCA (1991), does not violate the Montana or United States Constitution.

DATED this 8th day of August, 2005.

BROWN LAW FIRM, P.C.

BY _____

Michael P. Heringer
P.O. Box 849
Billings, MT 59103-0849
Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was duly served on counsel of record by U.S. mail, postage prepaid, and addressed as follows this 8th day of August, 2005:

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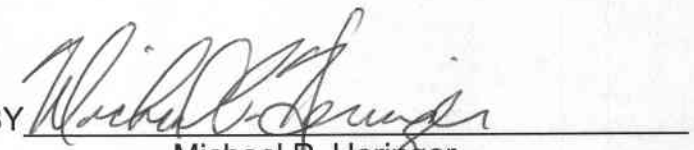
BY 
Michael P. Heringer

cc: Sandy Mayernik

EXHIBIT 1

430p9

MONTANA LEGISLATIVE HISTORY

Chapter 386 1981

Bill H _____ S 64 Original bill & history ✓C

H. Committee on State Administration		S. Committee on Labor & Employment Relations	
Hearing Date(s) Mar 10	✓C	Hearing Date(s) Jan 13	✓C
Mar 19	✓C	_____	C
_____	C	_____	C
_____	C	_____	C
Date Out Mar 19	✓C	Jan 13	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

47TH LEGISLATIVE SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB #32	1/5/81	1/8/81	1/13/81	1/13/81					
SB #52	1/5/81	1/8/81	1/13/81			1/13/81			
Re-ref. SB #52	1/15/81		1/22/81		1/22/81				
SB #60	1/5/81	1/8/81	1/20/81			1/20/81			
SB #64	1/6/81	1/13/81	1/13/81	1/13/81					
Re-ref. SB #64	1/17/81	1/29/81	2/10/81	2/10/81					
SB #101	1/12/81	Stays in	Committee						
SB #128	1/14/81	1/20/81	1/27/81	1/27/81					
SB #132	1/14/81	1/27/81	1/27/81	1/27/81					
SB #191	1/19/81	1/27/81	1/27/81		1/27/81				
SB #198	1/20/81	Stays in	Committee						
SB #226	1/21/81	2/3/81	2/10/81			2/10/81			
SB #313	1/28/81	2/5/81	2/17/81			2/17/81			
SB #318	1/29/81	2/5/81	2/10/81		2/10/81				
SB #360	2/3/81	2/12/81	2/17/81	2/17/81					
SB #378	2/6/81	2/12/81	2/19/81		2/19/81				

Use a separate sheet for Senate, House Bills, and Resolutions.

SENATE BILL NO. 64

INTRODUCED BY ELLIOTT

IN THE SENATE

January 6, 1981	Introduced and referred to Committee on Labor and Employment Relations.
January 14, 1981	Committee recommend bill do pass. Report adopted.
January 15, 1981	Bill printed and placed on members' desks.
January 17, 1981	Rereferred to Committee on Labor and Employment Relations.
February 10, 1981	Committee recommend bill do pass. Report adopted.
February 11, 1981	Bill printed and placed on members' desks.
February 12, 1981	Second reading, do pass.
February 13, 1981	Correctly engrossed.
February 14, 1981	Third reading, passed. Ayes, 28; Noes, 21. Transmitted to House.

IN THE HOUSE

February 16, 1981	Introduced and referred to Committee on State Administration.
March 19, 1981	Committee recommend bill be concurred in. Report adopted.
March 26, 1981	Second reading, pass consideration.
March 27, 1981	Second reading, pass consideration until 71st legislative day.

April 2, 1981	Second reading, pass consideration.
April 3, 1981	Second reading, concurred in.
April 4, 1981	Third reading, concurred in. Ayes, 53; Noes, 47.

IN THE SENATE

April 6, 1981	Returned from House. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

SENATE BILL NO. 64

INTRODUCED BY ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT TOTAL DISABILITY COMPENSATION BENEFITS WILL TERMINATE WHEN A CLAIMANT RECEIVES RETIREMENT SOCIAL SECURITY BENEFITS OR WHEN DISABILITY SOCIAL SECURITY BENEFITS ARE CONVERTED TO RETIREMENT BENEFITS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Termination of total disability benefits upon retirement. If a claimant is receiving total disability compensation benefits and the claimant receives retirement social security benefits or disability social security benefits paid to the claimant are converted by law to retirement benefits, the claimant is considered to be retired and no longer in the open labor market. When the claimant is considered retired, the liability of the insurer is ended for payment of such compensation benefits. This section does not apply to permanent partial disability benefits. Medical benefits are expressly reserved to the claimant.

-End-

INTRODUCED BILL
SB 64

There were questions from the Committee regarding funding of the agency. Ms. Townsend stated that they are funded by both state and federal and they are funded somewhere around $180,000.

Mr. Scott Seacat, representing the Legislative Auditor, stated they felt it was best not to have the overlapping of the two agencies.

Senator Goodover asked how it would affect personnel in the Labor Department. Mr. David Hunter responded that he didn't think it would affect it, and added that the important thing is that transferring this authority to Human Rights Commission would put the employer in a double jeopardy situation. He felt there ought to be one set of consistent standards.

Senator Nelson wanted to know if we are getting our money's worth. Ms. Townsend stated that a small amount of money is spent on these cases, and they would not be adding any staff.

Chairman Nelson closed the hearing on SB 52.

SENATE BILL 64: Chairman Nelson introduced Senator Roger Elliott, sponsor of SB 64, who explained the bill to the Committee. This bill terminates total disability compensation benefits when a claimant is considered retired. This bill does not stop payments altogether except after 9 1/2 years.

PROPONENTS OF SENATE BILL 64: Mr. Laury Lewis, representing the Division of Workmen's Compensation, further explained SB 64 to the Committee. He stated that Workers Compensation was meant to provide benefits to those who have suffered in their earning capacity, and it should not become a pension program. It is not an anti-anything bill. The bill will not allow someone who is permanently disabled to receive benefits for the rest of his life.

Mr. George Wood, representing Montana Self Insurers Association, stated they support SB 64.

Mr. Keith Olson, representing Montana Logging Association, stated they support passage of SB 64. His printed testimony is attached to the minutes.

Mr. Robert Helding, representing Montana Wood Products Association, stated they support SB 64.

OPPONENTS OF SENATE BILL 64: Mr. Jerry Driscoll, representing AFL-CIO Laborers' Union Local 98, stated they oppose SB 64 because they feel it discriminates against older workers. Mr. Driscoll read a letter to the Committee from Mr. James W. Murry, Executive Secretary of Montana State AFL-CIO. This letter is attached to the minutes.

Mr. Tom Ryan, representing Montana Senior Citizens Association, stated that they oppose SB 64. His written testimony is attached.

Mr. Ed Sheehy, representing Montana Retired Federal Employees, stated they believe SB 64 is unfair legislation and discriminates against people no longer able to work.

Mr. Mike Meloy, representing the Montana Trial Lawyers Association, stated the employee gives up some rights, too. He gives up the right to be compensated for pain and suffering when he is injured on the job. The employer pays for the insurance benefit of Social Security.

Senator Elliott made closing statements in support of SB 64.

QUESTIONS: Senator Aklestad brought out the fact that this bill will not affect anyone injured before July 1, 1981, the effective date of the bill.

Mr. Bud Pillen from the State Compensation Insurance Fund, stated that compensation would not stop at age 65. He explained what the worker would be entitled to under Social Security and other benefits.

Chairman Nelson called the hearing on SB 64 closed.

DISPOSITION OF SENATE BILL 32: Senator Goodover moved that SB 32 DO PASS. On a Roll Call Vote, SB 32 passed by a 6-2 vote. This vote is attached to the minutes.

DISPOSITION OF SENATE BILL 60: No action taken at this time because an amendment is being prepared to clarify language in the bill.

DISPOSITION OF SENATE BILL 52: Senator Ryan moved that the amendments offered by Senator Regan Do Pass. The Committee voted unanimously that the amendments to SB 52 Do Pass. Senator Ryan moved that SENATE BILL 52 DO PASS AS AMENDED. On a Roll Call Vote, SENATE BILL 52 PASSED by a 6-2 vote. This Roll Call Vote is attached to the minutes.

DISPOSITION OF SENATE BILL 64: Senator Keating moved that SB 64 Do Pass. On a Roll Call Vote, SENATE BILL 64 PASSED by a 6-1 vote. Senator Hafferman chose to pass on this vote.

ADJOURN: There being no further business, the meeting adjourned at 2:25 p.m.

Harold C. Nelson

Senator Harold C. Nelson, Chairman

mln

STANDING COMMITTEE REPORT

January 13, 19 81

MR. PRESIDENT

We, your committee on LABOR & EMPLOYMENT RELATIONS

having had under consideration SENATE Bill No. 64

Respectfully report as follows: That SENATE Bill No. 64

DO PASS

Senator Harold Nelson Chairman.

STATE PUB. CO.
Helena, Mont.

MONTANA LOGGING ASSOCIATION

P.O. Box 1716, Kalispell, Montana 59901

January 13, 1981

Re: Senate Bill # 64

Mr. Chairman, members of the committee.

My name is Keith Olson, I am the Executive Director of the Montana Logging Association. The MLA represents independent logging contractors from throughout the state of Montana. The MLA strongly supports passage of SB 64.

Our concern with this legislation is two-fold. Firstly, should this legislation fail, we fear workers' compensation insurance will become what it was never intended to be; a pension plan. Secondly, the premium rate that would be charged for logging activity to fund this pension plan will cost jobs and earnings in the logging industry.

As we testified before this committee last week, workers' compensation insurance is the most significant indirect expense of the logging cost. Logging contractors in Montana pay $18.85 in premium for every $100 in wages they pay an employee. This is currently one-half the premium rate we were paying just five years ago. Gentlemen, the MLA is committed to lower that rate even further. We are so dedicated to this committment that we recently hired a full-time loss control officer to work with our members in an effort to increase safety awareness and reduce accidents in the logging industry. However, our success depends not only on our efforts in the woods, it depends upon the internal workings of the Division of Workers' Compensation.

As an association we are doing everything within our power to minimize the expense of workers' compensation coverage for logging activity. We sincerely believe SB 64 will further assist in the establishment of the lowest practical premium rate for the logging industry. Should we fail in this endeavor, the consequences will be far-reaching, for as the premium rate goes up, the competitive efficiency of the logging contractor goes down. Translated, this means our members can not only afford to hire fewer employee's, it also reduces the wages they can afford to pay them for their services.

In closing, the Montana Logging Association respectfully encourages this committee to vote a "do pass" recommendation for SB 64. Besides limiting workers' compensation benefits to the role for which they were originally intended, this legislation will help to stabilize logging costs. We contend the benefit's will stretch from Montana's loggers to the young families of this nation as they endeavor to purchase a home.

Thank you!

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59601
406/442-1708

Room 100 "Steamboat Block"
616 Helena Ave.

January 13, 1981

TO THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

Because of a conflict in hearings scheduled with the House Labor Committee and the Board of Labor Appeals hearings currently in session, the Montana State AFL-CIO is unable to be present to testify against Senate Bill 64. Please allow us to enter this letter into your record.

The Montana State AFL-CIO opposes SB 64 because it discriminates against older workers. People over 65 constitute a growing segment of our population. They also represent an economically disadvantaged segment of our society.

SB 64 would deny workers' compensation for wages lost to all workers who were drawing Social Security retirement benefits. The theory probably is that a retired person is no longer on the job market, and therefore deserves no compensation for wages lost. This is very far from the truth, however.

In reality, very many older persons work either by choice or by economic necessity. Why should the state of Montana discriminate against these citizens because of their age?

Social Security Disability benefits are based on a person's income. If the person goes back to work, he or she loses this disability benefit. The maximum benefit level currently is $653.80 per month or $7,845.60 per year. Most people draw far lower benefits than the maximum.

Under current Montana law, that Social Security Disability benefit is offset 50% by Workers' Compensation. That means that for each $2 received in Social Security Disability benefits, workers' compensation is reduced by $1.

At age 65, Social Security Disability benefits are automatically transformed into Social Security Retirement benefits, which are paid at exactly the same level. Under current Montana law, the offset by workers' comp is removed, so that more workers compensation is paid to the injured person. Since there is no increase for inflation built into our law, that comes as a lifesaver to many elderly people. But under Senate Bill 64, workers' comp payments would be cut off altogether.

Even more unfair is the effect of this bill on a worker who is over 65 years of age. Under present federal law, a person can earn up to $5,500 in outside wages without losing her or his Social Security Retirement benefits. After the initial $5,500, Social Security retirement is reduced $1 for each $2 earned. That means that a person can earn up to about $21,000 under certain conditions and still receive at least a few dollars in Social Security retirement benefits.

Under SB 64, a person who is 65 years old might be working at a $15,000 per year job and still drawing some Social Security. If that person is injured on the job, he or she is cheated out of workers' compensation benefits for lost wages, even though they are clearly losing wages.

We understand that the number of persons to whom this bill would apply is not large. The total amount of money involved is probably $2 million or less -- not a very large chunk when you consider the tax cut measures that are being considered. But for an elderly person, many of whom live in poverty anyway, to be injured and then denied workers' compensation is a cruel way to shave dollars off this fund. In many societies of the world, elderly people are honored and respected as the senior members of society. I hope we have not fallen so low in Montana that we discriminate against injured senior citizens, denying them the meager resources necessary to maintain their existence. The average Social Security retirement benefit is only $3,960 per year for an individual or $6,756 for a couple. The Montana State AFL-CIO does not believe that our injured workers should be condemned to such a poverty-stricken existence. An injured person frequently requires more to survive than a healthy person.

We ask you to defeat SB 64 and refuse to discriminate against senior citizens.

With best regards, I am

Sincerely yours,

Jim Murry

James W. Murry, Executive Secretary
Montana State AFL-CIO

STATUS SHEET

STATE ADMINISTRATION COMMITTEE

47 Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 779	TO PROVIDE FOR TEMPORARY COMMISSION TO REGULATE BALLOT ISSUE CAMPAIGN PRACTICES.	2/16	BARDANOUVE	2/19/81	TABLED	2/23
HB 786	IMPOSE A HIRING FREEZE ON STATE GOVERNMENT AGENCIES FROM JANUARY 1, 1982 THRU DE. 31, 1982....	2/16	O'HARA	2/20	DO PASS AS AMENDED	2/20
HB 788	REQUIRE STATE ELECTION BOARD TO ALLOW CERTAIN APPLICANTS TO TAKE LICENSE EXAMINATIONS.	2/16	MENAHAN	2/20	DO PASS AS AMENDED	2/20
HB 789	ALLOW STATE LAW LIBRARY OF MONTANA TO OCCUPY QUARTERS IN BUILDINGS OTHER THAN THE STATE CAPITOL.	2/16	YARDLEY	2/20	DO PASS CONSENT CAL.	2/20
HB 792	PROVIDE METHOD FOR RELIEVING SEVERE ECONOMIC IMPACTS TO COMMUNITIES RESULTING FROM MAJOR INDUSTRIAL PLANT CLOSURERS....	2/16	MENAHAN	2/20	DO PASS	2/20
SB 64	PROVIDE TOTAL DISABILITY COMP. BENEFITS WILL TERM. WHEN CLAIMANT RECEIVES RETIREMENT, SOC. SEC. BENE. OR RET. BENEFITS.....	2/16	ELLIOTT	3/10/81	BE CONCURRED IN	3/19/81

Form CS-32
1-79

SENATE BILL 64-SPONSOR, Senator Elliott, introduced this bill which prohibits a claimant from receiving total disability compensation benefits when he is receiving retirement social security benefits or when his disability social security benefits are converted to retirement benefits. It also states that the liability of the insurer for payment of disability compensation benefits ends when the claimant is considered retired. Senator Elliott said that the original intent of the workers compensation benefits was to replace earnings lost due to disability on the job not to be a retirement system. He gave an illustration of how the system would work. (Blackboard illustration) The information provided in this illustration was very similar to the testimony submitted by Mr. Loury Lewis. See exhibit 2.

PROPONENTS

DAVID HUNTER, Department of Labor & Industry, appeared in support of the bill and stated two points. First, a person applying for retirement disability has chosen not to be in the job market therefore, should not be entitled to the same benefits as a person in the job market. Second, this bill would keep workmen's compensation from becoming a retirement system.

LOURY LEWIS, Workmen's Compensation Division, submitted a memorandum by the Workers" Compensation Division regarding SB 64 expressing its reasons for supporting the proposed bill. A copy of this is attached and is EXHIBIT 2 of the minutes.

GEORGE WOOD, Executive Secretary of the Montana Self-Insurers Assoc., arose in support of SB 64. A copy of his prepared testimony is attached and is EXHIBIT 3 of the minutes.

ROBERT HELDING, Montana Wood Products Assoc., stated support of the bill by the association and also stated support of the bill for the Montana Chamber at the request of Mr. Boles.

KEITH OLSEN, Montana Logging Assoc., commented that if this bill does not pass Workers' Compensation will become a retirement program, rates will go up and this will result in a loss of jobs for many Montanan's. He read a prepared statement to the committee. EXHIBIT 11

SB 64 (cont.)

LARRY HUSS, representing the Montana Contractors Assoc., stated support of this bill.

PAUL KELLER, American Insurance Assoc., arose and stated support of this bill.

CLYDE SMITH, representing the logging contractors, testified in support of SB 64.

BILL KURKPATRICK, Champion International, Missoula, concurred with other proponents of this bill.

IRVIN E. DELLINGER, Executive Secretary, Montana Building Material Dealers' Assoc., arose in support of SB 64. A copy of his statement is attached and is EXHIBIT 4 of the minutes.

BUD PILLEN, Workers' Compensation, stated support of SB 64.

BILL HANLEY, Hanley Timber Company, arose in support of this legislation.

OPPONENTS-

JERRY DRISCOLL, from Laborers Local 98, Billings, testified in opposition to SB 64. A copy of his testimony is attached and is EXHIBIT 5 of the minutes.

JAMES MURRAY, Montana AFL-CIO, stated that he was the member of the governor's committee on Workers' Compensation, that vetoed this bill. The reason I vetoed this bill, he stated, is because it is such a bad bill. SB 64 will deny benefits to members who are drawing social security retirement benefits if those persons were totally disabled. Under current Montana law, he stated, the social security disability benefits are offset by 50% by workers' compensation. That means that for every $2 received from social security disability benefits, workers' compensation is reduced by $1. Under the current system, he stated, a retiree is not going to get rich especially when the person has to provide for medical care to compensate his disability. The number of people in Montana who are currently drawing both permanant disability from workers' compensation and also social security retirement benefits is about 85. "Why should we pick on this small group of totally disabled people. We should be helping them."

SB 64 (cont.)

TOM RYAN, Montana Senior Citizens' Assoc., stated that this bill is supported by people who work for the state who are suppose to be serving us and by the people from the industry where we were injured.

MIKE MELOY, Montana Trial Law Assoc., stated that the whole workers' compensation system is a "trade off" system set up by an employer and the employee to eliminate fault and provide a means of compensating the employee for injuries received on the job. The wage received under compensation benefits is "fixed" at 60% of the wage the person received not to exceed an average hourly rate of about $1.90 an hour. The benefits that this bill addresses are very low. He stated that the opponents would have the committee believe that there is another benefit available that starts replacing the total disability benefit when a person starts receiving retirement disability but that is not what the bill says. The bill says that when the person is retired and starts receiving social security retirement benefits the liability of the insurer is ended for the payment of such compensation benefits.

LINDA ANDERSON, representing Senior Advocates, stated that this bill is based on the assumption that most people retire at the age of 65. In this day many people cannot afford to retire at that age. 99% of the workers' compensation cases are settled in a lump sum settlement. What this bill does is reduce the amount of time a person is able to barter for lost wages. We are concerned about the person from the ages of about 55 to 60 who is injured on the job and has to negotiate for wages until he reaches the age of 65. We find this very unfair to the population of that age group in Montana.

QUESTIONS BY THE COMMITTEE:

Sales: Is there anything retroactive about this bill that would affect those 85 people who are currently covered by these benefits?

Lewis: No there would not be. I believe they would still receive the same benefits as they do now.

SB 64 (cont.)

Pistoria: Is the governor's office behind this bill.

Hunter: The understanding is that if they have any objections they would notify me. My assumption is that the governor will sign this bill if it gets to his desk.

Following further discussion by the committee, Senator Elliott closed the hearing on SB 64. He stated that this bill is an attempt to maintain the integrity of the workers' compensation law.

SENATE BILL 135-SPONSOR, Senator Regan, introduced this bill which revises the provision permitting a member of the Teachers' Retirement System to purchase service credits for employment while on leave. To qualify this leave time as creditable service, a teacher must contribute an amount equal to the combined employer and employee contributions plus interest for each year of service. If a member is on leave for two years or less, the compensation used to compute the required contribution is the annual compensation received by the member immediately before taking leave. If a member is on leave for over two years, the compensation used for computation is the annual compensation received during his first full year's teaching salary after his return from leave.

OPPONENTS

BOB JOHNSON, Teachers' Retirement System, arose in support of this bill. A copy of his prepared statement is attached and is EXHIBIT 6 of the minutes.

QUESTIONS BY THE COMMITTEE:

Hanson: Mr. Johnson, are you suggesting that this bill would leave it wide open for teachers to try and buy back military service.

Johnson: Yes

McBride: In how many cases has someone taken time off for military service?

Johnson: Not very many. Most military service is put in before their teaching starts.

McBride: Then this is not a valid argument.

EXHIBIT 2

MEMORANDUM BY THE WORKERS' COMPENSATION DIVISION REGARDING SENATE BILL NO. 64, AN ACT TO PROVIDE THAT TOTAL DISABILITY COMPENSATION BENEFITS WILL TERMINATE WHEN A CLAIMANT RECEIVES RETIREMENT SOCIAL SECURITY BENEFITS OR DISABILITY SOCIAL SECURITY BENEFITS ARE CONVERTED TO RETIREMENT BENEFITS AND THE CLAIMANT IS DEEMED RETIRED.

The Workers' Compensation Division wishes to explain its reasons for supporting the proposed bill.

The Workers' Compensation Act currently provides for the payment of total disability benefits for the duration of the worker's total permanent disability. This amendment would provide for the termination of total disability workers' compensation benefits in cases where the claimant is deemed to be retired and no longer in the open labor market.

Payment of disability benefits to a worker who has elected retirement is not consistent with the underlying philosophy and intent of the Montana Workers' Compensation Act. Workers' compensation commentators are in universal agreement that the distinctive feature of this compensation system, by contrast with tort liability, is that its awards are made not for physical injury as such, but for disability produced by such injury. The measure of that disability is usually in the difference between the claimant's earning ability before the injury and his earning ability after the injury. The function of the Workers' Compensation Act is well understood; it is to provide support for industrially disabled workers during periods of actual disability and for their dependents in the event of occupationally related death, together with hospital, medical and funeral expenses. This being the case, loss of earnings or diminution of earning capacity are impossible to assess when normal retirement age has been reached, in that it becomes impossible to compare current earning ability with previous earning ability.

The proposed legislation will eliminate payment of total disability benefits after date of retirement. Temporary total and partial disability benefits would remain to properly compensate a worker for temporary disability and for physical impairment that may exist.

It should also be noted that the Montana Supreme Court has suggested in at least one case that the intent of the legislature should be clarified in reference to payment of compensation when loss of earnings is not a factor when a worker has removed himself from the labor market through retirement.

WBD/nmb

gross weekly earnings = $150.00 ..... (a) *
weekly permanent total rate = $100 = PT rate ..... (b)
average estimated S.S. benefits age 62 = $264.00 monthly
average estimated S.S. benefits age 65 = $330.00 monthly

Determination S.S. offset @ $264.00 monthly
x 12 months
$3,168.00
÷ 52.14 weeks
60.76 /week from SS..... (c)
÷ 50% offset
- 30.38 week SS offset..... (d)
+ 100.00 PT rate
69.62 = PT offset rate ..... (e)

vs

100.00 weekly partial rate .... (f)

age 65 gross weekly earning $150.00

PT	100.00 weekly
SS Offset	37.97 weekly
PT offset rate	$ 62.03 weekly

vs

Partial $100.00 weekly

Effects of Senate Bill 64

Retirement at Age 65

Gross Earnings	Permanent Total Rate	Partial Rate	Social Security Benefits	S.S. + PT with offset prior to Retirement at Age 65	S.S. + PT	Amount Payable if SB 64 passed
(a)	(b)	(f)	(c)	(c+e)	(b+c)	(f+c)
$150.00	$100.00	$100.00	$ 75.95	$130.38	$175.95	$175.95
175.00	116.67	109.50	90.22	151.89	206.89	199.72
200.00	133.34	109.50	104.49	174.19	237.83	213.99
250.00	166.68	109.50	118.76	211.56	285.44	228.26
300.00	200.01	109.50	133.03	249.72	333.04	242.53
328.50	219.00 (max. allowed)	109.50 (max. allowed)	149.60	278.84	368.60	259.10

Effects of Senate Bill 64

Retirement at Age 62 - Social Security Discounted by 20%

Gross Earnings (a)	Permanent Total Rate (b)	Partial Rate (f)	Social Security Benefits (c)	Social Security Offset Rate (d)	Permanent Total Offset Rate (e)	Amt. Payable at Retirement/SS Benefits & PT Offset Rate (c+e)	Amt. Payable at Retirement/SS Benefits without offset applied (b+c)	Amt. Payab if SB 64 Passed (c+f)
$150.0(	$100.00	$100.00	$ 60.76	$30.38	$69.62	$130.38	$160.76	$160.76
175.0(	116.67	109.50	70.43	35.21	81.46	151.89	187.10	179.93
200.00	133.34	109.50	80.09	40.05	93.29	174.19	214.24	190.40
250.00	166.68	109.50	89.76	44.88	121.80	211.56	256.44	199.26
300.00	200.01	109.50	99.42	49.71	150.30	249.72	299.43	208.92
328.50	219.00	109.50	119.68	59.84	159.16	278.84	338.68	229.18

* Letters a f correspond to data on page 1

** Above amounts are on a weekly basis

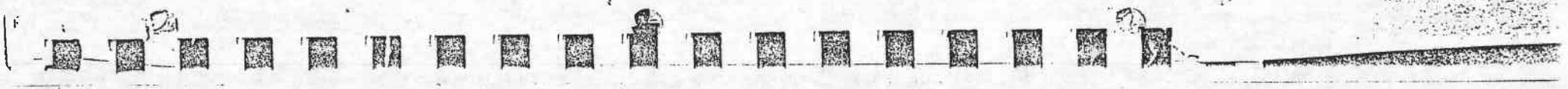


EXHIBIT 3

GEORGE WOOD
Executive Secretary

MONTANA SELF-INSURERS ASSOCIATION

Box 2899
MISSOULA, MONTANA 59806
(406) 543-7195

SENATE BILL 64

MY NAME IS GEORGE WOOD AND I AM EXECUTIVE SECRETARY OF THE MONTANA SELF-INSURERS ASSOCIATION. I RISE IN SUPPORT OF SENATE BILL 64.

THE PRESENT WORKERS' COMPENSATION ACT PROVIDES FOR PAYMENT OF COMPENSATION BENEFITS TO A TOTALLY DISABLED WORKER AT A MAXIMUM WEEKLY COMPENSATION RATE OF $219.00 OR $11,419.32. THE BENEFITS ARE PAID FOR THE LENGTH OF THE DISABILITY, WHICH COULD BE LIFETIME BENEFITS.

THE INJURED WORKER MAY ALSO BE ENTITLED TO SOCIAL SECURITY DISABILITY BENEFITS. IF SO, THE MONTANA WORKERS' COMPENSATION BENEFITS ARE REDUCED BY ONE-HALF OF THE SOCIAL SECURITY DISABILITY BENEFITS WHICH HE RECEIVES AT THE TIME OF HIS ORIGINAL ENTITLEMENT AND COST OF LIVING INCREASES, GRANTED BY THE SOCIAL SECURITY ACT, ARE NOT CONSIDERED. THAT IS, THE OFFSET IS NOT TAKEN ON COST OF LIVING INCREASES.

THE MAXIMUM SOCIAL SECURITY DISABILITY BENEFIT, AT THE PRESENT TIME, IS APPROXIMATELY 653.00 $600.00 A MONTH FOR THE INJURED WORKER AND ONE-HALF OF THAT OR $300.00 FOR THE SPOUSE.

ASSUME A TOTALLY DISABLED WORKER WHO IS ENTITLED TO THE MAXIMUM WORKERS' COMPENSATION BENEFIT OF $219.00 WEEKLY AND THE MAXIMUM SOCIAL SECURITY DISABILITY BENEFIT OF $600.00 AND THAT THE SPOUSE IS ENTITLED TO THE $300.00 MONTHLY BENEFIT. THE BENEFITS PAYABLE WOULD BE:

SOCIAL SECURITY		$207.12 WEEKLY
OFFSET (ONE-HALF)	$103.56	
WORKERS' COMPENSATION ($219.00 - $103.56)		$115.44 WEEKLY
TOTAL BENEFIT (TAX FREE)		$322.56 WEEKLY

THIS IS AN ANNUAL BENEFIT OF $16,819.25 (TAX FREE)

WHEN A TOTALLY DISABLED WORKER REACHES AGE 65, THE SOCIAL SECURITY BENEFITS ARE CHANGED TO RETIREMENT BENEFITS. THERE IS NO CHANGE IN THE AMOUNT OF THE BENEFITS, JUST A CHANGE IN THE CLASSIFICATION. THE MONTANA WORKERS' COMPENSATION ACT DOES NOT PROVIDE FOR A REDUCTION (OFFSET) OF WORKERS' COMPENSATION BENEFITS WHEN SOCIAL SECURITY RETIREMENT BENEFITS ARE PAID.

ASSUME THE SAME INJURED WORKER REACHES THE AGE OF 65. I WILL USE THE SAME SOCIAL SECURITY BENEFITS EVEN THOUGH THEY WOULD BE INCREASED BY THE AMOUNT OF COST OF LIVING INCREASES GRANTED BY THE SOCIAL SECURITY ACT. THE INCREASES VARY DEPENDING ON THE COST OF LIVING INDEX. THE LAST INCREASE WAS ABOUT 13%.

SOCIAL SECURITY BENEFITS	$207.12 WEEKLY
WORKERS' COMPENSATION BENEFITS	$219.00 WEEKLY
TOTAL BENEFITS (TAX FREE)	$426.12 WEEKLY

THIS IS AN ANNUAL BENEFIT OF $22,219.18 OR AN INCREASE OF $5,399.93 SIMPLY FOR REACHING AGE 65. INCIDENTALLY, THE INJURED WORKER NEED EARN ONLY $328.50 WEEKLY OR $17,128.98 ANNUALLY TO BE ENTITLED TO THE MAXIMUM WORKERS' COMPENSATION WEEKLY BENEFIT.

THE UNINJURED FELLOW EMPLOYEE WHO RETIRES AT AGE 65 WOULD RECEIVE, WITH THE BENEFITS PAYABLE TO THE SPOUSE, A MAXIMUM OF $900.00 MONTHLY OR $10,800.00 ANNUALLY IN SOCIAL SECURITY BENEFITS.

SENATE BILL 64 PROVIDES FOR THE TERMINATION OF TOTAL DISABILITY BENEFITS UNDER THE WORKERS' COMPENSATION ACT WHEN THE INJURED WORKER

RECEIVES RETIREMENT SOCIAL SECURITY BENEFITS. IT DOES PROVIDE THAT THE INJURED WORKER COULD RECEIVE BENEFITS FOR PERMANENT PARTIAL DISABILITY, MAXIMUM WEEKLY RATE PRESENTLY IS $109.50. PERMANENT PARTIAL DISABILITY BENEFITS ARE PAID FOR A MAXIMUM OF 500 WEEKS OR 9.6 YEARS.

UNDER SENATE BILL 64, THE WORKER AND THE SPOUSE, AT AGE 65, WOULD RECEIVE BENEFITS AS FOLLOWS:

SOCIAL SECURITY	$207.12 WEEKLY
WORKERS' COMPENSATION	$109.50 WEEKLY
TOTAL BENEFITS (TAX FREE)	$316.82 WEEKLY

THIS IS AN ANNUAL BENEFIT OF $16,519.95 WHICH IS 96% OF THE TAXABLE EARNINGS NECESSARY TO DRAW THE MAXIMUM TAX FREE WORKERS' COMPENSATION BENEFITS. THE BENEFITS WOULD EXCEED THE EARNINGS AFTER TAXES.

IF A WORKER IS RETIRED AND RECEIVING SOCIAL SECURITY RETIREMENT BENEFITS, BENEFITS WOULD BE PAID ON ANNUAL EARNINGS OF THE WORKER, WHICH ARE LIMITED UNDER THE SOCIAL SECURITY ACT.

SENATE BILL 64 DOES NOT PROVIDE FOR TERMINATION OF WORKERS' COMPENSATION BENEFITS FOR TOTAL DISABILITY FOR AN INJURED WORKER WHO IS NOT RECEIVING SOCIAL SECURITY RETIREMENT BENEFITS. THESE WORKERS WOULD RECEIVE THE SAME BENEFITS FOR TOTAL DISABILITY AS AN INJURED WORKER WHO HAS NOT REACHED AGE 65. AN INJURED WORKER, AGE 65 OR OLDER, WOULD NEED TO APPLY FOR RETIREMENT SOCIAL SECURITY BENEFITS BEFORE SENATE BILL 64 WOULD CHANGE THE WORKERS' COMPENSATION BENEFITS THAT ARE PAID.

SENATE BILL 64 WOULD PREVENT THE PAYMENT OF MAXIMUM BENEFITS FOR TOTAL LOSS OF WAGES TO A WORKER WHO IS ALSO RECEIVING RETIREMENT BENEFITS.

I SUBMIT THAT SENTATE BILL 64 WOULD CREATE NO HARDSHIP AND RESPECTFULLY REQUEST THAT THIS COMMITTEE REPORT SENATE BILL 64 - DO PASS.

George Wood

(14)

EXHIBIT 4

Irvin E Dellinger Exec. Secretary Montana Building Material Dealers' Association

I apprear here in favor of S B # 64

One of the most expensive cost of doing business as you all know is payroll and payroll taxes or benefits. Today over a third of payroll cost goes to benefits. Two of these increasing cost are social security and workmans comp. Wheras we want to protect our employees when they become injured on the job, we do not feel that if and when other benefits are available, they should be able to collect from both funds.

Today we hear that we need and have to control costs, for these reasons ~~we~~ feel that S. B. # 64 is a good bill.

Thank You

Irvin E Dellinger

EXHIBIT 5

SB 64

My name is Jerry Driscoll, from Laborers Local 98, Billings. I am here to oppose Senate Bill 64.

This bill addresses totally disabled workers. These are workers who have suffered crippling injuries such as those described in the Montana Codes, Section 39-71-705(2). "The loss of both hands, both arms, both legs, both eyes or any two thereof in an accident ... shall constitute total disability permanent in character." Also included are other total permanent injuries which are both total and permanent in the opinion of medical doctors. This legislature has already passed Senate Bill 128, which requires "a preponderance of medical evidence," which means that the Workers Comp Division or an insurance company can require second or third opinions with legal standing.

SB 64 would reduce the benefits these disabled workers receive after the age of 65 by denying them workers compensation. It's not like these totally disabled elderly people need less to live on. They need more, because they require care of some kind.

You have to remember that workers comp does not automatically increase evegy year. In fact, workers comp never increases, except by an act of the legislature. So if a person is totally disabled now, in 40 years he will still be drawing the same benefits. Just think what inflation can do in 40 years. For an example, a worker in southwest Montana went blind in the 1920s in an accident on the job. He is still drawing the same workers comp benefits he did then -- $10 every two weeks. And now this bill would take that away from him.

I ask you not to pass SB 64. It is unfair to totally disabled elderly people.

MONTANA LOGGING ASSOCIATION

P.O. Box 1716, Kalispell, Montana 59901

March 10, 1981

Testimony on: SB 64
Presented to: House State Administration Committee
Presented by: Keith L. Olson, Executive Director
Montana Logging Association

Chairman Feda, members of the committee:

The Montana Logging Association (MLA) represents independent logging contractors from throughout the state of Montana. We rise in support of SB 64 as it proposes to close an existing loop-hole in Montana's workers' compensation law. The most knowledgeable authority on this confusing issue is Montana's Division of Workers' Compensation. They understand that if SB 64 is not passed work. comp. will eventually become what it was never intended to be -- a pension plan! Furthermore, as the only method of funding this pension plan will be to increase work. comp. rates, the net result will be a loss of jobs and earnings for Montana's employee's.

In order that this committee may better understand the MLA's endorsement of SB 64 allow me to explain that work. comp. coverage is the most significant indirect expense in the cost of logging. When the MLA was formed less than 5 years ago, Montana's logging contractors were paying in excess of $37 in work. comp. premium for every $100 in wages paid to an employee. Currently, we pay $18.85 in premium for every $100 in wages paid an employee. We bring this to your attention to dramatize the MLA's concern that work. comp. rates can skyrocket if careful consideration is not given to all aspects of coverage.

Even though logging contractors are currently paying ½ the premium rate of 1976, by the time you add work. comp. to social security, unemployment, federal and state withholding, etc, an employee in the logging industry costs his employer approximately $40 for every $100 in wages earned. Obviously, a logging contractor must be extremely sure prior to hiring an employee that he will pay his way.

Because work. comp. rates have fluctuated drastically in past years the MLA is attempting to stabilize the rate in the logging industry. For our part the MLA has hired a full-time loss control officer to work with our employer members and their employee's to increase safety-awareness and minimize accidents in the logging industry. Logging contractors are well aware that an injured employee is not only non-productive, he becomes a financial liability to his employer. On the one-hand, accidents raise the employer's work. comp. rate. More importantly, however, an injured logger reduces the competitive efficiency of the logging crew. Efficient logging crews, like athletic teams, are finely tuned operations. When one member of that crew has to be replaced the productive efficiency of the entire crew decreases. However, as the MLA strives to reduce accidents it is just as imperative that the internal operation of the Division of Workers' Compensation strives to attain the highest level of efficiency, and that is precisely what SB 64 strives to accomplish. It strives

to prevent work. comp. coverage from becoming supplemental income for social security!

During committee hearings in the Senate, representatives of senior citizens argued that social security benefits were not adequate to to meet today's financial demands. We do not dispute this contention. We do dispute that Montana's employers should be required to provide additional financial support. Should SB 64 fail, tomorrow's work. comp. program will be in the same sad shape as today's social security program. Furthermore, the increase in premium to cover tomorrow's claims will effectively eliminate jobs for todays labor force.

One need only read last Sunday's Missoulian to understand the plight of the timber industry's unemployed. Now is the time to take responsible legislative action to ensure further damage is not caused by this loop-hole in the workers' compensation law. The Montana Logging Association respectfully urges your support for SB 64!

EXECUTIVE SESSION (cont.)

SENATE BILL 412 — BE CONCURRED IN

Representative Mueller moved that SB 412 BE CONCURRED IN. A vote was taken and carried with 15 YES, 1 NO and 2 members absent. Representative Kropp voted no and Representative Spilker abstained.

Representative McBride was assigned to carry SB 412.

SENATE JOINT RESOLUTION 8 - BE CONCURRED IN AS AMENDED

Representative McBride said that the study should include all of the departments.

Representative Spilker said that in her opinion if she had to choose one area to study it would be the Departments of Fish, Wildlike and Parks.

Representative Smith made a BE NOT CONCURRED motion.

Representative Dussault proposed an amendment that would strike section 5 in its entirety. She said the reason for this is because she thinks this study should be directed to the Interim Finance Committee, especially the part that addresses the Coal Board.

A vote was taken on the motion to amend and carried unanimously.

Representative Spilker made a substitute motion that SJR 8 BE CONCURRED IN AS AMENDED.

A vote was taken and carried with 14 YES, 2 NO and 3 members absent. Representatives McBride and Smith voted no.

Representative Spilker was assigned to carry SJR 8 in the House.

SENATE BILL 64 — BE CONCURRED IN

Representative Mueller made a motion that SB 64 BE CONCURRED IN. Following Discussion a vote was taken and carried with 12 YES, 5 NO and 2 absent. Representatives Kennerly, Pistoria, McBride, Dussault, and Azzara voted no.

Representative Sales was assigned to carry SB 64 in the House.

Tawney

STATE OF MONTANA

REQUEST NO. 427-81

FISCAL NOTE

Form BD-15

In compliance with a written request received March 16, 19 81, there is hereby submitted a Fiscal Note for SB 64 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation:

Senate Bill 64 is an act to provide that total disability workers' compensation benefits will terminate when a claimant receives retirement Social Security benefits or when disability Social Security benefits are converted to retirement benefits.

Assumptions:

a.) Assume all permanent total injured workers currently receiving disability benefits will not be affected by this legislation. Only those claimants injured after the effective date of the bill will be impacted.

b.) Assume that the State Compensation Insurance Fund will experience one-half of the cases involving permanent total disability during any fiscal period.

c.) Based upon the ages of current recipients assume the average age of permanent total claimants is 44.7 years.

d.) Using ordinary mortality tables assume average life expectency to be 72.5 years.

e.) Assume that age 65 will be the retirement age.

f.) The reduction from age 72.5 years to 65.0 years equate to a 27% reduction in permanent total benefit payments.

Projections based on payouts:

Impacted Benefits	F/Y '82	F/Y '83
State Insurance Fund	$ 941,000	$1,256,000
Private Carrier & Self-Insurer	941,000	1,256,000
Estimated Impacted Benefits.	$1,822,000	$2,512,000
% Reduction	27%	27%
	$ 508,140	$ 678,240

As the percentage of permanent benefits to earned premium increases, premium rates will necessarily increase to offset the expanding costs.

Fiscal Year	Earned Premium	Permanent Compensation	Percentage of Premium
76	$18,329,385	$ 50,119	0.3%
77	19,455,992	107,723	0.6
78	22,253,622	178,250	0.8
79	22,809.346	495,305	2.2
80	26,902,631	1,720,020	6.4
81	27,750,000	2,799,000	10.1
82*	28,900,000	3,740,000	12.9
83*	30,200,000	4,996,000	16.5

* Estimated Figures

The estimates for future Earned Premium and the estimates for future Permanent Total Compensation Payments were made independently of each other. If the projections for Permanent Total Payments hold true, Earned Premium would be insufficient.

BUDGET DIRECTOR
Office of Budget and Program Planning
Date: _____