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Effort to cut work comp costs targets illegal aliens

By JOHN S. ADAMS Tribune Capital Bureau · January 11, 2011

HELENA — Two major issues of the 2011 Legislature intersected in a House Judiciary Committee hearing Monday morning as lawmakers heard testimony on a bill that would prohibit illegal immigrant workers from collecting workers' compensation benefits.

The bill, House Bill 71, is sponsored by Rep. Gordon Vance, R-Bozeman. Republicans, who control both houses of the Montana Legislature by large majorities, said they plan to reduce the cost of workers' compensation insurance, which they say is hampering businesses' ability to hire new employees.

Vance's bill would require Montana workers' compensation insurance carriers to establish processes to ensure that no wage-loss or medical benefits for work-related injury or disease are paid to illegal immigrants.

Vance told the committee that at the end of the 2009 session lawmakers were asked what they thought was the most pressing issue that needed to be addressed during the interim. He said workers' compensation rates topped the list.

Vance, who served as vice-chairman of the Economic Affairs Interim Committee, said lawmakers spent over a year and a half during the interim looking for ways to rein in workers' compensation costs.

"At that time Montana's work comp rates were number two in the nation in terms of being the highest. We now, as of October, have the ignominious honor of being number one," Vance said.

According to a fiscal note prepared by the state Office of Budget and Program Planning, in 2010 Montana State Fund identified eight claims out of 8,099 that required additional validation because the Social Security number of the claimant didn't match. In 2009 seven claims out of 9,353 required additional validation.

The budget office said the actual number of claims or the total amount of benefit payments made to

illegal immigrants could not be determined.

Opponents of the House Bill 71 told the committee that prohibiting workers' compensation benefits for a relatively small number of illegal immigrants would lead to a litany of unintended consequences.

Shahid Haque-Hausrath, an immigration attorney in Helena, said Vance's bill would create a "perverse incentive for employers to actually hire undocumented workers."

"Eliminating workers' compensation to unauthorized aliens will do nothing to deter undocumented immigration, but it will create an incentive for unscrupulous employers to actually hire undocumented workers, who they then would have no responsibility to pay workers' compensation to," Haque-Hausrath said. "This would decrease workplace safety for all employees."

Other attorneys testified that HB 71 could lead to a wave of lawsuits against the state and employers.

Andrea Olsen, opposing the bill on behalf of the Montana Trial Lawyers association, said workers' compensation isn't a public government benefit, but rather a contract between employers and employees that eliminates negligence actions against the employers while ensuring that employees who suffer work-related injuries are covered.

"Courts have said that work-related injuries are not based on status. An injured worker is injured no matter where he continues to work in the world," Olsen said. "If these workers are excluded based on

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immigration status, that opens up the employer to potential claims, because the law doesn't prohibit ... illegal aliens from suing the employer. They would actually be forced (to sue) because any kind of negligence claim that isn't covered under workers' comp would be allowed to file suit."

Helena lawyer Deborah Smith teaches immigration at the University of Montana School of Law. She said HB 71 would force the state to make complicated legal determinations about workers' immigration status that could open up taxpayers to costly lawsuits.

"When you start trying to figure out, or dictate who workers' comp gets paid to, you get into very, very complicated legal determinations that the state has no authority to make in the first place, and the state doesn't have the training or manpower to do it," Smith told the committee. "From a mechanics point of view this is just simply unworkable; it's not going to be able to be fixed. It will create a lot of litigation opportunities for lawyers to litigate, which I would enjoy to litigate."

Other than Vance, no proponents spoke in favor of the measure.

Vance told the committee that his bill is primarily aimed at reducing workers' compensation costs and does not seek to address the issue of illegal immigration.

"There's no one solution to this problem. That's why, over the next few months, you folks will see a lot of bills dealing with workers' compensation," Vance said.

The committee is expected to vote on the bill at some point in the next few weeks.

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