

HOUSE BILL NO. 465

INTRODUCED BY THOMAS, R. JOHNSON, WILLIAMS, BLAYLOCK,
DRISCOLL, SQUIRES, WANZENRIED, LYNCH, THAYER,
BENEDICT, NATHE
BY REQUEST OF THE DEPARTMENT OF LABOR

IN THE HOUSE

JANUARY 30, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON LABOR & EMPLOYMENT RELATIONS.

 FIRST READING.

FEBRUARY 18, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 19, 1991 PRINTING REPORT.

FEBRUARY 21, 1991 POSTED ON ALTERNATIVE CONSENT CALENDAR.

FEBRUARY 23, 1991 THIRD READING, PASSED.
 AYES, 98; NOES, 0.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 25, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON LABOR & EMPLOYMENT RELATIONS.

 FIRST READING.

MARCH 20, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

MARCH 22, 1991 SECOND READING, CONCURRED IN.

MARCH 23, 1991 THIRD READING, CONCURRED IN.
 AYES, 47; NOES, 0.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1991 RECEIVED FROM SENATE.

 ON MOTION, CONSIDERATION PASSED.

APRIL 9, 1991 SECOND READING, AMENDMENTS

APRIL 10, 1991

CONCURRED IN.

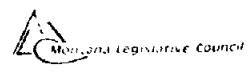
THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 ~~HOUSE~~ BILL NO. 465
 2 INTRODUCED BY Thomas Owen Williams Blaylock
 3 BY REQUEST OF THE DEPARTMENT OF LABOR
 4 NATN Spencer Wanzon Spencer Spencer
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT
 6 STATUTORY AND COMMON-LAW RULES OF EVIDENCE DO NOT APPLY TO
 7 DEPARTMENT OF LABOR AND INDUSTRY WORKERS' COMPENSATION
 8 HEARINGS; TO CHANGE THE REQUIREMENTS FOR FILING AND
 9 DISTRIBUTING CERTAIN DOCUMENTS; TO CHANGE THE IMPAIRMENT
 10 EVALUATION PROCEDURE; TO CHANGE PROVISIONS RELATING TO THE
 11 YEARLY MEDICAL SERVICES FEE SCHEDULES; TO CHANGE APPLICATION
 12 REQUIREMENTS FOR VOCATIONALLY HANDICAPPED BENEFITS; TO
 13 CLARIFY THAT WORKERS' COMPENSATION STATUTES RELATING TO THE
 14 VOCATIONALLY HANDICAPPED ALSO APPLY TO OCCUPATIONAL
 15 DISEASES; GRANTING THE DEPARTMENT DISCRETION AS TO THE SIZE
 16 OF THE SECURITY DEPOSITED BY AN EMPLOYER THAT SELF-INSURES;
 17 AMENDING SECTIONS 39-71-201, 39-71-306, 39-71-601,
 18 39-71-604, 39-71-605, 39-71-704, 39-71-711, 39-71-905,
 19 39-71-2106, 39-71-2401, 39-71-2410, 39-72-402, AND
 20 39-72-403, MCA; REPEALING SECTION 39-72-304, MCA; AND
 21 PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."
 22
 23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 24 NEW SECTION. Section 1. Hearings -- rules of evidence.
 25 The statutory and common law rules of evidence do not apply

1 to a hearing before the department under this chapter.
 2 **Section 2.** Section 39-71-201, MCA, is amended to read:
 3 "39-71-201. Administration fund. (1) A workers'
 4 compensation administration fund is established out of which
 5 all costs of administering the Workers' Compensation and
 6 Occupational Disease Acts and the various occupational
 7 safety acts the department must administer are to be paid
 8 upon lawful appropriation. The following money collected by
 9 the department must be deposited in the state treasury to
 10 the credit of the workers' compensation administrative fund
 11 and must be used for the administrative expenses of the
 12 department:
 13 (a) all fees and penalties provided in 39-71-205 and
 14 39-71-304;
 15 (b) all fees paid for inspection of boilers and
 16 issuance of licenses to operating engineers as required by
 17 law;
 18 (c) all fees paid from an assessment on each plan No. 1
 19 employer, plan No. 2 insurer, and plan No. 3, the state
 20 fund. The assessments must be levied against the preceding
 21 calendar year's gross annual payroll of the plan No. 1
 22 employers and the gross annual direct premiums collected in
 23 Montana on the policies of the plan No. 2 insurers, insuring
 24 employers covered under the chapter, during the preceding
 25 calendar year. However, no assessment of the plan No. 1



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1 employer or plan No. 2 insurer may be less than \$200. The
 2 assessments must be sufficient to fund the direct costs
 3 identified to the three plans and an equitable portion of
 4 the indirect costs based on the ratio of the preceding
 5 fiscal year's indirect costs distributed to the plans, using
 6 proper accounting and cost allocation procedures. Plan No. 3
 7 must be assessed an amount sufficient to fund its the direct
 8 costs and an equitable portion of the indirect costs as
 9 referred-to-above of regulating Plan No. 3. Other sources of
 10 revenue, including unexpended funds from the preceding
 11 fiscal year, must be used to reduce the costs before levying
 12 the assessments.

13 (2) The administration fund must be debited with
 14 expenses incurred by the department in the general
 15 administration of the provisions of this chapter, including
 16 the salaries of its members, officers, and employees and the
 17 travel expenses of the members, officers, and employees, as
 18 provided for in 2-18-501 through 2-18-503, as amended,
 19 incurred while on the business of the department either
 20 within or without the state.

21 (3) Disbursements from the administration money must be
 22 made after being approved by the department upon claim
 23 therefor."

24 **Section 3.** Section 39-71-306, MCA, is amended to read:

25 "39-71-306. Insurers to file summary reports of

1 benefits paid for injuries and statements of medical
 2 expenditures. Every insurer shall, on or before the 15th day
 3 of after each ~~and--every--month~~ state government fiscal
 4 quarter, file with the department:

- 5 (1) summary reports of benefits for all compensation
 6 payments made during the previous month state fiscal quarter
 7 to injured workers or their beneficiaries or dependents; and
 8 (2) statements showing the amounts expended during the
 9 previous month state fiscal quarter for all medical,
 10 ~~surgical,--and-hospital~~ services for injured workers ~~and--for~~
 11 ~~the-burial-of-deceased-workers."~~

12 **Section 4.** Section 39-71-601, MCA, is amended to read:

13 "39-71-601. Statute of limitation on presentment of
 14 claim -- waiver. (1) In case of personal injury or death,
 15 all claims must be forever barred unless presented in
 16 writing to the employer, or the insurer, ~~or-the--department,~~
 17 as the case may be, within 12 months from the date of the
 18 happening of the accident, either by the claimant or someone
 19 legally authorized to act for him in his behalf.

20 (2) The department may waive the time requirement up to
 21 an additional 24 months upon a reasonable showing by the
 22 claimant of:

- 23 (a) lack of knowledge of disability;
 24 (b) latent injury; or
 25 (c) equitable estoppel."

1 **Section 5.** Section 39-71-604, MCA, is amended to read:

2 "39-71-604. Application for compensation. (1) If a
3 worker is entitled to benefits under this chapter, the
4 worker shall file with the insurer ~~or--the--department~~ all
5 reasonable information needed by the insurer to determine
6 compensability. It is the duty of the worker's attending
7 physician to lend all necessary assistance in making
8 application for compensation and such proof of other matters
9 as may be required by the rules of the department without
10 charge to the worker. The filing of forms or other
11 documentation by the attending physician does not constitute
12 a claim for compensation.

13 (2) If death results from an injury, the parties
14 entitled to compensation or someone in their behalf shall
15 file a claim with the insurer ~~or--the--department~~. The claim
16 must be accompanied with proof of death and proof of
17 relationship, showing the parties entitled to compensation,
18 certificate of the attending physician, if any, and such
19 other proof as may be required by the department."

20 **Section 6.** Section 39-71-605, MCA, is amended to read:

21 "39-71-605. Examination of employee by physician --
22 effect of refusal to submit to examination -- report and
23 testimony of physician -- cost. (1) (a) Whenever in case of
24 injury the right to compensation under this chapter would
25 exist in favor of any employee, he shall, upon the written

1 request of the insurer, submit from time to time to
2 examination by a physician or panel of physicians, who shall
3 be provided and paid for by such insurer, and shall likewise
4 submit to examination from time to time by any physician or
5 panel of physicians selected by the department.

6 (b) The request or order for such examination shall fix
7 a time and place therefor, due regard being had to the
8 convenience of the employee and his physical condition and
9 ability to attend at the time and place fixed. The employee
10 shall be entitled to have a physician present at any such
11 examination. So long as the employee, after such written
12 request, shall fail or refuse to submit to such examination
13 or shall in any way obstruct the same, his right to
14 compensation shall be suspended. Any physician or panel of
15 physicians employed by the insurer or the department who
16 shall make or be present at any such examination may be
17 required to testify as to the results thereof.

18 (2) In the event of a dispute concerning the physical
19 condition of a claimant or the cause or causes of the injury
20 or disability, if any, the department, at the request of the
21 claimant or insurer, as the case may be, shall require the
22 claimant to submit to such examination as it may deem
23 desirable by a physician or panel of physicians within the
24 state or elsewhere who have had adequate and substantial
25 experience in the particular field of medicine concerned

1 with the matters presented by the dispute. The physician or
 2 panel of physicians making the examination shall file a
 3 written report of findings with the department claimant and
 4 insurer for its their use in the determination of the
 5 controversy involved. The department requesting party shall
 6 pay the physician or panel of physicians for the examination
 7 ~~and shall be reimbursed by the party who requested it.~~

8 (3) This section does not apply to impairment
 9 evaluations provided for in 39-71-711."

10 **Section 7.** Section 39-71-704, MCA, is amended to read:

11 ***39-71-704.** Payment of medical, hospital, and related
 12 services -- fee schedules and hospital rates. (1) In
 13 addition to the compensation provided by this chapter and as
 14 an additional benefit separate and apart from compensation,
 15 the following must be furnished:

16 (a) After the happening of the injury, the insurer
 17 shall furnish, without limitation as to length of time or
 18 dollar amount, reasonable services by a physician or
 19 surgeon, reasonable hospital services and medicines when
 20 needed, and such other treatment as may be approved by the
 21 department for the injuries sustained.

22 (b) The insurer shall replace or repair prescription
 23 eyeglasses, prescription contact lenses, prescription
 24 hearing aids, and dentures that are damaged or lost as a
 25 result of an injury, as defined in 39-71-119, arising out of

1 and in the course of employment.

2 (c) The insurer shall reimburse a worker for reasonable
 3 travel expenses incurred in travel to a medical provider for
 4 treatment of an injury pursuant to rules adopted by the
 5 department. Reimbursement must be at the rates allowed for
 6 reimbursement of travel by state employees.

7 (2) ~~A relative value fee schedule for medical,~~
 8 ~~chiropractic, and paramedical services provided for in this~~
 9 ~~chapter, excluding hospital services, must be established~~
 10 ~~annually by the department and become effective in January~~
 11 ~~of each year. The maximum fee schedule must be adopted as a~~
 12 ~~relative value fee schedule of medical, chiropractic, and~~
 13 ~~paramedical services, with unit values to indicate the~~
 14 ~~relative relationship within each grouping of specialties.~~
 15 ~~Medical fees must be based on the median fees as billed to~~
 16 ~~the state fund during the year preceding the adoption of the~~
 17 ~~schedule. The state fund shall report fees billed in the~~
 18 ~~form and at the times required by the department. The~~
 19 ~~department shall adopt rules establishing relative unit~~
 20 ~~values, groups of specialties, the procedures insurers must~~
 21 ~~use to pay for services under the schedule, and the method~~
 22 ~~of determining the median of billed medical fees. These~~
 23 ~~rules must be modeled on the 1974 revision of the 1969~~
 24 ~~California Relative Value Studies. The department shall~~
 25 annually establish a schedule of fees for medical

1 nonhospital services necessary for the treatment of injured
 2 workers. The department may require insurers to submit
 3 information to be used in establishing the schedule.

4 (3) Beginning January 1, 1988, the department shall
 5 establish rates for hospital services necessary for the
 6 treatment of injured workers. Approved rates must be in
 7 effect for a period of 12 months from the date of approval.
 8 The department may coordinate this ratesetting function with
 9 other public agencies that have similar responsibilities.

10 (4) Notwithstanding subsection (2), beginning January
 11 1, 1988, through December 31, 1991, the maximum fees payable
 12 by insurers must be limited to the ~~relative--value~~ fee
 13 schedule established in January 1987. Notwithstanding
 14 subsection (3), beginning January 1, 1988, through December
 15 31, 1991, the hospital rates payable by insurers must be
 16 limited to those set in January 1988."

17 **Section 8.** Section 39-71-711, MCA, is amended to read:

18 "39-71-711. Impairment evaluation -- ratings. (1) An
 19 impairment rating:

20 (a) is a purely medical determination and must be
 21 determined by an impairment evaluator after a claimant has
 22 reached maximum healing;

23 (b) must be based on the current edition of the Guides
 24 to Evaluation of Permanent Impairment published by the
 25 American medical association; and

1 (c) must be expressed as a percentage of the whole
 2 person.

3 (2) A claimant or insurer, or both, may obtain an
 4 impairment rating from an evaluator who is a medical doctor
 5 or from an evaluator who is a chiropractor if the claimant's
 6 treating physician is a chiropractor. If the claimant and
 7 insurer cannot agree upon the rating, the mediation
 8 procedure in subsection-(3) part 24 of this chapter must be
 9 followed.

10 ~~{3}--(a) Upon request of the claimant or insurer, the~~
 11 ~~department shall direct the claimant to an evaluator for a~~
 12 ~~rating. The evaluator shall:~~

13 ~~{i} evaluate the claimant to determine the degree of~~
 14 ~~impairment, if any, that exists due to the injury; and~~

15 ~~{ii} submit a report to the department, the claimant,~~
 16 ~~and the insurer;~~

17 ~~{b} Unless the following procedure is followed, the~~
 18 ~~insurer shall begin paying the impairment award, if any,~~
 19 ~~within 30 days of the evaluator's mailing of the report;~~

20 ~~{i} Either the claimant or the insurer, within 15 days~~
 21 ~~after the date of mailing of the report by the first~~
 22 ~~evaluator, may request that the claimant be evaluated by a~~
 23 ~~second evaluator; if a second evaluation is requested, the~~
 24 ~~department shall direct the claimant to a second evaluator,~~
 25 ~~who shall determine the degree of impairment, if any, that~~

1 exists due to the injury;

2 (ii) The reports of both examinations must be submitted
3 to a third evaluator, who may also examine the claimant or
4 seek other consultation. The three evaluators shall consult
5 with one another, and then the third evaluator shall submit
6 a final report to the department, the claimant, and the
7 insurer. The final report must state the degree of
8 impairment, if any, that exists due to the injury;

9 (iii) Unless either party disputes the rating in the
10 final report as provided in subsection (6), the insurer
11 shall begin paying the impairment award, if any, within 45
12 days of the date of mailing of the report by the third
13 evaluator;

14 (4)(3) The department shall appoint impairment
15 evaluators to render ratings under subsection (1). The
16 department shall adopt rules that set forth the
17 qualifications of evaluators and the locations of
18 examinations. An evaluator must be a physician licensed
19 under Title 37, chapter 3, except if the claimant's treating
20 physician is a chiropractor, the evaluator may be a
21 chiropractor who is certified as an evaluator under chapter
22 12. The department may seek nominations from the board of
23 medical examiners for evaluators licensed under Title 37,
24 chapter 3, and from the board of chiropractors for
25 evaluators licensed under Title 37, chapter 12.

1 (5) The cost of impairment evaluations is assessed to
2 the insurer, except that the cost of an evaluation under
3 subsection (3)(b)(i) or (3)(b)(ii) is assessed to the
4 requesting party;

5 (6)(4) A party may dispute a final impairment rating
6 rendered under subsection (3)(b)(ii) by filing a petition
7 with the workers' compensation court within 15 days of the
8 evaluator's mailing of the report. Disputes over impairment
9 ratings are not subject to 39-71-605 or to mandatory
10 mediation.

11 (7) An impairment rating rendered under subsection (3)
12 is presumed correct. This presumption is rebuttable."

13 **Section 9.** Section 39-71-905, MCA, is amended to read:

14 "39-71-905. Certification as vocationally handicapped.
15 A person who wishes to be certified as vocationally
16 handicapped for purposes of this part shall apply to the
17 department on forms furnished by the department. The
18 department shall conduct an investigation and shall issue a
19 certificate to a person who, in the department's discretion,
20 meets the requirements for vocationally handicapped
21 certification. An employee who is requesting reemployment
22 may be certified as vocationally handicapped. An employee
23 who is not employed at the time of application for
24 certification must be certified as vocationally handicapped
25 before entering new employment in order for the new employer

1 ~~to receive the~~ A person shall apply for certification before
 2 employment or within 60 days after he becomes employed or
 3 reemployed and before an injury occurs that is covered by
 4 this part. The certification is effective on the date of
 5 employment or reemployment. Failure to apply before
 6 employment or within 60 days after employment or
 7 reemployment precludes the employer from the protection and
 8 benefits of this part."

9 **Section 10.** Section 39-71-2106, MCA, is amended to
 10 read:

11 ***39-71-2106. Requiring security of employer. (1) (a)**
 12 The department may require any employer who elects to be
 13 bound by compensation plan No. 1 to provide a security
 14 deposit. Such Except as provided in subsection (1)(b), the
 15 security deposit may be a surety bond, government bond, or
 16 letter of credit approved by the department and must be the
 17 greater of:

18 **(a)(i)** \$250,000; or

19 **(b)(ii)** an average of the workers' compensation
 20 liabilities incurred by the employer in Montana for the past
 21 3 calendar years.

22 **(b)** The department may require a larger deposit as
 23 additional evidence of solvency and financial ability to pay
 24 the liabilities provided by this chapter.

25 **(2)** If the department finds that an employer has lost

1 his solvency or financial ability to pay the compensation
 2 herein provided to be paid which might reasonably be
 3 expected to be chargeable to the employer during the fiscal
 4 year to be covered by the permission or that the employer is
 5 an association, corporation, or organization of individual
 6 employers seeking permission to operate under compensation
 7 plan No. 1, the department must require the employer, before
 8 granting to him permission or before continuing or engaging
 9 in such employment subject to the provisions of compensation
 10 plan No. 1, to give security in addition to the security
 11 described in subsection (1) for the payment of compensation,
 12 which security must be in such an amount as the department
 13 finds is reasonable and necessary to meet all liabilities of
 14 the employer which may reasonably and ordinarily be expected
 15 to accrue during the fiscal year.

16 **(3)** The security provided for in subsection (2) must be
 17 deposited with the department and may be a certain estimated
 18 percent of the employer's last preceding annual payroll or a
 19 certain percent of the established amount of his annual
 20 payroll for the fiscal year; or the security may be in the
 21 form of a bond or undertaking executed to the department in
 22 the amount to be fixed by it with two or more sufficient
 23 sureties, which undertaking must be conditioned that the
 24 employer will well and truly pay or cause to be paid all
 25 sums and amounts for which the employer shall become liable

1 under the terms of this chapter to his employees during the
 2 fiscal year; or such security may consist of any state,
 3 county, municipal, or school district bonds or the bonds or
 4 evidence of indebtedness of any individuals or corporations
 5 which the department deems solvent; and every such deposit
 6 and the character and amount of such securities shall at all
 7 times be subject to approval, revision, or change by the
 8 department as in its judgment may be required, and upon
 9 proof of the final payment of the liability for which such
 10 securities are given, such securities or any remaining part
 11 thereof shall be returned to the depositor.

12 (4) The department is liable for the value and
 13 safekeeping of all such deposits or securities and shall, at
 14 any time, upon demand of a bondsman or the depositor,
 15 account for the same and the earnings thereof."

16 **Section 11.** Section 39-71-2401, MCA, is amended to
 17 read:

18 "39-71-2401. Disputes -- jurisdiction -- evidence----
 19 settlement requirements -- mediation. (1) A dispute
 20 concerning benefits arising under this chapter or chapter
 21 72, other than the disputes described in subsection (2),
 22 must be brought before a department mediator as provided in
 23 this part. If a dispute still exists after the parties
 24 satisfy the mediation requirements in this part, either
 25 party may petition the workers' compensation court for a

1 resolution.

2 (2) A dispute arising under this chapter that does not
 3 concern benefits or a dispute for which a specific provision
 4 of this chapter gives the department jurisdiction must be
 5 brought before the department.

6 (3) An appeal from a department order may be made to
 7 the workers' compensation court.

8 ~~(4) The common law and statutory rules of evidence do~~
 9 ~~not apply in a case brought to hearing before the~~
 10 ~~department.~~

11 ~~(5)~~(4) Except as otherwise provided in this chapter,
 12 before a party may bring a dispute concerning benefits
 13 before a mediator, the parties shall attempt to settle as
 14 follows:

15 (a) The party making a demand shall present the other
 16 party with a specific written demand that contains
 17 sufficient explanation and documentary evidence to enable
 18 the other party to thoroughly evaluate the demand.

19 (b) The party receiving the demand shall respond in
 20 writing within 15 working days of receipt. If the demand is
 21 denied in whole or in part, the response shall state the
 22 basis of the denial.

23 (c) Upon motion of a party or upon the mediator's own
 24 motion, the mediator has the authority to dismiss a petition
 25 if he finds that either party did not comply with this

1 subsection. A decision dismissing a petition under this
 2 subsection must be in writing and must state in detail the
 3 grounds for dismissal. The mediator's decision may be
 4 reviewed by the workers' compensation court upon motion of a
 5 party.

6 (d) Nothing in this subsection relieves a party of an
 7 obligation otherwise contained in this chapter."

8 **Section 12.** Section 39-71-2410, MCA, is amended to
 9 read:

10 "39-71-2410. Limitations on mediation proceedings. (1)
 11 Except as may be necessary for the workers' compensation
 12 court to rule on issues arising under 39-71-2401(5)(c)
 13 (4)(c) or 39-71-2411(7)(c), mediation proceedings are:

14 (a) held in private;

15 (b) informal and held without a verbatim record; and

16 (c) confidential.

17 (2) All communications, verbal or written, from the
 18 parties to the mediator and any information and evidence
 19 presented to the mediator during the proceeding are
 20 confidential.

21 (3) A mediator's files and records are closed to all
 22 but the parties.

23 (4) (a) A mediator may not be called to testify in any
 24 proceeding concerning the issues discussed in the mediation
 25 process.

1 (b) Neither the mediator's report nor any of the
 2 information or recommendations contained in it are
 3 admissible as evidence in any action subsequently brought in
 4 any court of law.

5 (5) Notwithstanding subsections (1) through (4), a
 6 mediator may issue a report and the parties and the mediator
 7 may be required to attend a conference before the workers'
 8 compensation court as set forth in 39-71-2411."

9 **Section 13.** Section 39-72-402, MCA, is amended to read:

10 "39-72-402. Practice and procedure -- applicability of
 11 Workers' Compensation Act. (1) Except as otherwise provided
 12 in this chapter, the practice and procedure prescribed in
 13 the Workers' Compensation Act applies to all proceedings
 14 under this chapter.

15 (2) Sections 39-71-304, 39-71-403, 39-71-406,
 16 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 and
 17 Title 39, chapter 71, part 9, which are contained in the
 18 Workers' Compensation Act, specifically apply to and are
 19 incorporated as part of this chapter."

20 **Section 14.** Section 39-72-403, MCA, is amended to read:

21 "39-72-403. Time when claims must be presented. (1)
 22 When a claimant seeks benefits under this chapter, his
 23 claims for benefits must be presented in writing to the
 24 employer, or the employer's insurer, ~~or the department~~
 25 within 2 years from the date the claimant knew or should

1 have known that his total disability condition resulted from
2 an occupational disease. When a beneficiary seeks benefits
3 under this chapter, his claims for death benefits must be
4 presented in writing to the employer, or the employer's
5 insurer, ~~or the department~~ within 1 year from the date the
6 beneficiaries knew or should have known that the decedent's
7 death was related to an occupational disease.

8 (2) The department may, upon a reasonable showing by
9 the claimant or a decedent's beneficiaries that the claimant
10 or the beneficiaries could not have known that the
11 claimant's condition or the employee's death was related to
12 an occupational disease, waive the claim time requirement up
13 to an additional 2 years."

14 NEW SECTION. Section 15. Repealer. Section 39-72-304,
15 MCA, is repealed.

16 NEW SECTION. Section 16. Codification instruction.
17 [Section 1] is intended to be codified as an integral part
18 of Title 39, chapter 71, part 2 or 3, and the provisions of
19 Title 39, chapter 71, apply to [section 1].

20 NEW SECTION. Section 17. Applicability. [This act]
21 applies to injuries that occur on or after [the effective
22 date of this act].

23 NEW SECTION. Section 18. Effective date. [This act] is
24 effective July 1, 1991.

-End-

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 465

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(a) all fees and penalties provided in 39-71-205 and
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law;

(c) all fees paid from an assessment on each plan No. 1
employer, plan No. 2 insurer, and plan No. 3, the state
fund. The assessments must be levied against the preceding
calendar year's gross annual payroll of the plan No. 1
employers and the gross annual direct premiums collected in
Montana on the policies of the plan No. 2 insurers, insuring

1 employers covered under the chapter, during the preceding
 2 calendar year. However, no assessment of the plan No. 1
 3 employer or plan No. 2 insurer may be less than \$200. The
 4 assessments must be sufficient to fund the direct costs
 5 identified to the three plans and an equitable portion of
 6 the indirect costs based on the ratio of the preceding
 7 fiscal year's indirect costs distributed to the plans, using
 8 proper accounting and cost allocation procedures. Plan No. 3
 9 must be assessed an amount sufficient to fund its the direct
 10 costs and an equitable portion of the indirect costs as
 11 ~~referred-to-above~~ of regulating Plan No. 3. Other sources of
 12 revenue, including unexpended funds from the preceding
 13 fiscal year, must be used to reduce the costs before levying
 14 the assessments.

15 (2) The administration fund must be debited with
 16 expenses incurred by the department in the general
 17 administration of the provisions of this chapter, including
 18 the salaries of its members, officers, and employees and the
 19 travel expenses of the members, officers, and employees, as
 20 provided for in 2-18-501 through 2-18-503, as amended,
 21 incurred while on the business of the department either
 22 within or without the state.

23 (3) Disbursements from the administration money must be
 24 made after being approved by the department upon claim
 25 therefor."

1 **Section 3.** Section 39-71-306, MCA, is amended to read:
 2 **"39-71-306.** Insurers to file summary reports of
 3 benefits paid for injuries and statements of medical
 4 expenditures. Every insurer shall, on or before the 15th day
 5 of after each ~~and--every--month~~ state government fiscal
 6 quarter, file with the department:

7 (1) summary reports of benefits for all compensation
 8 payments made during the previous month state fiscal quarter
 9 to injured workers or their beneficiaries or dependents; and

10 (2) statements showing the amounts expended during the
 11 previous month state fiscal quarter for all medical,
 12 ~~surgically-and-hospital~~ services for injured workers and ~~--for~~
 13 ~~the-burial-of-deceased-workers."~~

14 ~~Section 4.--Section 39-71-601, MCA, is amended to read:~~
 15 ~~"39-71-601--Statute--of--limitation--on--presentation--of~~
 16 ~~claim---waiver--(1)--In--case--of--personal--injury--or--death,~~
 17 ~~all--claims--must--be--forever--barred--unless--presented--in~~
 18 ~~writing--to--the--employer, or--the--insurer, or--the--department,~~
 19 ~~as--the--case--may--be--within--12--months--from--the--date--of--the~~
 20 ~~happening--of--the--accident, either--by--the--claimant--or--someone~~
 21 ~~legally--authorized--to--act--for--him--in--his--behalf.~~

22 (2) ~~The--department--may--waive--the--time--requirement--up--to~~
 23 ~~an--additional--24--months--upon--a--reasonable--showing--by--the~~
 24 ~~claimant--of:~~

25 (a) ~~lack--of--knowledge--of--disability;~~

1 ~~(b) latent injury, or~~
 2 ~~(c) equitable estoppel."~~

3 **Section 4.** Section 39-71-604, MCA, is amended to read:

4 "39-71-604. Application for compensation. (1) If a
 5 worker is entitled to benefits under this chapter, the
 6 worker shall file with the insurer ~~or the department~~ all
 7 reasonable information needed by the insurer to determine
 8 compensability. It is the duty of the worker's attending
 9 physician to lend all necessary assistance in making
 10 application for compensation and such proof of other matters
 11 as may be required by the rules of the department without
 12 charge to the worker. The filing of forms or other
 13 documentation by the attending physician does not constitute
 14 a claim for compensation.

15 (2) If death results from an injury, the parties
 16 entitled to compensation or someone in their behalf shall
 17 file a claim with the insurer ~~or the department~~. The claim
 18 must be accompanied with proof of death and proof of
 19 relationship, showing the parties entitled to compensation,
 20 certificate of the attending physician, if any, and such
 21 other proof as may be required by the department."

22 **Section 5.** Section 39-71-605, MCA, is amended to read:

23 "39-71-605. Examination of employee by physician --
 24 effect of refusal to submit to examination -- report and
 25 testimony of physician -- cost. (1) (a) Whenever in case of

1 injury the right to compensation under this chapter would
 2 exist in favor of any employee, he shall, upon the written
 3 request of the insurer, submit from time to time to
 4 examination by a physician or panel of physicians, who shall
 5 be provided and paid for by such insurer, and shall likewise
 6 submit to examination from time to time by any physician or
 7 panel of physicians selected by the department.

8 (b) The request or order for such examination shall fix
 9 a time and place ~~therefor, due~~ FOR THE EXAMINATION, WITH
 10 regard being had to the convenience of the employee and FOR
 11 THE EMPLOYEE'S CONVENIENCE, his physical condition, and HIS
 12 ability to attend at the time and place fixed THAT IS AS
 13 CLOSE TO THE EMPLOYEE'S RESIDENCE AS IS PRACTICAL. The
 14 employee shall be entitled to have a physician present at
 15 any such examination. So long as the employee, after such
 16 written request, shall fail or refuse to submit to such
 17 examination or shall in any way obstruct the same, his right
 18 to compensation shall be suspended. Any physician or panel
 19 of physicians employed by the insurer or the department who
 20 shall make or be present at any such examination may be
 21 required to testify as to the results thereof.

22 (2) In the event of a dispute concerning the physical
 23 condition of a claimant or the cause or causes of the injury
 24 or disability, if any, the department, at the request of the
 25 claimant or insurer, as the case may be, shall require the

1 claimant to submit to such examination as it may deem
 2 desirable by a physician or panel of physicians within the
 3 state or elsewhere who have had adequate and substantial
 4 experience in the particular field of medicine concerned
 5 with the matters presented by the dispute. The physician or
 6 panel of physicians making the examination shall file a
 7 written report of findings with the department claimant and
 8 insurer for its their use in the determination of the
 9 controversy involved. The department requesting party shall
 10 pay the physician or panel of physicians for the examination
 11 ~~and shall be reimbursed by the party who requested it.~~

12 (3) This section does not apply to impairment
 13 evaluations provided for in 39-71-711."

14 **Section 6.** Section 39-71-704, MCA, is amended to read:

15 "39-71-704. Payment of medical, hospital, and related
 16 services -- fee schedules and hospital rates -- FEE
 17 LIMITATION. (1) In addition to the compensation provided by
 18 this chapter and as an additional benefit separate and apart
 19 from compensation, the following must be furnished:

20 (a) After the happening of the injury, the insurer
 21 shall furnish, without limitation as to length of time or
 22 dollar amount, reasonable services by a physician or
 23 surgeon, reasonable hospital services and medicines when
 24 needed, and such other treatment as may be approved by the
 25 department for the injuries sustained.

1 (b) The insurer shall replace or repair prescription
 2 eyeglasses, prescription contact lenses, prescription
 3 hearing aids, and dentures that are damaged or lost as a
 4 result of an injury, as defined in 39-71-119, arising out of
 5 and in the course of employment.

6 (c) The insurer shall reimburse a worker for reasonable
 7 travel expenses incurred in travel to a medical provider for
 8 treatment of an injury pursuant to rules adopted by the
 9 department. Reimbursement must be at the rates allowed for
 10 reimbursement of travel by state employees.

11 (2) ~~A relative value fee schedule for medical,
 12 chiropractic, and paramedical services provided for in this
 13 chapter, excluding hospital services, must be established
 14 annually by the department and become effective in January
 15 of each year. The maximum fee schedule must be adopted as a
 16 relative value fee schedule of medical, chiropractic, and
 17 paramedical services, with unit values to indicate the
 18 relative relationship within each grouping of specialties.
 19 Medical fees must be based on the median fees as billed to
 20 the state fund during the year preceding the adoption of the
 21 schedule. The state fund shall report fees billed in the
 22 form and at the times required by the department. The
 23 department shall adopt rules establishing relative unit
 24 values, groups of specialties, the procedures insurers must
 25 use to pay for services under the schedule, and the method~~

1 ~~of determining the median of billed medical fees. These~~
 2 ~~rules must be modeled on the 1974 revision of the 1969~~
 3 ~~California Relative Value Studies. The department shall~~
 4 annually establish a schedule of fees for medical
 5 nonhospital services necessary for the treatment of injured
 6 workers. The department may require insurers to submit
 7 information to be used in establishing the schedule.

8 (3) Beginning January 1, 1988, the department shall
 9 establish rates for hospital services necessary for the
 10 treatment of injured workers. Approved rates must be in
 11 effect for a period of 12 months from the date of approval.
 12 The department may coordinate this ratesetting function with
 13 other public agencies that have similar responsibilities.

14 (4) Notwithstanding subsection (2), beginning January
 15 1, 1988, through December 31, 1991, the maximum fees payable
 16 by insurers must be limited to the ~~relative-value~~ fee
 17 schedule established in January 1987. Notwithstanding
 18 subsection (3), beginning January 1, 1988, through December
 19 31, 1991, the hospital rates payable by insurers must be
 20 limited to those set in January 1988. AFTER DECEMBER 31,
 21 1991, THE PERCENTAGE INCREASE IN MEDICAL COSTS PAYABLE UNDER
 22 THIS CHAPTER MAY NOT EXCEED THE ANNUAL PERCENTAGE INCREASE
 23 IN THE STATE'S AVERAGE WEEKLY WAGE AS DEFINED IN 39-71-116."

24 **Section 7.** Section 39-71-711, MCA, is amended to read:

25 **"39-71-711. Impairment evaluation -- ratings. (1) An**

1 impairment rating:

2 (a) is a purely medical determination and must be
 3 determined by an impairment evaluator after a claimant has
 4 reached maximum healing;

5 (b) must be based on the current edition of the Guides
 6 to Evaluation of Permanent Impairment published by the
 7 American medical association; and

8 (c) must be expressed as a percentage of the whole
 9 person.

10 (2) A claimant or insurer, or both, may obtain an
 11 impairment rating from an evaluator who is a medical doctor
 12 or from an evaluator who is a chiropractor ~~if the claimant's~~
 13 ~~treating physician is a chiropractor~~ IF THE INJURY FALLS
 14 WITHIN THE SCOPE OF CHIROPRACTIC PRACTICE. If the claimant
 15 and insurer cannot agree upon the rating, the mediation
 16 procedure in subsection (3) part 24 of this chapter must be
 17 followed.

18 ~~(3) (a) Upon request of the claimant or insurer, the~~
 19 ~~department shall direct the claimant to an evaluator for a~~
 20 ~~rating. The evaluator shall:~~

21 ~~(i) evaluate the claimant to determine the degree of~~
 22 ~~impairment, if any, that exists due to the injury, and~~

23 ~~(ii) submit a report to the department, the claimant,~~
 24 ~~and the insurer.~~

25 ~~(b) Unless the following procedure is followed, the~~

1 insurer shall begin paying the impairment award, if any,
2 within 30 days of the evaluator's mailing of the report:

3 (i) Either the claimant or the insurer, within 15 days
4 after the date of mailing of the report by the first
5 evaluator, may request that the claimant be evaluated by a
6 second evaluator. If a second evaluation is requested, the
7 department shall direct the claimant to a second evaluator,
8 who shall determine the degree of impairment, if any, that
9 exists due to the injury:

10 (ii) The reports of both examinations must be submitted
11 to a third evaluator, who may also examine the claimant or
12 seek other consultation. The three evaluators shall consult
13 with one another, and then the third evaluator shall submit
14 a final report to the department, the claimant, and the
15 insurer. The final report must state the degree of
16 impairment, if any, that exists due to the injury:

17 (iii) Unless either party disputes the rating in the
18 final report as provided in subsection (6), the insurer
19 shall begin paying the impairment award, if any, within 45
20 days of the date of mailing of the report by the third
21 evaluator:

22 (4)(3) The department shall appoint impairment
23 evaluators to render ratings under subsection (1). The
24 department shall adopt rules that set forth the
25 qualifications of evaluators and the locations of

1 examinations. An evaluator must be a physician licensed
2 under Title 37, chapter 3, except if the claimant's treating
3 physician is a chiropractor, the evaluator may be a
4 chiropractor who is certified as an evaluator under chapter
5 12. The department may seek nominations from the board of
6 medical examiners for evaluators licensed under Title 37,
7 chapter 3, and from the board of chiropractors for
8 evaluators licensed under Title 37, chapter 12.

9 (5) The cost of impairment evaluations is assessed to
10 the insurer, except that the cost of an evaluation under
11 subsection (3)(b)(i) or (3)(b)(ii) is assessed to the
12 requesting party:

13 (6)(4) A party may dispute a final impairment rating
14 rendered under subsection (3)(b)(ii) by filing a petition
15 with the workers' compensation court within 15 days of the
16 evaluator's mailing of the report. Disputes over impairment
17 ratings are not subject to 39-71-605 or to mandatory
18 mediation.

19 (7) An impairment rating rendered under subsection (3)
20 is presumed correct. This presumption is rebuttable."

21 **Section 8.** Section 39-71-905, MCA, is amended to read:
22 "39-71-905. Certification as vocationally handicapped.
23 A person who wishes to be certified as vocationally
24 handicapped for purposes of this part shall apply to the
25 department on forms furnished by the department. The

1 department shall conduct an investigation and shall issue a
 2 certificate to a person who, in the department's discretion,
 3 meets the requirements for vocationally handicapped
 4 certification. ~~An--employee--who-is-requesting-reemployment~~
 5 ~~may-be-certified-as-vocationally--handicapped.--An--employee~~
 6 ~~who---is---not---employed---at---the---time---of---application---for~~
 7 ~~certification--must-be-certified-as-vocationally--handicapped~~
 8 ~~before-entering-new-employment-in-order-for-the-new-employer~~
 9 ~~to-receive-the~~ A person shall apply for certification before
 10 employment or within 60 days after he becomes employed or
 11 reemployed and before an injury occurs that is covered by
 12 this part. The certification is effective on the date of
 13 employment or reemployment. Failure to apply before
 14 employment or within 60 days after employment or
 15 reemployment precludes the employer from the protection and
 16 benefits of this part."

17 **Section 9.** Section 39-71-2106, MCA, is amended to read:

18 "39-71-2106. **Requiring security of employer.** (1) (a)
 19 The department may require any employer who elects to be
 20 bound by compensation plan No. 1 to provide a security
 21 deposit. Such Except as provided in subsection (1)(b), the
 22 security deposit may be a surety bond, government bond, or
 23 letter of credit approved by the department and must be the
 24 greater of:

25 (a)(i) \$250,000; or

1 (b)(ii) an average of the workers' compensation
 2 liabilities incurred by the employer in Montana for the past
 3 3 calendar years.

4 (b) The department may require a larger deposit as
 5 additional evidence of solvency and financial ability to pay
 6 the liabilities provided by this chapter.

7 (2) If the department finds that an employer has lost
 8 his solvency or financial ability to pay the compensation
 9 herein provided to be paid which might reasonably be
 10 expected to be chargeable to the employer during the fiscal
 11 year to be covered by the permission or that the employer is
 12 an association, corporation, or organization of individual
 13 employers seeking permission to operate under compensation
 14 plan No. 1, the department must require the employer, before
 15 granting to him permission or before continuing or engaging
 16 in such employment subject to the provisions of compensation
 17 plan No. 1, to give security in addition to the security
 18 described in subsection (1) for the payment of compensation,
 19 which security must be in such an amount as the department
 20 finds is reasonable and necessary to meet all liabilities of
 21 the employer which may reasonably and ordinarily be expected
 22 to accrue during the fiscal year.

23 (3) The security provided for in subsection (2) must be
 24 deposited with the department and may be a certain estimated
 25 percent of the employer's last preceding annual payroll or a

1 certain percent of the established amount of his annual
 2 payroll for the fiscal year; or the security may be in the
 3 form of a bond or undertaking executed to the department in
 4 the amount to be fixed by it with two or more sufficient
 5 sureties, which undertaking must be conditioned that the
 6 employer will well and truly pay or cause to be paid all
 7 sums and amounts for which the employer shall become liable
 8 under the terms of this chapter to his employees during the
 9 fiscal year; or such security may consist of any state,
 10 county, municipal, or school district bonds or the bonds or
 11 evidence of indebtedness of any individuals or corporations
 12 which the department deems solvent; and every such deposit
 13 and the character and amount of such securities shall at all
 14 times be subject to approval, revision, or change by the
 15 department as in its judgment may be required, and upon
 16 proof of the final payment of the liability for which such
 17 securities are given, such securities or any remaining part
 18 thereof shall be returned to the depositor.

19 (4) The department is liable for the value and
 20 safekeeping of all such deposits or securities and shall, at
 21 any time, upon demand of a bondsman or the depositor,
 22 account for the same and the earnings thereof."

23 **Section 10.** Section 39-71-2401, MCA, is amended to
 24 read:

25 "39-71-2401. Disputes -- jurisdiction -- evidence---

1 settlement requirements -- mediation. (1) A dispute
 2 concerning benefits arising under this chapter or chapter
 3 72, other than the disputes described in subsection (2),
 4 must be brought before a department mediator as provided in
 5 this part. If a dispute still exists after the parties
 6 satisfy the mediation requirements in this part, either
 7 party may petition the workers' compensation court for a
 8 resolution.

9 (2) A dispute arising under this chapter that does not
 10 concern benefits or a dispute for which a specific provision
 11 of this chapter gives the department jurisdiction must be
 12 brought before the department.

13 (3) An appeal from a department order may be made to
 14 the workers' compensation court.

15 ~~(4) The common law and statutory rules of evidence do~~
 16 ~~not apply in a case brought to hearing before the~~
 17 ~~department.~~

18 ⁽⁵⁾(4) Except as otherwise provided in this chapter,
 19 before a party may bring a dispute concerning benefits
 20 before a mediator, the parties shall attempt to settle as
 21 follows:

22 (a) The party making a demand shall present the other
 23 party with a specific written demand that contains
 24 sufficient explanation and documentary evidence to enable
 25 the other party to thoroughly evaluate the demand.

1 (b) The party receiving the demand shall respond in
2 writing within 15 working days of receipt. If the demand is
3 denied in whole or in part, the response shall state the
4 basis of the denial.

5 (c) Upon motion of a party or upon the mediator's own
6 motion, the mediator has the authority to dismiss a petition
7 if he finds that either party did not comply with this
8 subsection. A decision dismissing a petition under this
9 subsection must be in writing and must state in detail the
10 grounds for dismissal. The mediator's decision may be
11 reviewed by the workers' compensation court upon motion of a
12 party.

13 (d) Nothing in this subsection relieves a party of an
14 obligation otherwise contained in this chapter."

15 **Section 11.** Section 39-71-2410, MCA, is amended to
16 read:

17 "39-71-2410. Limitations on mediation proceedings. (1)
18 Except as may be necessary for the workers' compensation
19 court to rule on issues arising under 39-71-2401~~(5)~~~~(c)~~
20 (4)(c) or 39-71-2411(7)(c), mediation proceedings are:

- 21 (a) held in private;
22 (b) informal and held without a verbatim record; and
23 (c) confidential.
24 (2) All communications, verbal or written, from the
25 parties to the mediator and any information and evidence

1 presented to the mediator during the proceeding are
2 confidential.

3 (3) A mediator's files and records are closed to all
4 but the parties.

5 (4) (a) A mediator may not be called to testify in any
6 proceeding concerning the issues discussed in the mediation
7 process.

8 (b) Neither the mediator's report nor any of the
9 information or recommendations contained in it are
10 admissible as evidence in any action subsequently brought in
11 any court of law.

12 (5) Notwithstanding subsections (1) through (4), a
13 mediator may issue a report and the parties and the mediator
14 may be required to attend a conference before the workers'
15 compensation court as set forth in 39-71-2411."

16 **Section 12.** Section 39-72-402, MCA, is amended to read:

17 "39-72-402. Practice and procedure -- applicability of
18 Workers' Compensation Act. (1) Except as otherwise provided
19 in this chapter, the practice and procedure prescribed in
20 the Workers' Compensation Act applies to all proceedings
21 under this chapter.

22 (2) Sections 39-71-304, 39-71-403, 39-71-406,
23 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 and
24 Title 39, chapter 71, part 9, which are contained in the
25 Workers' Compensation Act, specifically apply to and are

1 incorporated as part of this chapter."

2 ~~Section 14. Section 39-72-403, MCA, is amended to read:~~

3 ~~"39-72-403. Time when claims must be presented. (1)~~
4 ~~When a claimant seeks benefits under this chapter, his~~
5 ~~claims for benefits must be presented in writing to the~~
6 ~~employer, or the employer's insurer, or the department~~
7 ~~within 2 years from the date the claimant knew or should~~
8 ~~have known that his total disability condition resulted from~~
9 ~~an occupational disease. When a beneficiary seeks benefits~~
10 ~~under this chapter, his claims for death benefits must be~~
11 ~~presented in writing to the employer, or the employer's~~
12 ~~insurer, or the department within 1 year from the date the~~
13 ~~beneficiaries knew or should have known that the decedent's~~
14 ~~death was related to an occupational disease.~~

15 ~~(2) The department may, upon a reasonable showing by~~
16 ~~the claimant or a decedent's beneficiaries that the claimant~~
17 ~~or the beneficiaries could not have known that the~~
18 ~~claimant's condition or the employee's death was related to~~
19 ~~an occupational disease, waive the claim time requirement up~~
20 ~~to an additional 2 years."~~

21 NEW SECTION. Section 13. Repealer. Section 39-72-304,
22 MCA, is repealed.

23 NEW SECTION. Section 14. Codification instruction.
24 [Section 1] is intended to be codified as an integral part
25 of Title 39, chapter 71, part 2 or 3, and the provisions of

1 Title 39, chapter 71, apply to [section 1].

2 NEW SECTION. Section 15. Applicability. [This act]
3 applies to injuries that occur on or after [the effective
4 date of this act].

5 NEW SECTION. Section 16. Effective date. [This act] is
6 effective July 1, 1991.

-End-

HOUSE BILL NO. 465

INTRODUCED BY THOMAS, R. JOHNSON, WILLIAMS, BLAYLOCK,
DRISCOLL, SQUIRES, WANZENRIED, LYNCH, THAYER,

BENEDICT, NATHE

BY REQUEST OF THE DEPARTMENT OF LABOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT
STATUTORY AND COMMON-LAW RULES OF EVIDENCE DO NOT APPLY TO
DEPARTMENT OF LABOR AND INDUSTRY WORKERS' COMPENSATION
HEARINGS; ~~TO CHANGE THE REQUIREMENTS FOR FILING AND
DISTRIBUTING CERTAIN DOCUMENTS;~~ TO CHANGE THE IMPAIRMENT
EVALUATION PROCEDURE; TO CHANGE PROVISIONS RELATING TO THE
YEARLY MEDICAL SERVICES FEE SCHEDULES; TO CHANGE APPLICATION
REQUIREMENTS FOR VOCATIONALLY HANDICAPPED BENEFITS; TO
CLARIFY THAT WORKERS' COMPENSATION STATUTES RELATING TO THE
VOCATIONALLY HANDICAPPED ALSO APPLY TO OCCUPATIONAL
DISEASES; GRANTING THE DEPARTMENT DISCRETION AS TO THE SIZE
OF THE SECURITY DEPOSITED BY AN EMPLOYER THAT SELF-INSURES;
AMENDING SECTIONS 39-71-201, 39-71-306, ~~39-71-601,~~
39-71-604, 39-71-605, 39-71-704, 39-71-711, 39-71-905,
39-71-2106, 39-71-2401, 39-71-2410, AND 39-72-402, AND
39-72-403, MCA; REPEALING SECTION 39-72-304, MCA; AND
PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Hearings -- rules of evidence.

The statutory and common law rules of evidence do not apply
to a hearing before the department under this chapter.

Section 2. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers'
compensation administration fund is established out of which
all costs of administering the Workers' Compensation and
Occupational Disease Acts and the various occupational
safety acts the department must administer are to be paid
upon lawful appropriation. The following money collected by
the department must be deposited in the state treasury to
the credit of the workers' compensation administrative fund
and must be used for the administrative expenses of the
department:

(a) all fees and penalties provided in 39-71-205 and
39-71-304;

(b) all fees paid for inspection of boilers and
issuance of licenses to operating engineers as required by
law;

(c) all fees paid from an assessment on each plan No. 1
employer, plan No. 2 insurer, and plan No. 3, the state
fund. The assessments must be levied against the preceding
calendar year's gross annual payroll of the plan No. 1
employers and the gross annual direct premiums collected in
Montana on the policies of the plan No. 2 insurers, insuring

1 employers covered under the chapter, during the preceding
 2 calendar year. However, no assessment of the plan No. 1
 3 employer or plan No. 2 insurer may be less than \$200. The
 4 assessments must be sufficient to fund the direct costs
 5 identified to the three plans and an equitable portion of
 6 the indirect costs based on the ratio of the preceding
 7 fiscal year's indirect costs distributed to the plans, using
 8 proper accounting and cost allocation procedures. Plan No. 3
 9 must be assessed an amount sufficient to fund its the direct
 10 costs and an equitable portion of the indirect costs as
 11 referred-to-above of regulating Plan No. 3. Other sources of
 12 revenue, including unexpended funds from the preceding
 13 fiscal year, must be used to reduce the costs before levying
 14 the assessments.

15 (2) The administration fund must be debited with
 16 expenses incurred by the department in the general
 17 administration of the provisions of this chapter, including
 18 the salaries of its members, officers, and employees and the
 19 travel expenses of the members, officers, and employees, as
 20 provided for in 2-18-501 through 2-18-503, as amended,
 21 incurred while on the business of the department either
 22 within or without the state.

23 (3) Disbursements from the administration money must be
 24 made after being approved by the department upon claim
 25 therefor."

1 **Section 3.** Section 39-71-306, MCA, is amended to read:

2 ***39-71-306.** Insurers to file summary reports of
 3 benefits paid for injuries and statements of medical
 4 expenditures. Every insurer shall, on or before the 15th day
 5 of after each and--every--month state government fiscal
 6 quarter, file with the department:

7 (1) summary reports of benefits for all compensation
 8 payments made during the previous month state fiscal quarter
 9 to injured workers or their beneficiaries or dependents; and

10 (2) statements showing the amounts expended during the
 11 previous month state fiscal quarter for all medical,
 12 surgical--and--hospital services for injured workers and--for
 13 the-burial-of-deceased-workers."

14 ~~Section 4.--Section 39-71-601, MCA, is amended to read:~~

15 ~~*39-71-601.--Statute--of--limitation--on--presentation--of~~
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 17 ~~all--claims--must--be--forever--barred--unless--presented--in~~
 18 ~~writing--to--the--employer,--or--the--insurer,--or--the--department,~~
 19 ~~as--the--case--may--be,--within--12--months--from--the--date--of--the~~
 20 ~~happening--of--the--accident,--either--by--the--claimant--or--someone~~
 21 ~~legally--authorized--to--act--for--him--in--his--behalf.~~

22 ~~(2)--The--department--may--waive--the--time--requirement--up--to~~
 23 ~~an--additional--24--months--upon--a--reasonable--showing--by--the~~
 24 ~~claimant--of:~~

25 ~~(a)--lack--of--knowledge--of--disability;~~

~~(b) latent-injury, or
(c) equitable-estoppel."~~

Section 4. Section 39-71-604, MCA, is amended to read:

"39-71-604. **Application for compensation.** (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer ~~or the department~~ all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the department without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer ~~or the department~~. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the department."

Section 5. Section 39-71-605, MCA, is amended to read:

"39-71-605. **Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost.** (1) (a) Whenever in case of

injury the right to compensation under this chapter would exist in favor of any employee, he shall, upon the written request of the insurer, submit from time to time to examination by a physician or panel of physicians, who shall be provided and paid for by such insurer, and shall likewise submit to examination from time to time by any physician or panel of physicians selected by the department.

(b) The request or order for such examination shall fix a time and place ~~therefor, due~~ FOR THE EXAMINATION, WITH regard being had to the convenience of the employee and FOR THE EMPLOYEE'S CONVENIENCE, his physical condition, and HIS ability to attend at the time and place fixed THAT IS AS CLOSE TO THE EMPLOYEE'S RESIDENCE AS IS PRACTICAL. The employee shall be entitled to have a physician present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician or panel of physicians employed by the insurer or the department who shall make or be present at any such examination may be required to testify as to the results thereof.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department, at the request of the claimant or insurer, as the case may be, shall require the

1 claimant to submit to such examination as it may deem
 2 desirable by a physician or panel of physicians within the
 3 state or elsewhere who have had adequate and substantial
 4 experience in the particular field of medicine concerned
 5 with the matters presented by the dispute. The physician or
 6 panel of physicians making the examination shall file a
 7 written report of findings with the department claimant and
 8 insurer for its their use in the determination of the
 9 controversy involved. The department requesting party shall
 10 pay the physician or panel of physicians for the examination
 11 ~~and shall be reimbursed by the party who requested it.~~

12 (3) This section does not apply to impairment
 13 evaluations provided for in 39-71-711."

14 **Section 6.** Section 39-71-704, MCA, is amended to read:

15 "39-71-704. Payment of medical, hospital, and related
 16 services -- fee schedules and hospital rates -- FEE
 17 LIMITATION. (1) In addition to the compensation provided by
 18 this chapter and as an additional benefit separate and apart
 19 from compensation, the following must be furnished:

20 (a) After the happening of the injury, the insurer
 21 shall furnish, without limitation as to length of time or
 22 dollar amount, reasonable services by a physician or
 23 surgeon, reasonable hospital services and medicines when
 24 needed, and such other treatment as may be approved by the
 25 department for the injuries sustained.

1 (b) The insurer shall replace or repair prescription
 2 eyeglasses, prescription contact lenses, prescription
 3 hearing aids, and dentures that are damaged or lost as a
 4 result of an injury, as defined in 39-71-119, arising out of
 5 and in the course of employment.

6 (c) The insurer shall reimburse a worker for reasonable
 7 travel expenses incurred in travel to a medical provider for
 8 treatment of an injury pursuant to rules adopted by the
 9 department. Reimbursement must be at the rates allowed for
 10 reimbursement of travel by state employees.

11 (2) ~~A relative value fee schedule for medical,~~
 12 ~~chiropractic, and paramedical services provided for in this~~
 13 ~~chapter, excluding hospital services, must be established~~
 14 ~~annually by the department and become effective in January~~
 15 ~~of each year. The maximum fee schedule must be adopted as a~~
 16 ~~relative value fee schedule of medical, chiropractic, and~~
 17 ~~paramedical services with unit values to indicate the~~
 18 ~~relative relationship within each grouping of specialties.~~
 19 ~~Medical fees must be based on the median fees as billed to~~
 20 ~~the state fund during the year preceding the adoption of the~~
 21 ~~schedule. The state fund shall report fees billed in the~~
 22 ~~form and at the times required by the department. The~~
 23 ~~department shall adopt rules establishing relative unit~~
 24 ~~values, groups of specialties, the procedures insurers must~~
 25 ~~use to pay for services under the schedule, and the method~~

1 of--determining--the--median--of--billed--medical--fees--These
 2 rules--must--be--modeled--on--the--1974--revision--of--the--1969
 3 California--Relative--Value--Studies. The department shall
 4 annually establish a schedule of fees for medical
 5 nonhospital services necessary for the treatment of injured
 6 workers. The department may require insurers to submit
 7 information to be used in establishing the schedule.

8 (3) Beginning January 1, 1988, the department shall
 9 establish rates for hospital services necessary for the
 10 treatment of injured workers. Approved rates must be in
 11 effect for a period of 12 months from the date of approval.
 12 The department may coordinate this ratesetting function with
 13 other public agencies that have similar responsibilities.

14 (4) Notwithstanding subsection (2), beginning January
 15 1, 1988, through December 31, 1991, the maximum fees payable
 16 by insurers must be limited to the relative--value fee
 17 schedule established in January 1987. Notwithstanding
 18 subsection (3), beginning January 1, 1988, through December
 19 31, 1991, the hospital rates payable by insurers must be
 20 limited to those set in January 1988. AFTER DECEMBER 31,
 21 1991, THE PERCENTAGE INCREASE IN MEDICAL COSTS PAYABLE UNDER
 22 THIS CHAPTER MAY NOT EXCEED THE ANNUAL PERCENTAGE INCREASE
 23 IN THE STATE'S AVERAGE WEEKLY WAGE AS DEFINED IN 39-71-116."

24 **Section 7.** Section 39-71-711, MCA, is amended to read:
 25 "39-71-711. Impairment evaluation -- ratings. (1) An

1 impairment rating:
 2 (a) is a purely medical determination and must be
 3 determined by an impairment evaluator after a claimant has
 4 reached maximum healing;
 5 (b) must be based on the current edition of the Guides
 6 to Evaluation of Permanent Impairment published by the
 7 American medical association; and
 8 (c) must be expressed as a percentage of the whole
 9 person.

10 (2) A claimant or insurer, or both, may obtain an
 11 impairment rating from an evaluator who is a medical doctor
 12 or from an evaluator who is a chiropractor ~~if the claimant's~~
 13 ~~treating physician is a chiropractor~~ IF THE INJURY FALLS
 14 WITHIN THE SCOPE OF CHIROPRACTIC PRACTICE. If the claimant
 15 and insurer cannot agree upon the rating, the mediation
 16 procedure in subsection (3) part 24 of this chapter must be
 17 followed.

18 ~~(3) (a) Upon request of the claimant or insurer, the~~
 19 ~~department shall direct the claimant to an evaluator for a~~
 20 ~~rating. The evaluator shall:~~

- 21 ~~(i) evaluate the claimant to determine the degree of~~
 22 ~~impairment, if any, that exists due to the injury, and~~
 23 ~~(ii) submit a report to the department, the claimant,~~
 24 ~~and the insurer;~~
 25 ~~(b) Unless the following procedure is followed, the~~

1 insurer shall begin paying the impairment award, if any,
 2 within 30 days of the evaluator's mailing of the report:
 3 (i) Either the claimant or the insurer, within 15 days
 4 after the date of mailing of the report by the first
 5 evaluator, may request that the claimant be evaluated by a
 6 second evaluator. If a second evaluation is requested, the
 7 department shall direct the claimant to a second evaluator,
 8 who shall determine the degree of impairment, if any, that
 9 exists due to the injury.
 10 (ii) The reports of both examinations must be submitted
 11 to a third evaluator, who may also examine the claimant or
 12 seek other consultation. The three evaluators shall consult
 13 with one another, and then the third evaluator shall submit
 14 a final report to the department, the claimant, and the
 15 insurer. The final report must state the degree of
 16 impairment, if any, that exists due to the injury.
 17 (iii) Unless either party disputes the rating in the
 18 final report as provided in subsection (6), the insurer
 19 shall begin paying the impairment award, if any, within 45
 20 days of the date of mailing of the report by the third
 21 evaluator.
 22 (4)(3) The department shall appoint impairment
 23 evaluators to render ratings under subsection (i). The
 24 department shall adopt rules that set forth the
 25 qualifications of evaluators and the locations of

1 examinations. An evaluator must be a physician licensed
 2 under Title 37, chapter 3, except if the claimant's treating
 3 physician is a chiropractor, the evaluator may be a
 4 chiropractor who is certified as an evaluator under chapter
 5 12. The department may seek nominations from the board of
 6 medical examiners for evaluators licensed under Title 37,
 7 chapter 3, and from the board of chiropractors for
 8 evaluators licensed under Title 37, chapter 12.
 9 (5) The cost of impairment evaluations is assessed to
 10 the insurer, except that the cost of an evaluation under
 11 subsection (3)(b)(i) or (3)(b)(ii) is assessed to the
 12 requesting party.
 13 (6)(4) A party may dispute a final impairment rating
 14 rendered under subsection (3)(b)(ii) by filing a petition
 15 with the workers' compensation court within 15 days of the
 16 evaluator's mailing of the report. Disputes over impairment
 17 ratings are not subject to 39-71-605 or to mandatory
 18 mediation.
 19 (7) An impairment rating rendered under subsection (3)
 20 is presumed correct. This presumption is rebuttable."
 21 **Section 8.** Section 39-71-905, MCA, is amended to read:
 22 "39-71-905. Certification as vocationally handicapped.
 23 A person who wishes to be certified as vocationally
 24 handicapped for purposes of this part shall apply to the
 25 department on forms furnished by the department. The

1 department shall conduct an investigation and shall issue a
 2 certificate to a person who, in the department's discretion,
 3 meets the requirements for vocationally handicapped
 4 certification. ~~An--employee--who--is--requesting--reemployment~~
 5 ~~may--be--certified--as--vocationally--handicapped.--An--employee~~
 6 ~~who---is---not---employed---at---the---time---of---application---for~~
 7 ~~certification--must--be--certified--as--vocationally--handicapped~~
 8 ~~before--entering--new--employment--in--order--for--the--new--employer~~
 9 ~~to--receive--the~~ A person shall apply for certification before
 10 employment or within 60 days after he becomes employed or
 11 reemployed and before an injury occurs that is covered by
 12 this part. The certification is effective on the date of
 13 employment or reemployment. Failure to apply before
 14 employment or within 60 days after employment or
 15 reemployment precludes the employer from the protection and
 16 benefits of this part."

17 **Section 9.** Section 39-71-2106, MCA, is amended to read:

18 "39-71-2106. **Requiring security of employer.** (1) (a)
 19 The department may require any employer who elects to be
 20 bound by compensation plan No. 1 to provide a security
 21 deposit. Such Except as provided in subsection (1)(b), the
 22 security deposit may be a surety bond, government bond, or
 23 letter of credit approved by the department and must be the
 24 greater of:

25 ~~(a)(i)~~ (i) \$250,000; or

1 ~~(b)(ii)~~ (ii) an average of the workers' compensation
 2 liabilities incurred by the employer in Montana for the past
 3 3 calendar years.

4 (b) The department may require a larger deposit as
 5 additional evidence of solvency and financial ability to pay
 6 the liabilities provided by this chapter.

7 (2) If the department finds that an employer has lost
 8 his solvency or financial ability to pay the compensation
 9 herein provided to be paid which might reasonably be
 10 expected to be chargeable to the employer during the fiscal
 11 year to be covered by the permission or that the employer is
 12 an association, corporation, or organization of individual
 13 employers seeking permission to operate under compensation
 14 plan No. 1, the department must require the employer, before
 15 granting to him permission or before continuing or engaging
 16 in such employment subject to the provisions of compensation
 17 plan No. 1, to give security in addition to the security
 18 described in subsection (1) for the payment of compensation,
 19 which security must be in such an amount as the department
 20 finds is reasonable and necessary to meet all liabilities of
 21 the employer which may reasonably and ordinarily be expected
 22 to accrue during the fiscal year.

23 (3) The security provided for in subsection (2) must be
 24 deposited with the department and may be a certain estimated
 25 percent of the employer's last preceding annual payroll or a

1 certain percent of the established amount of his annual
 2 payroll for the fiscal year; or the security may be in the
 3 form of a bond or undertaking executed to the department in
 4 the amount to be fixed by it with two or more sufficient
 5 sureties, which undertaking must be conditioned that the
 6 employer will well and truly pay or cause to be paid all
 7 sums and amounts for which the employer shall become liable
 8 under the terms of this chapter to his employees during the
 9 fiscal year; or such security may consist of any state,
 10 county, municipal, or school district bonds or the bonds or
 11 evidence of indebtedness of any individuals or corporations
 12 which the department deems solvent; and every such deposit
 13 and the character and amount of such securities shall at all
 14 times be subject to approval, revision, or change by the
 15 department as in its judgment may be required, and upon
 16 proof of the final payment of the liability for which such
 17 securities are given, such securities or any remaining part
 18 thereof shall be returned to the depositor.

19 (4) The department is liable for the value and
 20 safekeeping of all such deposits or securities and shall, at
 21 any time, upon demand of a bondsman or the depositor,
 22 account for the same and the earnings thereof."

23 **Section 10.** Section 39-71-2401, MCA, is amended to
 24 read:

25 "39-71-2401. Disputes -- jurisdiction -- evidence---

1 settlement requirements -- mediation. (1) A dispute
 2 concerning benefits arising under this chapter or chapter
 3 72, other than the disputes described in subsection (2),
 4 must be brought before a department mediator as provided in
 5 this part. If a dispute still exists after the parties
 6 satisfy the mediation requirements in this part, either
 7 party may petition the workers' compensation court for a
 8 resolution.

9 (2) A dispute arising under this chapter that does not
 10 concern benefits or a dispute for which a specific provision
 11 of this chapter gives the department jurisdiction must be
 12 brought before the department.

13 (3) An appeal from a department order may be made to
 14 the workers' compensation court.

15 ~~(4) The common law and statutory rules of evidence do~~
 16 ~~not apply in a case brought to hearing before the~~
 17 ~~department.~~

18 ~~(5)~~(4) Except as otherwise provided in this chapter,
 19 before a party may bring a dispute concerning benefits
 20 before a mediator, the parties shall attempt to settle as
 21 follows:

22 (a) The party making a demand shall present the other
 23 party with a specific written demand that contains
 24 sufficient explanation and documentary evidence to enable
 25 the other party to thoroughly evaluate the demand.

1 (b) The party receiving the demand shall respond in
 2 writing within 15 working days of receipt. If the demand is
 3 denied in whole or in part, the response shall state the
 4 basis of the denial.

5 (c) Upon motion of a party or upon the mediator's own
 6 motion, the mediator has the authority to dismiss a petition
 7 if he finds that either party did not comply with this
 8 subsection. A decision dismissing a petition under this
 9 subsection must be in writing and must state in detail the
 10 grounds for dismissal. The mediator's decision may be
 11 reviewed by the workers' compensation court upon motion of a
 12 party.

13 (d) Nothing in this subsection relieves a party of an
 14 obligation otherwise contained in this chapter."

15 **Section 11.** Section 39-71-2410, MCA, is amended to
 16 read:

17 "39-71-2410. Limitations on mediation proceedings. (1)
 18 Except as may be necessary for the workers' compensation
 19 court to rule on issues arising under 39-71-2401(5)(c)
 20 (4)(c) or 39-71-2411(7)(c), mediation proceedings are:

- 21 (a) held in private;
- 22 (b) informal and held without a verbatim record; and
- 23 (c) confidential.

24 (2) All communications, verbal or written, from the
 25 parties to the mediator and any information and evidence

1 presented to the mediator during the proceeding are
 2 confidential.

3 (3) A mediator's files and records are closed to all
 4 but the parties.

5 (4) (a) A mediator may not be called to testify in any
 6 proceeding concerning the issues discussed in the mediation
 7 process.

8 (b) Neither the mediator's report nor any of the
 9 information or recommendations contained in it are
 10 admissible as evidence in any action subsequently brought in
 11 any court of law.

12 (5) Notwithstanding subsections (1) through (4), a
 13 mediator may issue a report and the parties and the mediator
 14 may be required to attend a conference before the workers'
 15 compensation court as set forth in 39-71-2411."

16 **Section 12.** Section 39-72-402, MCA, is amended to read:

17 "39-72-402. Practice and procedure -- applicability of
 18 Workers' Compensation Act. (1) Except as otherwise provided
 19 in this chapter, the practice and procedure prescribed in
 20 the Workers' Compensation Act applies to all proceedings
 21 under this chapter.

22 (2) Sections 39-71-304, 39-71-403, 39-71-406,
 23 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 and
 24 Title 39, chapter 71, part 9, which are contained in the
 25 Workers' Compensation Act, specifically apply to and are

1 incorporated as part of this chapter."

2 ~~Section 14. Section 39-72-403, MCA, is amended to read:~~
 3 ~~*39-72-403. Time when claims must be presented. (1)~~
 4 ~~When a claimant seeks benefits under this chapter, his~~
 5 ~~claims for benefits must be presented in writing to the~~
 6 ~~employer, or the employer's insurer, or the department~~
 7 ~~within 2 years from the date the claimant knew or should~~
 8 ~~have known that his total disability condition resulted from~~
 9 ~~an occupational disease. When a beneficiary seeks benefits~~
 10 ~~under this chapter, his claims for death benefits must be~~
 11 ~~presented in writing to the employer, or the employer's~~
 12 ~~insurer, or the department within 1 year from the date the~~
 13 ~~beneficiaries knew or should have known that the decedent's~~
 14 ~~death was related to an occupational disease.~~

15 ~~(2) The department may, upon a reasonable showing by~~
 16 ~~the claimant or a decedent's beneficiaries that the claimant~~
 17 ~~or the beneficiaries could not have known that the~~
 18 ~~claimant's condition or the employee's death was related to~~
 19 ~~an occupational disease, waive the claim time requirement up~~
 20 ~~to an additional 2 years."~~

21 NEW SECTION. Section 13. Repealer. Section 39-72-304,
 22 MCA, is repealed.

23 NEW SECTION. Section 14. Codification instruction.
 24 [Section 1] is intended to be codified as an integral part
 25 of Title 39, chapter 71, part 2 or 3, and the provisions of

1 Title 39, chapter 71, apply to [section 1].

2 NEW SECTION. Section 15. Applicability. [This act]
 3 applies to injuries that occur on or after [the effective
 4 date of this act].

5 NEW SECTION. Section 16. Effective date. [This act] is
 6 effective July 1, 1991.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 20, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 465 (third reading copy -- blue), respectfully report that House Bill No. 465 be amended and as so amended be concurred in:

1. Page 14, line 4.

Following: "may"

Insert: ", in accordance with rules adopted by the department,"

Signed: _____


Thomas E. Towe, Vice Chairman

MA 3-20-91
And. Coord.

SB 3-20
Sec. of Senate

12:30

SENATE
HB 465

HOUSE BILL NO. 465

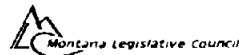
INTRODUCED BY THOMAS, R. JOHNSON, WILLIAMS, BLAYLOCK,
DRISCOLL, SQUIRES, WANZENRIED, LYNCH, THAYER,

BENEDICT, NATHE

BY REQUEST OF THE DEPARTMENT OF LABOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT
STATUTORY AND COMMON-LAW RULES OF EVIDENCE DO NOT APPLY TO
DEPARTMENT OF LABOR AND INDUSTRY WORKERS' COMPENSATION
HEARINGS; ~~TO CHANGE THE REQUIREMENTS FOR FILING AND
DISTRIBUTING CERTAIN DOCUMENTS;~~ TO CHANGE THE IMPAIRMENT
EVALUATION PROCEDURE; TO CHANGE PROVISIONS RELATING TO THE
YEARLY MEDICAL SERVICES FEE SCHEDULES; TO CHANGE APPLICATION
REQUIREMENTS FOR VOCATIONALLY HANDICAPPED BENEFITS; TO
CLARIFY THAT WORKERS' COMPENSATION STATUTES RELATING TO THE
VOCATIONALLY HANDICAPPED ALSO APPLY TO OCCUPATIONAL
DISEASES; GRANTING THE DEPARTMENT DISCRETION AS TO THE SIZE
OF THE SECURITY DEPOSITED BY AN EMPLOYER THAT SELF-INSURES;
AMENDING SECTIONS 39-71-201, 39-71-306, ~~39-71-601, 7~~
39-71-604, 39-71-605, 39-71-704, 39-71-711, 39-71-905,
39-71-2106, 39-71-2401, 39-71-2410, AND 39-72-402, AND
39-72-403, MCA; REPEALING SECTION 39-72-304, MCA; AND
PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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



NEW SECTION. **Section 1.** Hearings -- rules of evidence.
The statutory and common law rules of evidence do not apply
to a hearing before the department under this chapter.

Section 2. Section 39-71-201, MCA, is amended to read:
"39-71-201. Administration fund. (1) A workers'
compensation administration fund is established out of which
all costs of administering the Workers' Compensation and
Occupational Disease Acts and the various occupational
safety acts the department must administer are to be paid
upon lawful appropriation. The following money collected by
the department must be deposited in the state treasury to
the credit of the workers' compensation administrative fund
and must be used for the administrative expenses of the
department:

(a) all fees and penalties provided in 39-71-205 and
39-71-304;

(b) all fees paid for inspection of boilers and
issuance of licenses to operating engineers as required by
law;

(c) all fees paid from an assessment on each plan No. 1
employer, plan No. 2 insurer, and plan No. 3, the state
fund. The assessments must be levied against the preceding
calendar year's gross annual payroll of the plan No. 1
employers and the gross annual direct premiums collected in
Montana on the policies of the plan No. 2 insurers, insuring

1 employers covered under the chapter, during the preceding
 2 calendar year. However, no assessment of the plan No. 1
 3 employer or plan No. 2 insurer may be less than \$200. The
 4 assessments must be sufficient to fund the direct costs
 5 identified to the three plans and an equitable portion of
 6 the indirect costs based on the ratio of the preceding
 7 fiscal year's indirect costs distributed to the plans, using
 8 proper accounting and cost allocation procedures. Plan No. 3
 9 must be assessed an amount sufficient to fund its the direct
 10 costs and an equitable portion of the indirect costs as
 11 referred-to-above of regulating Plan No. 3. Other sources of
 12 revenue, including unexpended funds from the preceding
 13 fiscal year, must be used to reduce the costs before levying
 14 the assessments.

15 (2) The administration fund must be debited with
 16 expenses incurred by the department in the general
 17 administration of the provisions of this chapter, including
 18 the salaries of its members, officers, and employees and the
 19 travel expenses of the members, officers, and employees, as
 20 provided for in 2-18-501 through 2-18-503, as amended,
 21 incurred while on the business of the department either
 22 within or without the state.

23 (3) Disbursements from the administration money must be
 24 made after being approved by the department upon claim
 25 therefor."

1 **Section 3.** Section 39-71-306, MCA, is amended to read:

2 "39-71-306. Insurers to file summary reports of
 3 benefits paid for injuries and statements of medical
 4 expenditures. Every insurer shall, on or before the 15th day
 5 of after each and--every--month state government fiscal
 6 quarter, file with the department:

7 (1) summary reports of benefits for all compensation
 8 payments made during the previous month state fiscal quarter
 9 to injured workers or their beneficiaries or dependents; and

10 (2) statements showing the amounts expended during the
 11 previous month state fiscal quarter for all medical,
 12 surgical, and hospital services for injured workers and--for
 13 the burial of deceased workers."

14 ~~Section 4. Section 39-71-601, MCA, is amended to read:~~

15 ~~"39-71-601. Statute of limitation on presentment of~~
 16 ~~claim--waiver, (1) in case of personal injury or death~~
 17 ~~all claims must be forever barred unless presented in~~
 18 ~~writing to the employer, or the insurer, or the department,~~
 19 ~~as the case may be, within 12 months from the date of the~~
 20 ~~happening of the accident, either by the claimant or someone~~
 21 ~~legally authorized to act for him in his behalf;~~

22 ~~(2) The department may waive the time requirement up to~~
 23 ~~an additional 24 months upon a reasonable showing by the~~
 24 ~~claimant of:~~

25 ~~(a) lack of knowledge of disability;~~

1 ~~(b)--latent-injury--or~~
 2 ~~(c)--equitable-estoppel--"~~

3 **Section 4.** Section 39-71-604, MCA, is amended to read:

4 "39-71-604. Application for compensation. (1) If a
 5 worker is entitled to benefits under this chapter, the
 6 worker shall file with the insurer ~~or--the--department~~ all
 7 reasonable information needed by the insurer to determine
 8 compensability. It is the duty of the worker's attending
 9 physician to lend all necessary assistance in making
 10 application for compensation and such proof of other matters
 11 as may be required by the rules of the department without
 12 charge to the worker. The filing of forms or other
 13 documentation by the attending physician does not constitute
 14 a claim for compensation.

15 (2) If death results from an injury, the parties
 16 entitled to compensation or someone in their behalf shall
 17 file a claim with the insurer ~~or--the--department~~. The claim
 18 must be accompanied with proof of death and proof of
 19 relationship, showing the parties entitled to compensation,
 20 certificate of the attending physician, if any, and such
 21 other proof as may be required by the department."

22 **Section 5.** Section 39-71-605, MCA, is amended to read:

23 "39-71-605. Examination of employee by physician --
 24 effect of refusal to submit to examination -- report and
 25 testimony of physician -- cost. (1) (a) Whenever in case of

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 2 exist in favor of any employee, he shall, upon the written
 3 request of the insurer, submit from time to time to
 4 examination by a physician or panel of physicians, who shall
 5 be provided and paid for by such insurer, and shall likewise
 6 submit to examination from time to time by any physician or
 7 panel of physicians selected by the department.

8 (b) The request or order for such examination shall fix
 9 a time and place therefor; ~~due~~ FOR THE EXAMINATION, WITH
 10 ~~regard being-had-to-the-convenience-of-the-employee-and~~ FOR
 11 THE EMPLOYEE'S CONVENIENCE, his physical condition, and HIS
 12 ability to attend at the time and place ~~fixed~~ THAT IS AS
 13 CLOSE TO THE EMPLOYEE'S RESIDENCE AS IS PRACTICAL. The
 14 employee shall be entitled to have a physician present at
 15 any such examination. So long as the employee, after such
 16 written request, shall fail or refuse to submit to such
 17 examination or shall in any way obstruct the same, his right
 18 to compensation shall be suspended. Any physician or panel
 19 of physicians employed by the insurer or the department who
 20 shall make or be present at any such examination may be
 21 required to testify as to the results thereof.

22 (2) In the event of a dispute concerning the physical
 23 condition of a claimant or the cause or causes of the injury
 24 or disability, if any, the department, at the request of the
 25 claimant or insurer, as the case may be, shall require the

1 claimant to submit to such examination as it may deem
 2 desirable by a physician or panel of physicians within the
 3 state or elsewhere who have had adequate and substantial
 4 experience in the particular field of medicine concerned
 5 with the matters presented by the dispute. The physician or
 6 panel of physicians making the examination shall file a
 7 written report of findings with the department claimant and
 8 insurer for ~~its~~ their use in the determination of the
 9 controversy involved. The department requesting party shall
 10 pay the physician or panel of physicians for the examination
 11 ~~and shall be reimbursed by the party who requested it.~~

12 (3) This section does not apply to impairment
 13 evaluations provided for in 39-71-711."

14 **Section 6.** Section 39-71-704, MCA, is amended to read:

15 "39-71-704. Payment of medical, hospital, and related
 16 services -- fee schedules and hospital rates -- FEE
 17 LIMITATION. (1) In addition to the compensation provided by
 18 this chapter and as an additional benefit separate and apart
 19 from compensation, the following must be furnished:

20 (a) After the happening of the injury, the insurer
 21 shall furnish, without limitation as to length of time or
 22 dollar amount, reasonable services by a physician or
 23 surgeon, reasonable hospital services and medicines when
 24 needed, and such other treatment as may be approved by the
 25 department for the injuries sustained.

1 (b) The insurer shall replace or repair prescription
 2 eyeglasses, prescription contact lenses, prescription
 3 hearing aids, and dentures that are damaged or lost as a
 4 result of an injury, as defined in 39-71-119, arising out of
 5 and in the course of employment.

6 (c) The insurer shall reimburse a worker for reasonable
 7 travel expenses incurred in travel to a medical provider for
 8 treatment of an injury pursuant to rules adopted by the
 9 department. Reimbursement must be at the rates allowed for
 10 reimbursement of travel by state employees.

11 (2) ~~A relative value fee schedule for medical
 12 chiropractic and paramedical services provided for in this
 13 chapter, excluding hospital services, must be established
 14 annually by the department and become effective in January
 15 of each year. The maximum fee schedule must be adopted as a
 16 relative value fee schedule of medical, chiropractic, and
 17 paramedical services, with unit values to indicate the
 18 relative relationship within each grouping of specialties.
 19 Medical fees must be based on the median fees as billed to
 20 the state fund during the year preceding the adoption of the
 21 schedule. The state fund shall report fees billed in the
 22 form and at the times required by the department. The
 23 department shall adopt rules establishing relative unit
 24 values, groups of specialties, the procedures insurers must
 25 use to pay for services under the schedule, and the method~~

1 ~~of--determining--the--median--of--billed--medical--fees--These~~
 2 ~~rules--must--be--modeled--on--the--1974--revision--of--the--1969~~
 3 ~~California--Relative--Value--Studies.~~ The department shall
 4 annually establish a schedule of fees for medical
 5 nonhospital services necessary for the treatment of injured
 6 workers. The department may require insurers to submit
 7 information to be used in establishing the schedule.

8 (3) Beginning January 1, 1988, the department shall
 9 establish rates for hospital services necessary for the
 10 treatment of injured workers. Approved rates must be in
 11 effect for a period of 12 months from the date of approval.
 12 The department may coordinate this ratesetting function with
 13 other public agencies that have similar responsibilities.

14 (4) Notwithstanding subsection (2), beginning January
 15 1, 1988, through December 31, 1991, the maximum fees payable
 16 by insurers must be limited to the ~~relative--value~~ fee
 17 schedule established in January 1987. Notwithstanding
 18 subsection (3), beginning January 1, 1988, through December
 19 31, 1991, the hospital rates payable by insurers must be
 20 limited to those set in January 1988. AFTER DECEMBER 31,
 21 1991, THE PERCENTAGE INCREASE IN MEDICAL COSTS PAYABLE UNDER
 22 THIS CHAPTER MAY NOT EXCEED THE ANNUAL PERCENTAGE INCREASE
 23 IN THE STATE'S AVERAGE WEEKLY WAGE AS DEFINED IN 39-71-116."

24 **Section 7.** Section 39-71-711, MCA, is amended to read:

25 **"39-71-711. Impairment evaluation -- ratings.** (1) An

1 impairment rating:

2 (a) is a purely medical determination and must be
 3 determined by an impairment evaluator after a claimant has
 4 reached maximum healing;

5 (b) must be based on the current edition of the Guides
 6 to Evaluation of Permanent Impairment published by the
 7 American medical association; and

8 (c) must be expressed as a percentage of the whole
 9 person.

10 (2) A claimant or insurer, or both, may obtain an
 11 impairment rating from an evaluator who is a medical doctor
 12 or from an evaluator who is a chiropractor if the claimant's
 13 treating physician is a chiropractor IF THE INJURY FALLS
 14 WITHIN THE SCOPE OF CHIROPRACTIC PRACTICE. If the claimant
 15 and insurer cannot agree upon the rating, the mediation
 16 procedure in subsection-~~(3)~~ part 24 of this chapter must be
 17 followed.

18 ~~(3)--(a)--Upon request of the claimant or insurer, the~~
 19 ~~department shall direct the claimant to an evaluator for a~~
 20 ~~rating. The evaluator shall:~~

21 ~~(i) evaluate the claimant to determine the degree of~~
 22 ~~impairment, if any, that exists due to the injury, and~~

23 ~~(ii) submit a report to the department, the claimant,~~
 24 ~~and the insurer;~~

25 ~~(b) Unless the following procedure is followed, the~~

1 insurer shall begin paying the impairment award, if any,
2 within 30 days of the evaluator's mailing of the report:

3 (i) Either the claimant or the insurer, within 15 days
4 after the date of mailing of the report by the first
5 evaluator, may request that the claimant be evaluated by a
6 second evaluator; if a second evaluation is requested, the
7 department shall direct the claimant to a second evaluator,
8 who shall determine the degree of impairment, if any, that
9 exists due to the injury.

10 (ii) The reports of both examinations must be submitted
11 to a third evaluator, who may also examine the claimant or
12 seek other consultation. The three evaluators shall consult
13 with one another, and then the third evaluator shall submit
14 a final report to the department, the claimant, and the
15 insurer. The final report must state the degree of
16 impairment, if any, that exists due to the injury.

17 (iii) Unless either party disputes the rating in the
18 final report as provided in subsection (6), the insurer
19 shall begin paying the impairment award, if any, within 45
20 days of the date of mailing of the report by the third
21 evaluator.

22 (4)(3) The department shall appoint impairment
23 evaluators to render ratings under subsection (i). The
24 department shall adopt rules that set forth the
25 qualifications of evaluators and the locations of

1 examinations. An evaluator must be a physician licensed
2 under Title 37, chapter 3, except if the claimant's treating
3 physician is a chiropractor, the evaluator may be a
4 chiropractor who is certified as an evaluator under chapter
5 12. The department may seek nominations from the board of
6 medical examiners for evaluators licensed under Title 37,
7 chapter 3, and from the board of chiropractors for
8 evaluators licensed under Title 37, chapter 12.

9 (5) The cost of impairment evaluations is assessed to
10 the insurer, except that the cost of an evaluation under
11 subsection (3)(b)(i) or (3)(b)(ii) is assessed to the
12 requesting party.

13 (6)(4) A party may dispute a final impairment rating
14 rendered under subsection (3)(b)(i) by filing a petition
15 with the workers' compensation court within 15 days of the
16 evaluator's mailing of the report. Disputes over impairment
17 ratings are not subject to 39-71-605 or to mandatory
18 mediation.

19 (7) An impairment rating rendered under subsection (3)
20 is presumed correct. This presumption is rebuttable."

21 **Section 8.** Section 39-71-905, MCA, is amended to read:
22 "39-71-905. Certification as vocationally handicapped.
23 A person who wishes to be certified as vocationally
24 handicapped for purposes of this part shall apply to the
25 department on forms furnished by the department. The

1 department shall conduct an investigation and shall issue a
 2 certificate to a person who, in the department's discretion,
 3 meets the requirements for vocationally handicapped
 4 certification. ~~An--employee--who-is-requesting-reemployment~~
 5 ~~may-be-certified-as-vocationally--handicapped;--An--employee~~
 6 ~~who---is--not--employed--at--the--time--of--application--for~~
 7 ~~certification-must-be-certified-as-vocationally--handicapped~~
 8 ~~before-entering-new-employment-in-order-for-the-new-employer~~
 9 ~~to-receive-the~~ A person shall apply for certification before
 10 employment or within 60 days after he becomes employed or
 11 reemployed and before an injury occurs that is covered by
 12 this part. The certification is effective on the date of
 13 employment or reemployment. Failure to apply before
 14 employment or within 60 days after employment or
 15 reemployment precludes the employer from the protection and
 16 benefits of this part."

17 **Section 9.** Section 39-71-2106, MCA, is amended to read:

18 **"39-71-2106. Requiring security of employer.** (1) (a)
 19 The department may require any employer who elects to be
 20 bound by compensation plan No. 1 to provide a security
 21 deposit. Such Except as provided in subsection (1)(b), the
 22 security deposit may be a surety bond, government bond, or
 23 letter of credit approved by the department and must be the
 24 greater of:
 25 (a)(i) \$250,000; or

1 ~~(b)(ii)~~ an average of the workers' compensation
 2 liabilities incurred by the employer in Montana for the past
 3 3 calendar years.

4 (b) The department may, IN ACCORDANCE WITH RULES
 5 ADOPTED BY THE DEPARTMENT, require a larger deposit as
 6 additional evidence of solvency and financial ability to pay
 7 the liabilities provided by this chapter.

8 (2) If the department finds that an employer has lost
 9 his solvency or financial ability to pay the compensation
 10 herein provided to be paid which might reasonably be
 11 expected to be chargeable to the employer during the fiscal
 12 year to be covered by the permission or that the employer is
 13 an association, corporation, or organization of individual
 14 employers seeking permission to operate under compensation
 15 plan No. 1, the department must require the employer, before
 16 granting to him permission or before continuing or engaging
 17 in such employment subject to the provisions of compensation
 18 plan No. 1, to give security in addition to the security
 19 described in subsection (1) for the payment of compensation,
 20 which security must be in such an amount as the department
 21 finds is reasonable and necessary to meet all liabilities of
 22 the employer which may reasonably and ordinarily be expected
 23 to accrue during the fiscal year.

24 (3) The security provided for in subsection (2) must be
 25 deposited with the department and may be a certain estimated

1 percent of the employer's last preceding annual payroll or a
 2 certain percent of the established amount of his annual
 3 payroll for the fiscal year; or the security may be in the
 4 form of a bond or undertaking executed to the department in
 5 the amount to be fixed by it with two or more sufficient
 6 sureties, which undertaking must be conditioned that the
 7 employer will well and truly pay or cause to be paid all
 8 sums and amounts for which the employer shall become liable
 9 under the terms of this chapter to his employees during the
 10 fiscal year; or such security may consist of any state,
 11 county, municipal, or school district bonds or the bonds or
 12 evidence of indebtedness of any individuals or corporations
 13 which the department deems solvent; and every such deposit
 14 and the character and amount of such securities shall at all
 15 times be subject to approval, revision, or change by the
 16 department as in its judgment may be required, and upon
 17 proof of the final payment of the liability for which such
 18 securities are given, such securities or any remaining part
 19 thereof shall be returned to the depositor.

20 (4) The department is liable for the value and
 21 safekeeping of all such deposits or securities and shall, at
 22 any time, upon demand of a bondsman or the depositor,
 23 account for the same and the earnings thereof."

24 **Section 10.** Section 39-71-2401, MCA, is amended to
 25 read:

1 "39-71-2401. Disputes -- jurisdiction -- evidence----
 2 settlement requirements -- mediation. (1) A dispute
 3 concerning benefits arising under this chapter or chapter
 4 72, other than the disputes described in subsection (2),
 5 must be brought before a department mediator as provided in
 6 this part. If a dispute still exists after the parties
 7 satisfy the mediation requirements in this part, either
 8 party may petition the workers' compensation court for a
 9 resolution.

10 (2) A dispute arising under this chapter that does not
 11 concern benefits or a dispute for which a specific provision
 12 of this chapter gives the department jurisdiction must be
 13 brought before the department.

14 (3) An appeal from a department order may be made to
 15 the workers' compensation court.

16 ~~(4) The common law and statutory rules of evidence do~~
 17 ~~not apply in a case brought to hearing before the~~
 18 ~~department.~~

19 (5)(4) Except as otherwise provided in this chapter,
 20 before a party may bring a dispute concerning benefits
 21 before a mediator, the parties shall attempt to settle as
 22 follows:

23 (a) The party making a demand shall present the other
 24 party with a specific written demand that contains
 25 sufficient explanation and documentary evidence to enable

1 the other party to thoroughly evaluate the demand.

2 (b) The party receiving the demand shall respond in
3 writing within 15 working days of receipt. If the demand is
4 denied in whole or in part, the response shall state the
5 basis of the denial.

6 (c) Upon motion of a party or upon the mediator's own
7 motion, the mediator has the authority to dismiss a petition
8 if he finds that either party did not comply with this
9 subsection. A decision dismissing a petition under this
10 subsection must be in writing and must state in detail the
11 grounds for dismissal. The mediator's decision may be
12 reviewed by the workers' compensation court upon motion of a
13 party.

14 (d) Nothing in this subsection relieves a party of an
15 obligation otherwise contained in this chapter."

16 **Section 11.** Section 39-71-2410, MCA, is amended to
17 read:

18 "39-71-2410. Limitations on mediation proceedings. (1)
19 Except as may be necessary for the workers' compensation
20 court to rule on issues arising under 39-71-2401~~(5)~~~~(c)~~
21 (4)(c) or 39-71-2411(7)(c), mediation proceedings are:

- 22 (a) held in private;
- 23 (b) informal and held without a verbatim record; and
- 24 (c) confidential.

25 (2) All communications, verbal or written, from the

1 parties to the mediator and any information and evidence
2 presented to the mediator during the proceeding are
3 confidential.

4 (3) A mediator's files and records are closed to all
5 but the parties.

6 (4) (a) A mediator may not be called to testify in any
7 proceeding concerning the issues discussed in the mediation
8 process.

9 (b) Neither the mediator's report nor any of the
10 information or recommendations contained in it are
11 admissible as evidence in any action subsequently brought in
12 any court of law.

13 (5) Notwithstanding subsections (1) through (4), a
14 mediator may issue a report and the parties and the mediator
15 may be required to attend a conference before the workers'
16 compensation court as set forth in 39-71-2411."

17 **Section 12.** Section 39-72-402, MCA, is amended to read:

18 "39-72-402. Practice and procedure -- applicability of
19 Workers' Compensation Act. (1) Except as otherwise provided
20 in this chapter, the practice and procedure prescribed in
21 the Workers' Compensation Act applies to all proceedings
22 under this chapter.

23 (2) Sections 39-71-304, 39-71-403, 39-71-406,
24 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 and
25 Title 39, chapter 71, part 9, which are contained in the

1 Workers' Compensation Act, specifically apply to and are
 2 incorporated as part of this chapter."

3 ~~Section 14. Section 39-72-403, MCA, is amended to read:~~

4 ~~"39-72-403. Time when claims must be presented. (1)~~

5 ~~When a claimant seeks benefits under this chapter, his~~
 6 ~~claims for benefits must be presented in writing to the~~
 7 ~~employer, or the employer's insurer, or the department~~
 8 ~~within 2 years from the date the claimant knew or should~~
 9 ~~have known that his total disability condition resulted from~~
 10 ~~an occupational disease. When a beneficiary seeks benefits~~
 11 ~~under this chapter, his claims for death benefits must be~~
 12 ~~presented in writing to the employer, or the employer's~~
 13 ~~insurer, or the department within 1 year from the date the~~
 14 ~~beneficiaries knew or should have known that the decedent's~~
 15 ~~death was related to an occupational disease.~~

16 ~~(2) The department may, upon a reasonable showing by~~
 17 ~~the claimant or a decedent's beneficiaries that the claimant~~
 18 ~~or the beneficiaries could not have known that the~~
 19 ~~claimant's condition or the employee's death was related to~~
 20 ~~an occupational disease, waive the claim time requirement up~~
 21 ~~to an additional 2 years."~~

22 NEW SECTION. Section 13. Repealer. Section 39-72-304,
 23 MCA, is repealed.

24 NEW SECTION. Section 14. Codification instruction.
 25 [Section 1] is intended to be codified as an integral part

1 of Title 39, chapter 71, part 2 or 3, and the provisions of
 2 Title 39, chapter 71, apply to [section 1].

3 NEW SECTION. Section 15. Applicability. [This act]
 4 applies to injuries that occur on or after [the effective
 5 date of this act].

6 NEW SECTION. Section 16. Effective date. [This act] is
 7 effective July 1, 1991.

-End-