

SENATE BILL 365

Introduced by Keating, et al.

2/13	Introduced
2/13	First Reading
2/13	Referred to Labor & Employment Relations
2/13	Fiscal Note Requested
2/19	Hearing
2/20	Fiscal Note Received
2/22	Fiscal Note Printed
2/22	Committee Report--Bill Not Passed
2/22	Adverse Committee Report Adopted
2/23	Motion Failed to Reconsider Adoption of Adverse Committee Report

1 *Senate* BILL NO. *365*
 2 INTRODUCED BY *Robert Lee Jones*
 3 *Gene Nelson* *Elmer Bennett*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING THE STATE
 5 COMPENSATION MUTUAL INSURANCE FUND; PROVIDING FOR
 6 ADMINISTRATION AND PAYMENT OF EXISTING CLAIMS BY ONE OR MORE
 7 PRIVATE COMPANIES UNDER CONTRACTS WITH THE COMMISSIONER OF
 8 INSURANCE; PROVIDING FOR LOANS TO THE COMMISSIONER OF
 9 INSURANCE TO SERVICE THE CONTRACTS; PROVIDING FOR MUTUALLY
 10 AGREEABLE LUMP-SUM SETTLEMENTS; PROVIDING THAT ALL EMPLOYERS
 11 MUST INSURE WITH A PRIVATE COMPANY; PROVIDING THAT THE SCOPE
 12 AND COVERAGE OF THE INSURANCE IS AT THE EMPLOYER'S
 13 DISCRETION; AMENDING SECTIONS 19-12-401, 20-15-403,
 14 31-2-106, 37-12-201, 39-51-201, 39-71-101, 39-71-116,
 15 39-71-117, 39-71-317, 39-71-401, 39-71-431, 39-71-2204,
 16 39-71-2353, 39-71-2501, 39-71-2502, 39-71-2503, 39-71-2504,
 17 39-73-104, 39-73-107, 39-73-108, 50-16-527, AND 50-71-325,
 18 MCA; REPEALING SECTIONS 2-15-1014, 39-71-102, 39-71-103,
 19 39-71-105, 39-71-119, 39-71-123, 39-71-201, 39-71-202,
 20 39-71-204, 39-71-205, 39-71-206, 39-71-208, 39-71-209,
 21 39-71-221, 39-71-222, 39-71-223, 39-71-224, 39-71-301,
 22 39-71-302, 39-71-303, 39-71-306, 39-71-307, 39-71-308,
 23 39-71-316, 39-71-402, 39-71-403, 39-71-405, 39-71-406,
 24 39-71-407, 39-71-408, 39-71-409, 39-71-411, 39-71-412,
 25 39-71-413, 39-71-414, 39-71-415, 39-71-421, 39-71-426,

1 39-71-427, 39-71-428, 39-71-434, 39-71-501, 39-71-502,
 2 39-71-503, 39-71-504, 39-71-505, 39-71-506, 39-71-507,
 3 39-71-508, 39-71-509, 39-71-510, 39-71-511, 39-71-515,
 4 39-71-516, 39-71-517, 39-71-518, 39-71-519, 39-71-601,
 5 39-71-602, 39-71-603, 39-71-604, 39-71-605, 39-71-606,
 6 39-71-607, 39-71-608, 39-71-609, 39-71-610, 39-71-611,
 7 39-71-612, 39-71-613, 39-71-614, 39-71-701, 39-71-702,
 8 39-71-703, 39-71-704, 39-71-708, 39-71-710, 39-71-711,
 9 39-71-721, 39-71-722, 39-71-723, 39-71-724, 39-71-725,
 10 39-71-726, 39-71-736, 39-71-737, 39-71-739, 39-71-740,
 11 39-71-741, 39-71-742, 39-71-743, 39-71-744, 39-71-801,
 12 39-71-802, 39-71-803, 39-71-804, 39-71-805, 39-71-806,
 13 39-71-807, 39-71-808, 39-71-809, 39-71-810, 39-71-811,
 14 39-71-812, 39-71-813, 39-71-901, 39-71-902, 39-71-903,
 15 39-71-904, 39-71-905, 39-71-906, 39-71-907, 39-71-908,
 16 39-71-909, 39-71-910, 39-71-911, 39-71-912, 39-71-913,
 17 39-71-1003, 39-71-1004, 39-71-1011, 39-71-1012, 39-71-1013,
 18 39-71-1014, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018,
 19 39-71-1019, 39-71-1023, 39-71-1024, 39-71-1025, 39-71-1026,
 20 39-71-1031, 39-71-1032, 39-71-1033, 39-71-2101, 39-71-2102,
 21 39-71-2103, 39-71-2104, 39-71-2105, 39-71-2106, 39-71-2107,
 22 39-71-2108, 39-71-2109, 39-71-2201, 39-71-2202, 39-71-2203,
 23 39-71-2205, 39-71-2206, 39-71-2207, 39-71-2311, 39-71-2312,
 24 39-71-2313, 39-71-2314, 39-71-2315, 39-71-2316, 39-71-2317,
 25 39-71-2318, 39-71-2319, 39-71-2320, 39-71-2321, 39-71-2322,



1 39-71-2323, 39-71-2325, 39-71-2327, 39-71-2336, 39-71-2337,
 2 39-71-2338, 39-71-2339, 39-71-2340, 39-71-2351, 39-71-2352,
 3 39-71-2361, 39-71-2401, 39-71-2406, 39-71-2407, 39-71-2408,
 4 39-71-2409, 39-71-2410, 39-71-2411, 39-71-2601, 39-71-2602,
 5 39-71-2603, 39-71-2604, 39-71-2609, 39-71-2610, 39-71-2611,
 6 39-71-2615, 39-71-2616, 39-71-2617, 39-71-2618, 39-71-2619,
 7 39-71-2620, 39-71-2901, 39-71-2902, 39-71-2903, 39-71-2904,
 8 39-71-2905, 39-71-2907, 39-71-2909, 39-71-2910, 39-71-2914,
 9 39-72-101, 39-72-102, 39-72-103, 39-72-104, 39-72-201,
 10 39-72-202, 39-72-203, 39-72-204, 39-72-206, 39-72-301,
 11 39-72-302, 39-72-303, 39-72-304, 39-72-305, 39-72-310,
 12 39-72-401, 39-72-402, 39-72-403, 39-72-404, 39-72-405,
 13 39-72-408, 39-72-509, 39-72-601, 39-72-602, 39-72-605,
 14 39-72-606, 39-72-607, 39-72-608, 39-72-609, 39-72-610,
 15 39-72-611, 39-72-612, 39-72-613, 39-72-701, 39-72-703,
 16 39-72-704, 39-72-705, 39-72-706, 39-72-707, 39-72-708,
 17 39-72-709, 39-72-711, 39-72-712, AND 39-72-714, MCA; AND
 18 PROVIDING EFFECTIVE DATES."

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 **Section 1.** Section 39-71-101, MCA, is amended to read:
 22 "39-71-101. Short title. This chapter may be cited as
 23 the "Workers' Compensation and Occupational Disease Act"."

24 **Section 2.** Section 39-71-117, MCA, is amended to read:
 25 "39-71-117. Employer defined. "Employer" means:

1 ~~{1}~~ the state and each county, city and county, city
 2 school district, irrigation district, all other districts
 3 established by law, and all public corporations and
 4 quasi-public corporations and public agencies therein and
 5 every person, every prime contractor, and every firm,
 6 voluntary association, and private corporation, including
 7 any public service corporation and including an independent
 8 contractor who has any person in service under any
 9 appointment or contract of hire, expressed or implied, oral
 10 or written, and the legal representative of any deceased
 11 employer or the receiver or trustee thereof; and

12 ~~{2}--any-association, corporation, or organization--that~~
 13 ~~seeks--permission--and--meets--the--requirements--set--by--the~~
 14 ~~department--by--rule--for--a--group--of--individual--employers--to~~
 15 ~~operate--as--self--insured--under--plan--No--1--of--this--chapter."~~

16 **Section 3.** Section 39-71-116, MCA, is amended to read:

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

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

1 vocational-rehabilitation, and legal services;

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

3 earnings of all employees under covered employment, as

4 defined and established annually by the Montana department

5 of labor and industry. It is established at the nearest

6 whole dollar number and must be adopted by the department

7 prior to July 1 of each year;

8 (3) "Beneficiary" means:

9 (a) a surviving spouse living with or legally entitled

10 to be supported by the deceased at the time of injury;

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

12 (c) an unmarried child under the age of 22 years who is

13 a full-time student in an accredited school or is enrolled

14 in an accredited apprenticeship program;

15 (d) an invalid child over the age of 18 years who is

16 dependent upon the decedent for support at the time of

17 injury;

18 (e) a parent who is dependent upon the decedent for

19 support at the time of the injury (however, such a parent is

20 a beneficiary only when no beneficiary, as defined in

21 subsections (3)(a) through (3)(d) of this section, exists);

22 and

23 (f) a brother or sister under the age of 18 years if

24 dependent upon the decedent for support at the time of the

25 injury (however, such a brother or sister is a beneficiary

1 only until the age of 18 years and only when no beneficiary

2 as defined in subsections (3)(a) through (3)(e) of this

3 section, exists;

4 (4) "Casual employment" means employment not in the

5 usual course of trade, business, profession, or occupation

6 of the employer.

7 (5) "Child" includes a posthumous child, a dependent

8 stepchild, and a child legally adopted prior to the injury;

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

10 specified;

11 (7)(2) "Department" means the department of labor and

12 industry.

13 (8) "Fiscal year" means the period of time between July

14 1 and the succeeding June 30;

15 (9) "Insurer" means an employer bound by compensation

16 plan No. 1, an insurance company transacting business under

17 compensation plan No. 2, the state fund under compensation

18 plan No. 3, or the uninsured employers' fund provided for in

19 part 5 of this chapter;

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

21 incapacitated;

22 (11) "Maximum healing" means the status reached when a

23 worker is as far restored medically as the permanent

24 character of the work-related injury will permit;

25 (12) "Order" means any decision, rule, or direction;

1 requirement, or standard of the department or any other
 2 determination arrived at or decision made by the department.
 3 (13) "Payroll" or "annual payroll" or "annual payroll for
 4 the preceding year" means the average annual payroll of the
 5 employer for the preceding calendar year or, if the employer
 6 shall not have operated a sufficient or any length of time
 7 during such calendar year, 12 times the average monthly
 8 payroll for the current year. However, an estimate may be
 9 made by the department for any employer starting in business
 10 if no average payrolls are available. This estimate is to be
 11 adjusted by additional payment by the employer or refund by
 12 the department, as the case may actually be, on December 31
 13 of such current year. An employer's payroll must be computed
 14 by calculating all wages, as defined in 39-71-123, that are
 15 paid by an employer.
 16 (14) "Permanent partial disability" means a condition,
 17 after a worker has reached maximum healing, in which a
 18 worker:
 19 (a) has a medically determined physical restriction as
 20 a result of an injury as defined in 39-71-119, and
 21 (b) is able to return to work in the worker's job pool
 22 pursuant to one of the options set forth in 39-71-1012 but
 23 suffers impairment or partial wage loss, or both.
 24 (15) "Permanent total disability" means a condition
 25 resulting from injury as defined in this chapter, after a

1 worker reaches maximum healing, in which a worker is unable
 2 to return to work in the worker's job pool after exhausting
 3 all options set forth in 39-71-1012.
 4 (16) The term "physician" includes "surgeon" and in
 5 either case means one authorized by law to practice his
 6 profession in this state.
 7 (17) The "plant of the employer" includes the place of
 8 business of a third person while the employer has access to
 9 or control over such place of business for the purpose of
 10 carrying on his usual trade, business, or occupation.
 11 (18) "Public corporation" means the state or any county,
 12 municipal corporation, school district, city, city under
 13 commission form of government or special charter, town, or
 14 village.
 15 (19) "Reasonably safe place to work" means that the
 16 place of employment has been made as free from danger to the
 17 life or safety of the employee as the nature of the
 18 employment will reasonably permit.
 19 (20) "Reasonably safe tools and appliances" are such
 20 tools and appliances as are adapted to and are reasonably
 21 safe for use for the particular purpose for which they are
 22 furnished.
 23 (21) "Temporary total disability" means a condition
 24 resulting from an injury as defined in this chapter that
 25 results in total loss of wages and exists until the injured

1 ~~worker-reaches-maximum-healing-~~
 2 ~~{22}-"Year";--unless-otherwise-specified;--means-calendar~~
 3 ~~year."~~

4 **Section 4.** Section 39-71-401, MCA, is amended to read:

5 "39-71-401. Employments covered and employments
 6 exempted. (1) Except as provided in subsection (2) of this
 7 section, the Workers' Compensation and Occupational Disease
 8 Act applies to all employers as defined in 39-71-117 and to
 9 all employees as defined in 39-71-118. An employer who has
 10 any employee in service under any appointment or contract of
 11 hire, expressed or implied, oral or written, shall ~~elect-to~~
 12 ~~be-bound-by-the-provisions-of-compensation-plan-No.-17-27-or~~
 13 ~~3~~ maintain a workers' compensation and occupational disease
 14 insurance policy with an insurance company authorized to
 15 transact workers' compensation and occupational disease
 16 insurance business in this state. Every employee whose
 17 employer is bound by the Workers' Compensation and
 18 Occupational Disease Act is subject to and bound by the
 19 ~~compensation-plan-that-has-been-elected~~ policy maintained by
 20 the employer.

21 (2) Unless the employer elects coverage for these
 22 employments under this chapter and an insurer allows such an
 23 election, the Workers' Compensation and Occupational Disease
 24 Act does not apply to any of the following employments:

25 (a) household and domestic employment;

1 (b) casual employment as defined in 39-71-116;

2 (c) employment of a dependent member of an employer's
 3 family for whom an exemption may be claimed by the employer
 4 under the federal Internal Revenue Code;

5 (d) employment of sole proprietors or working members
 6 of a partnership, except as provided in subsection (3);

7 (e) employment of a broker or salesman performing under
 8 a license issued by the board of realty regulation;

9 (f) employment of a direct seller engaged in the sale
 10 of consumer products, primarily in the customer's home;

11 (g) employment for which a rule of liability for
 12 injury, occupational disease, or death is provided under the
 13 laws of the United States;

14 (h) employment of any person performing services in
 15 return for aid or sustenance only, except employment of a
 16 volunteer under 67-2-105;

17 (i) employment with any railroad engaged in interstate
 18 commerce, except that railroad construction work is included
 19 in and subject to the provisions of this chapter;

20 (j) employment as an official, including a timer,
 21 referee, or judge, at a school amateur athletic event,
 22 unless the person is otherwise employed by a school
 23 district;

24 (k) any person performing services as a newspaper
 25 carrier or free-lance correspondent if the person performing

1 the services or a parent or guardian of the person
 2 performing the services in the case of a minor has
 3 acknowledged in writing that the person performing the
 4 services and the services are not covered. As used in this
 5 subsection "free-lance correspondent" is a person who
 6 submits articles or photographs for publication and is paid
 7 by the article or by the photograph. As used in this
 8 subsection "newspaper carrier":

9 (i) is a person who provides a newspaper with the
 10 service of delivering newspapers singly or in bundles; but

11 (ii) does not include an employee of the paper who,
 12 incidentally to his main duties, carries or delivers papers.

13 (3) (a) A sole proprietor or a working member of a
 14 partnership who holds himself out or considers himself an
 15 independent contractor [and who is not contracting] for
 16 cosmetologist's services or barber's services as defined in
 17 39-51-204(1)(1) must ~~elect--to--be--bound~~ personally and
 18 individually ~~by--the-provisions-of-compensation-plan-No--17~~
 19 ~~27-or-3~~ maintain a workers' compensation and occupational
 20 disease insurance policy, but he may apply to the department
 21 for an exemption from the Workers' Compensation and
 22 Occupational Disease Act for himself.

23 (b) The application must be made in accordance with the
 24 rules adopted by the department. The department may deny the
 25 application only if it determines that the applicant is not

1 an independent contractor.

2 (c) When an application is approved by the department,
 3 it is conclusive as to the status of an independent
 4 contractor and precludes the applicant from obtaining
 5 benefits under this chapter.

6 (d) When an ~~election-of~~ application for an exemption is
 7 approved by the department, the ~~election~~ exemption remains
 8 effective and the independent contractor retains his status
 9 as an independent contractor until he notifies the
 10 department of any change in his status and provides a
 11 description of his present work status.

12 (e) If the department denies the application for
 13 exemption, the applicant may contest the denial by
 14 petitioning for review of the decision by an appeals referee
 15 in the manner provided for in 39-51-1109. An applicant
 16 dissatisfied with the decision of the appeals referee may
 17 appeal the decision in accordance with the procedure
 18 established in 39-51-2403 and 39-51-2404.

19 (4) (a) A private corporation shall provide coverage
 20 for its officers and other employees ~~under-the-provisions-of~~
 21 ~~compensation--plan-No--17-27-or-3~~. However, pursuant to such
 22 rules as the department promulgates and subject in all cases
 23 to approval by the department, an officer of a private
 24 corporation may elect not to be bound as an employee under
 25 this chapter by giving a written notice, on a form provided

1 by the department, served in the following manner:

2 ~~(i) if the employer has elected to be bound by the~~
3 ~~provisions of compensation plan No. 17 by delivering the~~
4 ~~notice to the board of directors of the employer and the~~
5 ~~department; or~~

6 ~~(ii) if the employer has elected to be bound by the~~
7 ~~provisions of compensation plan No. 2 or 3, by delivering~~
8 the notice to the board of directors of the employer, the
9 department, and the insurer.

10 (b) If the employer changes ~~plans or~~ insurers, the
11 officer's previous election is not effective and the officer
12 shall again serve notice as provided in subsection (4)(a) if
13 he elects not to be bound.

14 (c) The appointment or election of an employee as an
15 officer of a corporation for the purpose of excluding the
16 employee from coverage under this chapter does not entitle
17 the officer to elect not to be bound as an employee under
18 this chapter. In any case, the officer must sign the notice
19 required by subsection (4)(a) under oath or affirmation, and
20 he is subject to the penalties for false swearing under
21 45-7-202 if he falsifies the notice.

22 (5) Each employer shall post a sign in the workplace at
23 the locations where notices to employees are normally
24 posted, informing employees about the employer's current
25 provision of compensation insurance. A workplace is any

1 location where an employee performs any work-related act in
2 the course of employment, regardless of whether the location
3 is temporary or permanent, and includes the place of
4 business or property of a third person while the employer
5 has access to or control over such place of business or
6 property for the purpose of carrying on his usual trade,
7 business, or occupation. The sign will be provided by the
8 department, distributed through insurers or directly by the
9 department, and posted by employers in accordance with rules
10 adopted by the department. An employer who purposely or
11 knowingly fails to post a sign as provided in this
12 subsection is subject to a \$50 fine for each citation."

13 **Section 5.** Section 39-71-431, MCA, is amended to read:

14 ~~"39-71-431. Assigned risk plan. (1) Following the date~~
15 ~~on which the provisions of 39-71-2311 through 39-71-2320,~~
16 ~~39-71-2337, and 39-71-2338 are implemented but no later than~~
17 ~~December 31, 1990, the~~ The commissioner of the department of
18 labor and industry may order the establishment of insurance
19 shall establish and administer a plan to equitably apportion
20 among the state fund, plan No. 3, and private insurers, plan
21 No. 2, the workers' compensation and occupational disease
22 coverage required by this chapter for employers who are
23 unable to procure coverage through ordinary methods. In
24 determining whether to order an assigned risk plan to be
25 established, the commissioner shall consider the effect a

1 plan-would-have-on-the-availability-of-workers'-compensation
 2 insurance-and--the--need--to--provide--competitive--workers'
 3 compensation--premium--rates-for-employers-in-this-state--if
 4 the-commissioner-orders-the--establishment--of--an--assigned
 5 risk--plan--it--may-not-take-effect-until-at-least-6-months
 6 following-the-commissioner's-order-creating-the-plan.

7 (2) All plan-No.-2 insurers--and--the--state--fund
 8 insurance companies authorized to transact workers'
 9 compensation and occupational disease insurance business in
 10 this state shall subscribe to and participate in the an
 11 assigned risk plan.

12 (3) If an insurer refuses to accept its equitable
 13 apportionment under the assigned risk plan, the commissioner
 14 of--insurance may suspend or revoke the insurer's authority
 15 to issue workers' compensation and occupational disease
 16 insurance policies in this state.

17 (4) If--an--assigned--risk--plan--is--established--and--in
 18 effect--the-state-fund--plan--No.-3--is--not--required--to
 19 insure--any--employer--in--this--state--requesting--coverage--and
 20 it--may--refuse--coverage--for--an--employer--except--for--a--state
 21 agency.

22 (5) If--an--assigned--risk--plan--is--established--and--in
 23 effect--an An employer who is refused the workers'
 24 compensation and occupational disease coverage required-by
 25 this-chapter-by-the-state-fund--plan--No.-3--and by at least

1 two private insurers--plan--No.-2--may must be assigned
 2 coverage by the commissioner under the assigned risk plan
 3 pursuant to the procedure established by the commissioner
 4 for the equitable apportionment of coverage."

5 NEW SECTION. Section 6. Contract for administration of
 6 claims for injuries that occurred before July 1, 1992 -- use
 7 and transfer of existing records. (1) Prior to July 1, 1992,
 8 the commissioner of insurance shall contract with one or
 9 more private insurance or other companies for the
 10 administration and payment of unpaid claims for workers'
 11 compensation injuries and occupational diseases that
 12 occurred before July 1, 1992, and were covered by insurance
 13 purchased through the state compensation mutual insurance
 14 fund or its predecessor. The initial contracts must provide
 15 that work under the initial contracts will begin on July 1,
 16 1992, but must be negotiated and signed far enough in
 17 advance of that date to allow the contractors sufficient
 18 time to prepare for the work. The state treasurer shall pay
 19 to contractors, out of the accounts created by 39-71-2504
 20 and on warrants authorized by the commissioner, amounts that
 21 the contracts require to be paid to contractors for the cost
 22 of administering and paying claims.

23 (2) Except as provided in [section 7], each claim must
 24 be administered and paid under the laws in effect on the
 25 date of the injury or disease.

1 (3) A company interested in bidding for a contract is
 2 entitled to fully inspect the written, typed, computerized,
 3 and other public records of the state compensation mutual
 4 insurance fund, including data banks, paper records, and raw
 5 data. All records of the fund are transferred to the
 6 commissioner as of July 1, 1992, to be used by the
 7 commissioner to carry out the provisions of this section.
 8 The commissioner may, as necessary or desirable, transfer
 9 records or copies of records to contractors.

10 NEW SECTION. Section 7. Mutually agreeable lump-sum
 11 settlements. A workers' compensation or occupational disease
 12 claimant and a company that has entered into a contract
 13 under [section 6] may, regardless of the lump-sum law in
 14 effect on the date of the injury or disease, mutually agree
 15 to a lump-sum settlement of a claim. If a mutual agreement
 16 is not reached, the lump-sum law in effect on the date of
 17 the injury or disease applies.

18 NEW SECTION. Section 8. Disposal of existing assets.

19 (1) The following financial assets must be transferred on
 20 July 1, 1992, to the contract account created by 39-71-2504:

21 (a) any assets in the fund created by 39-71-502 that
 22 the department of labor and industry estimates are not
 23 needed on July 1, 1992, to pay claims under Title 39,
 24 chapter 71, part 5, for injuries and diseases that occurred
 25 before July 1, 1992;

1 (b) any assets in the fund referred to in 39-71-902
 2 that the department of labor and industry estimates are not
 3 needed on July 1, 1992, to pay claims under Title 39,
 4 chapter 71, part 9, for injuries and diseases that occurred
 5 before July 1, 1992;

6 (c) any assets in the account referred to in 39-71-1004
 7 that the department of labor and industry estimates are not
 8 needed on July 1, 1992, to pay expenses under Title 39,
 9 chapter 71, part 10, for injuries and diseases that occurred
 10 before July 1, 1992;

11 (d) any assets in the fund created by 39-71-2609 that
 12 the board created by 39-71-2604 estimates are not needed on
 13 July 1, 1992, to pay claims for injuries and diseases that
 14 occurred before July 1, 1992; and

15 (e) all financial assets of the state compensation
 16 mutual insurance fund.

17 (2) Assets held by the department of labor and industry
 18 under Title 39, chapter 71, part 21, must be held in the
 19 amount estimated by the department to be necessary for the
 20 payment, under 39-71-2108, of claims for injuries and
 21 diseases that occurred before July 1, 1992. The remaining
 22 assets must be distributed to the employers whose deposits
 23 under part 21 created the assets.

24 (3) Assets held by the department of labor and industry
 25 under 39-71-2206 and 39-71-2207 that the department of labor

1 and industry estimates are not needed under those sections
2 on July 1, 1992, to pay claims for injuries and diseases
3 that occurred before that date must be returned to the
4 insurers whose deposits under those sections created the
5 assets.

6 **Section 9.** Section 39-71-2353, MCA, is amended to read:

7 "39-71-2353. Use of payroll tax proceeds -- loans.
8 ~~Taxes--collected--under--39-71-2503--may--be--used--only--to~~
9 ~~administer--and--pay--claims--for--injuries--resulting--from~~
10 ~~accidents--that--occurred--before--July--17--1990--including--the~~
11 ~~cost--of--repaying--loans--given--under--this--section;~~ If the
12 ~~state--fund~~ commissioner of insurance determines that, for
13 the next 1 or more years following the date of the
14 determination, the tax revenue collected under 39-71-2503,
15 together with other funds in the account accounts required
16 by ~~39-71-2321--for--claims--for--injuries--resulting--from~~
17 ~~accidents--that--occurred--before--July--17--1990~~ 39-71-2504, will
18 be insufficient to ~~administer--and--pay--those--claims~~ for the
19 payment of contracts entered into under [section 6], the
20 ~~state--fund--through--its--board--of--directors;~~ commissioner may
21 advise the board of investments that additional funding is
22 necessary. The board of investments may ~~loan--from--reserves~~
23 ~~accumulated--from--premiums--paid--to--the--state--fund--based--upon~~
24 ~~wages--payable--on--or--after--July--17--1990;~~ the commissioner the
25 amounts necessary for payment of ~~claims--for--injuries~~

1 ~~resulting--from--accidents--that--occurred--before--July--17--1990~~
2 ~~the contracts entered into under [section 6].~~ The loans must
3 bear interest at 7 1/2%. Loaned amounts must be deposited in
4 the contract account created in 39-71-2504."

5 **Section 10.** Section 39-71-2501, MCA, is amended to
6 read:

7 "39-71-2501. Definitions. As used in this part, the
8 following definitions apply:

9 (1) "Department" means the department of revenue
10 provided for in 2-15-1301.

11 (2) "Employer" has the meaning set forth in 39-71-117.

12 (3) "Payroll" means the payroll of an employer for each
13 of the calendar quarters ending March 31, June 30, September
14 30, and December 31, for all employments covered under
15 39-71-401.

16 (4) "State--fund"--means--the--state--compensation--mutual
17 ~~insurance--fund;~~

18 (5) "Tax" means the workers' compensation and
19 occupational disease payroll tax provided for in 39-71-2503.

20 (6) "Tax--account"--means--the--workers'--compensation--tax
21 ~~account--created--by--39-71-2504."~~

22 **Section 11.** Section 39-71-2502, MCA, is amended to
23 read:

24 "39-71-2502. Findings and purpose. (1) Based on current
25 liabilities and actuarial analysis, an unfunded liability

1 presently exists ~~in-the-state-fund~~ with regard to claims for
 2 injuries resulting from accidents and for diseases that were
 3 covered by insurance policies issued by the former state
 4 compensation mutual insurance fund and its predecessor and
 5 that occurred before July 1, 1990, and it may increase.
 6 While legislative action is required to correct the causes
 7 of the unfunded liability, those actions will not provide
 8 sufficient funds to permit the ~~state--fund--to--pay-its~~
 9 ~~existing-liabilities-and-obligations~~ payment of the unfunded
 10 liability in a timely manner ~~from--premium--and--investment~~
 11 ~~income--available--to--the--state--fund~~. Therefore, it is
 12 necessary to provide a source of funding for the unfunded
 13 liability ~~in-addition-to-premium-and-investment-income~~.

14 (2) The police power of the state extends to all great
 15 public needs. The state, in the past and in the exercise of
 16 its police power, has determined that it is was greatly and
 17 immediately necessary to the public welfare to make workers'
 18 compensation and occupational disease insurance available to
 19 all employers through the state fund as the insurer of last
 20 resort. In making this insurance available, ~~the state fund~~
 21 ~~has~~ agencies incurred the unfunded liability described in
 22 subsection (1). The burden of this unfunded liability should
 23 not be borne solely by those employers who have insured with
 24 the state fund agencies because the availability of
 25 insurance to all employers through the state fund has

1 agencies benefited all employers who have had workers'
 2 compensation and occupational disease coverage. Therefore,
 3 all employers who have employments covered by the workers'
 4 compensation and occupational disease laws should share in
 5 the cost of the unfunded liability.

6 (3) The purpose of this part is to provide a
 7 supplemental source of financing for the unfunded
 8 liability."

9 **Section 12.** Section 39-71-2503, MCA, is amended to
 10 read:

11 "39-71-2503. Workers' compensation and occupational
 12 disease payroll tax. (1) (a) (i) There is imposed on each
 13 employer a workers' compensation and occupational disease
 14 payroll tax in an amount equal to 0.28% of the employer's
 15 payroll in the preceding calendar quarter for all
 16 employments covered under 39-71-401, except that if an
 17 employer is subject to 15-30-204(2), the tax is an amount
 18 equal to 0.28% of the employer's payroll in the preceding
 19 week.

20 (ii) This payroll tax must be used to:

21 (A) reduce repay loans made to the former state
 22 compensation mutual insurance fund to pay the unfunded
 23 liability ~~in-the-state-fund~~ incurred for claims for injuries
 24 resulting from accidents and for diseases that occurred
 25 before July 1, 1990;

1 (B) repay loans made to the commissioner of insurance
2 under 39-71-2353; and

3 (C) to pay contracts entered into by the commissioner
4 under [section 6].

5 (iii) The department must report past and projected
6 future tax proceeds to the legislature, which shall consider
7 the report and determine the tax rate necessary for
8 repayment of loans with interest and for payments to
9 contractors under [section 6].

10 (b) Each employer shall maintain the records the
11 department requires concerning the employer's payroll. The
12 records are subject to inspection by the department and its
13 employees and agents during regular business hours.

14 (2) All collections of the tax are appropriated to and
15 must be deposited as received in the tax-account accounts
16 created in 39-71-2504. The tax is in addition to any other
17 tax or fee assessed against employers subject to the tax.

18 (3) (a) On or before the 20th day of May, August,
19 November, and February, each employer subject to the tax
20 shall file a return in the form and containing the
21 information required by the department and, except as
22 provided in subsection (3)(b), pay the amount of tax
23 required by this section to be paid on the employer's
24 payroll for the preceding calendar quarter.

25 (b) An employer subject to 15-30-204(2) shall remit to

1 the department a weekly payment with its weekly withholding
2 tax payment in the amount required by subsection (1)(a).

3 (c) A tax payment required by subsection (1)(a) must be
4 made with the return filed pursuant to 15-30-204. The
5 department shall first credit a payment to the liability
6 under 15-30-202 and credit any remainder to the workers+
7 compensation--tax account--provided accounts created in
8 39-71-2504.

9 (4) An employer's officer or employee with the duty to
10 collect, account for, and pay to the department the amounts
11 due under this section who willfully fails to pay an amount
12 is liable to the state for the unpaid amount and any penalty
13 and interest relating to that amount.

14 (5) Returns and remittances under subsection (3) and
15 any information obtained by the department during an audit
16 are subject to the provisions of 15-30-303, but the
17 department may disclose the information to the department of
18 labor and industry under circumstances and conditions that
19 ensure the continued confidentiality of the information.

20 (6) The department of labor and industry ~~and the--state~~
21 ~~fund shall,--on July 17, 1991, or as soon after that date as~~
22 ~~possible,~~ give the department a list of all employers having
23 coverage under ~~any plan administered--or--regulated--by--the~~
24 ~~department--of--labor-and-industry-and-the-state-fund--After~~
25 ~~the lists have been given to the department, the--department~~

1 ~~of labor and industry and the state fund shall~~ this chapter
 2 and shall update the ~~lists~~ list weekly. The department of
 3 labor and industry ~~and the state fund~~ shall provide the
 4 department with access to ~~their~~ its computer data bases and
 5 paper files and records for the purpose of the department's
 6 administration of the tax imposed by this section.

7 (7) The provisions of Title 15, chapter 30, not in
 8 conflict with the provisions of this part regarding
 9 administration, remedies, enforcement, collections,
 10 hearings, interest, deficiency assessments, credits for
 11 overpayment, statute of limitations, penalties, and
 12 department rulemaking authority apply to the tax, to
 13 employers, and to the department."

14 **Section 13.** Section 39-71-2504, MCA, is amended to
 15 read:

16 "39-71-2504. Workers' compensation tax and occupational
 17 disease account -- loan repayment account -- contract
 18 account. (1) There is a workers' compensation tax and
 19 occupational disease account in the state special revenue
 20 fund. The workers' compensation tax and occupational disease
 21 account consists of a tax contract account and a workers'
 22 compensation loan repayment account.

23 (2) All collections of the tax, and interest and
 24 penalties on the tax, ~~and revenue appropriated to the~~
 25 ~~workers' compensation tax account under section 17 Chapter~~

1 97--~~Special--Laws--of--June--1989~~ must be deposited in the
 2 ~~workers' compensation tax account--All such money--deposited~~
 3 ~~in the workers' compensation tax account must be credited to~~
 4 ~~the workers' compensation loan repayment account to the~~
 5 extent necessary to pay the principal of and interest due on
 6 ~~workers' compensation loans issued under 39-71-2353 to the~~
 7 ~~commissioner of insurance under 39-71-2353 for the payment~~
 8 ~~of contracts entered into under [section 6] and loans issued~~
 9 ~~to the former state compensation mutual insurance fund for~~
 10 ~~the payment of unfunded liabilities.~~ The balance ~~in the~~
 11 ~~workers' compensation loan repayment account of the~~
 12 ~~collected taxes, interest, and penalties~~ must be credited to
 13 ~~deposited in the tax contract account within the workers'~~
 14 ~~compensation tax account and.~~ The money in the contract
 15 account is statutorily appropriated, as provided in
 16 17-7-502, to the ~~state fund~~ commissioner to be used to
 17 ~~reduce the unfunded liability in the state fund incurred for~~
 18 ~~claims for injuries resulting from accidents that occurred~~
 19 ~~before July 17, 1990 for the payment of contracts entered~~
 20 ~~into under [section 6]."~~

21 **Section 14.** Section 39-71-317, MCA, is amended to read:

22 "39-71-317. Employer not to terminate worker for filing
 23 claim ----preference-----jurisdiction over dispute. (1) An
 24 employer may not use as grounds for terminating a worker the
 25 filing of a claim under this chapter ~~or chapter 72 of this~~

1 title.

2 (2)--When--an--injured-worker-is-capable-of-returning-to
3 work-within-2-years-from-the-date-of-injury-and-has-received
4 a-medical-release-to-return-to--work,--the--worker--must--be
5 given--a--preference--over-other-applicants-for-a-comparable
6 position-that-becomes-vacant-if-the-position--is--consistent
7 with---the---worker's---physical--condition--and--vocational
8 abilities:

9 (3)--This-preference-applies-only-to-employment-with-the
10 employer-for-whom-the-employee-was-working-at-the--time--the
11 injury-occurred:

12 (4)--The--department--and-workers'-compensation-court-do
13 not-have-jurisdiction-to-administer--or--resolve--a--dispute
14 under--this--section;--Exclusive--jurisdiction--is--with-the
15 district-court."

16 Section 15. Section 39-71-2204, MCA, is amended to
17 read:

18 "39-71-2204. Insurer to submit notice of coverage
19 within thirty days -- penalty for failure. (1) The insurer
20 shall, within 30 days after the issuance of the policy of
21 workers' compensation and occupational disease insurance,
22 submit to the department the notice of coverage stating the
23 effective date of the policy insuring the employer and such
24 other information as may be required by the department.

25 (2) The department may, in its discretion, assess a

1 penalty of no more than \$200 against an insurer which as a
2 general business practice does not comply with the 30-day
3 notice requirement as set forth in subsection (1) of this
4 section."

5 Section 16. Section 39-73-104, MCA, is amended to read:

6 "39-73-104. Eligibility requirements for benefits.

7 Payment shall be made under this chapter to any person who:

8 (1) has silicosis, as defined in 39-73-101, which
9 results in his total disability so as to render it
10 impossible for him to follow continuously any substantially
11 gainful occupation;

12 (2) has resided in and been an inhabitant of the state
13 of Montana for 10 years or more immediately preceding the
14 date of the application;

15 (3) is not receiving, with respect to any month for
16 which he would receive a payment under this chapter,
17 compensation under The the Workers' Compensation and
18 Occupational Disease Act of Montana, as provided by chapter
19 72-of-this-title, which that will equal the sum of \$200."

20 Section 17. Section 39-73-107, MCA, is amended to read:

21 "39-73-107. Amount of payments. Subject to the
22 provisions of this chapter and the deductions herein
23 provided, any person who has silicosis, as defined in this
24 chapter, and who has, subject to the regulations and
25 standards of the department of labor and industry, been

1 determined by the department to be entitled payment under
 2 this chapter for silicosis shall be granted a payment by the
 3 department of \$200 per month, subject to such appropriations
 4 as may from time to time be made. If he is receiving
 5 payments under ~~The~~ the Workers' Compensation and
 6 Occupational Disease Act of Montana, as provided by chapter
 7 ~~72--of-this-title, which~~ that are less in the aggregate than
 8 \$200, then he is entitled to a payment under this chapter of
 9 the difference between the amount received under ~~The~~ the
 10 Workers' Compensation and Occupational Disease Act of
 11 Montana, as provided by chapter 72 of this title, and \$200
 12 per month. The legislature shall authorize such additional
 13 appropriations as may be necessary to make the increased
 14 monthly payments provided herein."

15 **Section 18.** Section 39-73-108, MCA, is amended to read:

16 "39-73-108. Payment of benefits where person entitled
 17 is in institution. If any person who is entitled to benefits
 18 under this chapter shall be an inmate in any Montana state
 19 institution, benefits shall not be paid to him but shall be
 20 paid to his beneficiary,---if---any,---as---defined---in
 21 39-73-116(2);:

22 (1) spouse;

23 (2) children under the age of 18, in equal amounts, if
 24 he does not have a spouse;

25 (3) children 18 years of age and older, in equal

1 amounts, if he has no spouse or children under the age of
 2 18;

3 (4) parents, in equal amounts, if payment is not made
 4 under subsections (1) through (3); or

5 (5) brothers and sisters, in equal amounts, if payment
 6 is not made under subsections (1) through (4)."

7 **Section 19.** Section 19-12-401, MCA, is amended to read:

8 "19-12-401. Eligibility for pension benefits. In order
 9 to qualify for participation in the volunteer firefighters'
 10 pension plan under 19-12-404, a volunteer firefighter must
 11 meet each of the following requirements:

12 (1) (a) To qualify for full participation, he must have
 13 completed a total of at least 20 years' service as an active
 14 volunteer firefighter and as an active member of a qualified
 15 volunteer fire company.

16 (b) If a firefighter is prevented from completing at
 17 least 20 years' service by dissolution or discontinuance of
 18 his volunteer fire company, personal relocation due to
 19 transfer or loss of employment, personal disability, or any
 20 other factor beyond his reasonable control, he may qualify
 21 for partial participation if he has completed at least 10
 22 years' service. In that event, he is eligible for only a
 23 proportion of the benefits specified in 19-12-404,
 24 determined by multiplying the benefits by a fraction, the
 25 numerator of which is the number of years of active service

1 completed and the denominator of which is 20.

2 (c) The years of active service are cumulative and need
3 not be continuous. The service need not be acquired with one
4 single fire company but may be a total of separate periods
5 of active service with different fire companies in different
6 fire districts.

7 (d) Effective March 1, 1965, the annual period of
8 service for the purpose of this chapter is the fiscal year.
9 No fractional part of any year may count toward the service
10 requirement, and to receive credit for any particular year,
11 a volunteer firefighter must serve with one particular
12 volunteer fire company throughout that entire fiscal year.

13 (2) (a) Except as provided in subsection (2)(b), he
14 must have attained the age of 55, but he need not be an
15 active volunteer firefighter or an active member of any
16 volunteer fire company when he reaches that age.

17 (b) An active member of a volunteer fire company whose
18 duty-related injury results in a permanent total disability
19 ~~as defined in 39-71-116~~ is eligible to receive a partial
20 pension regardless of his age calculated as follows:

21 (i) for a member with less than 10 years of service, a
22 pension calculated as provided in subsection (1)(b) in which
23 the numerator equals 10; or

24 (ii) for a member with 10 years or more of service, a
25 pension calculated as provided in subsection (1)(b).

1 (c) For purposes of this subsection, "permanent total
2 disability" means a condition resulting from an injury after
3 a worker reaches maximum healing, in which a worker is
4 unable to return to work in the worker's job pool.

5 (3) During each of the years for which he claims credit
6 under subsection (1), he must have completed a minimum of 30
7 hours of instruction in matters pertaining to firefighting
8 under a program formulated and supervised by the chief or
9 foreman of his volunteer fire company.

10 (4) Effective July 1, 1965, no volunteer firefighter
11 may receive credit for any year of membership in a volunteer
12 fire company unless, throughout the year:

13 (a) the company maintained firefighting equipment in
14 serviceable condition of a value of \$2,500 or more; and

15 (b) the company or the fire district served by it was
16 rated in class 5, 6, 7, 8, 9, or 10 by the board of fire
17 underwriters for the purpose of fire insurance premium
18 rates.

19 (5) He must have ceased to be an active member of any
20 volunteer fire company, and if he applies for and receives
21 pension benefits hereunder, he will not thereafter be
22 eligible to become an active member of any volunteer fire
23 company."

24 **Section 20.** Section 20-15-403, MCA, is amended to read:

25 **"20-15-403. Applications of other school district**

1 provisions. (1) When the term "school district" appears in
 2 the following sections outside of Title 20, the term
 3 includes community college districts and the provisions of
 4 those sections applicable to school districts apply to
 5 community college districts: 2-9-101, 2-9-111, 2-9-316,
 6 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604,
 7 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106,
 8 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204,
 9 15-16-101, 15-16-601, 15-55-106, 15-70-301, 15-70-322,
 10 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201,
 11 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404,
 12 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402,
 13 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103,
 14 39-31-304, ~~39-71-1167~~, 39-71-117, ~~39-71-21067--39-71-22067~~
 15 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
 16 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and
 17 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as
 18 amended.

19 (2) When the term "school district" appears in a
 20 section outside of Title 20 but the section is not listed in
 21 subsection (1), the school district provision does not apply
 22 to a community college district."

23 **Section 21.** Section 31-2-106, MCA, is amended to read:

24 "31-2-106. Exempt property -- bankruptcy proceeding. No
 25 individual may exempt from the property of the estate in any

1 bankruptcy proceeding the property specified in 11 U.S.C.
 2 522(d). An individual may exempt from the property of the
 3 estate in any bankruptcy proceeding:

4 (1) that property exempt from execution of judgment as
 5 provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705,
 6 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612,
 7 19-13-1004, 19-21-212, Title 25, chapter 13, part 6,
 8 33-7-511, 33-15-512 through 33-15-514, 35-10-502,
 9 39-51-3105, ~~39-71-7437~~, 39-73-110, 53-2-607, 53-9-129, Title
 10 70, chapter 32, and 80-2-245;

11 (2) the individual's right to receive unemployment
 12 compensation and unemployment benefits; and

13 (3) the individual's right to receive benefits from or
 14 interest in a private or governmental retirement, pension,
 15 stock bonus, profit-sharing, annuity, or similar plan or
 16 contract on account of illness, disability, death, age, or
 17 length of service, excluding that portion of contributions
 18 made by the individual within 1 year before the filing of
 19 the petition in bankruptcy which exceeds 15% of the
 20 individual's gross income for that 1-year period, unless:

21 (a) the plan or contract was established by or under
 22 the auspices of an insider that employed the individual at
 23 the time the individual's rights under the plan or contract
 24 arose;

25 (b) the benefit is paid on account of age or length of

1 service; and

2 (c) the plan or contract does not qualify under section
3 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue
4 Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409)."

5 **Section 22.** Section 37-12-201, MCA, is amended to read:

6 "37-12-201. Organization of board -- meetings -- powers
7 and duties. (1) The board shall elect annually a president,
8 vice-president, and secretary-treasurer from its membership.

9 (2) The board shall hold a regular meeting each year at
10 Helena and shall hold special meetings at times and places
11 as a majority of the board designates. A majority of the
12 board constitutes a quorum.

13 (3) The board shall:

14 (a) administer oaths, take affidavits, summon
15 witnesses, and take testimony as to matters coming within
16 the scope of the board;

17 (b) adopt a seal which shall be affixed to licenses
18 issued;

19 (c) make a schedule of minimum educational
20 requirements, which are without prejudice, partiality, or
21 discrimination, as to the different schools of chiropractic;

22 (d) adopt rules necessary for the implementation,
23 administration, continuation, and enforcement of this
24 chapter. The rules must address but are not limited to
25 license applications, form and display of license, license

1 examination format, criteria for and grading of
2 examinations, and disciplinary standards for licensees;

3 (e) investigate complaints;

4 (f) make determinations of the qualifications of
5 applicants under this chapter;

6 (g) administer the examination for licensure under this
7 chapter;

8 (h) establish and collect fees, fines, and charges as
9 provided in this chapter; and

10 (i) issue, suspend, or revoke licenses under the
11 conditions prescribed in this chapter; and

12 ~~(j) certify that a chiropractor who meets the standards~~
13 ~~that the board by rule adopts is a qualified evaluator for~~
14 ~~purposes of 39-71-711.~~

15 (4) The department shall keep a record of the
16 proceedings of the board, which shall at all times be open
17 to public inspection."

18 **Section 23.** Section 39-51-201, MCA, is amended to read:

19 "39-51-201. General definitions. As used in this
20 chapter, unless the context clearly requires otherwise, the
21 following definitions apply:

22 (1) "Annual payroll" means the total amount of wages
23 paid by an employer, regardless of the time of payment, for
24 employment during a calendar year.

25 (2) "Base period" means the first four of the last five

1 completed calendar quarters immediately preceding the first
 2 day of an individual's benefit year. However, in the case of
 3 a combined-wage claim pursuant to the arrangement approved
 4 by the secretary of labor of the United States, the base
 5 period shall be that applicable under the unemployment law
 6 of the paying state. For an individual who fails to meet
 7 the qualifications of 39-51-2105 or a similar statute of
 8 another state due to a temporary total disability ~~as defined~~
 9 ~~in 39-71-116 or a similar statute of another state or the~~
 10 United States as defined by department rule, the base period
 11 means the first four quarters of the last five quarters
 12 preceding the disability if a claim for unemployment
 13 benefits is filed within 24 months of the date on which the
 14 individual's disability was incurred.

15 (3) "Benefits" means the money payments payable to an
 16 individual, as provided in this chapter, with respect to the
 17 individual's unemployment.

18 (4) "Benefit year", with respect to any individual,
 19 means the 52-consecutive-week period beginning with the
 20 first day of the calendar week in which such individual
 21 files a valid claim for benefits, except that the benefit
 22 year shall be 53 weeks if filing a new valid claim would
 23 result in overlapping any quarter of the base year of a
 24 previously filed new claim. A subsequent benefit year may
 25 not be established until the expiration of the current

1 benefit year. However, in the case of a combined-wage claim
 2 pursuant to the arrangement approved by the secretary of
 3 labor of the United States, the base period is the period
 4 applicable under the unemployment law of the paying state.

5 (5) "Board" means the board of labor appeals provided
 6 for in Title 2, chapter 15, part 17.

7 (6) "Calendar quarter" means the period of 3
 8 consecutive calendar months ending on March 31, June 30,
 9 September 30, or December 31.

10 (7) "Contributions" means the money payments to the
 11 state unemployment insurance fund required by this chapter
 12 but does not include assessments under 39-51-404(4).

13 (8) "Department" means the department of labor and
 14 industry provided for in Title 2, chapter 15, part 17.

15 (9) "Employing unit" means any individual or
 16 organization, including the state government, any of its
 17 political subdivisions or instrumentalities, any
 18 partnership, association, trust, estate, joint-stock
 19 company, insurance company, or corporation, whether domestic
 20 or foreign, or the receiver, trustee in bankruptcy, trustee
 21 or successor thereof, or the legal representative of a
 22 deceased person which has or had in its employ one or more
 23 individuals performing services for it within this state,
 24 except as provided under subsections (8) and (9) of
 25 39-51-203. All individuals performing services within this

1 state for any employing unit which maintains two or more
 2 separate establishments within this state are considered to
 3 be employed by a single employing unit for all the purposes
 4 of this chapter. Each individual employed to perform or
 5 assist in performing the work of any agent or employee of an
 6 employing unit is deemed to be employed by such employing
 7 unit for the purposes of this chapter, whether such
 8 individual was hired or paid directly by such employing unit
 9 or by such agent or employee, provided the employing unit
 10 has actual or constructive knowledge of the work.

11 (10) "Employment office" means a free public employment
 12 office or branch thereof operated by this state or
 13 maintained as a part of a state-controlled system of public
 14 employment offices or such other free public employment
 15 offices operated and maintained by the United States
 16 government or its instrumentalities as the department may
 17 approve.

18 (11) "Fund" means the unemployment insurance fund
 19 established by this chapter to which all contributions and
 20 payments in lieu of contributions are required to be paid
 21 and from which all benefits provided under this chapter
 22 shall be paid.

23 (12) "Gross misconduct" means a criminal act, other than
 24 a violation of a motor vehicle traffic law, for which an
 25 individual has been convicted in a criminal court or has

1 admitted or conduct which demonstrates a flagrant and wanton
 2 disregard of and for the rights or title or interest of a
 3 fellow employee or the employer.

4 (13) "Hospital" means an institution which has been
 5 licensed, certified, or approved by the state as a hospital.

6 (14) "Independent contractor" means an individual who
 7 renders service in the course of an occupation and:

8 (a) has been and will continue to be free from control
 9 or direction over the performance of the services, both
 10 under his contract and in fact; and

11 (b) is engaged in an independently established trade,
 12 occupation, profession, or business.

13 (15) (a) "Institution of higher education", for the
 14 purposes of this part, means an educational institution
 15 which:

16 (i) admits as regular students only individuals having
 17 a certificate of graduation from a high school or the
 18 recognized equivalent of such a certificate;

19 (ii) is legally authorized in this state to provide a
 20 program of education beyond high school;

21 (iii) provides an educational program for which it
 22 awards a bachelor's or higher degree or provides a program
 23 which is acceptable for full credit toward such a degree, a
 24 program of postgraduate or postdoctoral studies, or a
 25 program of training to prepare students for gainful

1 employment in a recognized occupation; and

2 (iv) is a public or other nonprofit institution.

3 (b) Notwithstanding any of the foregoing provisions of
4 this subsection, all colleges and universities in this state
5 are institutions of higher education for purposes of this
6 part.

7 (16) "State" includes, in addition to the states of the
8 United States of America, the District of Columbia, Puerto
9 Rico, the Virgin Islands, and the Dominion of Canada.

10 (17) "Unemployment insurance administration fund" means
11 the unemployment insurance administration fund established
12 by this chapter from which administrative expenses under
13 this chapter shall be paid.

14 (18) (a) "Wages" means all remuneration payable for
15 personal services, including commissions and bonuses, the
16 cash value of all remuneration payable in any medium other
17 than cash, and backpay received pursuant to a dispute
18 related to employment. The reasonable cash value of
19 remuneration payable in any medium other than cash shall be
20 estimated and determined in accordance with rules prescribed
21 by the department.

22 (b) The term "wages" does not include:

23 (i) the amount of any payment made by the employer, if
24 the payment was made under a plan established for the
25 employees in general or for a specific class or classes of

1 employees, to or on behalf of the employee for:

2 (A) retirement;

3 (B) sickness or accident disability, but in the case of
4 payments made by an employer directly to an employee, only
5 those payments made under a workers' compensation law are
6 excluded from "wages";

7 (C) medical and hospitalization expenses in connection
8 with sickness or accident disability; or

9 (D) death;

10 (ii) remuneration paid by any county welfare office from
11 public assistance funds for services performed at the
12 direction and request of such county welfare office.

13 (19) "Week" means a period of 7 consecutive calendar
14 days ending at midnight on Saturday.

15 (20) An individual's "weekly benefit amount" means the
16 amount of benefits the individual would be entitled to
17 receive for 1 week of total unemployment."

18 **Section 24.** Section 50-16-527, MCA, is amended to read:

19 **"50-16-527. Patient authorization -- retention --**
20 **effective period -- exception.** (1) A health care provider
21 shall retain each authorization or revocation in conjunction
22 with any health care information from which disclosures are
23 made.

24 (2) Except for authorizations to provide information to
25 third-party health care payors, an authorization may not

1 permit the release of health care information relating to
2 health care that the patient receives more than 6 months
3 after the authorization was signed.

4 (3) An authorization in effect on October 1, 1987,
5 remains valid for 30 months after October 1, 1987, unless an
6 earlier date is specified or it is revoked under 50-16-528.
7 Health care information disclosed under such an
8 authorization is otherwise subject to this part. An
9 authorization written after October 1, 1987, becomes invalid
10 after the expiration date contained in the authorization,
11 which may not exceed 30 months. If the authorization does
12 not contain an expiration date, it expires 6 months after it
13 is signed.

14 (4) Notwithstanding subsections (2) and (3), a signed
15 claim for workers' compensation or occupational disease
16 benefits authorizes disclosure to the workers' compensation
17 and occupational disease insurer as defined in 39-71-1167
18 by the health care provider. The disclosure authorized by
19 this subsection relates only to information concerning the
20 claimant's condition. This authorization is effective only
21 as long as the claimant is claiming benefits."

22 **Section 25.** Section 50-71-325, MCA, is amended to read:

23 "50-71-325. Department authorized to prohibit further
24 use of equipment constituting violation. (1) The department,
25 upon finding any violation of any duly adopted safety code,

1 order, or rule involving failure to install or maintain any
2 safety appliance, device, or safeguard required by such
3 safety order, code, or rule, may prohibit the further use of
4 the machine, equipment, or apparatus constituting such
5 violation and, when such use is prohibited, shall post
6 notice in an appropriate place in plain view of any person
7 likely to use the same calling attention to the unsafe
8 condition, defect, or lack of safeguard and the fact that
9 the further use thereof is prohibited.

10 (2) The notice required by subsection (1) of this
11 section shall not be removed until the required safety
12 appliance, device, or safeguard complies with the
13 requirement of the safety order or safety code.

14 (3) Every person who, after the notice required by
15 subsection (1) of this section is posted as provided in that
16 subsection, uses or operates any place of employment,
17 machine, device, apparatus, or equipment referred to in
18 subsection (1) of this section before it is made safe and
19 the required safeguards or safety appliances or devices are
20 provided or who defaces or destroys or removes any notice
21 required by subsection (1) of this section without the
22 authority of the department ~~or who fails or refuses to file~~
23 ~~a report of accident as required by 39-71-307(i)~~ is guilty
24 of a misdemeanor and, in addition to the punishment provided
25 for misdemeanors, is subject to a civil penalty in an amount

1 of not more than \$1,000. This civil penalty may be imposed
 2 and collected by the department in an action brought in the
 3 name of the state in the county in which the employer
 4 resides or in which he employs workers. Any penalty
 5 collected under this subsection shall be paid into the
 6 department's state special revenue account.

7 (4) Any person aggrieved by an order prohibiting the
 8 use of the machine, equipment, apparatus, or place of
 9 employment as provided for in this section may request a
 10 hearing before the department within 20 days after entry of
 11 such order. The department shall then affirm, modify, or
 12 revoke the order, and all procedures of this chapter
 13 relative to entry of orders, rehearing, and appeal shall
 14 apply."

15 **NEW SECTION. Section 26. Repealer. Sections 2-15-1014,**
 16 39-71-102, 39-71-103, 39-71-105, 39-71-119, 39-71-123,
 17 39-71-201, 39-71-202, 39-71-204, 39-71-205, 39-71-206,
 18 39-71-208, 39-71-209, 39-71-221, 39-71-222, 39-71-223,
 19 39-71-224, 39-71-301, 39-71-302, 39-71-303, 39-71-306,
 20 39-71-307, 39-71-308, 39-71-316, 39-71-402, 39-71-403,
 21 39-71-405, 39-71-406, 39-71-407, 39-71-408, 39-71-409,
 22 39-71-411, 39-71-412, 39-71-413, 39-71-414, 39-71-415,
 23 39-71-421, 39-71-426, 39-71-427, 39-71-428, 39-71-434,
 24 39-71-501, 39-71-502, 39-71-503, 39-71-504, 39-71-505,
 25 39-71-506, 39-71-507, 39-71-508, 39-71-509, 39-71-510,

1 39-71-511, 39-71-515, 39-71-516, 39-71-517, 39-71-518,
 2 39-71-519, 39-71-601, 39-71-602, 39-71-603, 39-71-604,
 3 39-71-605, 39-71-606, 39-71-607, 39-71-608, 39-71-609,
 4 39-71-610, 39-71-611, 39-71-612, 39-71-613, 39-71-614,
 5 39-71-701, 39-71-702, 39-71-703, 39-71-704, 39-71-708,
 6 39-71-710, 39-71-711, 39-71-721, 39-71-722, 39-71-723,
 7 39-71-724, 39-71-725, 39-71-726, 39-71-736, 39-71-737,
 8 39-71-739, 39-71-740, 39-71-741, 39-71-742, 39-71-743,
 9 39-71-744, 39-71-801, 39-71-802, 39-71-803, 39-71-804,
 10 39-71-805, 39-71-806, 39-71-807, 39-71-808, 39-71-809,
 11 39-71-810, 39-71-811, 39-71-812, 39-71-813, 39-71-901,
 12 39-71-902, 39-71-903, 39-71-904, 39-71-905, 39-71-906,
 13 39-71-907, 39-71-908, 39-71-909, 39-71-910, 39-71-911,
 14 39-71-912, 39-71-913, 39-71-1003, 39-71-1004, 39-71-1011,
 15 39-71-1012, 39-71-1013, 39-71-1014, 39-71-1015, 39-71-1016,
 16 39-71-1017, 39-71-1018, 39-71-1019, 39-71-1023, 39-71-1024,
 17 39-71-1025, 39-71-1026, 39-71-1031, 39-71-1032, 39-71-1033,
 18 39-71-2101, 39-71-2102, 39-71-2103, 39-71-2104, 39-71-2105,
 19 39-71-2106, 39-71-2107, 39-71-2108, 39-71-2109, 39-71-2201,
 20 39-71-2202, 39-71-2203, 39-71-2205, 39-71-2206, 39-71-2207,
 21 39-71-2311, 39-71-2312, 39-71-2313, 39-71-2314, 39-71-2315,
 22 39-71-2316, 39-71-2317, 39-71-2318, 39-71-2319, 39-71-2320,
 23 39-71-2321, 39-71-2322, 39-71-2323, 39-71-2325, 39-71-2327,
 24 39-71-2336, 39-71-2337, 39-71-2338, 39-71-2339, 39-71-2340,
 25 39-71-2351, 39-71-2352, 39-71-2361, 39-71-2401, 39-71-2406,

1 39-71-2407, 39-71-2408, 39-71-2409, 39-71-2410, 39-71-2411,
 2 39-71-2601, 39-71-2602, 39-71-2603, 39-71-2604, 39-71-2609,
 3 39-71-2610, 39-71-2611, 39-71-2615, 39-71-2616, 39-71-2617,
 4 39-71-2618, 39-71-2619, 39-71-2620, 39-71-2901, 39-71-2902,
 5 39-71-2903, 39-71-2904, 39-71-2905, 39-71-2907, 39-71-2909,
 6 39-71-2910, 39-71-2914, 39-72-101, 39-72-102, 39-72-103,
 7 39-72-104, 39-72-201, 39-72-202, 39-72-203, 39-72-204,
 8 39-72-206, 39-72-301, 39-72-302, 39-72-303, 39-72-304,
 9 39-72-305, 39-72-310, 39-72-401, 39-72-402, 39-72-403,
 10 39-72-404, 39-72-405, 39-72-408, 39-72-509, 39-72-601,
 11 39-72-602, 39-72-605, 39-72-606, 39-72-607, 39-72-608,
 12 39-72-609, 39-72-610, 39-72-611, 39-72-612, 39-72-613,
 13 39-72-701, 39-72-703, 39-72-704, 39-72-705, 39-72-706,
 14 39-72-707, 39-72-708, 39-72-709, 30-72-711, 39-72-712, and
 15 39-72-714, MCA, are repealed.

16 **NEW SECTION. Section 27. Codification instruction.**
 17 [Sections 6 and 7] are intended to be codified as an
 18 integral part of Title 39, chapter 71, and the provisions of
 19 Title 39, chapter 71, apply to [sections 6 and 7].

20 **NEW SECTION. Section 28. Code commissioner**
 21 **instruction.** Whenever the term "Workers' Compensation Act"
 22 occurs in the Montana Code Annotated or in legislation
 23 enacted by the 52nd legislature, the code commissioner shall
 24 change the term to "Workers' Compensation and Occupational
 25 Disease Act".

1 **NEW SECTION. Section 29. Effective dates. (1)**
 2 [Sections 6, 26 through 28, and this section] are effective
 3 on passage and approval.
 4 (2) [Section 5] is effective on passage and approval
 5 for purposes of creating the assigned risk plan and is
 6 effective July 1, 1992, for all other purposes.
 7 (3) [Sections 1 through 4 and 7 through 25] are
 8 effective July 1, 1992.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0365, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act abolishing the State Compensation Mutual Insurance Fund; providing for administration and payment of existing claims by one or more private companies under contracts with the Commissioner of Insurance; providing for loans to the Commissioner of Insurance to service the contracts; providing for mutually agreeable lump-sum settlements; providing that all employers must insure with a private company; providing that the scope and coverage of the insurance is at the employer's discretion; amending existing statutes; repealing existing statutes; and providing effective dates."

ASSUMPTIONS:


State Compensation Mutual Insurance Fund:

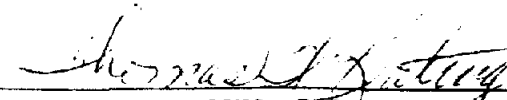
1. The effective date of the proposed legislation pertaining to the dissolution of the State Fund is upon passage and approval of the bill by the Governor. May 15, 1991, is the estimated approval date.
2. State Fund employees would be terminated on May 15, 1991. Terminated employees are entitled to payments for accrued vacation leave and 25% of accrued sick leave. These accrued costs were valued at \$349,083 on June 30, 1990, and would be a FY91 expenditure.
3. Since the State Fund would be abolished prior to the 1993 biennium, all budget costs would be eliminated. Benefits and claims would be paid through the Insurance Commissioner. The fund transfers indicated on the fiscal note are for the Department of Social and Rehabilitation Services, Department of Labor and Industries, Department of Justice and the debt service on the Workers' Compensation Building.

Department of Labor and Industries:

4. The workers' compensation panels in the Job Service Division will be eliminated.
5. The proposed legislation would abolish the hearings activity currently performed by the department.
6. The proposed legislation would abolish the Workers' Compensation Court. District court would perform the functions currently provided by the Workers' Compensation Court.
7. Cases and claims established prior to the July 1, 1992, effective date of this proposed legislation must be treated by the law in effect at the time established. "Prior law" cases would continue to require administrative and other management services from the department.
8. The department will continue to manage the subsequent injury fund, the uninsured employers fund, deposits for plan I and plan II carriers, and pay claims incurred prior to July 1, 1992. The department would not offer insurance. In accordance with state laws, the department would regulate various components of workers' compensation insurance.

(continued on next page)


ROD SUNDSTED, BUDGET DIRECTOR 2-21-91 DATE
Office of Budget and Program Planning


THOMAS F. KEATING, PRIMARY SPONSOR 2/24/91 DATE
Fiscal Note for SB0365, as introduced.

SB 365

Department of Labor and Industries: (continued):

9. The department will continue to administer the mandatory safety programs. These safety programs include occupational safety, safety in mines other than coal mines, safety in coal mines, boilers and steam engines, hoisting engines, and construction blasting. The repeal of section 39-71-201 removes the current funding source for administering these safety programs.
10. The proposed legislation abolishes the existing funding mechanism for workers' compensation insurance funding. A new funding mechanism for the various regulatory and safety functions of the department was not identified. Functions and activities which require continued funding would become the responsibility of the general fund.

State Auditor:

11. The administration of State Fund claims in Section 6 contemplates an annual service fee paid to the private insurer rather than the discounted cost of future claims resulting from a bulk reinsurance assumption by the private insurer.
12. The annual cost of the administration of claims run-off and the interest costs are not included in this fiscal note due to the difficulty of estimating a probable impact.
13. Through a competitive bidding process, one private insurance carrier will administer accrued State Fund claims.
14. The State Auditor will need 2.00 FTE administrative assistants (grade 12/step 2) to administer the assigned risk pool and monitor the contract with the private insurer which services the assigned risk plan and to monitor the contract with the private insurance carrier which services accrued State Fund claims.
15. The department will need \$25,000 during the 1993 biennium in contracted services to transfer the State Fund records to a private insurer, and \$25,000 each fiscal year for a qualified CPA to audit claims paid by the private insurer.

FISCAL IMPACT:

see next page

SB 365

State Fund:

	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	216.9	0	(216.9)	215.9	0	(215.9)
Personal Services	5,536,182	0	(5,536,182)	5,506,944	0	(5,506,944)
Operating Expenses	3,802,378	0	(3,802,378)	3,748,677	0	(3,748,677)
Equipment	188,893	0	(188,893)	127,138	0	(127,138)
Benefits & Claims	110,953,000	0	(110,953,000)	118,060,000	0	(118,060,000)
Transfers	<u>2,941,701</u>	<u>0</u>	<u>(2,941,701)</u>	<u>2,959,054</u>	<u>0</u>	<u>(2,959,054)</u>
Total	123,422,154	0	(123,422,154)	130,401,813	0	(130,401,813)
<u>Funding:</u>						
State Special Revenue	26,570	0	(26,570)	0	0	0
Proprietary Fund	<u>123,395,584</u>	<u>0</u>	<u>(123,395,584)</u>	<u>130,401,813</u>	<u>0</u>	<u>(130,401,813)</u>
Total	123,422,154	0	(123,422,154)	130,401,813	0	(130,401,813)
<u>Revenues:</u>						
Premiums	123,395,584	0	(123,395,584)	130,401,813	0	(130,401,813)

Dept. Labor & 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	466.10	456.40	(9.70)	466.10	456.40	(9.70)
Personal Services	12,857,530	12,776,556	(80,974)	12,844,883	12,762,568	(82,315)
Operating Costs	5,401,572	5,348,320	(53,252)	5,346,164	5,291,415	(54,749)
Equipment	199,269	192,042	(7,227)	212,559	205,284	(7,275)
Benefits and Claims	<u>423,224</u>	<u>423,224</u>	<u>0</u>	<u>394,028</u>	<u>394,028</u>	<u>0</u>
Total	18,881,595	18,740,142	(141,453)	18,797,634	18,653,294	(144,340)
<u>Funding:</u>						
General Fund	423,224	3,520,341	3,097,117	394,028	3,479,661	3,085,633
State Special	3,238,570	0	(3,238,570)	3,233,731	3,758	(3,229,973)
Federal Special	15,080,282	15,080,282	0	15,030,343	15,030,343	0
Proprietary Fund	<u>139,519</u>	<u>139,519</u>	<u>0</u>	<u>139,532</u>	<u>139,532</u>	<u>0</u>
Total	18,881,595	18,740,142	(141,453)	18,797,634	18,011,347	(144,340)
<u>Revenues:</u>						
Wkrs' Comp Assessment (02)	3,238,570	0	(3,238,570)	3,229,973	0	(3,229,973)

(continued on next page)

SB 365

FISCAL IMPACT: (continued)

State Auditor:	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	0.00	2.00	2.00	0.00	2.00	2.00
Personal Services	0	49,550	49,550	0	49,550	49,550
Operating Costs	0	47,500	47,500	0	47,500	47,500
Equipment	0	6,000	6,000	0	0	0
Total	0	103,050	103,050	0	97,050	97,050
<u>Funding:</u>						
General Fund	0	103,050	103,050	0	103,050	103,050
General Fund Impact:			(3,200,167)			(3,188,683)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The proposed legislation would abolish the Workers' Compensation Court. Disputes related to workers' compensation would appear in district courts. District court caseloads would increase along with the related costs to adjudicate the disputes.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Elimination of fine and penalty revenues for the uninsured program will result in injured employees of uninsured employers having no means of recovering damages for their injuries. The workers' compensation uninsured fund would be disbanded by 1995 due to lack of available funding.

Dispute Resolution Bureau functions would gradually be phased out as "prior law" claims were resolved; such cases historically take between five and twenty years for resolution. Many of the 22.00 FTE in the Dispute Resolution Bureau would not be replaced over time. Certain components of the Standards Bureau would also be eliminated and the services of certain employees would no longer be needed. Due to workload increases created by the abolishment of the State Fund, the increase of 3.70 FTE in the Employment Relations Division would likely remain over the long term.

TECHNICAL NOTES:

1. Elimination of the workers' compensation assessment provided in 39-71-201 and 39-71-902, MCA, would shift the funding for the workers' compensation regulatory, safety, subsequent injury and judicial functions for all insurers to the general fund. Elimination of workers' compensation assessments also impacts the vocational rehabilitation funding that goes to the Department of Social and Rehabilitation Services which, in turn, uses the funds to match federal funds (reference 39-71-1004, MCA). The entire general fund impact in the Department of Labor would be eliminated through the continuation of the workers' compensation assessments.
2. No exclusive remedy is allowed by this legislation; therefore, employers could be sued by their employees.
3. While workers' compensation coverage is mandatory, the proposed legislation contains no provision for enforcement or definition of workers' compensation coverage.
4. Contested case hearings would go directly to district court and bypass the current process of mediation, hearings and the Workers' Compensation Court.