

HOUSE BILL NO. 837
INTRODUCED BY DRISCOLL

IN THE HOUSE

FEBRUARY 14, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON LABOR & EMPLOYMENT RELATIONS.

 FIRST READING.

FEBRUARY 22, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1991 PRINTING REPORT.

FEBRUARY 26, 1991 SECOND READING, DO PASS.

 ENGROSSING REPORT.

FEBRUARY 27, 1991 THIRD READING, PASSED.
 AYES, 99; NOES, 0.

 TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON LABOR & EMPLOYMENT RELATIONS.

 FIRST READING.

APRIL 1, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

APRIL 4, 1991 SECOND READING, CONCURRED IN.

APRIL 5, 1991 THIRD READING, CONCURRED IN.
 AYES, 49; NOES, 1.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 10, 1991 RECEIVED FROM SENATE.

 SECOND READING, AMENDMENTS
 CONCURRED IN.

APRIL 11, 1991 THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 837
2 INTRODUCED BY Parsons

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS'
5 COMPENSATION AND OCCUPATIONAL DISEASE ACTS; AMENDING
6 SECTIONS 39-71-116, 39-71-123, 39-71-414, 39-71-701,
7 39-71-702, 39-71-703, 39-71-704, 39-71-741, 39-71-1011,
8 39-71-1013, 39-71-1025, 39-71-1032, 39-72-601, AND
9 39-72-602, MCA; REPEALING SECTIONS 39-71-1012, 39-71-1015,
10 39-71-1016, 39-71-1017, 39-71-1018, 39-71-1019, 39-71-1023,
11 39-71-1024, 39-71-1026, AND 39-71-1033, MCA; AND PROVIDING
12 AN EFFECTIVE DATE."
13

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

15 **Section 1.** Section 39-71-116, MCA, is amended to read:

16 **"39-71-116. Definitions.** Unless the context otherwise
17 requires, words and phrases employed in this chapter have
18 the following meanings:

19 (1) "Administer and pay" includes all actions by the
20 state fund under the Workers' Compensation Act and the
21 Occupational Disease Act of Montana necessary to the
22 investigation, review, and settlement of claims; payment of
23 benefits; setting of reserves; furnishing of services and
24 facilities; and utilization of actuarial, audit, accounting,
25 vocational rehabilitation, and legal services.

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

7 (3) "Beneficiary" means:

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

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

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

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

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

22 (f) a brother or sister under the age of 18 years if
23 dependent upon the decedent for support at the time of the
24 injury (however, such a brother or sister is a beneficiary
25 only until the age of 18 years and only when no beneficiary,



1 as defined in subsections (3)(a) through (3)(e) of this
2 section, exists).

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

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

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

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

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

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

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

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

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

1 determination arrived at or decision made by the department.

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

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

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

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

25 (15) "Permanent total disability" means a condition

1 resulting from injury as defined in this chapter, after a
 2 worker reaches maximum healing, in which a worker is-unable
 3 to-return-to-work-in-the-worker's-job-pool-after--exhausting
 4 all-options-set-forth-in--39-71-1012 has no reasonable
 5 prospect of physically performing regular employment.
 6 Regular employment means work on a recurring basis performed
 7 for remuneration in a trade, business, profession, or other
 8 occupation in this state. Lack of immediate job openings is
 9 not a factor to be considered in determining if a worker is
 10 permanently totally disabled.

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

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

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

22 (19) "Reasonably safe place to work" means that the
 23 place of employment has been made as free from danger to the
 24 life or safety of the employee as the nature of the
 25 employment will reasonably permit.

1 (20) "Reasonably safe tools and appliances" are such
 2 tools and appliances as are adapted to and are reasonably
 3 safe for use for the particular purpose for which they are
 4 furnished.

5 (21) "Temporary total disability" means a condition
 6 resulting from an injury as defined in this chapter that
 7 results in total loss of wages and exists until the injured
 8 worker reaches maximum healing.

9 (22) "Year", unless otherwise specified, means calendar
 10 year."

11 **Section 2.** Section 39-71-123, MCA, is amended to read:

12 "39-71-123. Wages defined. (1) "Wages" means the gross
 13 remuneration paid in money, or in a substitute for money,
 14 for services rendered by an employee. Wages include but are
 15 not limited to:

16 (a) commissions, bonuses, and remuneration at the
 17 regular hourly rate for overtime work, holidays, vacations,
 18 and sickness periods;

19 (b) board, lodging, rent, or housing if it constitutes
 20 a part of the employee's remuneration and is based on its
 21 actual value; and

22 (c) payments made to an employee on any basis other
 23 than time worked, including but not limited to piecework, an
 24 incentive plan, or profit-sharing arrangement.

25 (2) Wages do not include:

1 (a) employee travel expense reimbursements or
2 allowances for meals, lodging, travel, and subsistence;

3 (b) special rewards for individual invention or
4 discovery;

5 (c) tips and other gratuities received by the employee
6 in excess of those documented to the employer for tax
7 purposes;

8 (d) contributions made by the employer to a group
9 insurance or pension plan; or

10 (e) vacation or sick leave benefits accrued but not
11 paid.

12 (3) For compensation benefit purposes, the average
13 actual earnings for the four pay periods immediately
14 preceding the injury are the employee's wages, except if:

15 (a) the term of employment for the same employer is
16 less than four pay periods, in which case the employee's
17 wages are the hourly rate times the number of hours in a
18 week for which the employee was hired to work; or

19 (b) for good cause shown by the claimant, the use of
20 the four pay periods does not accurately reflect the
21 claimant's employment history with the employer, in which
22 case the insurer may use additional pay periods.

23 (4) (a) For the purpose of calculating compensation
24 benefits for an employee working concurrent employments, the
25 average actual wages must be calculated as provided in

1 subsection (3).

2 (b) The compensation benefits for a covered volunteer
3 must be based on the average actual wages in his regular
4 employment, except self-employment as a sole proprietor or
5 partner who elected not to be covered, from which he is
6 disabled by the injury incurred.

7 (c) The compensation benefits for an employee working
8 at two or more concurrent remunerated employments must be
9 based on the aggregate of average actual wages of all
10 employments, except self-employment as a sole proprietor or
11 partner who elected not to be covered, from which the
12 employee is disabled by the injury incurred.

13 (5) If an injured worker is engaged in self-employment
14 subsequent to an injury, earnings from self-employment are
15 considered wages as defined in subsection (1) for purposes
16 of determining entitlement to temporary total disability
17 benefits. If a self-employed worker is entitled to temporary
18 total disability benefits and continues to receive
19 self-employment income, temporary total disability benefits
20 must be reduced by an amount equal to two-thirds of the
21 self-employment income."

22 **Section 3.** Section 39-71-414, MCA, is amended to read:

23 "39-71-414. Subrogation. (1) If an action is prosecuted
24 as provided for in 39-71-412 or 39-71-413 and except as
25 otherwise provided in this section, the insurer is entitled

1 to subrogation for all compensation and benefits paid or to
 2 be paid under the Workers' Compensation Act. The insurer's
 3 right of subrogation is a first lien on the claim, judgment,
 4 or recovery.

5 (2) (a) If the injured employee intends to institute
 6 the third party action, he shall give the insurer reasonable
 7 notice of his intention to institute the action.

8 (b) The injured employee may request that the insurer
 9 pay a proportionate share of the reasonable cost of the
 10 action, including attorneys' fees.

11 (c) The insurer may elect not to participate in the
 12 cost of the action. If this election is made, the insurer
 13 waives 50% of its subrogation rights granted by this
 14 section.

15 (d) If the injured employee or the employee's personal
 16 representative institutes the action, the employee is
 17 entitled to at least one-third of the amount recovered by
 18 judgment or settlement less a proportionate share of
 19 reasonable costs, including attorneys' fees, if the amount
 20 of recovery is insufficient to provide the employee with
 21 that amount after payment of subrogation.

22 (3) If an injured employee refuses or fails to
 23 institute the third party action within 1 year from the date
 24 of injury, the insurer may institute the action in the name
 25 of the employee and for the employee's benefit or that of

1 the employee's personal representative. If the insurer
 2 institutes the action, it shall pay to the employee any
 3 amount received by judgment or settlement which is in excess
 4 of the amounts paid or to be paid under the Workers'
 5 Compensation Act after the insurer's reasonable costs,
 6 including attorneys' fees for prosecuting the action, have
 7 been deducted from the recovery.

8 (4) An insurer may enter into compromise agreements in
 9 settlement of subrogation rights.

10 (5) If the amount of compensation and other benefits
 11 payable under the Workers' Compensation Act have not been
 12 fully determined at the time the employee, the employee's
 13 heirs or personal representatives, or the insurer have
 14 settled in any manner the action as provided for in this
 15 section, the department shall determine what proportion of
 16 the settlement shall be allocated under subrogation. The
 17 department's determination may be appealed to the workers'
 18 compensation judge.

19 (6) (a) The insurer is entitled to full subrogation
 20 rights under this section, even though the claimant is able
 21 to demonstrate damages in excess of the workers'
 22 compensation benefits and the third-party recovery combined.
 23 The insurer may subrogate against the entire settlement or
 24 award of a third party claim brought by the claimant or his
 25 personal representative, without regard to the nature of the

1 damages.

2 (b) If no survival action exists and the parties reach
3 a settlement of a wrongful death claim without apportionment
4 of damages by a court or jury, the insurer may subrogate
5 against the entire settlement amount, without regard to the
6 parties' apportionment of the damages, unless the insurer is
7 a party to the settlement agreement.

8 (7) Regardless of whether the amount of compensation
9 and other benefits payable have been fully determined, the
10 insurer and the claimant may stipulate the proportion of the
11 third-party settlement to be allocated under subrogation.
12 Upon review and approval by the department, the agreement
13 constitutes a compromise settlement of the issue of
14 subrogation and may not be reopened by the department or by
15 any court."

16 **Section 4.** Section 39-71-701, MCA, is amended to read:

17 "39-71-701. Compensation for temporary total
18 disability. (1) Subject to the limitation in 39-71-736, a
19 worker is eligible for temporary total disability benefits
20 when the worker suffers a total loss of wages as a result of
21 an injury and until the worker reaches maximum healing.

22 (2) The determination of temporary total disability
23 must be supported by a preponderance of medical evidence.

24 (3) Weekly compensation benefits for injury producing
25 temporary total disability shall be $66 \frac{2}{3}\%$ of the wages

1 received at the time of the injury. The maximum weekly
2 compensation benefits may not exceed the state's average
3 weekly wage at the time of injury. Temporary total
4 disability benefits must be paid for the duration of the
5 worker's temporary disability. However, if a worker is
6 released by the treating physician to the same, a modified,
7 or an alternate position that is available to the worker
8 with the same employer with a wage equivalent to or higher
9 than the wage at the time of injury, the worker is no longer
10 eligible for temporary total disability benefits even though
11 the worker has not reached maximum healing. A worker is
12 again entitled to temporary total benefits if for any reason
13 the job is no longer available to the worker and he
14 continues to be temporarily totally disabled. The weekly
15 benefit amount may not be adjusted for cost of living as
16 provided in 39-71-702(5).

17 (4) In cases where it is determined that periodic
18 disability benefits granted by the Social Security Act are
19 payable because of the injury, the weekly benefits payable
20 under this section are reduced, but not below zero, by an
21 amount equal, as nearly as practical, to one-half the
22 federal periodic benefits for such week, which amount is to
23 be calculated from the date of the disability social
24 security entitlement.

25 (5) Notwithstanding subsection (3), beginning July 1,

1 1987, through June 30, 1991, weekly compensation benefits
2 for temporary total disability may not exceed the state's
3 average weekly wage of \$299 established July 1, 1986."

4 **Section 5.** Section 39-71-702, MCA, is amended to read:

5 "~~39-71-702. Compensation for permanent total~~
6 ~~disability. (1) If a worker is no longer temporarily totally~~
7 ~~disabled and is unable to return to work due to injury, the~~
8 ~~worker is eligible for permanent total disability benefits.~~
9 ~~At an insurer's request, an evaluation of all options under~~
10 ~~39-71-1012 must be made before permanent total disability~~
11 ~~status is determined.~~ Permanent total disability benefits
12 must be paid for the duration of the worker's permanent
13 total disability, subject to 39-71-710 and ~~39-71-1026.~~

14 (2) The determination of permanent total disability
15 must be supported by a preponderance of medical evidence.

16 (3) Weekly compensation benefits for an injury
17 resulting in permanent total disability shall be 66 2/3% of
18 the wages received at the time of the injury. The maximum
19 weekly compensation benefits shall not exceed the state's
20 average weekly wage at the time of injury.

21 (4) In cases where it is determined that periodic
22 disability benefits granted by the Social Security Act are
23 payable because of the injury, the weekly benefits payable
24 under this section are reduced, but not below zero, by an
25 amount equal, as nearly as practical, to one-half the

1 federal periodic benefits for such week, which amount is to
2 be calculated from the date of the disability social
3 security entitlement.

4 (5) A worker's benefit amount must be adjusted for a
5 cost-of-living increase on the next July 1 after 104 weeks
6 of permanent total disability benefits have been paid and on
7 each succeeding July 1. A worker may not receive more than
8 10 such adjustments. The adjustment must be the percentage
9 increase, if any, in the state's average weekly wage as
10 adopted by the department over the state's average weekly
11 wage adopted for the previous year or 3%, whichever is less.

12 (6) Notwithstanding subsection (3), beginning July 1,
13 1987, through June 30, 1991, the maximum weekly compensation
14 benefits for permanent total disability may not exceed the
15 state's average weekly wage of \$299 established July 1,
16 1986."

17 **Section 6.** Section 39-71-703, MCA, is amended to read:

18 "~~39-71-703. Compensation for permanent partial~~
19 ~~disability ---impairment---awards---and---wage---supplements. (1)~~
20 ~~The benefits available for permanent partial disability are~~
21 ~~impairment---awards---and---wage---supplements. A worker who has~~
22 ~~reached maximum healing and is not eligible for permanent~~
23 ~~total disability benefits but who has a medically determined~~
24 ~~physical restriction as a result of a work-related injury~~
25 ~~may be eligible for an impairment award and wage supplement~~

1 benefits-as-follows:

2 (a)--The--following--procedure--must--be--followed--for--an
3 impairment-award:

4 (i)--Each--percentage--point--of--impairment--is--compensated
5 in--an--amount--equal--to--5--weeks--times--66-2/3%--of--the--wages
6 received--at--the--time--of--the--injury,--subject--to--a--maximum
7 compensation--rate--of--one--half--of--the--state's--average--weekly
8 wage--at--the--time--of--injury;

9 (ii)--When--a--worker---reaches---maximum---healing,---an
10 impairment--rating--is--rendered--by--one--or--more--physicians--as
11 provided--for--in--39-71-711,--impairment--benefits--are--payable
12 beginning--the--date--of--maximum--healing;

13 (iii)--An--impairment--award--may--be--paid--biweekly--or--in--a
14 lump-sum,--at--the--discretion--of--the--worker,--lump--sums--paid
15 for--impairments--are--not--subject--to--the--requirements--set
16 forth--in--39-71-741,--except--that--lump-sum--conversions--for
17 benefits--not--accrued--may--be--reduced--to--present--value--at--the
18 rate--set--forth--by--the--department--in--39-71-741(5);

19 (iv)--If--a--worker--becomes--eligible--for--permanent--total
20 disability--benefits,--the--insurer--may--recover--any--lump-sum
21 advance--paid--to--a--claimant--for--impairment,--as--set--forth--in
22 39-71-741(5),--Such--right--of--recovery--does--not--apply--to
23 lump-sum--benefits--paid--for--the--period--prior--to--claimant's
24 eligibility--for--permanent--total--disability--benefits;

25 (v)--If--a--worker--suffers--additional--injury,--an

1 impairment-award-payable-for-the-additional-injury--must--be
2 reduced---by--the--amount--of--a--previous--award--paid--for
3 impairment--to--the--same--site--on--the--body;

4 (b)--The--following--procedure--must--be--followed--for--a--wage
5 supplement:

6 (i)--A--worker--must--be--compensated--in--weekly--benefits
7 equal--to--66-2/3%--of--the--difference--between--the--worker's
8 actual--wages--received--at--the--time--of--the--injury--and--the
9 wages--the--worker--is--qualified--to--earn--in--the--worker's--job
10 pool,--subject--to--a--maximum--compensation--rate--of--one--half--the
11 state's--average--weekly--wage--at--the--time--of--injury;

12 (ii)--Eligibility--for--wage--supplement--benefits--begins--at
13 maximum--healing--and--terminates--at--the--expiration--of--500
14 weeks--minus--the--number--of--weeks--for--which--a--worker's
15 impairment--award--is--payable,--subject--to--39-71-710,--A
16 worker's--failure--to--sustain--a--wage--loss--compensable--under
17 subsection--(1)(b)(i)--does--not--extend--the--period--of
18 eligibility,--However,--if--a--worker--becomes--eligible--for
19 temporary--total--disability,--permanent--total--disability,--or
20 total--rehabilitation--benefits---after---reaching---maximum
21 healing,--the--eligibility--period--for--wage--supplement--benefits
22 is--extended--by--any--period--for--which--a--worker--is--compensated
23 by--those--benefits--after--reaching--maximum--healing;

24 (2)--The--determination--of--permanent--partial--disability
25 must--be--supported--by--a--preponderance--of--medical--evidence;

~~(3) Notwithstanding subsection (1), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for permanent partial disability may not exceed \$149.50, which is one-half the state's average weekly wage established July 1, 1986.~~

(1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award.

(2) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (3) by 350 weeks.

(3) An award granted an injured worker may not exceed a permanent partial disability rating of 100%. The criteria for the rating of disability must be calculated using the medical impairment rating as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment. The percentage to be used in subsection (2) must be determined by adding the following applicable percentages:

(a) if the claimant is 30 years of age or younger at the time of injury, 0%; if the claimant is over 30 years of age but under 56 years of age at the time of injury, 3%; and if the claimant is 56 years of age or older at the time of injury, 5%;

(b) for a worker who has completed less than 9 years of education, 5%; for a worker who has completed 9 through 12 years of education or who has received a graduate equivalency diploma, 3%; for a worker who has completed more than 12 years of education, 0%;

(c) if a worker has no wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than \$2 an hour as a result of the industrial injury, 20%; and

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 20%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 15%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 10%.

(4) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future

1 fiscal years.

2 (5) If a worker suffers a subsequent compensable injury
3 to the same part of the body, the award payable for the
4 subsequent injury must be reduced by the amount paid for the
5 previous injury.

6 (6) As used in the section:

7 (a) "Heavy labor activity" means the ability to lift
8 over 50 pounds occasionally or up to 50 pounds frequently;

9 (b) "Medium labor activity" means the ability to lift
10 up to 50 pounds occasionally or up to 25 pounds frequently;

11 (c) "Light labor activity" means the ability to lift up
12 to 25 pounds occasionally or up to 10 pounds frequently; and

13 (d) "Sedentary labor activity" means the ability to
14 lift up to 10 pounds occasionally or up to 5 pounds
15 frequently."

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

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

22 (a) After the happening of the injury and subject to
23 the provisions of subsection (1)(d), the insurer shall
24 furnish, without limitation as to length of time or dollar
25 amount, reasonable services by a physician or surgeon,

1 reasonable hospital services and medicines when needed, and
2 such other treatment as may be approved by the department
3 for the injuries sustained.

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

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

14 (d) Except for the repair or replacement of a
15 prosthesis furnished as a result of an industrial injury,
16 the benefits provided for in this section terminate when
17 they are not used for a period of 60 consecutive months.

18 (2) A relative value fee schedule for medical,
19 chiropractic, and paramedical services provided for in this
20 chapter, excluding hospital services, must be established
21 annually by the department and become effective in January
22 of each year. The maximum fee schedule must be adopted as a
23 relative value fee schedule of medical, chiropractic, and
24 paramedical services, with unit values to indicate the
25 relative relationship within each grouping of specialties.

1 Medical fees must be based on the median fees as billed to
 2 the state fund during the year preceding the adoption of the
 3 schedule. The state fund shall report fees billed in the
 4 form and at the times required by the department. The
 5 department shall adopt rules establishing relative unit
 6 values, groups of specialties, the procedures insurers must
 7 use to pay for services under the schedule, and the method
 8 of determining the median of billed medical fees. These
 9 rules must be modeled on the 1974 revision of the 1969
 10 California Relative Value Studies.

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

17 (4) Notwithstanding subsection (2), beginning January
 18 1, 1988, through December 31, 1991, the maximum fees payable
 19 by insurers must be limited to the relative value fee
 20 schedule established in January 1987. Notwithstanding
 21 subsection (3), beginning January 1, 1988, through December
 22 31, 1991, the hospital rates payable by insurers must be
 23 limited to those set in January 1988. After December 31,
 24 1991, the percentage increase in medical costs payable under
 25 this chapter may not exceed the annual percentage increase

1 in the state's average weekly wage as defined in 39-71-116."

2 **Section 8.** Section 39-71-741, MCA, is amended to read:

3 "~~39-71-741. Compromise settlements, and lump-sum~~
 4 ~~payments,--and--lump-sum--advance-payments.~~ (1) (a) Benefits
 5 may be converted in whole to a lump sum:

6 (i) if a claimant and an insurer dispute the initial
 7 compensability of an injury; and

8 (ii) if the claimant and insurer agree to a settlement.

9 (b) The agreement is subject to department approval.
 10 The department may disapprove an agreement under this
 11 section only if there is not a reasonable dispute over
 12 compensability.

13 (c) Upon approval, the agreement constitutes a
 14 compromise and release settlement and may not be reopened by
 15 the department ~~or-by-any-court.~~

16 ~~(d)--The-parties'-failure-to-reach-an-agreement-is-not-a~~
 17 ~~dispute-over-which-a-mediator-or-the--workers'-compensation~~
 18 ~~court-has-jurisdiction.~~

19 (2) (a) If an insurer has accepted initial liability
 20 for an injury, ~~permanent-total-and~~ permanent partial wage
 21 supplement disability benefits may be converted in whole or
 22 in part to a lump-sum payment.

23 ~~(b)--The-conversion-may--be--made--only--upon--agreement~~
 24 ~~between-a-claimant-and-an-insurer.~~

25 ~~(c)~~(b) The An agreement is subject to department

1 approval. The department may approve an agreement if:
 2 (i) there is a reasonable dispute concerning the amount
 3 of the insurer's future liability or benefits; or
 4 (ii) the amount of the insurer's projected liability is
 5 reasonably certain and the settlement amount is not
 6 substantially less than the present value of the insurer's
 7 liability disapprove an agreement only if the department
 8 determines that the settlement amount is inadequate. If
 9 disapproved, the department shall set forth in detail the
 10 reasons for disapproval.

11 (d) The parties' failure to reach agreement is not a
 12 dispute over which a mediator or the workers' compensation
 13 court has jurisdiction.

14 (e)(c) Upon approval, the agreement constitutes a
 15 compromise and release settlement and may not be reopened by
 16 the department or by any court.

17 (3)(a) Permanent partial wage supplement benefits may
 18 be converted in part to a lump-sum advance.

19 (b) The conversion may be made only upon agreement
 20 between a claimant and an insurer.

21 (c) The agreement is subject to department approval.
 22 The department may approve an agreement if the parties
 23 demonstrate that the claimant has financial need that:

24 (i) relates to the necessities of life or relates to an
 25 accumulation of debt incurred prior to injury; and

1 (ii) arises subsequent to the date of injury or arises
 2 because of reduced income as a result of the injury.

3 (d) The parties' failure to reach an agreement is not a
 4 dispute over which a mediator or the workers' compensation
 5 court has jurisdiction.

6 (d) A lump-sum payment of permanent partial disability
 7 benefits approved by the department or granted by the court
 8 must be paid.

9 (4)(3) Permanent total disability benefits may be
 10 converted in whole or in part to a lump-sum advance lump
 11 sum. The total of all lump-sum advance payments to a
 12 claimant may not exceed \$20,000. A conversion may be made
 13 only upon the written application of the injured worker with
 14 the concurrence of the insurer. Approval of the lump-sum
 15 advance payment rests in the discretion of the department.
 16 The approval or award of a lump-sum advance payment by the
 17 department or court must be the exception. It may be given
 18 only if the worker has demonstrated financial need that:

19 (a) relates to:

20 (i) the necessities of life;

21 (ii) an accumulation of debt incurred prior to the
 22 injury; or

23 (iii) a self-employment venture as set forth in
 24 39-71-1026 and that is considered feasible under criteria
 25 set forth by the department; or

1 (b) arises subsequent to the date of injury or arises
2 because of reduced income as a result of the injury.

3 (4) Any lump-sum conversion of benefits under this
4 section must be converted to present value using the rate
5 prescribed under subsection (5)(b).

6 (5) (a) An insurer may recoup any lump-sum ~~advance~~
7 payment amortized at the rate established by the department,
8 prorated biweekly over the projected duration of the
9 compensation period.

10 (b) The rate adopted by the department must be based on
11 the average rate for United States 10-year treasury bills in
12 the previous calendar year, rounded to the nearest whole
13 number.

14 (c) If the projected compensation period is the
15 claimant's lifetime, the life expectancy must be determined
16 by using the most recent table of life expectancy as
17 published by the United States national center for health
18 statistics.

19 (6) The Subject to the other provisions of this
20 section, the department has full power, authority, and
21 jurisdiction under subsection (1) to allow, approve, or
22 condition compromise settlements for any type of benefits
23 provided for under this chapter or lump-sum advances
24 payments agreed to by workers and insurers. All such
25 compromise settlements and lump-sum payments are void

1 without the approval of the department. Approval by the
2 department must be in writing. The department shall directly
3 notify a claimant of a department order approving or denying
4 a claimant's compromise or lump-sum payment.

5 (7) ~~Subject--to--39-71-2401,--a~~ A dispute between a
6 claimant and an insurer regarding the conversion of biweekly
7 payments into a ~~lump-sum-advance-under-subsection-(4)~~ lump
8 sum is considered a dispute, for which a mediator and the
9 workers' compensation court have jurisdiction to make a
10 determination. If an insurer and a claimant agree to a
11 compromise and release settlement or a lump-sum advance
12 payment but the department disapproves the agreement, the
13 parties may request the workers' compensation court to
14 review the department's decision."

15 **Section 9.** Section 39-71-1011, MCA, is amended to read:

16 "39-71-1011. Definitions. As used in this chapter, the
17 following definitions apply:

18 (1) "Board of rehabilitation certification" means the
19 nonprofit, independent, fee-structured organization that is
20 a member of the national commission for health certifying
21 agencies and that is established to certify rehabilitation
22 practitioners.

23 (2) "Disabled worker" means one who has a medically
24 determined restriction resulting from a work-related injury
25 that precludes the worker from returning to the job the

1 worker held at the time of the injury.

2 {3}--"I.W.R.P."--means--an--individualized,--written
3 rehabilitation-program-prepared-by-the-department-of--social
4 and-rehabilitation-services;

5 {4}{3} "Rehabilitation benefits" means benefits
6 provided in 39-71-1003, [section 11], and 39-71-1023 through
7 39-71-1025.

8 {4} "Rehabilitation plan" means an individualized plan
9 of education, training, or specialized job modification
10 designed to assist a disabled worker in acquiring skills or
11 aptitudes to return to work.

12 {5} "Rehabilitation provider" means a rehabilitation
13 counselor,--other--than--the--department--of--social--and
14 rehabilitation--services; certified by the board for
15 rehabilitation certification and designated by the insurer
16 to the department.

17 {6} "Rehabilitation services" consists of a program of
18 evaluation, planning, and delivery of goods and services to
19 assist a disabled worker to return to work.

20 {7}{a}--"Worker's-job-pool"--means-those-jobs-typically
21 available-for-which-a-worker-is-qualified,--consistent--with
22 the--worker's--age,--education,--vocational--experience--and
23 aptitude--and--compatible--with--the--worker's--physical
24 capacities-and-limitations-as-the--result--of--the--worker's
25 injury;--back-of-immediate-job-openings-is-not-a-factor-to-be

1 considered;

2 {b}--A--worker's--job--pool--may--be--either--local--or
3 statewide,--as--follows:

4 {i}--a--local-job-pool-is-the--job--service--office--area
5 that--includes--the--worker's--residence;--and

6 {ii}--the--statewide-job-pool-is--the--state--of--Montana;"

7 **Section 10.** Section 39-71-1013, MCA, is amended to
8 read:

9 "39-71-1013. Agreement between worker and insurer
10 regarding option. A worker and an insurer may agree that--an
11 option--in--39-71-1012--is--appropriate--without--following--the
12 procedures--provided--in--this--part. Failure-to-reach-agreement
13 is-not-a-dispute-under-39-71-2401 to a rehabilitation plan
14 and file the agreement with the department."

15 **NEW SECTION. Section 11. Rehabilitation benefits.** (1)
16 If, as a result of an injury, an injured worker cannot
17 return to the job the worker held at the time of injury, the
18 worker is entitled to rehabilitation benefits and services
19 as provided in subsections (2) through (5). If there is a
20 dispute as to whether an injured worker can return to the
21 job the worker held at the time of injury, the insurer shall
22 designate a rehabilitation provider to evaluate and
23 determine whether the worker can return to the job held at
24 the time of injury, and if it is determined that he cannot,
25 the worker is entitled to rehabilitation benefits and

1 services as provided for in subsections (2) through (5).

2 (2) If it is determined that the worker cannot return
3 to the job held at the time of injury, a vocational
4 assessment must be completed by a rehabilitation provider
5 designated by the insurer. The assessment must identify
6 potential vocational goals, vocational rehabilitation
7 training, and reemployment and wage potential and take into
8 consideration the worker's age, education, training, work
9 history, and residual physical capacities.

10 (3) If it is determined that a worker cannot return to
11 the job the worker held at the time of injury, the
12 rehabilitation provider shall assist the worker in obtaining
13 new employment and the worker must be given up to 8 weeks of
14 weekly benefits at the worker's temporary total disability
15 rate while attempting to obtain new employment. If, after
16 receiving benefits under this subsection, the worker decides
17 to proceed with a rehabilitation plan, the weeks in which
18 benefits were paid under this subsection must be credited
19 against the maximum of 104 weeks of rehabilitation benefits
20 provided in this section.

21 (4) Up to 104 weeks of weekly rehabilitation benefits
22 must be provided at the temporary total disability rate
23 established for the worker. The number of weeks of benefits
24 provided must be stated in a rehabilitation plan filed with
25 the department. The benefits must be paid only while the

1 worker is engaged in an approved rehabilitation or
2 apprenticeship program or during a reasonable period of time
3 while the worker is waiting to begin an approved
4 rehabilitation or apprenticeship program. The benefits begin
5 when the rehabilitation provider files the plan with the
6 department. A worker may not receive temporary total or
7 biweekly permanent partial disability benefits and
8 rehabilitation benefits during the same period of time. The
9 insurer may agree to extend rehabilitation benefits beyond
10 the 104-week period.

11 (5) The rehabilitation provider shall continue to work
12 with and assist the injured worker until the rehabilitation
13 plan is completed.

14 **Section 12.** Section 39-71-1025, MCA, is amended to
15 read:

16 "39-71-1025. **Auxiliary rehabilitation benefits.** In
17 addition to benefits otherwise provided in this chapter,
18 separate benefits not exceeding a total of \$4,000 may be
19 paid by the insurer for:

20 (a) reasonable travel and relocation expenses used to:
21 (1) search for new employment;
22 (2) return to work but in a new location; and
23 (3) implement a rehabilitation program pursuant to a
24 final order of determination by plan that has been filed
25 with the department; and

1 (4) attend an on-the-job training program.

2 ~~(2)--reasonable--participation--with--an--employer--in--an~~
3 ~~on-the-job-training-program."~~

4 **Section 13.** Section 39-71-1032, MCA, is amended to
5 read:

6 "**39-71-1032. Termination of benefits for noncooperation**
7 ~~with rehabilitation provider or-the-department-of-social-and~~
8 ~~rehabilitation-services -- department hearing and appeal.~~

9 (1) If an insurer believes a worker is refusing unreasonably
10 to cooperate with the rehabilitation provider ~~or--the~~
11 ~~department--of--social--and--rehabilitation--services,~~ the
12 insurer, with 14 days' notice to the worker and department
13 on a form approved by the department, may terminate any
14 rehabilitation benefits the worker is receiving under this
15 part until the worker cooperates. If the worker is receiving
16 wage-supplement rehabilitation benefits, those benefits must
17 continue until the department's determination under
18 subsection (3) is made.

19 (2) The worker may contest the insurer's termination of
20 benefits by filing a written exception to the department
21 within ~~10~~ 20 working days after the date of the 14-day
22 notice. The worker or insurer may request a hearing ~~or-the~~
23 before the department may hold a hearing on its own motion.
24 The department shall hold a hearing within 30 days of
25 receipt of the request. The department shall issue an order

1 within ~~30~~ 15 days of the hearing.

2 (3) If no exceptions are timely filed or the department
3 determines the worker unreasonably refused to cooperate, the
4 insurer may terminate ~~wage-loss-supplement~~ rehabilitation
5 benefits the worker is receiving until the worker cooperates
6 with the rehabilitation provider. If the worker prevails at
7 a hearing before the department, it may award attorney fees
8 and costs to the worker under 39-71-612.

9 (4) Within ~~10-working~~ 30 days after the department
10 mails its order to the party's last-known address, a party
11 may appeal to the workers' compensation court."

12 **Section 14.** Section 39-72-601, MCA, is amended to read:

13 "**39-72-601. Medical panel.** (1) The department shall
14 develop a list of physicians to serve on the occupational
15 disease medical panel. The list may include physicians
16 nominated by the board of medical examiners. A physician on
17 the panel must be certified by his specialty board or be
18 eligible for certification in the specialty area appropriate
19 to the claimant's condition in relation to this chapter.

20 (2) The department or an insurer shall select a panel
21 physician to examine a claimant, as required. The department
22 shall appoint, as required, one member of the panel to be
23 the chairman."

24 **Section 15.** Section 39-72-602, MCA, is amended to read:

25 "**39-72-602. Insurer may accept liability -- procedure**

1 for medical examination when insurer has not accepted
2 liability. (1) An insurer may accept liability for a claim
3 under this chapter based on information submitted to it by a
4 claimant.

5 (2) In order to determine the compensability of claims
6 under this chapter when an insurer ~~has not accepted~~
7 liability questions liability and to determine whether the
8 claimant is totally disabled and the extent, if any, of
9 reduction of benefits pursuant to 39-72-706, the following
10 procedure must be followed:

11 (a) The department or an insurer with notice to the
12 department shall direct the claimant to a member of the
13 medical panel for an examination. The panel member shall
14 conduct an examination to determine whether the claimant is
15 totally disabled and is suffering from an occupational
16 disease. The panel member shall submit a report of his
17 findings to the department.

18 (b) Either the claimant or the insurer may, within 20
19 days after the receipt of the report by the first panel
20 member, request that the claimant be examined by a second
21 panel member. If a second examination is requested, the
22 department or an insurer with notice to the department shall
23 direct the claimant to a second panel member who shall
24 conduct an examination to determine whether he believes the
25 claimant is totally disabled and is suffering from an

1 occupational disease and the extent, if any, of reduction of
2 benefits pursuant to 39-72-706. The panel member shall
3 submit a report of his findings to the department. When a
4 second examination has been requested, the reports of the
5 examinations shall be submitted to three members of the
6 medical panel for review. A medical panel member or the
7 panel may, in order to assist the panel member or the panel
8 in reaching a conclusion, consult with the claimant's
9 attending physician. The three panel members shall issue a
10 report concerning the claimant's physical condition and
11 whether the claimant is suffering from an occupational
12 disease.

13 (c) If a second examination is not requested, the
14 department shall issue its order determining whether the
15 claimant is entitled to occupational disease benefits based
16 on the report of the first examining physician. If a second
17 examination is requested, the department shall issue its
18 order based on the report of the three members of the
19 medical panel.

20 (d) For the purpose of reviewing the reports of the
21 examinations and issuing the report under subsection (2)(b),
22 the three members of the medical panel shall be the two
23 members of the panel who examined the claimant and the panel
24 chairman. If the panel chairman has examined the claimant,
25 the panel chairman shall appoint another member of the

LC 1411/01

1 medical panel to be the third member."

2 NEW SECTION. **Section 16.** Codification instruction.

3 [Section 11] is intended to be codified as an integral part
4 of Title 39, chapter 71, part 20, and the provisions of
5 Title 39, chapter 71, apply to [section 11].

6 NEW SECTION. **Section 17.** Repealer. Sections
7 39-71-1012, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018,
8 39-71-1019, 39-71-1023, 39-71-1024, 39-71-1026, and
9 39-71-1033, MCA, are repealed.

10 NEW SECTION. **Section 18.** Effective date. [This act] is
11 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0837, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the workers' compensation and occupational disease act.

ASSUMPTIONS:

Department of Labor and Industry (DLI):


1. Cases and claims established prior to the effective date of the proposed legislation must be treated in accordance with the laws in effect at the time the claim is filed; consequently, prior law cases will continue to require administrative and other management services.
2. Funding for the additional services created by the proposed legislation is derived from assessment fees levied on workers' compensation insurers and deposited in the industrial accident rehabilitation account established by 39-71-1004, MCA.
3. The proposed legislation repeals 39-71-1019, MCA, pertaining to the appeal process. DLI will become responsible for appeals. The additional responsibility will require a 1.00 FTE hearings officer at grade 16/step 2.
4. The proposed legislation repeals the statutes which gives the Department of Social and Rehabilitation Services (SRS) jurisdiction over retraining, rehabilitation benefits, and the management of the industrial accident rehabilitation account. DLI will implement and manage the provisions of the proposed legislation. The additional duties and responsibilities will require a 0.50 FTE program manager at grade 14/step 2.

Department of Social and Rehabilitation Services (SRS):

5. Under current law, SRS spends approximately \$640,000 per year from the industrial accident rehabilitation (IAR) account to rehabilitate injured workers. The funds are used to match federal funds for vocational rehabilitation.
6. Under the proposed legislation, SRS will no longer have priority to use the IAR account. All rehabilitation providers will have access to the IAR account. SRS will no longer be able to use IAR funds as a guarantee to the state match to federal vocational rehabilitation funds.
7. The proposed legislation amends 39-71-1011(5) to require rehabilitation providers be certified by a board of rehabilitation certification. Not all SRS vocational rehabilitation counselors are certified. Therefore, SRS eligibility for industrial accident rehabilitation funds will be diminished.
8. Federal regulations require adequate vocational rehabilitation staff be available to implement the provisions of the Vocational Rehabilitation State Plan. Without a reliable funding source, the federal government would withdraw its funding. SRS would continue to serve industrially injured clients in the state vocational rehabilitation program by using general fund to match the federal funds necessary to continue the program.
9. Vocational rehabilitation would access about \$40,000 in FY92 because of current cases.

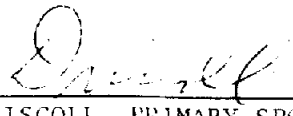
FISCAL IMPACT:

see next page


ROD SUNDSTED, BUDGET DIRECTOR

DATE

Office of Budget and Program Planning


JERRY L. DRISCOLL, PRIMARY SPONSOR

DATE

Fiscal Note for HB0837, as introduced

HB 837

FISCAL IMPACT:

Dept of Labor and Industry:

	FY 92			FY 93		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0.00	1.50	1.50	0.00	1.50	1.50
Personal Services	0	46,685	46,685	0	46,662	46,662
Operating Expenses	0	13,427	13,427	0	13,427	13,427
Total	171,684	60,112	60,112	0	60,089	60,089
<u>Funding:</u>						
State Special	0	60,112	60,112	0	60,089	60,089

Social & Rehab Services:

	FY 92			FY 93		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Benefits and Claims	640,000	640,000	0	640,000	640,000	0
<u>Funding:</u>						
General Fund	0	600,000	600,000	0	640,000	640,000
State Special	640,000	40,000	(600,000)	640,000	0	(640,000)
Total	640,000	640,000	0	640,000	640,000	0

General Fund Impact: (600,000) (640,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. The fiscal impact of the proposed legislation upon the State Compensation Mutual Insurance Fund cannot be estimated without an actuarial evaluation. The State Fund did not have time to perform an actuarial evaluation before the mandatory fiscal note submittal date.
2. If the workers' compensation funds were not replaced with general fund, as assumed in this fiscal note, the SRS Vocational Rehabilitation and Visual Services Programs could not exist, and \$7 million per year in federal revenue would be lost by the state.

TECHNICAL NOTES:

1. The proposed legislation repeals 39-71-1019, MCA, which designates SRS as the exclusive remedy for injured workers aggrieved in the receipt of services provided by SRS. Federal requirements state SRS must have exclusive control over grievances related to its programs. The proposed legislation may make SRS ineligible to serve any industrially injured clients with workers' compensation funding.
2. The proposed revisions to the appeal process is unclear. The proposed legislation repeals 39-71-1016, MCA, pertaining to rehabilitation panels. What happens to persons injured between 1987 and 1991?
3. The proposed legislation contains no provisions for the certification of industrially injured workers by DLI for vocational rehabilitation services. Certification by DLI is necessary before SRS can commence vocational rehabilitative services.
4. There appears to be a problem with age, education and other category formulas used in determining settlements.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0837, 2nd Reading Copy.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the workers' compensation and occupational disease acts.

ASSUMPTIONS:

Department of Labor and Industry (DLI):

1. Cases and claims established prior to the effective date of the proposed legislation must be treated in accordance with the laws in effect at the time the claim is filed; consequently, prior law cases will continue to require administrative and other management services.
2. The act will shift the focus of the rehabilitation program from panel analysis and recommendations for rehabilitation to dealing with disputes over panel recommendations. This will result in a reduced workload and change in the mix of services provided under the program. A reduction from 5.00 FTE to 3.00 FTE will occur with a change in the function of the remaining FTE to resolution of disputes. A corresponding reduction in operating costs will occur.

Department of Social and Rehabilitation Services (SRS):

3. The act as outlined in the 2nd reading copy will have no fiscal impact on the Department of Social & Rehabilitation Services during the 1993 biennium.

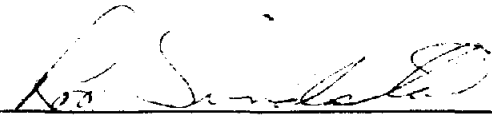
FISCAL IMPACT:

Dept of Labor and Industry:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
FTE	5.00	3.00	(2.00)	5.00	3.00	(2.00)
Personal Services	136,901	82,968	(53,933)	137,969	82,809	(55,160)
Operating Expenses	<u>47,175</u>	<u>32,192</u>	<u>(14,983)</u>	<u>47,175</u>	<u>32,192</u>	<u>(14,983)</u>
Total	184,076	115,160	(68,916)	185,144	115,001	(70,143)
<u>Funding:</u>						
State Special	184,076	115,160	(68,916)	185,144	115,001	(70,143)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. The fiscal impact of the proposed legislation upon the State Compensation Mutual Insurance Fund cannot be estimated without an actuarial evaluation. The State Fund did not have time to perform an actuarial evaluation before the mandatory fiscal note submittal date.


 _____ 2-26-91
 ROD SUNDSTED, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning


 _____ 2-26-91
 JERRY L. DRISCOLL, PRIMARY SPONSOR DATE

Fiscal Note for HB0837, 2nd Reading Copy **HB 837**

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 837
INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS'
COMPENSATION AND OCCUPATIONAL DISEASE ACTS; AMENDING
SECTIONS 39-71-116, 39-71-123, 39-71-414, 39-71-701,
39-71-702, 39-71-703, 39-71-704, 39-71-741, 39-71-1003,
39-71-1011, 39-71-1013, 39-71-1025, AND 39-71-1032,
~~39-72-601~~ ~~AND~~ ~~39-72-602~~ MCA; REPEALING SECTIONS
39-71-1012, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018,
~~39-71-1019~~, 39-71-1023, 39-71-1024, 39-71-1026, AND
39-71-1033, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 39-71-116, MCA, is amended to read:

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

(1) "Administer and pay" includes all actions by the
state fund under the Workers' Compensation Act and the
Occupational Disease Act of Montana necessary to the
investigation, review, and settlement of claims; payment of
benefits; setting of reserves; furnishing of services and
facilities; and utilization of actuarial, audit, accounting,
vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly
earnings of all employees under covered employment, as
defined and established annually by the Montana department
of labor and industry. It is established at the nearest
whole dollar number and must be adopted by the department
prior to July 1 of each year.

(3) "Beneficiary" means:

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

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

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

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

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

(f) a brother or sister under the age of 18 years if
dependent upon the decedent for support at the time of the
injury (however, such a brother or sister is a beneficiary
only until the age of 18 years and only when no beneficiary,

1 as defined in subsections (3)(a) through (3)(e) of this
2 section, exists).

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

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

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

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

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

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

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

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

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

1 determination arrived at or decision made by the department.

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

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

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

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

25 (15) "Permanent total disability" means a condition

1 resulting from injury as defined in this chapter, after a
 2 worker reaches maximum healing, in which a worker is-unable
 3 to-return-to-work-in-the-worker's-job-pool-after--exhausting
 4 all--options--set--forth--in--39-71-1012 has no reasonable
 5 prospect of physically performing regular employment.
 6 Regular employment means work on a recurring basis performed
 7 for remuneration in a trade, business, profession, or other
 8 occupation in this state. Lack of immediate job openings is
 9 not a factor to be considered in determining if a worker is
 10 permanently totally disabled.

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

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

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

22 (19) "Reasonably safe place to work" means that the
 23 place of employment has been made as free from danger to the
 24 life or safety of the employee as the nature of the
 25 employment will reasonably permit.

1 (20) "Reasonably safe tools and appliances" are such
 2 tools and appliances as are adapted to and are reasonably
 3 safe for use for the particular purpose for which they are
 4 furnished.

5 (21) "Temporary total disability" means a condition
 6 resulting from an injury as defined in this chapter that
 7 results in total loss of wages and exists until the injured
 8 worker reaches maximum healing.

9 (22) "Year", unless otherwise specified, means calendar
 10 year."

11 ~~Section 2, Section 39-71-123, MCA, is amended to read:~~
 12 ~~"39-71-123. Wages--defined--(1)--"Wages"--means--the--gross~~
 13 ~~remuneration--paid--in--money,--or--in--a--substitute--for--money,~~
 14 ~~for--services--rendered--by--an--employee;--Wages--include--but--are~~
 15 ~~not--limited--to:~~

16 ~~(a)--commissions,--bonuses,--and--remuneration--at--the~~
 17 ~~regular--hourly--rate--for--overtime--work,--holidays,--vacations,~~
 18 ~~and--sickness--periods;~~

19 ~~(b)--board,--lodging,--rent,--or--housing--if--it--constitutes~~
 20 ~~a--part--of--the--employee's--remuneration--and--is--based--on--its~~
 21 ~~actual--value,--and~~

22 ~~(c)--payments--made--to--an--employee--on--any--basis--other~~
 23 ~~than--time--worked,--including--but--not--limited--to--piecework,--an~~
 24 ~~incentive--plan,--or--profit--sharing--arrangement;~~

25 ~~(2)--Wages--do--not--include:~~

1 (a) employee travel expense reimbursements or
 2 allowances for meals, lodging, travel, and subsistence;
 3 (b) special rewards for individual invention or
 4 discovery;
 5 (c) tips and other gratuities received by the employee
 6 in excess of those documented to the employer for tax
 7 purposes;
 8 (d) contributions made by the employer to a group
 9 insurance or pension plan; or
 10 (e) vacation or sick leave benefits accrued but not
 11 paid.
 12 (3) For compensation benefit purposes, the average
 13 actual earnings for the four pay periods immediately
 14 preceding the injury are the employee's wages, except if:
 15 (a) the term of employment for the same employer is
 16 less than four pay periods, in which case the employee's
 17 wages are the hourly rate times the number of hours in a
 18 week for which the employee was hired to work; or
 19 (b) for good cause shown by the claimant, the use of
 20 the four pay periods does not accurately reflect the
 21 claimant's employment history with the employer, in which
 22 case the insurer may use additional pay periods;
 23 (4) (a) For the purpose of calculating compensation
 24 benefits for an employee working concurrent employments, the
 25 average actual wages must be calculated as provided in

1 subsection (3);
 2 (b) The compensation benefits for a covered volunteer
 3 must be based on the average actual wages in his regular
 4 employment, except self-employment as a sole proprietor or
 5 partner who elected not to be covered, from which he is
 6 disabled by the injury incurred;
 7 (c) The compensation benefits for an employee working
 8 at two or more concurrent remunerated employments must be
 9 based on the aggregate of average actual wages of all
 10 employments, except self-employment as a sole proprietor or
 11 partner who elected not to be covered, from which the
 12 employee is disabled by the injury incurred.
 13 (5) If an injured worker is engaged in self-employment
 14 subsequent to an injury, earnings from self-employment are
 15 considered wages as defined in subsection (1) for purposes
 16 of determining entitlement to temporary total disability
 17 benefits. If a self-employed worker is entitled to temporary
 18 total disability benefits and continues to receive
 19 self-employment income, temporary total disability benefits
 20 must be reduced by an amount equal to two thirds of the
 21 self-employment income."

22 **Section 2.** Section 39-71-414, MCA, is amended to read:
 23 "39-71-414. Subrogation. (1) If an action is prosecuted
 24 as provided for in 39-71-412 or 39-71-413 and except as
 25 otherwise provided in this section, the insurer is entitled

1 to subrogation for all compensation and benefits paid or to
 2 be paid under the Workers' Compensation Act. The insurer's
 3 right of subrogation is a first lien on the claim, judgment,
 4 or recovery.

5 (2) (a) If the injured employee intends to institute
 6 the third party action, he shall give the insurer reasonable
 7 notice of his intention to institute the action.

8 (b) The injured employee may request that the insurer
 9 pay a proportionate share of the reasonable cost of the
 10 action, including attorneys' fees.

11 (c) The insurer may elect not to participate in the
 12 cost of the action. If this election is made, the insurer
 13 waives 50% of its subrogation rights granted by this
 14 section.

15 (d) If the injured employee or the employee's personal
 16 representative institutes the action, the employee is
 17 entitled to at least one-third of the amount recovered by
 18 judgment or settlement less a proportionate share of
 19 reasonable costs, including attorneys' fees, if the amount
 20 of recovery is insufficient to provide the employee with
 21 that amount after payment of subrogation.

22 (3) If an injured employee refuses or fails to
 23 institute the third party action within 1 year from the date
 24 of injury, the insurer may institute the action in the name
 25 of the employee and for the employee's benefit or that of

1 the employee's personal representative. If the insurer
 2 institutes the action, it shall pay to the employee any
 3 amount received by judgment or settlement which is in excess
 4 of the amounts paid or to be paid under the Workers'
 5 Compensation Act after the insurer's reasonable costs,
 6 including attorneys' fees for prosecuting the action, have
 7 been deducted from the recovery.

8 (4) An insurer may enter into compromise agreements in
 9 settlement of subrogation rights.

10 (5) If the amount of compensation and other benefits
 11 payable under the Workers' Compensation Act have not been
 12 fully determined at the time the employee, the employee's
 13 heirs or personal representatives, or the insurer have
 14 settled in any manner the action as provided for in this
 15 section, the department shall determine what proportion of
 16 the settlement shall be allocated under subrogation. The
 17 department's determination may be appealed to the workers'
 18 compensation judge.

19 (6) (a) The insurer is entitled to full subrogation
 20 rights under this section, even though the claimant is able
 21 to demonstrate damages in excess of the workers'
 22 compensation benefits and the third-party recovery combined.
 23 The insurer may subrogate against the entire settlement or
 24 award of a third party claim brought by the claimant or his
 25 personal representative, without regard to the nature of the

1 damages.

2 (b) If no survival action exists and the parties reach
3 a settlement of a wrongful death claim without apportionment
4 of damages by a court or jury, the insurer may subrogate
5 against the entire settlement amount, without regard to the
6 parties' apportionment of the damages, unless the insurer is
7 a party to the settlement agreement.

8 (7) Regardless of whether the amount of compensation
9 and other benefits payable have been fully determined, the
10 insurer and the claimant may stipulate the proportion of the
11 third-party settlement to be allocated under subrogation.
12 Upon review and approval by the department, the agreement
13 constitutes a compromise settlement of the issue of
14 subrogation and may not be reopened by the department or by
15 any court."

16 Section 4, Section 39-71-701, MCA, is amended to read:

17 "39-71-701. Compensation for temporary total
18 disability. (1) Subject to the limitation in 39-71-736, a
19 worker is eligible for temporary total disability benefits
20 when the worker suffers a total loss of wages as a result of
21 an injury and until the worker reaches maximum healing.

22 (2) The determination of temporary total disability
23 must be supported by a preponderance of medical evidence.

24 (3) Weekly compensation benefits for injury producing
25 temporary total disability shall be 66 2/3% of the wages

1 received at the time of the injury. The maximum weekly
2 compensation benefits may not exceed the state's average
3 weekly wage at the time of injury. Temporary total
4 disability benefits must be paid for the duration of the
5 worker's temporary disability. However, if a worker is
6 released by the treating physician to the same, a modified,
7 or an alternate position that is available to the worker
8 with the same employer with a wage equivalent to or higher
9 than the wage at the time of injury, the worker is no longer
10 eligible for temporary total disability benefits even though
11 the worker has not reached maximum healing. A worker is
12 again entitled to temporary total benefits if for any reason
13 the job is no longer available to the worker and the
14 continues to be temporarily totally disabled. The weekly
15 benefit amount may not be adjusted for cost of living as
16 provided in 39-71-702(5).

17 (4) In cases where it is determined that periodic
18 disability benefits granted by the Social Security Act are
19 payable because of the injury, the weekly benefits payable
20 under this section are reduced, but not below zero, by an
21 amount equal, as nearly as practical, to one-half the
22 federal periodic benefits for such week, which amount is to
23 be calculated from the date of the disability social
24 security entitlement.

25 (5) Notwithstanding subsection (3), beginning July 1,

1 1987, through June 30, 1991, weekly compensation benefits
 2 for temporary total disability may not exceed the state's
 3 average weekly wage of \$299 established July 1, 1986."

4 **Section 3.** Section 39-71-702, MCA, is amended to read:

5 "39-71-702. Compensation for permanent total
 6 disability. (1) If a worker is no longer temporarily totally
 7 disabled and is unable to return to work due to injury
 8 PERMANENTLY TOTALLY DISABLED, AS DEFINED IN 39-71-116, the
 9 worker is eligible for permanent total disability benefits.
 10 ~~At an insurer's request, an evaluation of all options under~~
 11 ~~39-71-1012 must be made before permanent total disability~~
 12 ~~status is determined.~~ Permanent total disability benefits
 13 must be paid for the duration of the worker's permanent
 14 total disability, subject to 39-71-710 and 39-71-1026.

15 (2) The determination of permanent total disability
 16 must be supported by a preponderance of medical evidence.

17 (3) Weekly compensation benefits for an injury
 18 resulting in permanent total disability shall be 66 2/3% of
 19 the wages received at the time of the injury. The maximum
 20 weekly compensation benefits shall not exceed the state's
 21 average weekly wage at the time of injury.

22 (4) In cases where it is determined that periodic
 23 disability benefits granted by the Social Security Act are
 24 payable because of the injury, the weekly benefits payable
 25 under this section are reduced, but not below zero, by an

1 amount equal, as nearly as practical, to one-half the
 2 federal periodic benefits for such week, which amount is to
 3 be calculated from the date of the disability social
 4 security entitlement.

5 (5) A worker's benefit amount must be adjusted for a
 6 cost-of-living increase on the next July 1 after 104 weeks
 7 of permanent total disability benefits have been paid and on
 8 each succeeding July 1. A worker may not receive more than
 9 10 such adjustments. The adjustment must be the percentage
 10 increase, if any, in the state's average weekly wage as
 11 adopted by the department over the state's average weekly
 12 wage adopted for the previous year or 3%, whichever is less.

13 (6) Notwithstanding subsection (3), beginning July 1,
 14 1987, through June 30, 1991, the maximum weekly compensation
 15 benefits for permanent total disability may not exceed the
 16 state's average weekly wage of \$299 established July 1,
 17 1986."

18 **Section 4.** Section 39-71-703, MCA, is amended to read:

19 "39-71-703. Compensation for permanent partial
 20 disability ---impairment awards and wage supplements. (†)
 21 ~~The benefits available for permanent partial disability are~~
 22 ~~impairment awards and wage supplements. A worker who has~~
 23 ~~reached maximum healing and is not eligible for permanent~~
 24 ~~total disability benefits but who has a medically determined~~
 25 ~~physical restriction as a result of a work-related injury~~

1 may--be-eligible-for-an-impairment-award-and-wage-supplement
 2 benefits-as-follows:
 3 (a)--The-following-procedure-must-be-followed-for-an
 4 impairment-award:
 5 (i)--Each-percentage-point-of-impairment-is-compensated
 6 in-an-amount-equal-to-5-weeks-times--66-2/3%--of--the--wages
 7 received--at--the--time--of--the--injury, subject-to-a-maximum
 8 compensation-rate-of-one-half-of-the-state's-average-weekly
 9 wage-at-the-time-of-injury;
 10 (ii)--When---a---worker---reaches---maximum---healing,---an
 11 impairment-rating-is-rendered-by-one-or-more-physicians---as
 12 provided--for--in-39-71-711,---impairment-benefits-are-payable
 13 beginning-the-date-of-maximum-healing;
 14 (iii)--An-impairment-award-may-be-paid-biweekly-or--in--a
 15 lump--sum,---at--the-discretion-of-the-worker,---lump-sums-paid
 16 for-impairments-are-not--subject--to--the--requirements--set
 17 forth--in--39-71-741,---except--that-lump-sum-conversions-for
 18 benefits-not-accrued-may-be-reduced-to-present-value-at--the
 19 rate-set-forth-by-the-department-in-39-71-741(5);
 20 (iv)--if--a--worker--becomes-eligible-for-permanent-total
 21 disability-benefits,---the-insurer-may-recover--any--lump-sum
 22 advance--paid--to-a-claimant-for-impairment,---as-set-forth-in
 23 39-71-741(5).---Such-right--of--recovery--does--not--apply--to
 24 lump-sum--benefits--paid--for-the-period-prior-to-claimant's
 25 eligibility-for-permanent-total-disability-benefits;

1 (v)--If--a--worker---suffers---additional---injury,---an
 2 impairment--award--payable-for-the-additional-injury-must-be
 3 reduced--by--the--amount--of--a--previous--award--paid---for
 4 impairment-to-the-same-site-on-the-body;
 5 (b)--The-following-procedure-must-be-followed-for-a-wage
 6 supplement:
 7 (i)--A-worker--must--be--compensated-in-weekly-benefits
 8 equal-to-66-2/3%--of--the--difference--between--the--worker's
 9 actual--wages--received--at--the--time-of-the-injury-and-the
 10 wages-the-worker-is-qualified-to-earn-in--the--worker's--job
 11 pool,---subject-to-a-maximum-compensation-rate-of-one-half-the
 12 state's-average-weekly-wage-at-the-time-of-injury;
 13 (ii)--Eligibility--for-wage-supplement-benefits-begins-at
 14 maximum-healing-and-terminates--at--the--expiration--of--500
 15 weeks--minus--the--number--of--weeks--for--which--a-worker's
 16 impairment--award--is--payable,---subject--to--39-71-710.---A
 17 worker's--failure--to--sustain-a-wage-loss-compensable-under
 18 subsection--(1)(b)(i)--does--not--extend---the---period---of
 19 eligibility.---However,---if--a--worker--becomes-eligible-for
 20 temporary-total-disability,---permanent-total-disability,---or
 21 total---rehabilitation---benefits---after--reaching--maximum
 22 healing,---the-eligibility-period-for-wage-supplement-benefits
 23 is-extended-by-any-period-for-which-a-worker-is-compensated
 24 by-those-benefits-after-reaching-maximum-healing;
 25 (2)--The--determination--of-permanent-partial-disability

1 ~~must be supported by a preponderance of medical evidence.~~

2 ~~(3) Notwithstanding subsection (1), beginning July 1,~~
 3 ~~1987, through June 30, 1991, the maximum weekly compensation~~
 4 ~~benefits for permanent partial disability may not exceed~~
 5 ~~\$149.50, which is one-half the state's average weekly wage~~
 6 ~~established July 1, 1986.~~

7 (1) If an injured worker suffers a permanent partial
 8 disability and is no longer entitled to temporary total or
 9 permanent total disability benefits, the worker is entitled
 10 to a permanent partial disability award.

11 (2) The permanent partial disability award must be
 12 arrived at by multiplying the percentage arrived at through
 13 the calculation provided in subsection (3) by 350 weeks.

14 (3) An award granted an injured worker may not exceed a
 15 permanent partial disability rating of 100%. The criteria
 16 for the rating of disability must be calculated using the
 17 medical impairment rating as determined by the latest
 18 edition of the American medical association Guides to the
 19 Evaluation of Permanent Impairment. The percentage to be
 20 used in subsection (2) must be determined by adding the
 21 following applicable percentages TO THE IMPAIRMENT RATING:

22 (a) if the claimant is 30 years of age or younger at
 23 the time of injury, 0%; if the claimant is over 30 years of
 24 age but under 56 years of age at the time of injury, 3 2/3%;
 25 and if the claimant is 56 years of age or older at the time

1 of injury, 5 3/4%;

2 (b) for a worker who has completed less than 9 years of
 3 education, 5 3/4%; for a worker who has completed 9 through
 4 12 years of education or who has received a graduate
 5 equivalency diploma, 3 2/3%; for a worker who has completed
 6 more than 12 years of education, 0%;

7 (c) if a worker has no wage loss as a result of the
 8 industrial injury, 0%; if a worker has an actual wage loss
 9 of \$2 or less an hour as a result of the industrial injury,
 10 10%; if a worker has an actual wage loss of more than \$2 an
 11 hour as a result of the industrial injury, 20%; and

12 (d) if a worker, at the time of the injury, was
 13 performing heavy labor activity and after the injury the
 14 worker can perform only light or sedentary labor activity,
 15 20%; if a worker, at the time of injury, was performing
 16 heavy labor activity and after the injury the worker can
 17 perform only medium labor activity, 15%; if a worker was
 18 performing medium labor activity at the time of the injury
 19 and after the injury the worker can perform only light or
 20 sedentary labor activity, 10%.

21 (4) The weekly benefit rate for permanent partial
 22 disability is 66 2/3% of the wages received at the time of
 23 injury, but the rate may not exceed one-half the state's
 24 average weekly wage. The weekly benefit amount established
 25 for an injured worker may not be changed by a subsequent

1 adjustment in the state's average weekly wage for future
2 fiscal years.

3 (5) If a worker suffers a subsequent compensable injury
4 OR INJURIES to the same part of the body, the award payable
5 for the subsequent injury must-be-reduced-by-the-amount MAY
6 NOT DUPLICATE ANY AMOUNTS paid for the previous injury OR
7 INJURIES.

8 (6) As used in the section:

9 (a) "Heavy labor activity" means the ability to lift
10 over 50 pounds occasionally or up to 50 pounds frequently;

11 (b) "Medium labor activity" means the ability to lift
12 up to 50 pounds occasionally or up to 25 pounds frequently;

13 (c) "Light labor activity" means the ability to lift up
14 to 25 pounds occasionally or up to 10 pounds frequently; and

15 (d) "Sedentary labor activity" means the ability to
16 lift up to 10 pounds occasionally or up to 5 pounds
17 frequently."

18 **Section 5.** Section 39-71-704, MCA, is amended to read:

19 **"39-71-704.** Payment of medical, hospital, and related
20 services -- fee schedules and hospital rates. (1) In
21 addition to the compensation provided by this chapter and as
22 an additional benefit separate and apart from compensation,
23 the following must be furnished:

24 (a) After the happening of the injury and subject to
25 the provisions of subsection (1)(d), the insurer shall

1 furnish, without limitation as to length of time or dollar
2 amount, reasonable services by a physician or surgeon,
3 reasonable hospital services and medicines when needed, and
4 such other treatment as may be approved by the department
5 for the injuries sustained.

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

11 (c) The insurer shall reimburse a worker for reasonable
12 travel expenses incurred in travel to a medical provider for
13 treatment of an injury pursuant to rules adopted by the
14 department. Reimbursement must be at the rates allowed for
15 reimbursement of travel by state employees.

16 (d) Except for the repair or replacement of a
17 prosthesis furnished as a result of an industrial injury,
18 the benefits provided for in this section terminate when
19 they are not used for a period of 60 consecutive months.

20 (2) A relative value fee schedule for medical,
21 chiropractic, and paramedical services provided for in this
22 chapter, excluding hospital services, must be established
23 annually by the department and become effective in January
24 of each year. The maximum fee schedule must be adopted as a
25 relative value fee schedule of medical, chiropractic, and

1 paramedical services, with unit values to indicate the
 2 relative relationship within each grouping of specialties.
 3 Medical fees must be based on the median fees as billed to
 4 the state fund during the year preceding the adoption of the
 5 schedule. The state fund shall report fees billed in the
 6 form and at the times required by the department. The
 7 department shall adopt rules establishing relative unit
 8 values, groups of specialties, the procedures insurers must
 9 use to pay for services under the schedule, and the method
 10 of determining the median of billed medical fees. These
 11 rules must be modeled on the 1974 revision of the 1969
 12 California Relative Value Studies.

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

19 (4) Notwithstanding subsection (2), beginning January
 20 1, 1988, through December 31, 1991, the maximum fees payable
 21 by insurers must be limited to the relative value fee
 22 schedule established in January 1987. Notwithstanding
 23 subsection (3), beginning January 1, 1988, through December
 24 31, 1991, the hospital rates payable by insurers must be
 25 limited to those set in January 1988. After December 31,

1 1991, the percentage increase in medical costs payable under
 2 this chapter may not exceed the annual percentage increase
 3 in the state's average weekly wage as defined in 39-71-116."

4 **Section 6.** Section 39-71-741, MCA, is amended to read:

5 ~~"39-71-741. Compromise settlements, and lump-sum~~
 6 ~~payments, and lump-sum advance payments.~~ (1) (a) Benefits
 7 may be converted in whole to a lump sum:

8 (i) if a claimant and an insurer dispute the initial
 9 compensability of an injury; and

10 (ii) if the claimant and insurer agree to a settlement.

11 (b) The agreement is subject to department approval.
 12 The department may disapprove an agreement under this
 13 section only if there is not a reasonable dispute over
 14 compensability.

15 (c) Upon approval, the agreement constitutes a
 16 compromise and release settlement and may not be reopened by
 17 the department ~~or by any court.~~

18 ~~(d) The parties' failure to reach an agreement is not a~~
 19 ~~dispute over which a mediator or the workers' compensation~~
 20 ~~court has jurisdiction.~~

21 (2) (a) If an insurer has accepted initial liability
 22 for an injury, ~~permanent total and permanent partial wage~~
 23 ~~supplement disability~~ benefits may be converted in whole or
 24 in part to a lump-sum payment.

25 ~~(b) The conversion may be made only upon agreement~~

1 between-a-claimant-and-an-insurer;

2 (B) THE TOTAL OF ANY LUMP-SUM CONVERSION IN PART THAT

3 IS AWARDED TO A CLAIMANT PRIOR TO THE CLAIMANT'S FINAL AWARD

4 MAY NOT EXCEED THE ANTICIPATED AWARD UNDER 39-71-703 OR

5 \$20,000, WHICHEVER IS LESS.

6 ~~(c)(b)(C)~~ The An agreement is subject to department

7 approval. The department may approve-an-agreement-if:

8 ~~(i)--there-is-a-reasonable-dispute-concerning-the-amount~~

9 ~~of-the-insurer's-future-liability-or-benefits;-or~~

10 ~~(ii)-the--amount-of-the-insurer's-projected-liability-is~~

11 ~~reasonably--certain--and--the--settlement--amount---is---not~~

12 ~~substantially--less--than-the-present-value-of-the-insurer's~~

13 ~~liability disapprove an agreement only if the department~~

14 ~~determines that the settlement amount is inadequate. If~~

15 ~~disapproved, the department shall set forth in detail the~~

16 ~~reasons for disapproval.~~

17 ~~(d)--The--parties'-failure--to-reach-agreement-is-not-a~~

18 ~~dispute-over-which-a-mediator-or-the--workers'-compensation~~

19 ~~court-has-jurisdiction;~~

20 ~~(e)(c)(D)~~ Upon approval, the agreement constitutes a

21 compromise and release settlement and may not be reopened by

22 the department or-by-any-court.

23 ~~(3)--(a)-Permanent-partial-wage-supplement-benefits--may~~

24 ~~be-converted-in-part-to-a-lump-sum-advance;~~

25 ~~(b)--The--conversion--may--be--made--only-upon-agreement~~

1 between-a-claimant-and-an-insurer;

2 ~~(c)--The-agreement-is-subject--to--department--approval;~~

3 ~~The--department--may--approve--an--agreement--if-the-parties~~

4 ~~demonstrate-that-the-claimant-has-financial-need-that:~~

5 ~~(i)--relates-to-the-necessities-of-life-or-relates-to-an~~

6 ~~accumulation-of-debt-incurred-prior-to-injury;-and~~

7 ~~(ii)-arises-subsequent-to-the-date-of-injury--or--arises~~

8 ~~because-of-reduced-income-as-a-result-of-the-injury;~~

9 ~~(d)--The-parties'-failure-to-reach-an-agreement-is-not-a~~

10 ~~dispute--over--which-a-mediator-or-the-workers'-compensation~~

11 ~~court-has-jurisdiction;~~

12 ~~(d)--A-lump-sum-payment-of-permanent-partial-disability~~

13 ~~benefits--approved-by-the-department-or-granted-by-the-court~~

14 ~~must-be-paid;~~

15 ~~(4)(3)~~ Permanent total disability benefits may be

16 converted in whole or in part to a lump-sum-advance lump

17 sum. The total of all lump-sum advance payments CONVERSIONS

18 IN PART THAT ARE AWARDED to a claimant may not exceed

19 \$20,000. A conversion may be made only upon the written

20 application of the injured worker with the concurrence of

21 the insurer. Approval of the lump-sum advance payment rests

22 in the discretion of the department. The approval or award

23 of a lump-sum advance payment by the department or court

24 must be the exception. It may be given only if the worker

25 has demonstrated financial need that:

1 (a) relates to:
 2 (i) the necessities of life;
 3 (ii) an accumulation of debt incurred prior to the
 4 injury; or
 5 (iii) a self-employment venture ~~as--set--forth--in~~
 6 39-71-1026; and that is considered feasible under criteria
 7 set forth by the department; or
 8 (b) arises subsequent to the date of injury or arises
 9 because of reduced income as a result of the injury.
 10 (4) Any lump-sum conversion of benefits under this
 11 section SUBSECTION (3) must be converted to present value
 12 using the rate prescribed under subsection (5)(b).
 13 (5) (a) An insurer may recoup any lump-sum ~~advance~~
 14 payment amortized at the rate established by the department,
 15 prorated biweekly over the projected duration of the
 16 compensation period.
 17 (b) The rate adopted by the department must be based on
 18 the average rate for United States 10-year treasury bills in
 19 the previous calendar year, rounded to the nearest whole
 20 number.
 21 (c) If the projected compensation period is the
 22 claimant's lifetime, the life expectancy must be determined
 23 by using the most recent table of life expectancy as
 24 published by the United States national center for health
 25 statistics.

1 (6) ~~The~~ Subject to the other provisions of this
 2 section, the department has full power, authority, and
 3 jurisdiction under subsection (1) to allow, approve, or
 4 condition compromise settlements for any type of benefits
 5 provided for under this chapter or lump-sum ~~advances~~
 6 payments agreed to by workers and insurers. All such
 7 compromise settlements and lump-sum payments are void
 8 without the approval of the department. Approval by the
 9 department must be in writing. The department shall directly
 10 notify a claimant of a department order approving or denying
 11 a claimant's compromise or lump-sum payment.

12 (7) ~~Subject--to--39-71-2401,--a~~ A dispute between a
 13 claimant and an insurer regarding the conversion of biweekly
 14 payments into a ~~lump-sum-advance-under-subsection--(4)~~ lump
 15 sum is considered a dispute, for which a mediator and the
 16 workers' compensation court have jurisdiction to make a
 17 determination. If an insurer and a claimant agree to a
 18 compromise and release settlement or a lump-sum ~~advance~~
 19 payment but the department disapproves the agreement, the
 20 parties may request the workers' compensation court to
 21 review the department's decision."

22 **SECTION 7. SECTION 39-71-1003, MCA, IS AMENDED TO READ:**
 23 "39-71-1003. Eligibility for vocational rehabilitation
 24 expenses. (1) Upon certification by the department of social
 25 and rehabilitation services, a disabled worker may be paid

1 vocational rehabilitation expenses from funds provided in
2 39-71-1004, in addition to benefits payable under the
3 Workers' Compensation Act.

4 (2) The appeal process provided for in 53-7-106 is the
5 exclusive remedy for an injured worker aggrieved in the
6 receipt of vocational rehabilitation services provided by
7 the department of social and rehabilitation services."

8 **Section 8.** Section 39-71-1011, MCA, is amended to read:

9 **"39-71-1011. Definitions.** As used in this chapter, the
10 following definitions apply:

11 (1) "Board of rehabilitation certification" means the
12 nonprofit, independent, fee-structured organization that is
13 a member of the national commission for health certifying
14 agencies and that is established to certify rehabilitation
15 practitioners.

16 (2) "Disabled worker" means one who has a medically
17 determined restriction resulting from a work-related injury
18 that precludes the worker from returning to the job the
19 worker held at the time of the injury.

20 ~~{3}--"IWRP"--means--an--individualized,--written~~
21 ~~rehabilitation--program-prepared-by-the-department-of-social~~
22 ~~and-rehabilitation-services;~~

23 ~~{4}~~(3) "Rehabilitation benefits" means benefits
24 provided in 39-71-1003, [section 11], and 39-71-1023 through
25 39-71-1025.

1 (4) "Rehabilitation plan" means an individualized plan
2 ~~of-education,--training,--or--specialized--job--modification~~
3 ~~designed--to-assist-a-disabled-worker-in-acquiring-skills-or~~
4 ~~aptitudes-to-return-to-work~~ TO ASSIST A DISABLED WORKER IN
5 ACQUIRING SKILLS OR APTITUDES TO RETURN TO WORK THROUGH JOB
6 PLACEMENT, ON-THE-JOB TRAINING, EDUCATION, TRAINING, OR
7 SPECIALIZED JOB MODIFICATION.

8 (5) "Rehabilitation provider" means a rehabilitation
9 counselor, ~~---other---than---the---department---of---social---and~~
10 ~~rehabilitation--services;~~ certified by the board for
11 rehabilitation certification and designated by the insurer
12 to the department OR A DEPARTMENT OF SOCIAL AND
13 REHABILITATION SERVICES COUNSELOR WHEN A WORKER HAS BEEN
14 CERTIFIED BY THE DEPARTMENT OF SOCIAL AND REHABILITATION
15 SERVICES UNDER 39-71-1003.

16 (6) "Rehabilitation services" consists of a program of
17 evaluation, planning, and delivery of goods and services to
18 assist a disabled worker to return to work.

19 ~~{7}--(a)--"Worker's--job--pool"--means--those--jobs--typically~~
20 ~~available-for-which-a-worker-is-qualified,--consistent--with~~
21 ~~the--worker's--age,--education,--vocational--experience--and~~
22 ~~aptitude--and--compatible--with--the--worker's--physical~~
23 ~~capacities-and-limitations-as-the--result--of--the--worker's~~
24 ~~injury--Back-of-immediate-job-openings-is-not-a-factor-to-be~~
25 ~~considered;~~

(b) A worker's job pool may be either local or statewide, as follows:

(i) a local job pool is the job service office area that includes the worker's residence; and

(ii) the statewide job pool is the state of Montana."

Section 9. Section 39-71-1013, MCA, is amended to read:

"39-71-1013. Agreement between worker and insurer regarding option. A worker and an insurer may agree that an option in 39-71-1012 is appropriate without following the procedures provided in this part. Failure to reach agreement is not a dispute under 39-71-2401 to a rehabilitation plan and file the agreement with the department."

NEW SECTION. Section 10. Rehabilitation benefits. (1) If, as a result of an injury, an injured worker cannot return to the job the worker held at the time of injury, the worker is entitled to rehabilitation benefits and services as provided in subsections (2) through (5). If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury, and if it is determined that he cannot, the worker is entitled to rehabilitation benefits and services as provided for in subsections (2) through (5):

(2) If it is determined that the worker cannot return

to the job held at the time of injury, a vocational assessment must be completed by a rehabilitation provider designated by the insurer. The assessment must identify potential vocational goals, vocational rehabilitation training, and reemployment and wage potential and take into consideration the worker's age, education, training, work history, and residual physical capacities:

(3) If it is determined that a worker cannot return to the job the worker held at the time of injury, the rehabilitation provider shall assist the worker in obtaining new employment and the worker must be given up to 8 weeks of weekly benefits at the worker's temporary total disability rate while attempting to obtain new employment. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection must be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) Up to 104 weeks of weekly rehabilitation benefits must be provided at the temporary total disability rate established for the worker. The number of weeks of benefits provided must be stated in a rehabilitation plan filed with the department. The benefits must be paid only while the worker is engaged in an approved rehabilitation or apprenticeship program or during a reasonable period of time

1 ~~while--the--worker--is--waiting---to---begin---an---approved~~
 2 ~~rehabilitation--or--apprenticeship--program--The--benefits--begin~~
 3 ~~when--the--rehabilitation--provider--files--the--plan--with--the~~
 4 ~~department:~~ (1) AN INJURED WORKER IS ELIGIBLE FOR
 5 REHABILITATION BENEFITS IF:

6 (A) THE INJURY RESULTS IN PERMANENT PARTIAL DISABILITY
 7 OR PERMANENT TOTAL DISABILITY AS DEFINED IN 39-71-116;

8 (B) A PHYSICIAN CERTIFIES THAT THE INJURED WORKER IS
 9 PHYSICALLY UNABLE TO WORK AT THE JOB THE WORKER HELD AT THE
 10 TIME OF THE INJURY;

11 (C) A REHABILITATION PLAN COMPLETED BY A REHABILITATION
 12 PROVIDER AND DESIGNATED BY THE INSURER CERTIFIES THAT THE
 13 INJURED WORKER HAS REASONABLE VOCATIONAL GOALS AND A
 14 REEMPLOYMENT AND WAGE POTENTIAL WITH REHABILITATION. THE
 15 PLAN MUST TAKE INTO CONSIDERATION THE WORKER'S AGE,
 16 EDUCATION, TRAINING, WORK HISTORY, RESIDUAL PHYSICAL
 17 CAPACITIES, AND VOCATIONAL INTERESTS; AND

18 (D) A REHABILITATION PLAN BETWEEN THE INJURED WORKER
 19 AND THE INSURER IS FILED WITH THE DEPARTMENT. IF THE PLAN
 20 CALLS FOR THE EXPENDITURE OF FUNDS UNDER 39-71-1004, THE
 21 DEPARTMENT SHALL AUTHORIZE THE DEPARTMENT OF SOCIAL AND
 22 REHABILITATION SERVICES TO USE THE FUNDS.

23 (2) AFTER FILING THE REHABILITATION PLAN WITH THE
 24 DEPARTMENT, THE INJURED WORKER IS ENTITLED TO RECEIVE
 25 REHABILITATION BENEFITS AT THE INJURED WORKER'S TEMPORARY

1 TOTAL DISABILITY RATE. THE BENEFITS MUST BE PAID FOR THE
 2 PERIOD SPECIFIED IN THE REHABILITATION PLAN, NOT TO EXCEED
 3 104 WEEKS. REHABILITATION BENEFITS MUST BE PAID DURING A
 4 REASONABLE PERIOD, NOT TO EXCEED 10 WEEKS, WHILE THE WORKER
 5 IS WAITING TO BEGIN THE AGREED-UPON REHABILITATION PLAN.
 6 REHABILITATION BENEFITS MUST BE PAID WHILE THE WORKER IS
 7 SATISFACTORILY COMPLETING THE AGREED-UPON REHABILITATION
 8 PLAN.

9 (3) IF THE REHABILITATION PLAN PROVIDES FOR JOB
 10 PLACEMENT, A VOCATIONAL REHABILITATION PROVIDER SHALL ASSIST
 11 THE WORKER IN OBTAINING OTHER EMPLOYMENT AND THE WORKER IS
 12 ENTITLED TO WEEKLY BENEFITS FOR A PERIOD NOT TO EXCEED 8
 13 WEEKS AT THE WORKER'S TEMPORARY TOTAL DISABILITY RATE. IF,
 14 AFTER RECEIVING BENEFITS UNDER THIS SUBSECTION, THE WORKER
 15 DECIDES TO PROCEED WITH A REHABILITATION PLAN, THE WEEKS IN
 16 WHICH BENEFITS WERE PAID UNDER THIS SUBSECTION MAY NOT BE
 17 CREDITED AGAINST THE MAXIMUM OF 104 WEEKS OF REHABILITATION
 18 BENEFITS PROVIDED IN THIS SECTION.

19 (4) IF THERE IS A DISPUTE AS TO WHETHER AN INJURED
 20 WORKER CAN RETURN TO THE JOB THE WORKER HELD AT THE TIME OF
 21 INJURY, THE INSURER SHALL DESIGNATE A REHABILITATION
 22 PROVIDER TO EVALUATE AND DETERMINE WHETHER THE WORKER CAN
 23 RETURN TO THE JOB HELD AT THE TIME OF INJURY. IF IT IS
 24 DETERMINED THAT HE CANNOT, THE WORKER IS ENTITLED TO
 25 REHABILITATION BENEFITS AND SERVICES AS PROVIDED IN

1 SUBSECTION (2).

2 (5) A worker may not receive temporary total or
3 biweekly permanent partial disability benefits and
4 rehabilitation benefits during the same period of time. The
5 insurer--may--agree-to-extend-rehabilitation-benefits-beyond
6 the-104-week-period-

7 (5)(6) The rehabilitation provider, AS AUTHORIZED BY
8 THE INSURER, shall continue to work with and assist the
9 injured worker until the rehabilitation plan is completed.

10 **Section 11.** Section 39-71-1025, MCA, is amended to
11 read:

12 "39-71-1025. Auxiliary rehabilitation benefits. In
13 addition to benefits otherwise provided in this chapter,
14 separate benefits not exceeding a total of \$4,000 may be
15 paid by the insurer for:

16 (1) reasonable travel and relocation expenses used to:

17 (a)(1) search for new employment;

18 (b)(2) return to work but in a new location; and

19 (c)(3) implement a rehabilitation program-pursuant-to-a
20 final--order--of--determination--by plan that has been filed
21 with the department; and

22 (4) attend an on-the-job training program.

23 (2)--reasonable-participation-with--an--employer--in--an
24 on-the-job-training-program:"

25 **Section 12.** Section 39-71-1032, MCA, is amended to

1 read:

2 "39-71-1032. Termination of benefits for noncooperation
3 with rehabilitation provider or-the-department-of-social-and
4 rehabilitation--services -- department hearing and appeal.

5 (1) If an insurer believes a worker is refusing unreasonably
6 to cooperate with the rehabilitation provider or--the
7 department---of--social--and--rehabilitation--services, the
8 insurer, with 14 days' notice to the worker and department
9 on a form approved by the department, may terminate any
10 rehabilitation benefits the worker is receiving under this
11 part until the worker cooperates. ~~if-the-worker-is-receiving~~
12 ~~wage-supplement rehabilitation-benefits, those-benefits-must~~
13 ~~continue---until---the---department's---determination--under~~
14 ~~subsection-(3)-is-made-~~

15 (2) The worker may contest the insurer's termination of
16 benefits by filing a written exception to the department
17 within 10 20 working days after the date of the 14-day
18 notice. The worker or insurer may request a hearing or--the
19 before the department may hold a hearing on its own motion.
20 The department shall hold a hearing within 30 days of
21 receipt of the request. The department shall issue an order
22 within 30 15 days of the hearing.

23 (3) ~~if-no-exceptions-are-timely-filed-or-the-department~~
24 ~~determines-the-worker-unreasonably-refused-to-cooperate, the~~
25 ~~insurer-may-terminate-wage--loss--supplement rehabilitation~~

benefits the worker is receiving until the worker cooperates with the rehabilitation provider. If the worker prevails at a hearing before the department, it may award attorney fees and costs to the worker under 39-71-612.

(4) Within ~~10~~ working 30 days after the department mails its order to the party's last-known address, a party may appeal to the workers' compensation court."

~~Section 14. Section 39-72-601, MCA, is amended to read:~~

~~"39-72-601. Medical panel. (1) The department shall develop a list of physicians to serve on the occupational disease medical panel. The list may include physicians nominated by the board of medical examiners. A physician on the panel must be certified by his specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.~~

~~(2) The department or an insurer shall select a panel physician to examine a claimant, as required. The department shall appoint, as required, one member of the panel to be the chairman."~~

~~Section 15. Section 39-72-602, MCA, is amended to read:~~

~~"39-72-602. Insurer may accept liability. Procedure for medical examination when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.~~

~~(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability questions liability and to determine whether the claimant is totally disabled and the extent, if any, of reduction of benefits pursuant to 39-72-706, the following procedure must be followed:~~

~~(a) The department or an insurer with notice to the department shall direct the claimant to a member of the medical panel for an examination. The panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the department.~~

~~(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the department or an insurer with notice to the department shall direct the claimant to a second panel member who shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from an occupational disease and the extent, if any, of reduction of benefits pursuant to 39-72-706. The panel member shall submit a report of his findings to the department. When a second examination has been requested, the reports of the~~

1 examinations--shall--be--submitted--to--three--members--of--the
 2 medical--panel--for--review. A--medical--panel--member--or--the
 3 panel--may, in--order--to--assist--the--panel--member--or--the--panel
 4 in--reaching--a--conclusion, consult--with--the--claimant's
 5 attending--physician. The--three--panel--members--shall--issue--a
 6 report--concerning--the--claimant's--physical--condition--and
 7 whether--the--claimant--is--suffering--from--an--occupational
 8 disease.

9 (c)--If--a--second--examination--is--not--requested, the
 10 department--shall--issue--its--order--determining--whether--the
 11 claimant--is--entitled--to--occupational--disease--benefits--based
 12 on--the--report--of--the--first--examining--physician. If--a--second
 13 examination--is--requested, the--department--shall--issue--its
 14 order--based--on--the--report--of--the--three--members--of--the
 15 medical--panel.

16 (d)--For--the--purpose--of--reviewing--the--reports--of--the
 17 examinations--and--issuing--the--report--under--subsection--(2)(b),
 18 the--three--members--of--the--medical--panel--shall--be--the--two
 19 members--of--the--panel--who--examined--the--claimant--and--the--panel
 20 chairman. If--the--panel--chairman--has--examined--the--claimant,
 21 the--panel--chairman--shall--appoint--another--member--of--the
 22 medical--panel--to--be--the--third--member."

23 NEW SECTION. Section 13. Codification instruction.
 24 [Section 11 10] is intended to be codified as an integral
 25 part of Title 39, chapter 71, part 20, and the provisions of

1 Title 39, chapter 71, apply to [section 11 10].

2 NEW SECTION. Section 14. Repealer. Sections
 3 39-71-1012, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018,
 4 39-71-1019, 39-71-1023, 39-71-1024, 39-71-1026, and
 5 39-71-1033, MCA, are repealed.

6 NEW SECTION. SECTION 15. SEVERABILITY. IF A PART OF
 7 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
 8 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
 9 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
 10 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
 11 SEVERABLE FROM THE INVALID APPLICATIONS.

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

-End-

1 HOUSE BILL NO. 837

2 INTRODUCED BY DRISCOLL

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS'
5 COMPENSATION AND OCCUPATIONAL DISEASE ACTS; AMENDING
6 SECTIONS 39-71-116, ~~39-71-123~~, 39-71-414, ~~39-71-701~~,
7 39-71-702, 39-71-703, 39-71-704, 39-71-741, 39-71-1003,
8 39-71-1011, 39-71-1013, 39-71-1025, AND 39-71-1032,
9 ~~39-72-601~~---AND---~~39-72-602~~, MCA; REPEALING SECTIONS
10 39-71-1012, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018,
11 ~~39-71-1019~~, 39-71-1023, 39-71-1024, 39-71-1026, AND
12 39-71-1033, MCA; AND PROVIDING AN EFFECTIVE DATE."

13

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

15 **Section 1.** Section 39-71-116, MCA, is amended to read:

16 "39-71-116. Definitions. Unless the context otherwise
17 requires, words and phrases employed in this chapter have
18 the following meanings:

19 (1) "Administer and pay" includes all actions by the
20 state fund under the Workers' Compensation Act and the
21 Occupational Disease Act of Montana necessary to the
22 investigation, review, and settlement of claims; payment of
23 benefits; setting of reserves; furnishing of services and
24 facilities; and utilization of actuarial, audit, accounting,
25 vocational rehabilitation, and legal services.

There are no changes in this bill,
and will not be reprinted. Please
refer to yellow copy for complete
text.

1 HOUSE BILL NO. 837

2 INTRODUCED BY DRISCOLL

3
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6 SECTIONS 39-71-116, 39-71-123, 39-71-414, 39-71-701,
7 39-71-702, 39-71-703, 39-71-704, 39-71-741, 39-71-1003,
8 39-71-1011, 39-71-1013, 39-71-1025, AND 39-71-1032,
9 39-72-601, ---AND---39-72-602, MCA; REPEALING SECTIONS
10 39-71-1012, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018,
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21 Occupational Disease Act of Montana necessary to the
22 investigation, review, and settlement of claims; payment of
23 benefits; setting of reserves; furnishing of services and
24 facilities; and utilization of actuarial, audit, accounting,
25 vocational rehabilitation, and legal services.

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

7 (3) "Beneficiary" means:

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

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

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

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

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

22 (f) a brother or sister under the age of 18 years if
23 dependent upon the decedent for support at the time of the
24 injury (however, such a brother or sister is a beneficiary
25 only until the age of 18 years and only when no beneficiary,

1 as defined in subsections (3)(a) through (3)(e) of this
 2 section, exists).

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

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

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

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

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

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

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

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

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

1 determination arrived at or decision made by the department.

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

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

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

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

25 (15) "Permanent total disability" means a condition

1 resulting from injury as defined in this chapter, after a
 2 worker reaches maximum healing, in which a worker is unable
 3 to return to work in the worker's job pool after exhausting
 4 all options set forth in 39-71-1012 has no reasonable
 5 prospect of physically performing regular employment.
 6 Regular employment means work on a recurring basis performed
 7 for remuneration in a trade, business, profession, or other
 8 occupation in this state. Lack of immediate job openings is
 9 not a factor to be considered in determining if a worker is
 10 permanently totally disabled.

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

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

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

22 (19) "Reasonably safe place to work" means that the
 23 place of employment has been made as free from danger to the
 24 life or safety of the employee as the nature of the
 25 employment will reasonably permit.

1 (20) "Reasonably safe tools and appliances" are such
 2 tools and appliances as are adapted to and are reasonably
 3 safe for use for the particular purpose for which they are
 4 furnished.

5 (21) "Temporary total disability" means a condition
 6 resulting from an injury as defined in this chapter that
 7 results in total loss of wages and exists until the injured
 8 worker reaches maximum healing.

9 (22) "Year", unless otherwise specified, means calendar
 10 year."

11 Section 2, Section 39-71-123, MCA, is amended to read:

12 "39-71-123. Wages defined. (1) "Wages" means the gross
 13 remuneration paid in money, or in a substitute for money,
 14 for services rendered by an employee. Wages include but are
 15 not limited to:

16 (a) commissions, bonuses, and remuneration at the
 17 regular hourly rate for overtime work, holidays, vacations,
 18 and sickness periods;

19 (b) board, lodging, rent, or housing if it constitutes
 20 a part of the employee's remuneration and is based on its
 21 actual value; and

22 (c) payments made to an employee on any basis other
 23 than time worked, including but not limited to piecework, an
 24 incentive plan, or profit-sharing arrangement;

25 (2) Wages do not include:

1 (a)--employee---travel---expense---reimbursements---or
 2 allowances-for-meals,-lodging,-travel,-and-subsistence;
 3 (b)--special--rewards--for--individual--invention--or
 4 discovery;
 5 (c)--tips--and--other--gratuities--received--by--the--employee
 6 in-excess-of--those--documented--to--the--employer--for--tax
 7 purposes;
 8 (d)--contributions--made--by--the--employer--to--a-group
 9 insurance-or-pension-plan;-or
 10 (e)--vacation-or-sick-leave--benefits--accrued--but--not
 11 paid;
 12 (3)--For--compensation--benefit--purposes,-the--average
 13 actual--earnings--for--the--four--pay--periods--immediately
 14 preceding-the-injury-are-the-employee's-wages,-except-if:
 15 (a)--the-term-of-employment-for-the--same--employer--is
 16 less--than--four--pay--periods,-in-which-case-the-employee's
 17 wages-are-the-hourly-rate-times-the-number--of--hours--in-a
 18 week-for-which-the-employee-was-hired-to-work;-or
 19 (b)--for--good--cause--shown-by-the-claimant,-the-use-of
 20 the--four--pay--periods--does--not--accurately--reflect--the
 21 claimant's-employment-history-with-the--employer,-in--which
 22 case-the-insurer-may-use-additional-pay-periods;
 23 (4)--(a)--For--the--purpose--of--calculating-compensation
 24 benefits-for-an-employee-working-concurrent-employments,-the
 25 average-actual-wages--must--be--calculated--as--provided--in

1 subsection-(3)-
 2 (b)--The--compensation--benefits-for-a-covered-volunteer
 3 must-be-based-on-the-average-actual--wages--in--his--regular
 4 employment,-except--self-employment-as-a-sole-proprietor-or
 5 partner-who-elected-not-to-be--covered,-from--which--he--is
 6 disabled-by-the-injury-incurred-
 7 (c)--The--compensation--benefits-for-an-employee-working
 8 at-two-or-more-concurrent-remunerated--employments--must--be
 9 based--on--the--aggregate--of--average--actual--wages-of-all
 10 employments,-except-self-employment-as-a-sole-proprietor--or
 11 partner--who--elected--not--to--be--covered,-from-which-the
 12 employee-is-disabled-by-the-injury-incurred-
 13 (5)--If-an-injured-worker-is-engaged-in-self-employment
 14 subsequent--to--an-injury,-earnings-from-self-employment-are
 15 considered-wages-as-defined-in-subsection-(1)--for--purposes
 16 of--determining--entitlement--to--temporary-total-disability
 17 benefits,-if-a-self-employed-worker-is-entitled-to-temporary
 18 total-disability-benefits--and--continues--to--receive
 19 self-employment--income,-temporary-total-disability-benefits
 20 must-be-reduced-by-an-amount--equal--to--two-thirds--of--the
 21 self-employment-income."

22 **Section 2.** Section 39-71-414, MCA, is amended to read:
 23 "39-71-414. Subrogation. (1) If an action is prosecuted
 24 as provided for in 39-71-412 or 39-71-413 and except as
 25 otherwise provided in this section, the insurer is entitled

1 to subrogation for all compensation and benefits paid or to
 2 be paid under the Workers' Compensation Act. The insurer's
 3 right of subrogation is a first lien on the claim, judgment,
 4 or recovery.

5 (2) (a) If the injured employee intends to institute
 6 the third party action, he shall give the insurer reasonable
 7 notice of his intention to institute the action.

8 (b) The injured employee may request that the insurer
 9 pay a proportionate share of the reasonable cost of the
 10 action, including attorneys' fees.

11 (c) The insurer may elect not to participate in the
 12 cost of the action. If this election is made, the insurer
 13 waives 50% of its subrogation rights granted by this
 14 section.

15 (d) If the injured employee or the employee's personal
 16 representative institutes the action, the employee is
 17 entitled to at least one-third of the amount recovered by
 18 judgment or settlement less a proportionate share of
 19 reasonable costs, including attorneys' fees, if the amount
 20 of recovery is insufficient to provide the employee with
 21 that amount after payment of subrogation.

22 (3) If an injured employee refuses or fails to
 23 institute the third party action within 1 year from the date
 24 of injury, the insurer may institute the action in the name
 25 of the employee and for the employee's benefit or that of

1 the employee's personal representative. If the insurer
 2 institutes the action, it shall pay to the employee any
 3 amount received by judgment or settlement which is in excess
 4 of the amounts paid or to be paid under the Workers'
 5 Compensation Act after the insurer's reasonable costs,
 6 including attorneys' fees for prosecuting the action, have
 7 been deducted from the recovery.

8 (4) An insurer may enter into compromise agreements in
 9 settlement of subrogation rights.

10 (5) If the amount of compensation and other benefits
 11 payable under the Workers' Compensation Act have not been
 12 fully determined at the time the employee, the employee's
 13 heirs or personal representatives, or the insurer have
 14 settled in any manner the action as provided for in this
 15 section, the department shall determine what proportion of
 16 the settlement shall be allocated under subrogation. The
 17 department's determination may be appealed to the workers'
 18 compensation judge.

19 (6) (a) The insurer is entitled to full subrogation
 20 rights under this section, even though the claimant is able
 21 to demonstrate damages in excess of the workers'
 22 compensation benefits and the third-party recovery combined.
 23 The insurer may subrogate against the entire settlement or
 24 award of a third party claim brought by the claimant or his
 25 personal representative, without regard to the nature of the

1 damages.

2 (b) If no survival action exists and the parties reach
3 a settlement of a wrongful death claim without apportionment
4 of damages by a court or jury, the insurer may subrogate
5 against the entire settlement amount, without regard to the
6 parties' apportionment of the damages, unless the insurer is
7 a party to the settlement agreement.

8 (7) Regardless of whether the amount of compensation
9 and other benefits payable have been fully determined, the
10 insurer and the claimant may stipulate the proportion of the
11 third-party settlement to be allocated under subrogation.
12 Upon review and approval by the department, the agreement
13 constitutes a compromise settlement of the issue of
14 subrogation and may not be reopened by the department or by
15 any court."

16 Section 4. Section 39-71-701, MCA, is amended to read:
17 "39-71-701. Compensation for temporary total
18 disability. (1) Subject to the limitation in 39-71-736, a
19 worker is eligible for temporary total disability benefits
20 when the worker suffers a total loss of wages as a result of
21 an injury and until the worker reaches maximum healing;
22 (2) The determination of temporary total disability
23 must be supported by a preponderance of medical evidence;
24 (3) Weekly compensation benefits for injury producing
25 temporary total disability shall be 66-2/3% of the wages

1 received at the time of the injury. The maximum weekly
2 compensation benefits may not exceed the state's average
3 weekly wage at the time of injury. Temporary total
4 disability benefits must be paid for the duration of the
5 worker's temporary disability. However, if a worker is
6 released by the treating physician to the same, a modified,
7 or an alternate position that is available to the worker
8 with the same employer with a wage equivalent to or higher
9 than the wage at the time of injury, the worker is no longer
10 eligible for temporary total disability benefits even though
11 the worker has not reached maximum healing. A worker is
12 again entitled to temporary total benefits if for any reason
13 the job is no longer available to the worker and he
14 continues to be temporarily totally disabled. The weekly
15 benefit amount may not be adjusted for cost of living as
16 provided in 39-71-702(5);

17 (4) In cases where it is determined that periodic
18 disability benefits granted by the Social Security Act are
19 payable because of the injury, the weekly benefits payable
20 under this section are reduced, but not below zero, by an
21 amount equal, as nearly as practical, to one-half the
22 federal periodic benefits for such week, which amount is to
23 be calculated from the date of the disability social
24 security entitlement;

25 (5) Notwithstanding subsection (3), beginning July 1,

1 1987 through June 30, 1991, weekly compensation benefits
 2 for temporary total disability may not exceed the state's
 3 average weekly wage of \$299 established July 1, 1986."

4 **Section 3.** Section 39-71-702, MCA, is amended to read:

5 "39-71-702. Compensation for permanent total
 6 disability. (1) If a worker is no longer temporarily totally
 7 disabled and is unable to return to work due to injury
 8 PERMANENTLY TOTALLY DISABLED, AS DEFINED IN 39-71-116, the
 9 worker is eligible for permanent total disability benefits.
 10 ~~At an insurer's request, an evaluation of all options under~~
 11 ~~39-71-1012 must be made before permanent total disability~~
 12 ~~status is determined.~~ Permanent total disability benefits
 13 must be paid for the duration of the worker's permanent
 14 total disability, subject to 39-71-710 and 39-71-1026.

15 (2) The determination of permanent total disability
 16 must be supported by a preponderance of medical evidence.

17 (3) Weekly compensation benefits for an injury
 18 resulting in permanent total disability shall be 66 2/3% of
 19 the wages received at the time of the injury. The maximum
 20 weekly compensation benefits shall not exceed the state's
 21 average weekly wage at the time of injury.

22 (4) In cases where it is determined that periodic
 23 disability benefits granted by the Social Security Act are
 24 payable because of the injury, the weekly benefits payable
 25 under this section are reduced, but not below zero, by an

1 amount equal, as nearly as practical, to one-half the
 2 federal periodic benefits for such week, which amount is to
 3 be calculated from the date of the disability social
 4 security entitlement.

5 (5) A worker's benefit amount must be adjusted for a
 6 cost-of-living increase on the next July 1 after 104 weeks
 7 of permanent total disability benefits have been paid and on
 8 each succeeding July 1. A worker may not receive more than
 9 10 such adjustments. The adjustment must be the percentage
 10 increase, if any, in the state's average weekly wage as
 11 adopted by the department over the state's average weekly
 12 wage adopted for the previous year or 3%, whichever is less.

13 (6) Notwithstanding subsection (3), beginning July 1,
 14 1987, through June 30, 1991, the maximum weekly compensation
 15 benefits for permanent total disability may not exceed the
 16 state's average weekly wage of \$299 established July 1,
 17 1986."

18 **Section 4.** Section 39-71-703, MCA, is amended to read:

19 "39-71-703. Compensation for permanent partial
 20 disability --- impairment awards and wage supplements. (1)
 21 ~~The benefits available for permanent partial disability are~~
 22 ~~impairment awards and wage supplements. A worker who has~~
 23 ~~reached maximum healing and is not eligible for permanent~~
 24 ~~total disability benefits but who has a medically determined~~
 25 ~~physical restriction as a result of a work-related injury~~

1 may be eligible for an impairment award and wage supplement
2 benefits as follows:

3 (a) The following procedure must be followed for an
4 impairment award:

5 (i) Each percentage point of impairment is compensated
6 in an amount equal to 5 weeks times 66-2/3% of the wages
7 received at the time of the injury, subject to a maximum
8 compensation rate of one-half of the state's average weekly
9 wage at the time of injury.

10 (ii) When a worker reaches maximum healing, an
11 impairment rating is rendered by one or more physicians as
12 provided for in 39-71-711; impairment benefits are payable
13 beginning the date of maximum healing.

14 (iii) An impairment award may be paid biweekly or in a
15 lump sum, at the discretion of the worker; lump sums paid
16 for impairments are not subject to the requirements set
17 forth in 39-71-741, except that lump sum conversions for
18 benefits not accrued may be reduced to present value at the
19 rate set forth by the department in 39-71-741(5).

20 (iv) If a worker becomes eligible for permanent total
21 disability benefits, the insurer may recover any lump sum
22 advance paid to a claimant for impairment, as set forth in
23 39-71-741(5). Such right of recovery does not apply to
24 lump sum benefits paid for the period prior to claimant's
25 eligibility for permanent total disability benefits.

1 (v) If a worker suffers additional injury, an
2 impairment award payable for the additional injury must be
3 reduced by the amount of a previous award paid for
4 impairment to the same site on the body.

5 (b) The following procedure must be followed for a wage
6 supplement:

7 (i) A worker must be compensated in weekly benefits
8 equal to 66-2/3% of the difference between the worker's
9 actual wages received at the time of the injury and the
10 wages the worker is qualified to earn in the worker's job
11 pool, subject to a maximum compensation rate of one-half the
12 state's average weekly wage at the time of injury.

13 (ii) Eligibility for wage supplement benefits begins at
14 maximum healing and terminates at the expiration of 500
15 weeks minus the number of weeks for which a worker's
16 impairment award is payable, subject to 39-71-710. A
17 worker's failure to sustain a wage loss compensable under
18 subsection (i)(b)(i) does not extend the period of
19 eligibility. However, if a worker becomes eligible for
20 temporary total disability, permanent total disability, or
21 total rehabilitation benefits after reaching maximum
22 healing, the eligibility period for wage supplement benefits
23 is extended by any period for which a worker is compensated
24 by those benefits after reaching maximum healing.

25 (2) The determination of permanent partial disability

1 ~~must be supported by a preponderance of medical evidence.~~
 2 ~~(3) Notwithstanding subsection (1), beginning July 1,~~
 3 ~~1987, through June 30, 1991, the maximum weekly compensation~~
 4 ~~benefits for permanent partial disability may not exceed~~
 5 ~~\$149.50, which is one-half the state's average weekly wage~~
 6 ~~established July 1, 1986.~~

7 (1) If an injured worker suffers a permanent partial
 8 disability and is no longer entitled to temporary total or
 9 permanent total disability benefits, the worker is entitled
 10 to a permanent partial disability award.

11 (2) The permanent partial disability award must be
 12 arrived at by multiplying the percentage arrived at through
 13 the calculation provided in subsection (3) by 350 weeks.

14 (3) An award granted an injured worker may not exceed a
 15 permanent partial disability rating of 100%. The criteria
 16 for the rating of disability must be calculated using the
 17 medical impairment rating as determined by the latest
 18 edition of the American medical association Guides to the
 19 Evaluation of Permanent Impairment. The percentage to be
 20 used in subsection (2) must be determined by adding the
 21 following applicable percentages TO THE IMPAIRMENT RATING:

22 (a) if the claimant is 30 years of age or younger at
 23 the time of injury, 0%; if the claimant is over 30 years of
 24 age but under 56 years of age at the time of injury, 3% 2%;
 25 and if the claimant is 56 years of age or older at the time

1 of injury, 5% 3%;
 2 (b) for a worker who has completed less than 9 years of
 3 education, 5% 3%; for a worker who has completed 9 through
 4 12 years of education or who has received a graduate
 5 equivalency diploma, 3% 2%; for a worker who has completed
 6 more than 12 years of education, 0%;
 7 (c) if a worker has no wage loss as a result of the
 8 industrial injury, 0%; if a worker has an actual wage loss
 9 of \$2 or less an hour as a result of the industrial injury,
 10 10%; if a worker has an actual wage loss of more than \$2 an
 11 hour as a result of the industrial injury, 20%; and
 12 (d) if a worker, at the time of the injury, was
 13 performing heavy labor activity and after the injury the
 14 worker can perform only light or sedentary labor activity,
 15 20%; if a worker, at the time of injury, was performing
 16 heavy labor activity and after the injury the worker can
 17 perform only medium labor activity, 15%; if a worker was
 18 performing medium labor activity at the time of the injury
 19 and after the injury the worker can perform only light or
 20 sedentary labor activity, 10%.

21 (4) The weekly benefit rate for permanent partial
 22 disability is 66 2/3% of the wages received at the time of
 23 injury, but the rate may not exceed one-half the state's
 24 average weekly wage. The weekly benefit amount established
 25 for an injured worker may not be changed by a subsequent

1 adjustment in the state's average weekly wage for future
 2 fiscal years.

3 (5) If a worker suffers a subsequent compensable injury
 4 OR INJURIES to the same part of the body, the award payable
 5 for the subsequent injury must be reduced by the amount MAY
 6 NOT DUPLICATE ANY AMOUNTS paid for the previous injury OR
 7 INJURIES.

8 (6) As used in the section:

9 (a) "Heavy labor activity" means the ability to lift
 10 over 50 pounds occasionally or up to 50 pounds frequently;

11 (b) "Medium labor activity" means the ability to lift
 12 up to 50 pounds occasionally or up to 25 pounds frequently;

13 (c) "Light labor activity" means the ability to lift up
 14 to 25 pounds occasionally or up to 10 pounds frequently; and

15 (d) "Sedentary labor activity" means the ability to
 16 lift up to 10 pounds occasionally or up to 5 pounds
 17 frequently."

18 **Section 5.** Section 39-71-704, MCA, is amended to read:

19 **"39-71-704. Payment of medical, hospital, and related**
 20 **services -- fee schedules and hospital rates. (1) In**
 21 **addition to the compensation provided by this chapter and as**
 22 **an additional benefit separate and apart from compensation,**
 23 **the following must be furnished:**

24 (a) After the happening of the injury and subject to
 25 the provisions of subsection (1)(d), the insurer shall

1 furnish, without limitation as to length of time or dollar
 2 amount, reasonable services by a physician or surgeon,
 3 reasonable hospital services and medicines when needed, and
 4 such other treatment as may be approved by the department
 5 for the injuries sustained.

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

11 (c) The insurer shall reimburse a worker for reasonable
 12 travel expenses incurred in travel to a medical provider for
 13 treatment of an injury pursuant to rules adopted by the
 14 department. Reimbursement must be at the rates allowed for
 15 reimbursement of travel by state employees.

16 (d) Except for the repair or replacement of a
 17 prosthesis furnished as a result of an industrial injury,
 18 the benefits provided for in this section terminate when
 19 they are not used for a period of 60 consecutive months.

20 (2) A relative value fee schedule for medical,
 21 chiropractic, and paramedical services provided for in this
 22 chapter, excluding hospital services, must be established
 23 annually by the department and become effective in January
 24 of each year. The maximum fee schedule must be adopted as a
 25 relative value fee schedule of medical, chiropractic, and

1 paramedical services, with unit values to indicate the
 2 relative relationship within each grouping of specialties.
 3 Medical fees must be based on the median fees as billed to
 4 the state fund during the year preceding the adoption of the
 5 schedule. The state fund shall report fees billed in the
 6 form and at the times required by the department. The
 7 department shall adopt rules establishing relative unit
 8 values, groups of specialties, the procedures insurers must
 9 use to pay for services under the schedule, and the method
 10 of determining the median of billed medical fees. These
 11 rules must be modeled on the 1974 revision of the 1969
 12 California Relative Value Studies.

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

19 (4) Notwithstanding subsection (2), beginning January
 20 1, 1988, through December 31, 1991, the maximum fees payable
 21 by insurers must be limited to the relative value fee
 22 schedule established in January 1987. Notwithstanding
 23 subsection (3), beginning January 1, 1988, through December
 24 31, 1991, the hospital rates payable by insurers must be
 25 limited to those set in January 1988. After December 31,

1 1991, the percentage increase in medical costs payable under
 2 this chapter may not exceed the annual percentage increase
 3 in the state's average weekly wage as defined in 39-71-116."

4 **Section 6.** Section 39-71-741, MCA, is amended to read:

5 "39-71-741. Compromise settlements, and lump-sum
 6 payments; and lump-sum advance payments. (1) (a) Benefits
 7 may be converted in whole to a lump sum:

8 (i) if a claimant and an insurer dispute the initial
 9 compensability of an injury; and

10 (ii) if the claimant and insurer agree to a settlement.

11 (b) The agreement is subject to department approval.
 12 The department may disapprove an agreement under this
 13 section only if there is not a reasonable dispute over
 14 compensability.

15 (c) Upon approval, the agreement constitutes a
 16 compromise and release settlement and may not be reopened by
 17 the department ~~or by any court.~~

18 ~~(d) The parties' failure to reach an agreement is not a~~
 19 ~~dispute over which a mediator or the workers' compensation~~
 20 ~~court has jurisdiction.~~

21 (2) (a) If an insurer has accepted initial liability
 22 for an injury, ~~permanent total and permanent partial wage~~
 23 supplement disability benefits may be converted in whole or
 24 in part to a lump-sum payment.

25 ~~(b) The conversion may be made only upon agreement~~

1 ~~between a claimant and an insurer.~~

2 (B) THE TOTAL OF ANY LUMP-SUM CONVERSION IN PART THAT
3 IS AWARDED TO A CLAIMANT PRIOR TO THE CLAIMANT'S FINAL AWARD
4 MAY NOT EXCEED THE ANTICIPATED AWARD UNDER 39-71-703 OR
5 \$20,000, WHICHEVER IS LESS.

6 ~~(c)(b)(C)~~ The An agreement is subject to department
7 approval. The department may approve an agreement if:

8 ~~(i) there is a reasonable dispute concerning the amount~~
9 ~~of the insurer's future liability or benefits; or~~

10 ~~(ii) the amount of the insurer's projected liability is~~
11 ~~reasonably certain and the settlement amount is not~~
12 ~~substantially less than the present value of the insurer's~~
13 ~~liability disapprove an agreement only if the department~~
14 ~~determines that the settlement amount is inadequate. If~~
15 ~~disapproved, the department shall set forth in detail the~~
16 ~~reasons for disapproval.~~

17 ~~(d) The parties' failure to reach agreement is not a~~
18 ~~dispute over which a mediator or the workers' compensation~~
19 ~~court has jurisdiction.~~

20 ~~(e)(c)(D)~~ Upon approval, the agreement constitutes a
21 compromise and release settlement and may not be reopened by
22 the department or by any court.

23 ~~(3)(a) Permanent partial wage supplement benefits may~~
24 ~~be converted in part to a lump-sum advance.~~

25 ~~(b) The conversion may be made only upon agreement~~

1 ~~between a claimant and an insurer.~~

2 ~~(c) The agreement is subject to department approval.~~
3 ~~The department may approve an agreement if the parties~~
4 ~~demonstrate that the claimant has financial need that:~~

5 ~~(i) relates to the necessities of life or relates to an~~
6 ~~accumulation of debt incurred prior to injury; and~~

7 ~~(ii) arises subsequent to the date of injury or arises~~
8 ~~because of reduced income as a result of the injury.~~

9 ~~(d) The parties' failure to reach an agreement is not a~~
10 ~~dispute over which a mediator or the workers' compensation~~
11 ~~court has jurisdiction.~~

12 ~~(d) A lump-sum payment of permanent partial disability~~
13 ~~benefits approved by the department or granted by the court~~
14 ~~must be paid.~~

15 ~~(4)(3) Permanent total disability benefits may be~~
16 ~~converted in whole or in part to a lump-sum advance lump~~
17 ~~sum. The total of all lump-sum advance payments CONVERSIONS~~
18 ~~IN PART THAT ARE AWARDED to a claimant may not exceed~~
19 ~~\$20,000. A conversion may be made only upon the written~~
20 ~~application of the injured worker with the concurrence of~~
21 ~~the insurer. Approval of the lump-sum advance payment rests~~
22 ~~in the discretion of the department. The approval or award~~
23 ~~of a lump-sum advance payment by the department or court~~
24 ~~must be the exception. It may be given only if the worker~~
25 ~~has demonstrated financial need that:~~

1 (a) relates to:

2 (i) the necessities of life;

3 (ii) an accumulation of debt incurred prior to the
4 injury; or

5 (iii) a self-employment venture ~~as set forth in~~
6 39-71-1026, and that is considered feasible under criteria
7 set forth by the department; or

8 (b) arises subsequent to the date of injury or arises
9 because of reduced income as a result of the injury.

10 (4) Any lump-sum conversion of benefits under this
11 section SUBSECTION (3) must be converted to present value
12 using the rate prescribed under subsection (5)(b).

13 (5) (a) An insurer may recoup any lump-sum advance
14 payment amortized at the rate established by the department,
15 prorated biweekly over the projected duration of the
16 compensation period.

17 (b) The rate adopted by the department must be based on
18 the average rate for United States 10-year treasury bills in
19 the previous calendar year, rounded to the nearest whole
20 number.

21 (c) If the projected compensation period is the
22 claimant's lifetime, the life expectancy must be determined
23 by using the most recent table of life expectancy as
24 published by the United States national center for health
25 statistics.

1 (6) The Subject to the other provisions of this
2 section, the department has full power, authority, and
3 jurisdiction ~~under subsection (1)~~ to allow, approve, or
4 condition compromise settlements for any type of benefits
5 provided for under this chapter or lump-sum advances
6 payments agreed to by workers and insurers. All such
7 compromise settlements and lump-sum payments are void
8 without the approval of the department. Approval by the
9 department must be in writing. The department shall directly
10 notify a claimant of a department order approving or denying
11 a claimant's compromise or lump-sum payment.

12 (7) ~~Subject to 39-71-2401, a~~ A dispute between a
13 claimant and an insurer regarding the conversion of biweekly
14 payments into a ~~lump-sum advance under subsection (4)~~ lump
15 sum is considered a dispute, for which a mediator and the
16 workers' compensation court have jurisdiction to make a
17 determination. If an insurer and a claimant agree to a
18 compromise and release settlement or a lump-sum advance
19 payment but the department disapproves the agreement, the
20 parties may request the workers' compensation court to
21 review the department's decision."

22 **SECTION 7. SECTION 39-71-1003, MCA, IS AMENDED TO READ:**

23 "39-71-1003. Eligibility for vocational rehabilitation
24 expenses. (1) Upon certification by the department of social
25 and rehabilitation services, a disabled worker may be paid

1 vocational rehabilitation expenses from funds provided in
 2 39-71-1004, in addition to benefits payable under the
 3 Workers' Compensation Act.

4 (2) The appeal process provided for in 53-7-106 is the
 5 exclusive remedy for an injured worker aggrieved in the
 6 receipt of vocational rehabilitation services provided by
 7 the department of social and rehabilitation services."

8 **Section 8.** Section 39-71-1011, MCA, is amended to read:

9 "39-71-1011. **Definitions.** As used in this chapter, the
 10 following definitions apply:

11 (1) "Board of rehabilitation certification" means the
 12 nonprofit, independent, fee-structured organization that is
 13 a member of the national commission for health certifying
 14 agencies and that is established to certify rehabilitation
 15 practitioners.

16 (2) "Disabled worker" means one who has a medically
 17 determined restriction resulting from a work-related injury
 18 that precludes the worker from returning to the job the
 19 worker held at the time of the injury.

20 (3) ~~"I.W.R.P." means an individualized, written~~
 21 ~~rehabilitation program prepared by the department of social~~
 22 ~~and rehabilitation services.~~

23 (4) (3) "Rehabilitation benefits" means benefits
 24 provided in 39-71-1003, [section 11], and 39-71-1023 through
 25 39-71-1025.

1 (4) "Rehabilitation plan" means an individualized plan
 2 of education, training, or specialized job modification
 3 designed to assist a disabled worker in acquiring skills or
 4 aptitudes to return to work TO ASSIST A DISABLED WORKER IN
 5 ACQUIRING SKILLS OR APTITUDES TO RETURN TO WORK THROUGH JOB
 6 PLACEMENT, ON-THE-JOB TRAINING, EDUCATION, TRAINING, OR
 7 SPECIALIZED JOB MODIFICATION.

8 (5) "Rehabilitation provider" means a rehabilitation
 9 counselor, other than the department of social and
 10 rehabilitation services, certified by the board for
 11 rehabilitation certification and designated by the insurer
 12 to the department OR A DEPARTMENT OF SOCIAL AND
 13 REHABILITATION SERVICES COUNSELOR WHEN A WORKER HAS BEEN
 14 CERTIFIED BY THE DEPARTMENT OF SOCIAL AND REHABILITATION
 15 SERVICES UNDER 39-71-1003.

16 (6) "Rehabilitation services" consists of a program of
 17 evaluation, planning, and delivery of goods and services to
 18 assist a disabled worker to return to work.

19 (7) (a) ~~"Worker's job pool" means those jobs typically~~
 20 ~~available for which a worker is qualified, consistent with~~
 21 ~~the worker's age, education, vocational experience and~~
 22 ~~aptitude and compatible with the worker's physical~~
 23 ~~capacities and limitations as the result of the worker's~~
 24 ~~injury, lack of immediate job openings is not a factor to be~~
 25 ~~considered.~~

1 (b) A worker's job pool may be either local or
 2 statewide, as follows:

3 (i) a local job pool is the job service office area
 4 that includes the worker's residence, and

5 (ii) the statewide job pool is the state of Montana."

6 **Section 9.** Section 39-71-1013, MCA, is amended to read:

7 "39-71-1013. Agreement between worker and insurer
 8 regarding option. A worker and an insurer may agree that an
 9 option in 39-71-1012 is appropriate without following the
 10 procedures provided in this part. Failure to reach agreement
 11 is not a dispute under 39-71-2401 to a rehabilitation plan
 12 and file the agreement with the department."

13 **NEW SECTION. Section 10.** Rehabilitation benefits. (1)
 14 If, as a result of an injury, an injured worker cannot
 15 return to the job the worker held at the time of injury, the
 16 worker is entitled to rehabilitation benefits and services
 17 as provided in subsections (2) through (5); if there is a
 18 dispute as to whether an injured worker can return to the
 19 job the worker held at the time of injury, the insurer shall
 20 designate a rehabilitation provider to evaluate and
 21 determine whether the worker can return to the job held at
 22 the time of injury, and if it is determined that he cannot,
 23 the worker is entitled to rehabilitation benefits and
 24 services as provided for in subsections (2) through (5);

25 (2) If it is determined that the worker cannot return

1 to the job held at the time of injury, a vocational
 2 assessment must be completed by a rehabilitation provider
 3 designated by the insurer. The assessment must identify
 4 potential vocational goals, vocational rehabilitation
 5 training, and reemployment and wage potential and take into
 6 consideration the worker's age, education, training, work
 7 history, and residual physical capacities.

8 (3) If it is determined that a worker cannot return to
 9 the job the worker held at the time of injury, the
 10 rehabilitation provider shall assist the worker in obtaining
 11 new employment and the worker must be given up to 8 weeks of
 12 weekly benefits at the worker's temporary total disability
 13 rate while attempting to obtain new employment. If, after
 14 receiving benefits under this subsection, the worker decides
 15 to proceed with a rehabilitation plan, the weeks in which
 16 benefits were paid under this subsection must be credited
 17 against the maximum of 104 weeks of rehabilitation benefits
 18 provided in this section.

19 (4) Up to 104 weeks of weekly rehabilitation benefits
 20 must be provided at the temporary total disability rate
 21 established for the worker. The number of weeks of benefits
 22 provided must be stated in a rehabilitation plan filed with
 23 the department. The benefits must be paid only while the
 24 worker is engaged in an approved rehabilitation or
 25 apprenticeship program or during a reasonable period of time

1 ~~while the worker is waiting to begin an approved~~
 2 ~~rehabilitation or apprenticeship program. The benefits begin~~
 3 ~~when the rehabilitation provider files the plan with the~~
 4 ~~department. (1) AN INJURED WORKER IS ELIGIBLE FOR~~
 5 ~~REHABILITATION BENEFITS IF:~~

6 (A) THE INJURY RESULTS IN PERMANENT PARTIAL DISABILITY
 7 OR PERMANENT TOTAL DISABILITY AS DEFINED IN 39-71-116;

8 (B) A PHYSICIAN CERTIFIES THAT THE INJURED WORKER IS
 9 PHYSICALLY UNABLE TO WORK AT THE JOB THE WORKER HELD AT THE
 10 TIME OF THE INJURY;

11 (C) A REHABILITATION PLAN COMPLETED BY A REHABILITATION
 12 PROVIDER AND DESIGNATED BY THE INSURER CERTIFIES THAT THE
 13 INJURED WORKER HAS REASONABLE VOCATIONAL GOALS AND A
 14 REEMPLOYMENT AND WAGE POTENTIAL WITH REHABILITATION. THE
 15 PLAN MUST TAKE INTO CONSIDERATION THE WORKER'S AGE,
 16 EDUCATION, TRAINING, WORK HISTORY, RESIDUAL PHYSICAL
 17 CAPACITIES, AND VOCATIONAL INTERESTS; AND

18 (D) A REHABILITATION PLAN BETWEEN THE INJURED WORKER
 19 AND THE INSURER IS FILED WITH THE DEPARTMENT. IF THE PLAN
 20 CALLS FOR THE EXPENDITURE OF FUNDS UNDER 39-71-1004, THE
 21 DEPARTMENT SHALL AUTHORIZE THE DEPARTMENT OF SOCIAL AND
 22 REHABILITATION SERVICES TO USE THE FUNDS.

23 (2) AFTER FILING THE REHABILITATION PLAN WITH THE
 24 DEPARTMENT, THE INJURED WORKER IS ENTITLED TO RECEIVE
 25 REHABILITATION BENEFITS AT THE INJURED WORKER'S TEMPORARY

1 TOTAL DISABILITY RATE. THE BENEFITS MUST BE PAID FOR THE
 2 PERIOD SPECIFIED IN THE REHABILITATION PLAN, NOT TO EXCEED
 3 104 WEEKS. REHABILITATION BENEFITS MUST BE PAID DURING A
 4 REASONABLE PERIOD, NOT TO EXCEED 10 WEEKS, WHILE THE WORKER
 5 IS WAITING TO BEGIN THE AGREED-UPON REHABILITATION PLAN.
 6 REHABILITATION BENEFITS MUST BE PAID WHILE THE WORKER IS
 7 SATISFACTORILY COMPLETING THE AGREED-UPON REHABILITATION
 8 PLAN.

9 (3) IF THE REHABILITATION PLAN PROVIDES FOR JOB
 10 PLACEMENT, A VOCATIONAL REHABILITATION PROVIDER SHALL ASSIST
 11 THE WORKER IN OBTAINING OTHER EMPLOYMENT AND THE WORKER IS
 12 ENTITLED TO WEEKLY BENEFITS FOR A PERIOD NOT TO EXCEED 8
 13 WEEKS AT THE WORKER'S TEMPORARY TOTAL DISABILITY RATE. IF,
 14 AFTER RECEIVING BENEFITS UNDER THIS SUBSECTION, THE WORKER
 15 DECIDES TO PROCEED WITH A REHABILITATION PLAN, THE WEEKS IN
 16 WHICH BENEFITS WERE PAID UNDER THIS SUBSECTION MAY NOT BE
 17 CREDITED AGAINST THE MAXIMUM OF 104 WEEKS OF REHABILITATION
 18 BENEFITS PROVIDED IN THIS SECTION.

19 (4) IF THERE IS A DISPUTE AS TO WHETHER AN INJURED
 20 WORKER CAN RETURN TO THE JOB THE WORKER HELD AT THE TIME OF
 21 INJURY, THE INSURER SHALL DESIGNATE A REHABILITATION
 22 PROVIDER TO EVALUATE AND DETERMINE WHETHER THE WORKER CAN
 23 RETURN TO THE JOB HELD AT THE TIME OF INJURY. IF IT IS
 24 DETERMINED THAT HE CANNOT, THE WORKER IS ENTITLED TO
 25 REHABILITATION BENEFITS AND SERVICES AS PROVIDED IN

1 SUBSECTION (2).

2 ~~(5)~~ A worker may not receive temporary total or
 3 biweekly permanent partial disability benefits and
 4 rehabilitation benefits during the same period of time. ~~The~~
 5 ~~insurer may agree to extend rehabilitation benefits beyond~~
 6 ~~the 104-week period.~~

7 ~~(5)(6)~~ The rehabilitation provider, AS AUTHORIZED BY
 8 THE INSURER, shall continue to work with and assist the
 9 injured worker until the rehabilitation plan is completed.

10 **Section 11.** Section 39-71-1025, MCA, is amended to
 11 read:

12 "39-71-1025. Auxiliary rehabilitation benefits. In
 13 addition to benefits otherwise provided in this chapter,
 14 separate benefits not exceeding a total of \$4,000 may be
 15 paid by the insurer for:

- 16 (i) reasonable travel and relocation expenses used to:
- 17 (a) (1) search for new employment;
- 18 (b) (2) return to work but in a new location; and
- 19 (c) (3) implement a rehabilitation program pursuant to a
- 20 final order of determination by plan that has been filed
- 21 with the department; and
- 22 (4) attend an on-the-job training program.

23 ~~(2) reasonable participation with an employer in an~~
 24 ~~on-the-job training program."~~

25 **Section 12.** Section 39-71-1032, MCA, is amended to

1 read:

2 "39-71-1032. Termination of benefits for noncooperation
 3 with rehabilitation provider ~~or the department of social and~~
 4 ~~rehabilitation services~~ -- department hearing and appeal.

5 (1) If an insurer believes a worker is refusing unreasonably
 6 to cooperate with the rehabilitation provider ~~or the~~
 7 ~~department of social and rehabilitation services~~, the
 8 insurer, with 14 days' notice to the worker and department
 9 on a form approved by the department, may terminate any
 10 rehabilitation benefits the worker is receiving under this
 11 part until the worker cooperates. ~~If the worker is receiving~~
 12 ~~wage supplement rehabilitation benefits, those benefits must~~
 13 ~~continue until the department's determination under~~
 14 ~~subsection (3) is made.~~

15 (2) The worker may contest the insurer's termination of
 16 benefits by filing a written exception to the department
 17 within ~~10~~ 20 working days after the date of the 14-day
 18 notice. The worker or insurer may request a hearing ~~or the~~
 19 ~~before the department may hold a hearing on its own motion.~~
 20 The department shall hold a hearing within 30 days of
 21 receipt of the request. The department shall issue an order
 22 within ~~30~~ 15 days of the hearing.

23 (3) ~~If no exceptions are timely filed or the department~~
 24 ~~determines the worker unreasonably refused to cooperate, the~~
 25 ~~insurer may terminate wage loss supplement rehabilitation~~

1 ~~benefits the worker is receiving until the worker cooperates~~
 2 ~~with the rehabilitation provider.~~ If the worker prevails at
 3 a hearing before the department, it may award attorney fees
 4 and costs to the worker under 39-71-612.

5 (4) Within ~~10~~ working 30 days after the department
 6 mails its order to the party's last-known address, a party
 7 may appeal to the workers' compensation court."

8 ~~Section 14. Section 39-72-601, MCA, is amended to read:~~

9 ~~"39-72-601. Medical panel. (1) The department shall~~
 10 ~~develop a list of physicians to serve on the occupational~~
 11 ~~disease medical panel. The list may include physicians~~
 12 ~~nominated by the board of medical examiners. A physician on~~
 13 ~~the panel must be certified by his specialty board or be~~
 14 ~~eligible for certification in the specialty area appropriate~~
 15 ~~to the claimant's condition in relation to this chapter.~~

16 ~~(2) The department or an insurer shall select a panel~~
 17 ~~physician to examine a claimant, as required. The department~~
 18 ~~shall appoint, as required, one member of the panel to be~~
 19 ~~the chairman."~~

20 ~~Section 15. Section 39-72-602, MCA, is amended to read:~~

21 ~~"39-72-602. Insurer may accept liability procedure~~
 22 ~~for medical examination when insurer has not accepted~~
 23 ~~liability. (1) An insurer may accept liability for a claim~~
 24 ~~under this chapter based on information submitted to it by a~~
 25 ~~claimant.~~

1 ~~(2) In order to determine the compensability of claims~~
 2 ~~under this chapter when an insurer has not accepted~~
 3 ~~liability questions liability and to determine whether the~~
 4 ~~claimant is totally disabled and the extent, if any, of~~
 5 ~~reduction of benefits pursuant to 39-72-706, the following~~
 6 ~~procedure must be followed:~~

7 ~~(a) The department or an insurer with notice to the~~
 8 ~~department shall direct the claimant to a member of the~~
 9 ~~medical panel for an examination. The panel member shall~~
 10 ~~conduct an examination to determine whether the claimant is~~
 11 ~~totally disabled and is suffering from an occupational~~
 12 ~~disease. The panel member shall submit a report of his~~
 13 ~~findings to the department.~~

14 ~~(b) Either the claimant or the insurer may, within 20~~
 15 ~~days after the receipt of the report by the first panel~~
 16 ~~member, request that the claimant be examined by a second~~
 17 ~~panel member. If a second examination is requested, the~~
 18 ~~department or an insurer with notice to the department shall~~
 19 ~~direct the claimant to a second panel member who shall~~
 20 ~~conduct an examination to determine whether he believes the~~
 21 ~~claimant is totally disabled and is suffering from an~~
 22 ~~occupational disease and the extent, if any, of reduction of~~
 23 ~~benefits pursuant to 39-72-706. The panel member shall~~
 24 ~~submit a report of his findings to the department. When a~~
 25 ~~second examination has been requested, the reports of the~~

1 examinations shall be submitted to three members of the
 2 medical panel for review. A medical panel member or the
 3 panel may, in order to assist the panel member or the panel
 4 in reaching a conclusion, consult with the claimant's
 5 attending physician. The three panel members shall issue a
 6 report concerning the claimant's physical condition and
 7 whether the claimant is suffering from an occupational
 8 disease.

9 (c) If a second examination is not requested, the
 10 department shall issue its order determining whether the
 11 claimant is entitled to occupational disease benefits based
 12 on the report of the first examining physician. If a second
 13 examination is requested, the department shall issue its
 14 order based on the report of the three members of the
 15 medical panel.

16 (d) For the purpose of reviewing the reports of the
 17 examinations and issuing the report under subsection (2)(b),
 18 the three members of the medical panel shall be the two
 19 members of the panel who examined the claimant and the panel
 20 chairman. If the panel chairman has examined the claimant,
 21 the panel chairman shall appoint another member of the
 22 medical panel to be the third member.

23 NEW SECTION. Section 13. Codification instruction.
 24 [Section 10] is intended to be codified as an integral
 25 part of Title 39, chapter 71, part 20, and the provisions of

1 Title 39, chapter 71, apply to [section 10].

2 NEW SECTION. Section 14. Repealer. Sections
 3 39-71-1012, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018,
 4 39-71-1019, 39-71-1019, 39-71-1023, 39-71-1024, 39-71-1026,
 5 and 39-71-1033, MCA, are repealed.

6 NEW SECTION. SECTION 15. SEVERABILITY. IF A PART OF
 7 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
 8 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
 9 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
 10 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
 11 SEVERABLE FROM THE INVALID APPLICATIONS.

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

-End-