

HOUSE BILL NO. 187

INTRODUCED BY DRISCOLL, HARP, WANZENRIED, THAYER, MANNING

IN THE HOUSE

JANUARY 15, 1991           INTRODUCED AND REFERRED TO COMMITTEE  
                                  ON LABOR & EMPLOYMENT RELATIONS.

                                  FIRST READING.

FEBRUARY 6, 1991           COMMITTEE RECOMMEND BILL  
                                  DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 7, 1991           PRINTING REPORT.

FEBRUARY 8, 1991           SECOND READING, DO PASS.

FEBRUARY 9, 1991           ENGROSSING REPORT.

FEBRUARY 11, 1991          THIRD READING, PASSED.  
                                  AYES, 94; NOES, 6.

                                  TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 12, 1991          INTRODUCED AND REFERRED TO COMMITTEE  
                                  ON LABOR & EMPLOYMENT RELATIONS.

                                  FIRST READING.

APRIL 2, 1991             COMMITTEE RECOMMEND BILL BE  
                                  CONCURRED IN AS AMENDED. REPORT  
                                  ADOPTED.

APRIL 4, 1991             SECOND READING, CONCURRED IN.

APRIL 5, 1991             THIRD READING, CONCURRED IN.  
                                  AYES, 45; NOES, 5.

                                  RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 9, 1991             RECEIVED FROM SENATE.

                                  SECOND READING, AMENDMENTS  
                                  CONCURRED IN.

APRIL 10, 1991            THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *187*  
 2 INTRODUCED BY *Dwight HARP*  
 3 *Richard E. Manning*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT  
 5 INVESTMENT INCOME EARNED OR REALIZED BY CERTAIN WORKERS'  
 6 COMPENSATION INSURERS BE CONSIDERED WHEN DETERMINING PREMIUM  
 7 RATES; DEFINING "CONSTRUCTION INDUSTRY"; REQUIRING THAT  
 8 PREMIUM RATES TO BE PAID FOR WORKERS' COMPENSATION FOR THE  
 9 CONSTRUCTION INDUSTRY BE COMPUTED ON THE NUMBER OF HOURS  
 10 WORKED RATHER THAN ON A PERCENTAGE OF PAYROLL; AMENDING  
 11 SECTIONS 33-16-1004, 39-71-116, 39-71-721, 39-71-723,  
 12 39-72-102, AND 39-73-108, MCA; AND PROVIDING A DELAYED  
 13 EFFECTIVE DATE."

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 33-16-1004, MCA, is amended to read:

17 "33-16-1004. Rates -- considerations -- methods --  
 18 standards. All rates ~~shall~~ must be made in accordance with  
 19 the following provisions:

- 20 (1) Due consideration ~~shall~~ must be given to:  
 21 (a) past and prospective loss experience within and  
 22 outside this state~~7-to~~;  
 23 (b) catastrophe hazards, if any~~7-to~~;  
 24 (c) a reasonable margin for underwriting profit and  
 25 contingencies~~7-to~~;

1 (d) dividends, savings, or unabsorbed premium deposits  
 2 allowed or returned by insurers to their policyholders,  
 3 members, or subscribers~~7-to~~;

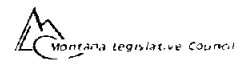
4 (e) past and prospective expenses, both countrywide and  
 5 those specially applicable to this state~~7~~;

6 (f) investment income earned or realized by insurers  
 7 from their unearned premium, loss, and loss expense reserve  
 8 funds generated from business within this state; and to

9 (g) all other relevant factors within and outside this  
 10 state.

11 (2) The systems of expense provisions included in the  
 12 rates for use by an insurer or group of insurers may differ  
 13 from those of other insurers or groups of insurers to  
 14 reflect the requirements of the operating methods of any  
 15 insurer or group with respect to any kind of insurance or  
 16 with respect to any subdivision or combination thereof of  
 17 insurance for which subdivision or combination separate  
 18 expense provisions are applicable.

19 (3) Risks may be grouped by classifications for the  
 20 establishment of rates and minimum premiums. Classification  
 21 rates may be modified to produce rates on individual risks  
 22 in accordance with rating plans which that establish  
 23 standards for measuring variations in hazards or expense  
 24 provisions, or both. Such The standards may measure any  
 25 difference among risks that can be demonstrated to have a



-2- INTRODUCED BILL  
 HB 187

1 probable effect upon losses or expenses.

2 (4) Rates shall may not be excessive, inadequate, or  
3 unfairly discriminatory.

4 (5) Except to the extent necessary to meet the  
5 provisions of subsections (1) through (3), uniformity among  
6 insurers in any matter within the scope of this section is  
7 neither required nor prohibited."

8 **Section 2.** Section 39-71-116, MCA, is amended to read:

9 "39-71-116. **Definitions.** Unless the context otherwise  
10 requires, words and phrases employed in this chapter have  
11 the following meanings:

12 (1) "Administer and pay" includes all actions by the  
13 state fund under the Workers' Compensation Act and the  
14 Occupational Disease Act of Montana necessary to:

15 (a) the investigation, review, and settlement of  
16 claims;

17 (b) payment of benefits;

18 (c) setting of reserves;

19 (d) furnishing of services and facilities; and

20 (e) utilization of actuarial, audit, accounting,  
21 vocational rehabilitation, and legal services.

22 (2) "Average weekly wage" means the mean weekly  
23 earnings of all employees under covered employment, as  
24 defined and established annually by the Montana department  
25 of labor and industry. It is established at the nearest

1 whole dollar number and must be adopted by the department  
2 prior to July 1 of each year.

3 (3) "Beneficiary" means:

4 (a) a surviving spouse living with or legally entitled  
5 to be supported by the deceased at the time of injury;

6 (b) an unmarried child under the age of 18 years;

7 (c) an unmarried child under the age of 22 years who is  
8 a full-time student in an accredited school or is enrolled  
9 in an accredited apprenticeship program;

10 (d) an invalid child over the age of 18 years who is  
11 dependent upon the decedent for support at the time of  
12 injury;

13 (e) a parent who is dependent upon the decedent for  
14 support at the time of the injury ~~{however, such a parent is~~  
15 ~~a beneficiary only when if~~ no beneficiary, as defined in  
16 subsections (3)(a) through (3)(d) ~~of this section, exists};~~  
17 and

18 (f) a brother or sister under the age of 18 years if  
19 dependent upon the decedent for support at the time of the  
20 injury ~~{however, such a brother or sister is a beneficiary~~  
21 ~~but~~ only until the age of 18 years and only when no  
22 beneficiary, as defined in subsections (3)(a) through (3)(e)  
23 ~~of this section, exists}.~~

24 (4) "Casual employment" means employment not in the  
25 usual course of trade, business, profession, or occupation

1 of the employer.

2 (5) "Child" includes a posthumous child, a dependent  
3 stepchild, and a child legally adopted prior to the injury.

4 (6) "Construction industry" means any activity in  
5 connection with the erection, alteration, repair,  
6 replacement, renovation, installation, or demolition of a  
7 building, highway, bridge, or structure.

8 (7)(7) "Days" means calendar days, unless otherwise  
9 specified.

10 (7)(8) "Department" means the department of labor and  
11 industry.

12 (8)(9) "Fiscal year" means the period of time between  
13 July 1 and the succeeding June 30.

14 (9)(10) "Insurer" means an employer bound by  
15 compensation plan No. 1, an insurance company transacting  
16 business under compensation plan No. 2, the state fund under  
17 compensation plan No. 3, or the uninsured employers' fund  
18 provided for in part 5 of this chapter.

19 (10)(11) "Invalid" means one who is physically or  
20 mentally incapacitated.

21 (11)(12) "Maximum healing" means the status reached when  
22 a worker is as far restored medically as the permanent  
23 character of the work-related injury will permit.

24 (12)(13) "Order" means any decision, rule, direction,  
25 requirement, or standard of the department or any other

1 determination arrived at or decision made by the department.

2 (13)(14) "Payroll", "annual payroll", or "annual payroll  
3 for the preceding year" means the average annual payroll of  
4 the employer for the preceding calendar year or, if the  
5 employer shall not have operated a sufficient or any length  
6 of time during such calendar year, 12 times the average  
7 monthly payroll for the current year. However, an estimate  
8 may be made by the department for any employer starting in  
9 business if no average payrolls are available. This estimate  
10 is to be adjusted by additional payment by the employer or  
11 refund by the department, as the case may actually be, on  
12 December 31 of such current year. An employer's payroll must  
13 be computed by calculating all wages, as defined in  
14 39-71-123, that are paid by an employer.

15 (14)(15) "Permanent partial disability" means a  
16 condition, after a worker has reached maximum healing, in  
17 which a worker:

18 (a) has a medically determined physical restriction as  
19 a result of an injury as defined in 39-71-119; and

20 (b) is able to return to work in the worker's job pool  
21 pursuant to one of the options set forth in 39-71-1012 but  
22 suffers impairment or partial wage loss, or both.

23 (15)(16) "Permanent total disability" means a condition  
24 resulting from injury as defined in this chapter, after a  
25 worker reaches maximum healing, in which a worker is unable

1 to return to work in the worker's job pool after exhausting  
2 all options set forth in 39-71-1012.

3 ~~{16}~~(17) The term "physician" includes "surgeon" and in  
4 either case means one authorized by law to practice his  
5 profession in this state.

6 ~~{17}~~(18) The "plant of the employer" includes the place  
7 of business of a third person while the employer has access  
8 to or control over such place of business for the purpose of  
9 carrying on his usual trade, business, or occupation.

10 ~~{18}~~(19) "Public corporation" means the state or any  
11 county, municipal corporation, school district, city, city  
12 under commission form of government or special charter,  
13 town, or village.

14 ~~{19}~~(20) "Reasonably safe place to work" means that the  
15 place of employment has been made as free from danger to the  
16 life or safety of the employee as the nature of the  
17 employment will reasonably permit.

18 ~~{20}~~(21) "Reasonably safe tools and appliances" are such  
19 tools and appliances as are adapted to and are reasonably  
20 safe for use for the particular purpose for which they are  
21 furnished.

22 ~~{21}~~(22) "Temporary total disability" means a condition  
23 resulting from an injury as defined in this chapter that  
24 results in total loss of wages and exists until the injured  
25 worker reaches maximum healing.

1 ~~{22}~~(23) "Year", unless otherwise specified, means  
2 calendar year."

3 NEW SECTION. Section 3. Premium rates for construction  
4 industry. The premium rates under plan No. 2 to be paid for  
5 workers' compensation insurance for the construction  
6 industry must be computed on the number of hours worked for  
7 each occupation classification rather than on a percentage  
8 of payroll.

9 Section 4. Section 39-71-721, MCA, is amended to read:  
10 "39-71-721. Compensation for injury causing death --  
11 limitation. (1) (a) If an injured employee dies and the  
12 injury was the proximate cause of such death, then the  
13 beneficiary of the deceased is entitled to the same  
14 compensation as though the death occurred immediately  
15 following the injury. A beneficiary's eligibility for  
16 benefits commences after the date of death, and the benefit  
17 level is established as set forth in subsection (2).

18 (b) The insurer is entitled to recover any overpayments  
19 or compensation paid in a lump sum to a worker prior to  
20 death but not yet recouped. The insurer shall recover such  
21 payments from the beneficiary's biweekly payments as  
22 provided in 39-71-741(5).

23 (2) To beneficiaries as defined in  
24 39-71-116~~{2}~~(3)(a) through ~~{2}~~(3)(d), weekly  
25 compensation benefits for an injury causing death are

1 66 2/3% of the decedent's wages. The maximum weekly  
2 compensation benefit may not exceed the state's average  
3 weekly wage at the time of injury. The minimum weekly  
4 compensation benefit is 50% of the state's average weekly  
5 wage, but in no event may it exceed the decedent's actual  
6 wages at the time of his death.

7 (3) To beneficiaries as defined in  
8 39-71-116~~(2)~~(3)(e) and ~~(2)~~(f) (3)(f), weekly benefits  
9 must be paid to the extent of the dependency at the time of  
10 the injury, subject to a maximum of 66 2/3% of the  
11 decedent's wages. The maximum weekly compensation may not  
12 exceed the state's average weekly wage at the time of  
13 injury.

14 (4) If the decedent leaves no beneficiary as defined in  
15 39-71-116~~(2)~~, a lump-sum payment of \$3,000 must be paid to  
16 the decedent's surviving parent or parents.

17 (5) If any beneficiary of a deceased employee dies, the  
18 right of such beneficiary to compensation under this chapter  
19 ceases. Death benefits must be paid to a surviving spouse  
20 for 500 weeks subsequent to the date of the deceased  
21 employee's death or until the spouse's remarriage, whichever  
22 occurs first. After benefit payments cease to a surviving  
23 spouse, death benefits must be paid to beneficiaries, if  
24 any, as defined in 39-71-116~~(2)~~(b)(3)(b) through ~~(2)~~(d)  
25 (3)(d).

1 (6) In all cases, benefits must be paid to  
2 beneficiaries, as defined in 39-71-116~~(2)~~.

3 (7) Benefits paid under this section may not be  
4 adjusted for cost of living as provided in 39-71-702.

5 (8) Notwithstanding subsections (2) and (3), beginning  
6 July 1, 1987, through June 30, 1991, the maximum weekly  
7 compensation benefits for injury causing death may not  
8 exceed the state's average weekly wage of \$299 established  
9 July 1, 1986. Beginning July 1, 1987, through June 30, 1991,  
10 the minimum weekly compensation for injury causing death  
11 shall be \$149.50, which is 50% of the state's average weekly  
12 wage established July 1, 1986, but in no event may it exceed  
13 the decedent's actual wages at the time of death."

14 **Section 5.** Section 39-71-723, MCA, is amended to read:

15 "39-71-723. How compensation to be divided among  
16 beneficiaries. Compensation due to beneficiaries shall be  
17 paid to the surviving spouse, if any, or if none, then  
18 divided equally among or for the benefit of the children. In  
19 cases where beneficiaries are a surviving spouse and  
20 stepchildren of such spouse, the compensation shall be  
21 divided equally among all beneficiaries. Compensation due to  
22 beneficiaries as defined in subsections ~~(2)~~(e) (3)(e) and  
23 ~~(2)~~(f) (3)(f) of 39-71-116, where there is more than one,  
24 shall be divided equitably among them, and the question of  
25 dependency and amount thereof shall be a question of fact

1 for determination by the department."

2 **Section 6.** Section 39-72-102, MCA, is amended to read:

3 "39-72-102. **Definitions.** As used in this chapter,  
4 unless the context requires otherwise, the following  
5 definitions apply:

6 (1) "Beneficiary" is as defined in 39-71-116.

7 (2) "Child" is as defined in 39-71-116.

8 (3) "Department" means the department of labor and  
9 industry.

10 (4) "Disablement" means the event of becoming  
11 physically incapacitated by reason of an occupational  
12 disease from performing work in the worker's job pool.  
13 Silicosis, when complicated by active pulmonary  
14 tuberculosis, is presumed to be total disablement.  
15 "Disability", "total disability", and "totally disabled" are  
16 synonymous with "disablement", but they have no reference to  
17 "permanent partial disability".

18 (5) "Employee" is as defined in 39-71-118.

19 (6) "Employer" is as defined in 39-71-117.

20 (7) "Independent contractor" is as defined in  
21 39-71-120.

22 (8) "Insurer" is as defined in 39-71-116.

23 (9) "Invalid" is as defined in 39-71-116.

24 (10) "Occupational disease" means harm, damage, or death  
25 as set forth in 39-71-119(1) arising out of or contracted in

1 the course and scope of employment and caused by events  
2 occurring on more than a single day or work shift. The term  
3 does not include a physical or mental condition arising from  
4 emotional or mental stress or from a nonphysical stimulus or  
5 activity.

6 (11) "Order" is as defined in 39-71-116.

7 (12) "Pneumoconiosis" means a chronic dust disease of  
8 the lungs arising out of employment in coal mines and  
9 includes anthracosis, coal workers' pneumoconiosis,  
10 silicosis, or anthracosilicosis arising out of such  
11 employment.

12 (13) "Silicosis" means a chronic disease of the lungs  
13 caused by the prolonged inhalation of silicon dioxide (SiO)  
14 and characterized by small discrete nodules of fibrous  
15 tissue similarly disseminated throughout both lungs, causing  
16 the characteristic x-ray pattern, and by other variable  
17 clinical manifestations.

18 (14) "Wages" is as defined in 39-71-123.

19 (15) "Year" is as defined in 39-71-116(0)--and  
20 39-71-116(22)."

21 **Section 7.** Section 39-73-108, MCA, is amended to read:

22 "39-73-108. **Payment of benefits where person entitled**  
23 **is in institution.** If any person who is entitled to benefits  
24 under this chapter shall be an inmate in any Montana state  
25 institution, benefits shall not be paid to him but shall be



LC 0472/01

1 paid his beneficiary, if any, as defined in 39-71-116{2}."

2 NEW SECTION. **Section 8.** Codification instruction.

3 [Section 3] is intended to be codified as an integral part  
4 of Title 39, chapter 71, part 22, and the provisions of  
5 Title 39, chapter 71, part 22, apply to [section 3].

6 NEW SECTION. **Section 9.** Effective date. [This act] is  
7 effective July 1, 1992.

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0187, third reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring that investment income earned or accrued by certain workers' compensation insurers be considered when determining premium rates; defining construction industry; requiring that premium rates to be paid for workers' compensation for the construction industry be computed on the number of hours worked rather than on a percentage of payroll; amending existing statutes; and providing a delayed effective date.

ASSUMPTIONS:

State Fund:

1. The proposed amendment to include investment income in the calculation of workers compensation insurance premiums is compatible with 39-23-2320, 39-23-2321 and 39-23-2327, MCA, which require the State Fund to include investment income in the calculation of State Fund premium rates.
2. The proposed legislation will affect approximately 3,000 currently insured (12% of 26,000) based on FY90 statistics.
3. Individual risk will be assigned both manpower and payroll class codes. Computer system modifications will be necessary to accommodate the hourly-based construction industry while retaining all other industries on a payroll basis.
4. Since payroll is verifiable and work hours are not verifiable, the State Fund must gather both payroll and work hours data to establish work hour premium rates. Initial work hour data would be gathered by means of a survey sent in conjunction with quarterly reports for firms assigned a construction code. Once computer programs are ready, work hour information will be entered for rate analysis.
5. The proposed legislation would require 2.00 FTE program coordinators to consult with those insured, monitor payroll reports, and conduct surveys; and 6.00 FTE auditors to measure compliance.


Department of Labor and Industries:

6. The Uninsured Employers' Fund (UEF) uses Plan 3 rates. A separate system would need to be developed for an hourly rate structure with new procedures to process audits, penalties, and claims for uninsured construction industry employers.
7. Approximately 75 workers' compensation classification codes will be affected by the proposed legislation.
8. Implementing the proposed legislation will require a 1.00 FTE compliance specialist at grade 12/step 2 plus associated costs for work materials, telephone, supplies and travel.

FISCAL IMPACT:

see next page

 2-14-91  
ROD SUNDSTED, BUDGET DIRECTOR                      DATE  
Office of Budget and Program Planning

**BULL SHIT**  
  
JERRY L. DRISCOLL, PRIMARY SPONSOR                      DATE

Fiscal Note for HB0187, third reading.

HB 187  
3rd. Rdg.

**FISCAL IMPACT:**

**State Fund:**

	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<b><u>Expenditures:</u></b>						
FTE	0.00	8.00	8.00	0.00	8.00	8.00
Personal Services	0	217,122	217,122	0	227,118	227,118
Operating Costs	0	182,043	182,043	0	155,072	155,072
Equipment	0	<u>75,744</u>	<u>75,744</u>	0	<u>0</u>	<u>0</u>
Total	0	474,909	474,909	0	382,190	382,190
<b><u>Funding:</u></b>						
Proprietary Fund	0	474,909	474,909	0	382,190	382,190

**Dept of Labor/Industry:**

	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<b><u>Expenditures:</u></b>						
FTE	0.00	1.00	1.00	0.00	1.00	1.00
Personal Services	0	24,047	24,047	0	23,992	23,992
Operating Costs	0	17,553	17,553	0	15,453	15,453
Equipment	0	<u>3,800</u>	<u>3,800</u>	0	<u>0</u>	<u>0</u>
Total	0	45,400	45,400	0	39,445	39,445
<b><u>Funding:</u></b>						
State Special	0	45,400	45,400	0	39,445	39,445

**LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:**

1. Reduction in workers' compensation premiums would result in reduced penalty assessments and a reduction in the fund balance of the Uninsured Employers' Fund.
2. Decreased premiums with no reduction in benefits would reduce the fund balance of the Uninsured Employers' Fund.

**TECHNICAL NOTES:**

1. Discrepancies exist in the definition of "construction" among NCCI, HB187, HB342 and other references in the insurance industry. Recommend the proposed legislation use the Standard Industrial Classification (SIC) manual, 1987 edition, as a guide to define the construction industry.
2. The reporting requirements for owners, partners and corporate officers is unclear. Reporting requirements for owners and partners are currently an elected payroll amount within set minimum and maximum amounts. For corporate officers, the reporting requirements are actual payroll within set minimum and maximum amounts.

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

HOUSE BILL NO. 187

INTRODUCED BY DRISCOLL, HARP, WANZENRIED, THAYER, MANNING

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT INVESTMENT INCOME EARNED OR REALIZED BY CERTAIN WORKERS' COMPENSATION INSURERS BE CONSIDERED WHEN DETERMINING PREMIUM RATES; DEFINING "CONSTRUCTION INDUSTRY"; REQUIRING THAT PREMIUM RATES TO BE PAID FOR WORKERS' COMPENSATION FOR THE CONSTRUCTION INDUSTRY BE COMPUTED ON THE NUMBER OF HOURS WORKED RATHER THAN ON A PERCENTAGE OF PAYROLL; AMENDING SECTIONS 33-16-1004, 39-71-116, 39-71-402, 39-71-426, 39-71-721, 39-71-723, 39-72-102, AND 39-73-108, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Section 33-16-1004, MCA, is amended to read:

"33-16-1004. Rates -- considerations -- methods -- standards. All rates shall must be made in accordance with the following provisions:

(1) Due consideration shall must be given to:

(a) past and prospective loss experience within and outside this state~~7-to;~~

(b) catastrophe hazards, if any~~7-to;~~

(c) a reasonable margin for underwriting profit and contingencies~~7-to;~~

(d) dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers~~7-to;~~

(e) past and prospective expenses, both countrywide and those specially applicable to this state~~;~~

(f) investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this state; and to

(g) all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof of insurance for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates on individual risks in accordance with rating plans which that establish standards for measuring variations in hazards or expense provisions, or both. Such The standards may measure any difference among risks that can be demonstrated to have a



1 probable effect upon losses or expenses.

2 (4) Rates shall may not be excessive, inadequate, or  
3 unfairly discriminatory.

4 (5) Except to the extent necessary to meet the  
5 provisions of subsections (1) through (3), uniformity among  
6 insurers in any matter within the scope of this section is  
7 neither required nor prohibited."

8 **Section 2.** Section 39-71-116, MCA, is amended to read:

9 "39-71-116. **Definitions.** Unless the context otherwise  
10 requires, words and phrases employed in this chapter have  
11 the following meanings:

12 (1) "Administer and pay" includes all actions by the  
13 state fund under the Workers' Compensation Act and the  
14 Occupational Disease Act of Montana necessary to:

15 (a) the investigation, review, and settlement of  
16 claims;

17 (b) payment of benefits;

18 (c) setting of reserves;

19 (d) furnishing of services and facilities; and

20 (e) utilization of actuarial, audit, accounting,  
21 vocational rehabilitation, and legal services.

22 (2) "Average weekly wage" means the mean weekly  
23 earnings of all employees under covered employment, as  
24 defined and established annually by the Montana department  
25 of labor and industry. It is established at the nearest

1 whole dollar number and must be adopted by the department  
2 prior to July 1 of each year.

3 (3) "Beneficiary" means:

4 (a) a surviving spouse living with or legally entitled  
5 to be supported by the deceased at the time of injury;

6 (b) an unmarried child under the age of 18 years;

7 (c) an unmarried child under the age of 22 years who is  
8 a full-time student in an accredited school or is enrolled  
9 in an accredited apprenticeship program;

10 (d) an invalid child over the age of 18 years who is  
11 dependent upon the decedent for support at the time of  
12 injury;

13 (e) a parent who is dependent upon the decedent for  
14 support at the time of the injury ~~(however, such a parent is~~  
15 ~~a beneficiary only when if no beneficiary, as defined in~~  
16 ~~subsections (3)(a) through (3)(d) of this section, exists);~~  
17 and

18 (f) a brother or sister under the age of 18 years if  
19 dependent upon the decedent for support at the time of the  
20 injury ~~(however, such a brother or sister is--a--beneficiary~~  
21 ~~but only until the age of 18 years and only when no~~  
22 ~~beneficiary, as defined in subsections (3)(a) through (3)(e)~~  
23 ~~of this section, exists).~~

24 (4) "Casual employment" means employment not in the  
25 usual course of trade, business, profession, or occupation

1 of the employer.

2 (5) "Child" includes a posthumous child, a dependent  
3 stepchild, and a child legally adopted prior to the injury.

4 (6) "Construction industry" means any AN activity in  
5 connection with the erection, alteration, repair,  
6 replacement, renovation, installation, or demolition of a  
7 building, highway, bridge, or structure.

8 ~~(6)~~(7) "Days" means calendar days, unless otherwise  
9 specified.

10 ~~(7)~~(8) "Department" means the department of labor and  
11 industry.

12 ~~(8)~~(9) "Fiscal year" means the period of time between  
13 July 1 and the succeeding June 30.

14 ~~(9)~~(10) "Insurer" means an employer bound by  
15 compensation plan No. 1, an insurance company transacting  
16 business under compensation plan No. 2, the state fund under  
17 compensation plan No. 3, or the uninsured employers' fund  
18 provided for in part 5 of this chapter.

19 ~~(10)~~(11) "Invalid" means one who is physically or  
20 mentally incapacitated.

21 ~~(11)~~(12) "Maximum healing" means the status reached when  
22 a worker is as far restored medically as the permanent  
23 character of the work-related injury will permit.

24 ~~(12)~~(13) "Order" means any decision, rule, direction,  
25 requirement, or standard of the department or any other

1 determination arrived at or decision made by the department.

2 ~~(13)~~(14) "Payroll", "annual payroll", or "annual payroll  
3 for the preceding year" means the average annual payroll of  
4 the employer for the preceding calendar year or, if the  
5 employer shall not have operated a sufficient or any length  
6 of time during such calendar year, 12 times the average  
7 monthly payroll for the current year. However, an estimate  
8 may be made by the department for any employer starting in  
9 business if no average payrolls are available. This estimate  
10 is to be adjusted by additional payment by the employer or  
11 refund by the department, as the case may actually be, on  
12 December 31 of such current year. An employer's payroll must  
13 be computed by calculating all wages, as defined in  
14 39-71-123, that are paid by an employer.

15 ~~(14)~~(15) "Permanent partial disability" means a  
16 condition, after a worker has reached maximum healing, in  
17 which a worker:

18 (a) has a medically determined physical restriction as  
19 a result of an injury as defined in 39-71-119; and

20 (b) is able to return to work in the worker's job pool  
21 pursuant to one of the options set forth in 39-71-1012 but  
22 suffers impairment or partial wage loss, or both.

23 ~~(15)~~(16) "Permanent total disability" means a condition  
24 resulting from injury as defined in this chapter, after a  
25 worker reaches maximum healing, in which a worker is unable

1 to return to work in the worker's job pool after exhausting  
 2 all options set forth in 39-71-1012.

3 ~~(16)~~(17) The term "physician" includes "surgeon" and in  
 4 either case means one authorized by law to practice his  
 5 profession in this state.

6 ~~(17)~~(18) The "plant of the employer" includes the place  
 7 of business of a third person while the employer has access  
 8 to or control over such place of business for the purpose of  
 9 carrying on his usual trade, business, or occupation.

10 ~~(18)~~(19) "Public corporation" means the state or any  
 11 county, municipal corporation, school district, city, city  
 12 under commission form of government or special charter,  
 13 town, or village.

14 ~~(19)~~(20) "Reasonably safe place to work" means that the  
 15 place of employment has been made as free from danger to the  
 16 life or safety of the employee as the nature of the  
 17 employment will reasonably permit.

18 ~~(20)~~(21) "Reasonably safe tools and appliances" are such  
 19 tools and appliances as are adapted to and are reasonably  
 20 safe for use for the particular purpose for which they are  
 21 furnished.

22 ~~(21)~~(22) "Temporary total disability" means a condition  
 23 resulting from an injury as defined in this chapter that  
 24 results in total loss of wages and exists until the injured  
 25 worker reaches maximum healing.

1 ~~(22)~~(23) "Year", unless otherwise specified, means  
 2 calendar year."

3 NEW SECTION. Section 3. Premium rates for construction  
 4 industry. The premium rates under plan No. 2 AND PLAN NO. 3  
 5 to be paid for workers' compensation insurance for the  
 6 construction industry must be computed on the number of  
 7 hours worked for each occupation classification rather than  
 8 on a percentage of payroll.

9 SECTION 4. SECTION 39-71-402, MCA, IS AMENDED TO READ:

10 "39-71-402. Extraterritorial application and  
 11 reciprocity -- exception. (1) If a worker employed in this  
 12 state who is subject to the provisions of this chapter  
 13 temporarily leaves the state incidental to that employment  
 14 and receives an injury arising out of and in the course of  
 15 such employment, the provisions of this chapter shall apply  
 16 to such worker as though he were injured within this state.

17 (2) If a worker from another state and his employer  
 18 from another state are temporarily engaged in work within  
 19 this state, this chapter shall not apply to them:

20 (a) if the employer and employee are bound by the  
 21 provisions of the workers' compensation law or similar law  
 22 of such other state which applies to them while they are in  
 23 the state of Montana; and

24 (b) if the Workers' Compensation Act of this state is  
 25 recognized and given effect as the exclusive remedy for



1 workers employed in this state who are injured while  
2 temporarily employed in such other state.

3 (3) A certificate from an authorized officer of the  
4 workers' compensation department or similar agency of  
5 another state certifying that an employer of such other  
6 state is bound by the Workers' Compensation Act of the state  
7 and that its act will be applied to employees of the  
8 employer while in the state of Montana shall be prima facie  
9 evidence of the application of the workers' compensation law  
10 of the certifying state.

11 (4) The department may, with the approval of the  
12 governor, enter into agreements with workers' compensation  
13 agencies of other states for the purpose of promulgating  
14 regulations not inconsistent with the provisions of this  
15 chapter to carry out the extraterritorial application of the  
16 workers' compensation laws of the agreeing states.

17 (5) The provisions of this section do not apply to the  
18 construction industry as defined in 39-71-116."

19 **SECTION 5. SECTION 39-71-426, MCA, IS AMENDED TO READ:**

20 "39-71-426. Reciprocal agreements with Canadian  
21 provinces -- exception. (1) Subject to the conditions  
22 provided in 39-71-427 and subsection (2) of this section,  
23 the governor may enter into agreements with duly authorized  
24 representatives of any Canadian province, granting  
25 reciprocal application of the workers' compensation laws of

1 this state to Montana employers and workers if they are  
2 temporarily engaged in work in that province.

3 (2) Subsection (1) does not apply to the construction  
4 industry as defined in 39-71-116."

5 **Section 6.** Section 39-71-721, MCA, is amended to read:

6 "39-71-721. Compensation for injury causing death --  
7 limitation. (1) (a) If an injured employee dies and the  
8 injury was the proximate cause of such death, then the  
9 beneficiary of the deceased is entitled to the same  
10 compensation as though the death occurred immediately  
11 following the injury. A beneficiary's eligibility for  
12 benefits commences after the date of death, and the benefit  
13 level is established as set forth in subsection (2).

14 (b) The insurer is entitled to recover any overpayments  
15 or compensation paid in a lump sum to a worker prior to  
16 death but not yet recouped. The insurer shall recover such  
17 payments from the beneficiary's biweekly payments as  
18 provided in 39-71-741(5).

19 (2) To beneficiaries as defined in  
20 39-71-116~~(2)(a)~~(3)(a) through ~~(2)(d)~~ (3)(d), weekly  
21 compensation benefits for an injury causing death are  
22 66 2/3% of the decedent's wages. The maximum weekly  
23 compensation benefit may not exceed the state's average  
24 weekly wage at the time of injury. The minimum weekly  
25 compensation benefit is 50% of the state's average weekly

1 wage, but in no event may it exceed the decedent's actual  
2 wages at the time of his death.

3 (3) To beneficiaries as defined in  
4 39-71-116~~(2)(e)~~(3)(e) and ~~(2)(f)~~ (3)(f), weekly benefits  
5 must be paid to the extent of the dependency at the time of  
6 the injury, subject to a maximum of 66 2/3% of the  
7 decedent's wages. The maximum weekly compensation may not  
8 exceed the state's average weekly wage at the time of  
9 injury.

10 (4) If the decedent leaves no beneficiary as defined in  
11 39-71-116~~(2)~~, a lump-sum payment of \$3,000 must be paid to  
12 the decedent's surviving parent or parents.

13 (5) If any beneficiary of a deceased employee dies, the  
14 right of such beneficiary to compensation under this chapter  
15 ceases. Death benefits must be paid to a surviving spouse  
16 for 500 weeks subsequent to the date of the deceased  
17 employee's death or until the spouse's remarriage, whichever  
18 occurs first. After benefit payments cease to a surviving  
19 spouse, death benefits must be paid to beneficiaries, if  
20 any, as defined in 39-71-116~~(2)(b)~~(3)(b) through ~~(2)(d)~~  
21 (3)(d).

22 (6) In all cases, benefits must be paid to  
23 beneficiaries, as defined in 39-71-116~~(2)~~.

24 (7) Benefits paid under this section may not be  
25 adjusted for cost of living as provided in 39-71-702.

1 (8) Notwithstanding subsections (2) and (3), beginning  
2 July 1, 1987, through June 30, 1991, the maximum weekly  
3 compensation benefits for injury causing death may not  
4 exceed the state's average weekly wage of \$299 established  
5 July 1, 1986. Beginning July 1, 1987, through June 30, 1991,  
6 the minimum weekly compensation for injury causing death  
7 shall be \$149.50, which is 50% of the state's average weekly  
8 wage established July 1, 1986, but in no event may it exceed  
9 the decedent's actual wages at the time of death."

10 **Section 7.** Section 39-71-723, MCA, is amended to read:

11 "39-71-723. How compensation to be divided among  
12 beneficiaries. Compensation due to beneficiaries shall be  
13 paid to the surviving spouse, if any, or if none, then  
14 divided equally among or for the benefit of the children. In  
15 cases where beneficiaries are a surviving spouse and  
16 stepchildren of such spouse, the compensation shall be  
17 divided equally among all beneficiaries. Compensation due to  
18 beneficiaries as defined in subsections ~~(2)(e)~~ (3)(e) and  
19 ~~(2)(f)~~ (3)(f) of 39-71-116, where there is more than one,  
20 shall be divided equitably among them, and the question of  
21 dependency and amount thereof shall be a question of fact  
22 for determination by the department."

23 **Section 8.** Section 39-72-102, MCA, is amended to read:

24 "39-72-102. Definitions. As used in this chapter,  
25 unless the context requires otherwise, the following

1 definitions apply:

- 2 (1) "Beneficiary" is as defined in 39-71-116.  
 3 (2) "Child" is as defined in 39-71-116.  
 4 (3) "Department" means the department of labor and  
 5 industry.  
 6 (4) "Disablement" means the event of becoming  
 7 physically incapacitated by reason of an occupational  
 8 disease from performing work in the worker's job pool.  
 9 Silicosis, when complicated by active pulmonary  
 10 tuberculosis, is presumed to be total disablement.  
 11 "Disability", "total disability", and "totally disabled" are  
 12 synonymous with "disablement", but they have no reference to  
 13 "permanent partial disability".  
 14 (5) "Employee" is as defined in 39-71-118.  
 15 (6) "Employer" is as defined in 39-71-117.  
 16 (7) "Independent contractor" is as defined in  
 17 39-71-120.  
 18 (8) "Insurer" is as defined in 39-71-116.  
 19 (9) "Invalid" is as defined in 39-71-116.  
 20 (10) "Occupational disease" means harm, damage, or death  
 21 as set forth in 39-71-119(1) arising out of or contracted in  
 22 the course and scope of employment and caused by events  
 23 occurring on more than a single day or work shift. The term  
 24 does not include a physical or mental condition arising from  
 25 emotional or mental stress or from a nonphysical stimulus or

1 activity.

- 2 (11) "Order" is as defined in 39-71-116.  
 3 (12) "Pneumoconiosis" means a chronic dust disease of  
 4 the lungs arising out of employment in coal mines and  
 5 includes anthracosis, coal workers' pneumoconiosis,  
 6 silicosis, or anthracosilicosis arising out of such  
 7 employment.  
 8 (13) "Silicosis" means a chronic disease of the lungs  
 9 caused by the prolonged inhalation of silicon dioxide (SiO)  
 10 and characterized by small discrete nodules of fibrous  
 11 tissue similarly disseminated throughout both lungs, causing  
 12 the characteristic x-ray pattern, and by other variable  
 13 clinical manifestations.  
 14 (14) "Wages" is as defined in 39-71-123.  
 15 (15) "Year" is as defined in 39-71-116~~(8)~~--and  
 16 39-71-116~~(22)~~."

17 **Section 9.** Section 39-73-108, MCA, is amended to read:  
 18 "39-73-108. Payment of benefits where person entitled  
 19 is in institution. If any person who is entitled to benefits  
 20 under this chapter shall be an inmate in any Montana state  
 21 institution, benefits shall not be paid to him but shall be  
 22 paid his beneficiary, if any, as defined in 39-71-116~~(2)~~."

23 NEW SECTION. **Section 10. Codification instruction.**  
 24 [Section 3] is intended to be codified as an integral part  
 25 of Title 39, chapter 71, part 22, and the provisions of

HB 0187/02

- 1 Title 39, chapter 71, part 22, apply to [section 3].
- 2 NEW SECTION. Section 11. Effective date. [This act] is
- 3 effective July 1, 1992.

-End-

## 1 HOUSE BILL NO. 187

2 INTRODUCED BY DRISCOLL, HARP, WANZENRIED, THAYER, MANNING

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT  
5 INVESTMENT INCOME EARNED OR REALIZED BY CERTAIN WORKERS'  
6 COMPENSATION INSURERS BE CONSIDERED WHEN DETERMINING PREMIUM  
7 RATES; DEFINING "CONSTRUCTION INDUSTRY"; REQUIRING THAT  
8 PREMIUM RATES TO BE PAID FOR WORKERS' COMPENSATION FOR THE  
9 CONSTRUCTION INDUSTRY BE COMPUTED ON THE NUMBER OF HOURS  
10 WORKED RATHER THAN ON A PERCENTAGE OF PAYROLL; AMENDING  
11 SECTIONS 33-16-1004, 39-71-116, 39-71-402, 39-71-426,  
12 39-71-721, 39-71-723, 39-72-102, AND 39-73-108, MCA; AND  
13 PROVIDING A DELAYED EFFECTIVE DATE."  
14

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

16 **Section 1.** Section 33-16-1004, MCA, is amended to read:

17 "33-16-1004. Rates -- considerations -- methods --  
18 standards. All rates shall must be made in accordance with  
19 the following provisions:

20 (1) Due consideration shall must be given to:

21 (a) past and prospective loss experience within and  
22 outside this state~~7-to~~;

23 (b) catastrophe hazards, if any~~7-to~~;

24 (c) a reasonable margin for underwriting profit and  
25 contingencies~~7-to~~;

1 (d) dividends, savings, or unabsorbed premium deposits  
2 allowed or returned by insurers to their policyholders,  
3 members, or subscribers~~7-to~~;

4 (e) past and prospective expenses, both countrywide and  
5 those specially applicable to this state~~7~~;

6 (f) investment income earned or realized by insurers  
7 from their unearned premium, loss, and loss expense reserve  
8 funds generated from business within this state; and to

9 (g) all other relevant factors within and outside this  
10 state.

11 (2) The systems of expense provisions included in the  
12 rates for use by an insurer or group of insurers may differ  
13 from those of other insurers or groups of insurers to  
14 reflect the requirements of the operating methods of any  
15 insurer or group with respect to any kind of insurance or  
16 with respect to any subdivision or combination ~~thereof~~ of  
17 insurance for which subdivision or combination separate  
18 expense provisions are applicable.

19 (3) Risks may be grouped by classifications for the  
20 establishment of rates and minimum premiums. Classification  
21 rates may be modified to produce rates on individual risks  
22 in accordance with rating plans which that establish  
23 standards for measuring variations in hazards or expense  
24 provisions, or both. Such The standards may measure any  
25 difference among risks that can be demonstrated to have a

1 probable effect upon losses or expenses.

2 (4) Rates ~~shall~~ may not be excessive, inadequate, or  
3 unfairly discriminatory.

4 (5) Except to the extent necessary to meet the  
5 provisions of subsections (1) through (3), uniformity among  
6 insurers in any matter within the scope of this section is  
7 neither required nor prohibited."

8 **Section 2.** Section 39-71-116, MCA, is amended to read:

9 **"39-71-116. Definitions.** Unless the context otherwise  
10 requires, words and phrases employed in this chapter have  
11 the following meanings:

12 (1) "Administer and pay" includes all actions by the  
13 state fund under the Workers' Compensation Act and the  
14 Occupational Disease Act of Montana necessary to:

15 (a) the investigation, review, and settlement of  
16 claims;

17 (b) payment of benefits;

18 (c) setting of reserves;

19 (d) furnishing of services and facilities; and

20 (e) utilization of actuarial, audit, accounting,  
21 vocational rehabilitation, and legal services.

22 (2) "Average weekly wage" means the mean weekly  
23 earnings of all employees under covered employment, as  
24 defined and established annually by the Montana department  
25 of labor and industry. It is established at the nearest

1 whole dollar number and must be adopted by the department  
2 prior to July 1 of each year.

3 (3) "Beneficiary" means:

4 (a) a surviving spouse living with or legally entitled  
5 to be supported by the deceased at the time of injury;

6 (b) an unmarried child under the age of 18 years;

7 (c) an unmarried child under the age of 22 years who is  
8 a full-time student in an accredited school or is enrolled  
9 in an accredited apprenticeship program;

10 (d) an invalid child over the age of 18 years who is  
11 dependent upon the decedent for support at the time of  
12 injury;

13 (e) a parent who is dependent upon the decedent for  
14 support at the time of the injury ~~(however, such a parent is~~  
15 ~~a beneficiary only when if~~ no beneficiary, as defined in  
16 subsections (3)(a) through (3)(d) ~~of this section, exists};~~  
17 and

18 (f) a brother or sister under the age of 18 years if  
19 dependent upon the decedent for support at the time of the  
20 injury ~~(however, such a brother or sister is a beneficiary~~  
21 ~~but~~ only until the age of 18 years and only when no  
22 beneficiary, as defined in subsections (3)(a) through (3)(e)  
23 ~~of this section, exists}.~~

24 (4) "Casual employment" means employment not in the  
25 usual course of trade, business, profession, or occupation

1 of the employer.

2 (5) "Child" includes a posthumous child, a dependent  
3 stepchild, and a child legally adopted prior to the injury.

4 (6) "Construction industry" means ~~any~~ AN activity in  
5 connection with the erection, alteration, repair,  
6 replacement, renovation, installation, or demolition of a  
7 building, highway, bridge, or structure.

8 †6†(7) "Days" means calendar days, unless otherwise  
9 specified.

10 †7†(8) "Department" means the department of labor and  
11 industry.

12 †8†(9) "Fiscal year" means the period of time between  
13 July 1 and the succeeding June 30.

14 †9†(10) "Insurer" means an employer bound by  
15 compensation plan No. 1, an insurance company transacting  
16 business under compensation plan No. 2, the state fund under  
17 compensation plan No. 3, or the uninsured employers' fund  
18 provided for in part 5 of this chapter.

19 †10†(11) "Invalid" means one who is physically or  
20 mentally incapacitated.

21 †11†(12) "Maximum healing" means the status reached when  
22 a worker is as far restored medically as the permanent  
23 character of the work-related injury will permit.

24 †12†(13) "Order" means any decision, rule, direction,  
25 requirement, or standard of the department or any other

1 determination arrived at or decision made by the department.

2 †13†(14) "Payroll", "annual payroll", or "annual payroll  
3 for the preceding year" means the average annual payroll of  
4 the employer for the preceding calendar year or, if the  
5 employer shall not have operated a sufficient or any length  
6 of time during such calendar year, 12 times the average  
7 monthly payroll for the current year. However, an estimate  
8 may be made by the department for any employer starting in  
9 business if no average payrolls are available. This estimate  
10 is to be adjusted by additional payment by the employer or  
11 refund by the department, as the case may actually be, on  
12 December 31 of such current year. An employer's payroll must  
13 be computed by calculating all wages, as defined in  
14 39-71-123, that are paid by an employer.

15 †14†(15) "Permanent partial disability" means a  
16 condition, after a worker has reached maximum healing, in  
17 which a worker:

18 (a) has a medically determined physical restriction as  
19 a result of an injury as defined in 39-71-119; and

20 (b) is able to return to work in the worker's job pool  
21 pursuant to one of the options set forth in 39-71-1012 but  
22 suffers impairment or partial wage loss, or both.

23 †15†(16) "Permanent total disability" means a condition  
24 resulting from injury as defined in this chapter, after a  
25 worker reaches maximum healing, in which a worker is unable

1 to return to work in the worker's job pool after exhausting  
2 all options set forth in 39-71-1012.

3 ~~(16)~~(17) The term "physician" includes "surgeon" and in  
4 either case means one authorized by law to practice his  
5 profession in this state.

6 ~~(17)~~(18) The "plant of the employer" includes the place  
7 of business of a third person while the employer has access  
8 to or control over such place of business for the purpose of  
9 carrying on his usual trade, business, or occupation.

10 ~~(18)~~(19) "Public corporation" means the state or any  
11 county, municipal corporation, school district, city, city  
12 under commission form of government or special charter,  
13 town, or village.

14 ~~(19)~~(20) "Reasonably safe place to work" means that the  
15 place of employment has been made as free from danger to the  
16 life or safety of the employee as the nature of the  
17 employment will reasonably permit.

18 ~~(20)~~(21) "Reasonably safe tools and appliances" are such  
19 tools and appliances as are adapted to and are reasonably  
20 safe for use for the particular purpose for which they are  
21 furnished.

22 ~~(21)~~(22) "Temporary total disability" means a condition  
23 resulting from an injury as defined in this chapter that  
24 results in total loss of wages and exists until the injured  
25 worker reaches maximum healing.

1 ~~(22)~~(23) "Year", unless otherwise specified, means  
2 calendar year."

3 NEW SECTION. Section 3. Premium rates for construction  
4 industry. The premium rates under plan No. 2 AND PLAN NO. 3  
5 to be paid for workers' compensation insurance for the  
6 construction industry must be computed on the number of  
7 hours worked for each occupation classification rather than  
8 on a percentage of payroll.

9 SECTION 4. SECTION 39-71-402, MCA, IS AMENDED TO READ:

10 "39-71-402. Extraterritorial application and  
11 reciprocity -- exception. (1) If a worker employed in this  
12 state who is subject to the provisions of this chapter  
13 temporarily leaves the state incidental to that employment  
14 and receives an injury arising out of and in the course of  
15 such employment, the provisions of this chapter shall apply  
16 to such worker as though he were injured within this state.

17 (2) If a worker from another state and his employer  
18 from another state are temporarily engaged in work within  
19 this state, this chapter shall not apply to them:

20 (a) if the employer and employee are bound by the  
21 provisions of the workers' compensation law or similar law  
22 of such other state which applies to them while they are in  
23 the state of Montana; and

24 (b) if the Workers' Compensation Act of this state is  
25 recognized and given effect as the exclusive remedy for



1 workers employed in this state who are injured while  
2 temporarily employed in such other state.

3 (3) A certificate from an authorized officer of the  
4 workers' compensation department or similar agency of  
5 another state certifying that an employer of such other  
6 state is bound by the Workers' Compensation Act of the state  
7 and that its act will be applied to employees of the  
8 employer while in the state of Montana shall be prima facie  
9 evidence of the application of the workers' compensation law  
10 of the certifying state.

11 (4) The department may, with the approval of the  
12 governor, enter into agreements with workers' compensation  
13 agencies of other states for the purpose of promulgating  
14 regulations not inconsistent with the provisions of this  
15 chapter to carry out the extraterritorial application of the  
16 workers' compensation laws of the agreeing states.

17 (5) The provisions of this section do not apply to the  
18 construction industry as defined in 39-71-116."

19 **SECTION 5. SECTION 39-71-426, MCA, IS AMENDED TO READ:**

20 "39-71-426. Reciprocal agreements with Canadian  
21 provinces -- exception. (1) Subject to the conditions  
22 provided in 39-71-427 and subsection (2) of this section,  
23 the governor may enter into agreements with duly authorized  
24 representatives of any Canadian province, granting  
25 reciprocal application of the workers' compensation laws of

1 this state to Montana employers and workers if they are  
2 temporarily engaged in work in that province.

3 (2) Subsection (1) does not apply to the construction  
4 industry as defined in 39-71-116."

5 **Section 6.** Section 39-71-721, MCA, is amended to read:

6 "39-71-721. Compensation for injury causing death --  
7 limitation. (1) (a) If an injured employee dies and the  
8 injury was the proximate cause of such death, then the  
9 beneficiary of the deceased is entitled to the same  
10 compensation as though the death occurred immediately  
11 following the injury. A beneficiary's eligibility for  
12 benefits commences after the date of death, and the benefit  
13 level is established as set forth in subsection (2).

14 (b) The insurer is entitled to recover any overpayments  
15 or compensation paid in a lump sum to a worker prior to  
16 death but not yet recouped. The insurer shall recover such  
17 payments from the beneficiary's biweekly payments as  
18 provided in 39-71-741(5).

19 (2) To beneficiaries as defined in  
20 39-71-116(2)(a)(3)(a) through (2)(d) (3)(d), weekly  
21 compensation benefits for an injury causing death are  
22 66 2/3% of the decedent's wages. The maximum weekly  
23 compensation benefit may not exceed the state's average  
24 weekly wage at the time of injury. The minimum weekly  
25 compensation benefit is 50% of the state's average weekly

1 wage, but in no event may it exceed the decedent's actual  
2 wages at the time of his death.

3 (3) To beneficiaries as defined in  
4 39-71-116~~(2)(e)~~(3)(e) and ~~(2)(f)~~ (3)(f), weekly benefits  
5 must be paid to the extent of the dependency at the time of  
6 the injury, subject to a maximum of 66 2/3% of the  
7 decedent's wages. The maximum weekly compensation may not  
8 exceed the state's average weekly wage at the time of  
9 injury.

10 (4) If the decedent leaves no beneficiary as defined in  
11 39-71-116~~(2)~~, a lump-sum payment of \$3,000 must be paid to  
12 the decedent's surviving parent or parents.

13 (5) If any beneficiary of a deceased employee dies, the  
14 right of such beneficiary to compensation under this chapter  
15 ceases. Death benefits must be paid to a surviving spouse  
16 for 500 weeks subsequent to the date of the deceased  
17 employee's death or until the spouse's remarriage, whichever  
18 occurs first. After benefit payments cease to a surviving  
19 spouse, death benefits must be paid to beneficiaries, if  
20 any, as defined in 39-71-116~~(2)(b)~~(3)(b) through ~~(2)(d)~~  
21 (3)(d).

22 (6) In all cases, benefits must be paid to  
23 beneficiaries, as defined in 39-71-116~~(2)~~.

24 (7) Benefits paid under this section may not be  
25 adjusted for cost of living as provided in 39-71-702.

1 (8) Notwithstanding subsections (2) and (3), beginning  
2 July 1, 1987, through June 30, 1991, the maximum weekly  
3 compensation benefits for injury causing death may not  
4 exceed the state's average weekly wage of \$299 established  
5 July 1, 1986. Beginning July 1, 1987, through June 30, 1991,  
6 the minimum weekly compensation for injury causing death  
7 shall be \$149.50, which is 50% of the state's average weekly  
8 wage established July 1, 1986, but in no event may it exceed  
9 the decedent's actual wages at the time of death."

10 **Section 7.** Section 39-71-723, MCA, is amended to read:

11 **"39-71-723. How compensation to be divided among**  
12 **beneficiaries.** Compensation due to beneficiaries shall be  
13 paid to the surviving spouse, if any, or if none, then  
14 divided equally among or for the benefit of the children. In  
15 cases where beneficiaries are a surviving spouse and  
16 stepchildren of such spouse, the compensation shall be  
17 divided equally among all beneficiaries. Compensation due to  
18 beneficiaries as defined in subsections ~~(2)(e)~~ (3)(e) and  
19 ~~(2)(f)~~ (3)(f) of 39-71-116, where there is more than one,  
20 shall be divided equitably among them, and the question of  
21 dependency and amount thereof shall be a question of fact  
22 for determination by the department."

23 **Section 8.** Section 39-72-102, MCA, is amended to read:

24 **"39-72-102. Definitions.** As used in this chapter,  
25 unless the context requires otherwise, the following

1 definitions apply:

- 2 (1) "Beneficiary" is as defined in 39-71-116.  
 3 (2) "Child" is as defined in 39-71-116.  
 4 (3) "Department" means the department of labor and  
 5 industry.  
 6 (4) "Disablement" means the event of becoming  
 7 physically incapacitated by reason of an occupational  
 8 disease from performing work in the worker's job pool.  
 9 Silicosis, when complicated by active pulmonary  
 10 tuberculosis, is presumed to be total disablement.  
 11 "Disability", "total disability", and "totally disabled" are  
 12 synonymous with "disablement", but they have no reference to  
 13 "permanent partial disability".  
 14 (5) "Employee" is as defined in 39-71-118.  
 15 (6) "Employer" is as defined in 39-71-117.  
 16 (7) "Independent contractor" is as defined in  
 17 39-71-120.  
 18 (8) "Insurer" is as defined in 39-71-116.  
 19 (9) "Invalid" is as defined in 39-71-116.  
 20 (10) "Occupational disease" means harm, damage, or death  
 21 as set forth in 39-71-119(1) arising out of or contracted in  
 22 the course and scope of employment and caused by events  
 23 occurring on more than a single day or work shift. The term  
 24 does not include a physical or mental condition arising from  
 25 emotional or mental stress or from a nonphysical stimulus or

1 activity.

- 2 (11) "Order" is as defined in 39-71-116.  
 3 (12) "Pneumoconiosis" means a chronic dust disease of  
 4 the lungs arising out of employment in coal mines and  
 5 includes anthracosis, coal workers' pneumoconiosis,  
 6 silicosis, or anthracosilicosis arising out of such  
 7 employment.  
 8 (13) "Silicosis" means a chronic disease of the lungs  
 9 caused by the prolonged inhalation of silicon dioxide (SiO)  
 10 and characterized by small discrete nodules of fibrous  
 11 tissue similarly disseminated throughout both lungs, causing  
 12 the characteristic x-ray pattern, and by other variable  
 13 clinical manifestations.  
 14 (14) "Wages" is as defined in 39-71-123.  
 15 (15) "Year" is as defined in 39-71-116~~(8)~~--and  
 16 39-71-116~~(22)~~."

17 **Section 9.** Section 39-73-108, MCA, is amended to read:  
 18 "39-73-108. Payment of benefits where person entitled  
 19 is in institution. If any person who is entitled to benefits  
 20 under this chapter shall be an inmate in any Montana state  
 21 institution, benefits shall not be paid to him but shall be  
 22 paid his beneficiary, if any, as defined in 39-71-116~~(2)~~."  
 23 NEW SECTION. **Section 10.** Codification instruction.  
 24 [Section 3] is intended to be codified as an integral part  
 25 of Title 39, chapter 71, part 22, and the provisions of

HB 0187/02

- 1 Title 39, chapter 71, part 22, apply to [section 3].
- 2 NEW SECTION. **Section 11.** Effective date. [This act] is
- 3 effective July 1, 1992.

-End-

SENATE STANDING COMMITTEE REPORT

Page 2 of 2  
April 2, 1991

Page 1 of 2  
April 2, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 187 (third reading copy -- blue), respectfully report that House Bill No. 187 be amended and as so amended be concurred in:

1. Title, lines 7 through 10.

Following: "INDUSTRY"; on line 7

Strike: remainder of line 7 through "PAYROLL" on line 10

Insert: "REQUIRING A METHOD OF COMPUTING WORKERS' COMPENSATION PREMIUM RATES FOR THE CONSTRUCTION INDUSTRY THAT DOES NOT IMPOSE A HIGHER PREMIUM SOLELY BECAUSE OF AN EMPLOYER'S HIGHER RATE OF WAGES"

2. Page 5, lines 4 through 7.

Following: "any"

Strike: remainder of line 4 through "structure" on line 7

Insert: "the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salesmen, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site"

3. Page 8, lines 3 through 8.

Strike: section 3 in its entirety

Insert: "NEW SECTION. Section 3. Premium rates for construction industry -- filing required. (1) With respect to each classification of risk in the construction industry under plan No. 2, the rating organization described in 33-16-1005 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at the Montana average weekly wage as reported by the department.

(3) The rating organization shall file a revenue neutral plan for new and renewed policies by July 1, 1992, for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation mutual insurance fund, plan No. 3, shall adopt the plan filed by the rating organization or adopt a credit scale plan that meets the requirements of this section."

4. Page 15, line 2.

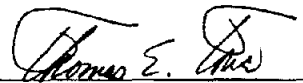
Following: line 1

Insert: "NEW SECTION. Section 11. Coordination instruction.

The definition of "construction industry" in [section 2(6) of this act] is intended to coordinate with the definitions of "construction industry" in House Bills No. 204 and 342."

Re-number: subsequent section

Signed:

  
Thomas E. Towe, Vice-Chairman

LB 4/2/91  
Amd. Coord.  
JB 4/2  
Sec. of Senate

HOUSE BILL NO. 187

INTRODUCED BY DRISCOLL, HARP, WANZENRIED, THAYER, MANNING

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT INVESTMENT INCOME EARNED OR REALIZED BY CERTAIN WORKERS' COMPENSATION INSURERS BE CONSIDERED WHEN DETERMINING PREMIUM RATES; DEFINING "CONSTRUCTION INDUSTRY"; REQUIRING--THAT PREMIUM--RATES--TO-BE-PAID-POR-WORKERS'-COMPENSATION-POR-THE CONSTRUCTION-INDUSTRY-BE-COMPUTED-ON--THE--NUMBER--OF--HOURS WORKED--RATHER--THAN--ON-A-PERCENTAGE-OF-PAYROLL REQUIRING A METHOD OF COMPUTING WORKERS' COMPENSATION PREMIUM RATES FOR THE CONSTRUCTION INDUSTRY THAT DOES NOT IMPOSE A HIGHER PREMIUM SOLELY BECAUSE OF AN EMPLOYER'S HIGHER RATE OF WAGES; AMENDING SECTIONS 33-16-1004, 39-71-116, 39-71-402, 39-71-426, 39-71-721, 39-71-723, 39-72-102, AND 39-73-108, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Section 33-16-1004, MCA, is amended to read:

"33-16-1004. Rates -- considerations -- methods -- standards. All rates shall must be made in accordance with the following provisions:

(1) Due consideration shall must be given to:

(a) past and prospective loss experience within and outside this state; to;

(b) catastrophe hazards, if any; to;

(c) a reasonable margin for underwriting profit and contingencies; to;

(d) dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to;

(e) past and prospective expenses, both countrywide and those specially applicable to this state;

(f) investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this state; and to

(g) all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof of insurance for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates on individual risks in accordance with rating plans which that establish



1 standards for measuring variations in hazards or expense  
 2 provisions, or both. Such The standards may measure any  
 3 difference among risks that can be demonstrated to have a  
 4 probable effect upon losses or expenses.

5 (4) Rates ~~shall~~ may not be excessive, inadequate, or  
 6 unfairly discriminatory.

7 (5) Except to the extent necessary to meet the  
 8 provisions of subsections (1) through (3), uniformity among  
 9 insurers in any matter within the scope of this section is  
 10 neither required nor prohibited."

11 **Section 2.** Section 39-71-116, MCA, is amended to read:

12 **"39-71-116. Definitions.** Unless the context otherwise  
 13 requires, words and phrases employed in this chapter have  
 14 the following meanings:

15 (1) "Administer and pay" includes all actions by the  
 16 state fund under the Workers' Compensation Act and the  
 17 Occupational Disease Act of Montana necessary to:

- 18 (a) the investigation, review, and settlement of
- 19 claims;
- 20 (b) payment of benefits;
- 21 (c) setting of reserves;
- 22 (d) furnishing of services and facilities; and
- 23 (e) utilization of actuarial, audit, accounting,
- 24 vocational rehabilitation, and legal services.

25 (2) "Average weekly wage" means the mean weekly

1 earnings of all employees under covered employment, as  
 2 defined and established annually by the Montana department  
 3 of labor and industry. It is established at the nearest  
 4 whole dollar number and must be adopted by the department  
 5 prior to July 1 of each year.

6 (3) "Beneficiary" means:

7 (a) a surviving spouse living with or legally entitled  
 8 to be supported by the deceased at the time of injury;

9 (b) an unmarried child under the age of 18 years;

10 (c) an unmarried child under the age of 22 years who is  
 11 a full-time student in an accredited school or is enrolled  
 12 in an accredited apprenticeship program;

13 (d) an invalid child over the age of 18 years who is  
 14 dependent upon the decedent for support at the time of  
 15 injury;

16 (e) a parent who is dependent upon the decedent for  
 17 support at the time of the injury ~~(however, such a parent is~~  
 18 ~~a--beneficiary--only--when~~ if no beneficiary, as defined in  
 19 subsections (3)(a) through (3)(d) ~~of this section,~~ exists);  
 20 and

21 (f) a brother or sister under the age of 18 years if  
 22 dependent upon the decedent for support at the time of the  
 23 injury ~~(however, such a brother or sister is a beneficiary~~  
 24 but only until the age of 18 years and only when no  
 25 beneficiary, as defined in subsections (3)(a) through (3)(e)

1 of-this-section, exists).

2 (4) "Casual employment" means employment not in the  
3 usual course of trade, business, profession, or occupation  
4 of the employer.

5 (5) "Child" includes a posthumous child, a dependent  
6 stepchild, and a child legally adopted prior to the injury.

7 (6) "Construction industry" means any AN activity--in  
8 connection---with---the---erection,---alteration,---repair,  
9 replacement,---renovation,---installation,---or---demolition--of--a  
10 building,---highway,---bridge,---or---structure THE MAJOR GROUP OF  
11 GENERAL CONTRACTORS AND OPERATIVE BUILDERS, HEAVY  
12 CONSTRUCTION (OTHER THAN BUILDING CONSTRUCTION) CONTRACTORS,  
13 AND SPECIAL TRADE CONTRACTORS, LISTED IN MAJOR GROUPS 15  
14 THROUGH 17 IN THE 1987 STANDARD INDUSTRIAL CLASSIFICATION  
15 MANUAL. THE TERM DOES NOT INCLUDE OFFICE WORKERS, DESIGN  
16 PROFESSIONALS, SALESMEN, ESTIMATORS, OR ANY OTHER RELATED  
17 EMPLOYMENT THAT IS NOT DIRECTLY INVOLVED ON A REGULAR BASIS  
18 IN THE PROVISION OF PHYSICAL LABOR AT A CONSTRUCTION OR  
19 RENOVATION SITE.

20 (6)(7) "Days" means calendar days, unless otherwise  
21 specified.

22 (7)(8) "Department" means the department of labor and  
23 industry.

24 (8)(9) "Fiscal year" means the period of time between  
25 July 1 and the succeeding June 30.

1 (9)(10) "Insurer" means an employer bound by  
2 compensation plan No. 1, an insurance company transacting  
3 business under compensation plan No. 2, the state fund under  
4 compensation plan No. 3, or the uninsured employers' fund  
5 provided for in part 5 of this chapter.

6 (10)(11) "Invalid" means one who is physically or  
7 mentally incapacitated.

8 (11)(12) "Maximum healing" means the status reached when  
9 a worker is as far restored medically as the permanent  
10 character of the work-related injury will permit.

11 (12)(13) "Order" means any decision, rule, direction,  
12 requirement, or standard of the department or any other  
13 determination arrived at or decision made by the department.

14 (13)(14) "Payroll", "annual payroll", or "annual payroll  
15 for the preceding year" means the average annual payroll of  
16 the employer for the preceding calendar year or, if the  
17 employer shall not have operated a sufficient or any length  
18 of time during such calendar year, 12 times the average  
19 monthly payroll for the current year. However, an estimate  
20 may be made by the department for any employer starting in  
21 business if no average payrolls are available. This estimate  
22 is to be adjusted by additional payment by the employer or  
23 refund by the department, as the case may actually be, on  
24 December 31 of such current year. An employer's payroll must  
25 be computed by calculating all wages, as defined in



1 39-71-123, that are paid by an employer.

2 †14†(15) "Permanent partial disability" means a  
3 condition, after a worker has reached maximum healing, in  
4 which a worker:

5 (a) has a medically determined physical restriction as  
6 a result of an injury as defined in 39-71-119; and

7 (b) is able to return to work in the worker's job pool  
8 pursuant to one of the options set forth in 39-71-1012 but  
9 suffers impairment or partial wage loss, or both.

10 †15†(16) "Permanent total disability" means a condition  
11 resulting from injury as defined in this chapter, after a  
12 worker reaches maximum healing, in which a worker is unable  
13 to return to work in the worker's job pool after exhausting  
14 all options set forth in 39-71-1012.

15 †16†(17) The term "physician" includes "surgeon" and in  
16 either case means one authorized by law to practice his  
17 profession in this state.

18 †17†(18) The "plant of the employer" includes the place  
19 of business of a third person while the employer has access  
20 to or control over such place of business for the purpose of  
21 carrying on his usual trade, business, or occupation.

22 †18†(19) "Public corporation" means the state or any  
23 county, municipal corporation, school district, city, city  
24 under commission form of government or special charter,  
25 town, or village.

1 †19†(20) "Reasonably safe place to work" means that the  
2 place of employment has been made as free from danger to the  
3 life or safety of the employee as the nature of the  
4 employment will reasonably permit.

5 †20†(21) "Reasonably safe tools and appliances" are such  
6 tools and appliances as are adapted to and are reasonably  
7 safe for use for the particular purpose for which they are  
8 furnished.

9 †21†(22) "Temporary total disability" means a condition  
10 resulting from an injury as defined in this chapter that  
11 results in total loss of wages and exists until the injured  
12 worker reaches maximum healing.

13 †22†(23) "Year", unless otherwise specified, means  
14 calendar year."

15 ~~NEW SECTION. Section 3. Premium rates for construction~~  
16 ~~industry. The premium rates under plan No. 2 AND PLAN NO. 3~~  
17 ~~to be paid for workers' compensation insurance for the~~  
18 ~~construction industry must be computed on the number of~~  
19 ~~hours worked for each occupation classification rather than~~  
20 ~~on a percentage of payroll.~~

21 NEW SECTION. SECTION 3. PREMIUM RATES FOR CONSTRUCTION  
22 INDUSTRY -- FILING REQUIRED. (1) WITH RESPECT TO EACH  
23 CLASSIFICATION OF RISK IN THE CONSTRUCTION INDUSTRY UNDER  
24 PLAN NO. 2, THE RATING ORGANIZATION DESCRIBED IN 33-16-1005  
25 SHALL FILE WITH THE COMMISSIONER OF INSURANCE A METHOD OF

1 COMPUTING PREMIUMS THAT DOES NOT IMPOSE A HIGHER INSURANCE  
2 PREMIUM SOLELY BECAUSE OF AN EMPLOYER'S HIGHER RATE OF WAGES  
3 PAID.

4 (2) THE COMMISSIONER SHALL ACCEPT A FILING UNDER  
5 SUBSECTION (1) THAT INCLUDES A REASONABLE METHOD OF  
6 RECOGNIZING DIFFERENCES IN RATES OF PAY. THIS METHOD MUST  
7 USE A CREDIT SCALE WITH THE STARTING POINT SET AT THE  
8 MONTANA AVERAGE WEEKLY WAGE AS REPORTED BY THE DEPARTMENT.

9 (3) THE RATING ORGANIZATION SHALL FILE A REVENUE  
10 NEUTRAL PLAN FOR NEW AND RENEWED POLICIES BY JULY 1, 1992,  
11 FOR PROMPT AND ORDERLY TRANSITION TO A METHOD OF COMPUTING  
12 PREMIUMS THAT IS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS  
13 SECTION.

14 (4) THE STATE COMPENSATION MUTUAL INSURANCE FUND, PLAN  
15 NO. 3, SHALL ADOPT THE PLAN FILED BY THE RATING ORGANIZATION  
16 OR ADOPT A CREDIT SCALE PLAN THAT MEETS THE REQUIREMENTS OF  
17 THIS SECTION.

18 **SECTION 4.** SECTION 39-71-402, MCA, IS AMENDED TO READ:

19 "39-71-402. Extraterritorial application and  
20 reciprocity -- exception. (1) If a worker employed in this  
21 state who is subject to the provisions of this chapter  
22 temporarily leaves the state incidental to that employment  
23 and receives an injury arising out of and in the course of  
24 such employment, the provisions of this chapter shall apply  
25 to such worker as though he were injured within this state.

1 (2) If a worker from another state and his employer  
2 from another state are temporarily engaged in work within  
3 this state, this chapter shall not apply to them:

4 (a) if the employer and employee are bound by the  
5 provisions of the workers' compensation law or similar law  
6 of such other state which applies to them while they are in  
7 the state of Montana; and

8 (b) if the Workers' Compensation Act of this state is  
9 recognized and given effect as the exclusive remedy for  
10 workers employed in this state who are injured while  
11 temporarily employed in such other state.

12 (3) A certificate from an authorized officer of the  
13 workers' compensation department or similar agency of  
14 another state certifying that an employer of such other  
15 state is bound by the Workers' Compensation Act of the state  
16 and that its act will be applied to employees of the  
17 employer while in the state of Montana shall be prima facie  
18 evidence of the application of the workers' compensation law  
19 of the certifying state.

20 (4) The department may, with the approval of the  
21 governor, enter into agreements with workers' compensation  
22 agencies of other states for the purpose of promulgating  
23 regulations not inconsistent with the provisions of this  
24 chapter to carry out the extraterritorial application of the  
25 workers' compensation laws of the agreeing states.

1 (5) The provisions of this section do not apply to the  
 2 construction industry as defined in 39-71-116."

3 **SECTION 5. SECTION 39-71-426, MCA, IS AMENDED TO READ:**

4 "39-71-426. Reciprocal agreements with Canadian  
 5 provinces -- exception. (1) Subject to the conditions  
 6 provided in 39-71-427 and subsection (2) of this section,  
 7 the governor may enter into agreements with duly authorized  
 8 representatives of any Canadian province, granting  
 9 reciprocal application of the workers' compensation laws of  
 10 this state to Montana employers and workers if they are  
 11 temporarily engaged in work in that province.

12 (2) Subsection (1) does not apply to the construction  
 13 industry as defined in 39-71-116."

14 **Section 6. Section 39-71-721, MCA, is amended to read:**

15 "39-71-721. Compensation for injury causing death --  
 16 limitation. (1) (a) If an injured employee dies and the  
 17 injury was the proximate cause of such death, then the  
 18 beneficiary of the deceased is entitled to the same  
 19 compensation as though the death occurred immediately  
 20 following the injury. A beneficiary's eligibility for  
 21 benefits commences after the date of death, and the benefit  
 22 level is established as set forth in subsection (2).

23 (b) The insurer is entitled to recover any overpayments  
 24 or compensation paid in a lump sum to a worker prior to  
 25 death but not yet recouped. The insurer shall recover such

1 payments from the beneficiary's biweekly payments as  
 2 provided in 39-71-741(5).

3 (2) To beneficiaries as defined in  
 4 39-71-116~~(2)(a)~~(3)(a) through ~~(2)(d)~~ (3)(d), weekly  
 5 compensation benefits for an injury causing death are  
 6 66 2/3% of the decedent's wages. The maximum weekly  
 7 compensation benefit may not exceed the state's average  
 8 weekly wage at the time of injury. The minimum weekly  
 9 compensation benefit is 50% of the state's average weekly  
 10 wage, but in no event may it exceed the decedent's actual  
 11 wages at the time of his death.

12 (3) To beneficiaries as defined in  
 13 39-71-116~~(2)(e)~~(3)(e) and ~~(2)(f)~~ (3)(f), weekly benefits  
 14 must be paid to the extent of the dependency at the time of  
 15 the injury, subject to a maximum of 66 2/3% of the  
 16 decedent's wages. The maximum weekly compensation may not  
 17 exceed the state's average weekly wage at the time of  
 18 injury.

19 (4) If the decedent leaves no beneficiary as defined in  
 20 39-71-116~~(2)~~, a lump-sum payment of \$3,000 must be paid to  
 21 the decedent's surviving parent or parents.

22 (5) If any beneficiary of a deceased employee dies, the  
 23 right of such beneficiary to compensation under this chapter  
 24 ceases. Death benefits must be paid to a surviving spouse  
 25 for 500 weeks subsequent to the date of the deceased

1 employee's death or until the spouse's remarriage, whichever  
 2 occurs first. After benefit payments cease to a surviving  
 3 spouse, death benefits must be paid to beneficiaries, if  
 4 any, as defined in 39-71-116~~(2)(b)~~(3)(b) through ~~(2)(d)~~  
 5 (3)(d).

6 (6) In all cases, benefits must be paid to  
 7 beneficiaries, as defined in 39-71-116~~(2)~~.

8 (7) Benefits paid under this section may not be  
 9 adjusted for cost of living as provided in 39-71-702.

10 (8) Notwithstanding subsections (2) and (3), beginning  
 11 July 1, 1987, through June 30, 1991, the maximum weekly  
 12 compensation benefits for injury causing death may not  
 13 exceed the state's average weekly wage of \$299 established  
 14 July 1, 1986. Beginning July 1, 1987, through June 30, 1991,  
 15 the minimum weekly compensation for injury causing death  
 16 shall be \$149.50, which is 50% of the state's average weekly  
 17 wage established July 1, 1986, but in no event may it exceed  
 18 the decedent's actual wages at the time of death."

19 **Section 7.** Section 39-71-723, MCA, is amended to read:

20 **"39-71-723. How compensation to be divided among**  
 21 **beneficiaries.** Compensation due to beneficiaries shall be  
 22 paid to the surviving spouse, if any, or if none, then  
 23 divided equally among or for the benefit of the children. In  
 24 cases where beneficiaries are a surviving spouse and  
 25 stepchildren of such spouse, the compensation shall be

1 divided equally among all beneficiaries. Compensation due to  
 2 beneficiaries as defined in subsections ~~(2)(e)~~ (3)(e) and  
 3 ~~(2)(f)~~ (3)(f) of 39-71-116, where there is more than one,  
 4 shall be divided equitably among them, and the question of  
 5 dependency and amount thereof shall be a question of fact  
 6 for determination by the department."

7 **Section 8.** Section 39-72-102, MCA, is amended to read:

8 **"39-72-102. Definitions.** As used in this chapter,  
 9 unless the context requires otherwise, the following  
 10 definitions apply:

- 11 (1) "Beneficiary" is as defined in 39-71-116.  
 12 (2) "Child" is as defined in 39-71-116.  
 13 (3) "Department" means the department of labor and  
 14 industry.  
 15 (4) "Disablement" means the event of becoming  
 16 physically incapacitated by reason of an occupational  
 17 disease from performing work in the worker's job pool.  
 18 Silicosis, when complicated by active pulmonary  
 19 tuberculosis, is presumed to be total disablement.  
 20 "Disability", "total disability", and "totally disabled" are  
 21 synonymous with "disablement", but they have no reference to  
 22 "permanent partial disability".  
 23 (5) "Employee" is as defined in 39-71-118.  
 24 (6) "Employer" is as defined in 39-71-117.  
 25 (7) "Independent contractor" is as defined in

1 39-71-120.

2 (8) "Insurer" is as defined in 39-71-116.

3 (9) "Invalid" is as defined in 39-71-116.

4 (10) "Occupational disease" means harm, damage, or death  
 5 as set forth in 39-71-119(1) arising out of or contracted in  
 6 the course and scope of employment and caused by events  
 7 occurring on more than a single day or work shift. The term  
 8 does not include a physical or mental condition arising from  
 9 emotional or mental stress or from a nonphysical stimulus or  
 10 activity.

11 (11) "Order" is as defined in 39-71-116.

12 (12) "Pneumoconiosis" means a chronic dust disease of  
 13 the lungs arising out of employment in coal mines and  
 14 includes anthracosis, coal workers' pneumoconiosis,  
 15 silicosis, or anthracosilicosis arising out of such  
 16 employment.

17 (13) "Silicosis" means a chronic disease of the lungs  
 18 caused by the prolonged inhalation of silicon dioxide (SiO)  
 19 and characterized by small discrete nodules of fibrous  
 20 tissue similarly disseminated throughout both lungs, causing  
 21 the characteristic x-ray pattern, and by other variable  
 22 clinical manifestations.

23 (14) "Wages" is as defined in 39-71-123.

24 (15) "Year" is as defined in 39-71-116(8)---and  
 25 39-71-116(22)."

1 **Section 9.** Section 39-73-108, MCA, is amended to read:

2 **"39-73-108. Payment of benefits where person entitled**  
 3 **is in institution.** If any person who is entitled to benefits  
 4 under this chapter shall be an inmate in any Montana state  
 5 institution, benefits shall not be paid to him but shall be  
 6 paid his beneficiary, if any, as defined in 39-71-116(2)."

7 NEW SECTION. Section 10. Codification instruction.  
 8 [Section 3] is intended to be codified as an integral part  
 9 of Title 39, chapter 71, part 22, and the provisions of  
 10 Title 39, chapter 71, part 22, apply to [section 3].

11 NEW SECTION. SECTION 11. COORDINATION INSTRUCTION. THE  
 12 DEFINITION OF "CONSTRUCTION INDUSTRY" IN [SECTION 2(6) OF  
 13 THIS ACT] IS INTENDED TO COORDINATE WITH THE DEFINITIONS OF  
 14 "CONSTRUCTION INDUSTRY" IN HOUSE BILLS NO. 204 AND 342.

15 NEW SECTION. Section 12. Effective date. [This act] is  
 16 effective July 1, 1992.

-End-