

May 31st, 2011

TO: MPMCSA MEMBERS

FROM: RONNA ALEXANDER, E.D.

LEGISLATIVE BULLETIN:

This is a final report on the 62nd Legislative Session that adjourned on April 30th; a week later than originally scheduled. Many bills have been in 'flux' either awaiting the Governor's signature, a veto or, the Governor allowing them to become law. While there are still a couple bills of interest that were vetoed but are now going through the process of a veto override, the fate of a majority of the business bills of interest has now been determined.

SENATE BILL 9: MIXING ZONES FOR PETROLEUM CONTAMINATED UST SITES:

Senator Keane/Butte. As previously reported, Senate Bill 9 was the primary offensive bill of import this Session. It has indeed become law and is effective immediately. A committee of stakeholders has been meeting periodically to write the implementing rules for SB9 and we can report that the process has been completed. The proposed rules should be noticed for filing by the Secretary of State's office in June for public comment. If you as a facility owner has a site that has been in monitoring mode for several years and continues on the Department's list in a dormant state then it may likely be a candidate for a mixing zone. If granted a mixing zone the site is determined "closed" and is removed from the Departments list of active sites. As an owner of one these sites, you must take the initiative and urge your consultant to take the steps to secure an approved mixing zone. The final rules should be available on the Departments website sometime in July.

SENATE BILL 29: MANDATORY ALCOHOL SALES TRAINING: *Senator Lynda Moss/Billings.*

Starting the first week of the Session and going down to the final day, Senate Bill 29 proved to be the most irritating issue we dealt with. In a masterful move the House rejected the Governors amendatory veto of a section of the bill that removed the Liquor Control Division's ability to create its own training program, placing it back on the desk of the Governor for either veto or acceptance. I never believed he would veto a bill that was recommended by the interim Law & Justice Committee dealing with DUIs. Indeed he let it become law without his signature. Here are the highlights:

1. Becomes effective October 1, 2011
2. All sellers and supervisors must be trained within 60 days of hire.
3. Must be trained every 3 years.
4. Training must be by a pre-approved program by the Liquor Control Division.
5. State has jurisdiction over the program meaning local governments may not enact their own regulations.
6. (And very importantly) Directs the Department to consider the following as mitigating circumstances before taking action on any of the alcohol violations in 16-4-406 governing the sales or serving of alcohol.
 - (a) *the licensee's prior violation history.*
 - (b) *the licensee's good faith effort to prevent a violation.*
 - (c) *the existence of written policies governing employee conduct; &*
 - (d) *whether the evidence of a violation was based solely on the investigating authority creating an opportunity for the violation rather than on complaints received or, observed misconduct.*

Because the Departments training program, "Let's Control It" will no longer be available or in-use, the Association is negotiating with the Michigan "TAMS" program to provided an online training program for our members use. The goal is to have this in place sometime this summer for release to the industry.

HOUSE BILL 613: *Appropriations Committee.* A unique bill was passed and allowed to become law by Governor Schweitzer that establishes benchmarks for the Remediation Division of the DEQ by requiring them to close no fewer than 45 petroleum storage tank release sites per budget year. Therefore, prior to December 31st of 2012 the Department must show they have closed 90 contaminated sites. If not meeting the legislative benchmark money appropriated for petroleum tank leak prevention may not be included in the Department's base budget which means; in the next legislative session the Department must pull that program out of its general budget and justify the entire program. This will be overseen by an interim legislative committee. What it means to the industry is that the mixing zone concept that was adopted in SB9 may move quicker than at first expected.

The Association followed and often supported other general business bills of which you have heard about in the media. Many of these bills were driven by the Montana Chamber of Commerce; their efforts in organization of the different trade groups who are affected and general oversight of the Legislative Committees hearing the bills is very much appreciated and the business community should be thankful.

HOUSE BILL 334: *Representative Scott Richner/Bigfork.* House Bill 334, the biggest work comp reform bill since 1989, is now the law of the land. But how much will it actually impact your business? At a recent meeting of the national group that prices reforms, the National Council on Compensation Insurance (NCCI), official cost savings projections were released for HB334. According to NCCI, the average lost cost savings will be 22.4% or, roughly \$92.2 million dollars a year! If you include some of the reductions that were due to come even without the bill, the average lost cost savings for work comp on July 1, 2011 is **26.7% or roughly \$110 million a year!** Since it's an average savings, some businesses may see more, some may see less. It will depend on the company's safety record, size and class codes. Plus, those savings are just for the first year – there should be more savings in the years to come as a result of HB334. The bill creates savings through reforms of many of the cost drivers in the system, such as increased claim closure & settlements, implementation of utilization and treatment guidelines, changes to the PPD (permanent, partial, disability) structure, reforms to course and scope of employment law, and modifications to the choice of physician.

HOUSE BILL 43: *Representative Gary MacLaren/Victor.* House Bill 43 clarifies employer rights for workplace Medical Marijuana; the Association supported the bill and it was signed by the Governor. The bill should resolve three main problem areas on this issue. Those include:

1. Employment Law – Disallowing wrongful discharge lawsuits and discrimination lawsuits against employers who fire employees who test positive for medical marijuana.
2. Drug Testing – Expanding drug testing laws so employers have more certainty in the law on who can be lawfully drug tested.
3. Work Comp Insurers – Saying work comp insurers and health insurance do not have to cover medical marijuana; and stating that medical use of marijuana cannot enhance disability benefits in work comp.

SENATE BILL 233: *Senator Jim Keane/Butte.* Senate Bill 233 reforms the Montana Environmental Policy Act (MEPA) to ensure that a company's permit cannot be pulled out from under them simply because an extreme environmental group sues to end the project. One significant hurdle for investment and development in Montana is our tendency to allow endless lawsuits to inject enough uncertainty in the process to discourage businesses from coming here. SB233 should help. The Governor allowed the bill to become law without his signature.

SENATE BILL 372: *Senator Bruce Tudvedt/Kalispell.* For more than 30 years the Montana Chamber has advocated reduction of the business equipment tax. Over time they have been able to bring it down from its highs of 12-15% in the 1980's to its current level of 3%. This Session trade groups were successful in bringing it down further to 2%, (effective July 1, 2011) for every business on the first \$2 million of equipment. If tax collections exceed a certain level in the coming years, the rate will

dip to 1.5% on the first \$3 million of equipment, which means the rate will be half of what it is now and provide \$15-\$22 million in savings for Montana businesses. That's money that can be used to increase wages, buy better equipment, or expand your operations.

In addition we would like to mention two bills that we considered "bad" or detrimental to business that would have hurt tourism and decreased the reductions employers were hoping to see in their work comp premiums with the passage of House Bill 334. Both bills were sponsored by freshman Representative Rob Cook-Conrad and were supported by the Republican Legislature. Governor Schweitzer vetoed both bills.

HOUSE BILL 316: This bill would have skimmed 10% of the bed tax money for general fund spending. The bed tax is used to promote tourism to our State and bring visitors from around the country. Tourism dollars are so important to Montana's economy because it brings outside money into the State. These investments in promotion drive millions of people to visit every year. The veto of HB316 allows those investments to continue as we try to stabilize and improve Montana's economy.

HOUSE BILL 604: This bill originally would have taken up to \$37 million from the Montana State Fund to pay off the Old Fund liabilities from before July 1, 1990. Eventually the bill was amended to allow for a 2.75% assessment on Montana State Fund customers to pay off the "Old Fund". During the 1990's a surcharge was placed on employers and employees to cover the liabilities of the "Old Fund", which were largely due to state government's mishandling of the workers' compensation funds prior to July 1, 1990. After collecting this surcharge/tax for a number of years, it was ceased when enough money had been collected to cover the Old Fund liabilities. In 2003, the Old Fund was raided to balance the budget, but the Fund was still thought to be solvent. Within a year, it was clear that more money would be needed because of the Legislature's actions. Now that the Old Fund is out of money and the State is seeing hard times, the Legislature is once again looking to raid workers' compensation monies in order to bailout its budget. If HB604 had become law, there are employers who are a part of the State Fund, who would essentially be paying twice for the same liabilities. On top of that, many of the savings from HB334 may not have found their way to Montana businesses. This kind of legislative maneuver would have set a very bad precedent for the future, and would only negatively impact Montana employers. Ironically, these vetoes are a good end to some bad bills.

Finally, interim committees for the 2011-2012 year have been formed with a few already holding their first meeting to elect chairs' and set their agendas. One we will be involved with, the Environmental Quality Council will continue its review of the Petroleum Tank Release Compensation Fund and the oversight of House Bill 613 previously mentioned.