SENATE BILL NO. 383

INTRODUCED BY WEEDING, WILLIAMS BY REQUEST OF THE STATE FUND

IN THE SENATE

FEBRUARY 14, 1991

INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.

DO PASS AS AMENDED. REPORT ADOPTED.

FIRST READING.

PRINTING REPORT.

ENGROSSING REPORT.

FEBRUARY 23, 1991

FEBRUARY 25, 1991

SECOND READING, DO PASS.

COMMITTEE RECOMMEND BILL

FEBRUARY 26, 1991

THIRD READING, PASSED. AYES, 49; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991

MARCH 18, 1991

MARCH 20, 1991

MARCH 21, 1991

INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

SECOND READING, CONCURRED IN.

THIRD READING, CONCURRED IN. AYES, 98; NOES, 1.

RETURNED TO SENATE.

IN THE SENATE

MARCH 22, 1991

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Jenate BILL NO. 383 1 1 INTRODUCED BY Schede 2 2 3 BY REQUEST OF THE STATE FUND 2 4 Δ A BILL FOR AN ACT ENTITLED: 5 "AN ACT TO REVISE CERTAIN 5 PROVISIONS OF THE WORKERS' COMPENSATION ACT; AMENDING б б 7 SECTIONS 39-71-116. 39-71-117, 39-71-118, 39-71-414. 7 39-71-431, 39-71+704, 39-71-741, 39-71-2311, 39-71-2339, 8 8 9 39-72-601, AND 39-72-602, MCA; AND REPEALING SECTION 9 39-71-2338, MCA; AND PROVIDING AN EFFECTIVE DATE." 10 10 11 11 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 12 13 Section 1. Section 39-71-116, MCA, is amended to read: 13 14 14 "39-71-116. Definitions. Unless the context otherwise 15 15 requires, words and phrases employed in this chapter have 16 16 the following meanings: 17 17 (1) "Administer and pay" includes all actions by the 18 18 state fund under the Workers' Compensation Act and the 19 19 Occupational Disease Act of Montana necessary to the 20 20 investigation, review, and settlement of claims; payment of 21 21 benefits; setting of reserves; furnishing of services and 22 22 facilities; and utilization of actuarial, audit, accounting, 23 23 vocational rehabilitation, and legal services. 24 24 (2) "Average weekly wage" means the mean weekly 25 25 earnings of all employees under covered employment, as

of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department pricr 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);

defined and established annually by the Montana department

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

and

N Montana Legislative Council

INTRODUCED BILL

SR 383

LC 1960/01

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

3 of the employer.

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4 (5) "Child" includes a posthumous child, a dependent5 stepchild, and a child legally adopted prior to the injury.

6 (6) "Days" means calendar days, unless otherwise7 specified.

8 (7) "Department" means the department of labor and9 industry.

10 (8) "Fiscal year" means the period of time between July11 1 and the succeeding June 30.

12 (9) "Insurer" means an employer bound by compensation 13 plan No. 1, an insurance company transacting business under 14 compensation plan No. 2, the state fund under compensation 15 plan No. 3, or the uninsured employers' fund provided for in 16 part 5 of this chapter.

17 (10) "Invalid" means one who is physically or mentally 18 incapacitated.

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

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

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

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

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

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

21 (15) "Permanent total disability" means a condition 22 resulting from injury as defined in this chapter, after a 23 worker reaches maximum healing, in which a worker is unable 24 to return to work in the worker's job pool after exhausting 25 all options set forth in 39-71-1012. (16) The term "physician" includes "surgeon" and in
 either case means one authorized by law to practice his
 profession in this state.

4 (17) The "plant of the employer" includes the place of 5 business of a third person while the employer has access to 6 or control over such place of business for the purpose of 7 carrying on his usual trade, business, or occupation.

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

12 (19) "Reasonably safe place to work" means that the 13 place of employment has been made as free from danger to the 14 life or safety of the employee as the nature of the 15 employment will reasonably permit.

16 (20) "Reasonably safe tools and appliances" are such 17 tools and appliances as are adapted to and are reasonably 18 safe for use for the particular purpose for which they are 19 furnished.

20 (21) "Temporary service contractor" means any person,
21 firm, association, or corporation conducting business that
22 employs individuals directly for the purpose of furnishing
23 the services of those individuals on a part-time or
24 temporary basis to others.

25 (21)(22) "Temporary total disability" means a condition

resulting from an injury as defined in this chapter that 1 results in total loss of wages and exists until the injured 2 3 worker reaches maximum healing. 4 (23) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis 5 to substitute for a permanent employee on leave or to meet 6 an emergency or short-term workload. 7 +22)(24) "Year", unless otherwise specified, means 8 calendar year." Э Section 2. Section 39-71-117, MCA, is amended to read: 10 "39-71-117. Employer defined. (1) "Employer" means: 11 fl+(a) the state and each county, city and county, city 12 school district, irrigation district, all other districts 13 established by law, and all public corporations and 14 quasi-public corporations and public agencies therein and 15 every person, every prime contractor, and every firm, 16 17 voluntary association, and private corporation, including 18 any public service corporation and including an independent 19 contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral 20 or written, and the legal representative of any deceased 21 employer or the receiver or trustee thereof; and 22

23 (2)(b) any association, corporation, or organization
24 that seeks permission and meets the requirements set by the
25 department by rule for a group of individual employers to

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1	operate as self-insured under plan No. 1 of this chapter.
2	(2) A temporary service contractor is the employer of a
3	temporary worker for premium and loss experience purposes.
4	(3) An employer defined in subsection (1) who utilizes
5	the services of a temporary worker furnished by another
б	person, association, contractor, firm, or corporation, other
7	than a temporary service contractor, is presumed to be the
8	employer for workers' compensation premium and loss
9	experience purposes for work performed by the worker. The
10	presumption may be rebutted by substantial credible evidence
11	of the following:
12	(a) the person, association, contractor, firm, or
13	corporation, other than a temporary service contractor,
14	furnishing the services of a temporary worker to another
15	retains control over all aspects of the work performed by
16	the worker, both at the inception of employment and during
17	all phases of the work; and
18	(b) the person, association, contractor, firm, or
19	corporation, other than a temporary service contractor,
20	furnishing the services of a temporary worker to another has
21	obtained workers' compensation insurance in Montana both at
22	the inception of employment and during all phases of the
23	work perfomed for the worker.
24	(4) Notwithstanding the provisions of subsection (3), a
25	common or contract motor carrier doing business in this

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1	state who utilizes drivers in this state is considered the
2	employer, is liable for workers' compensation premiums, and
3	is subject to loss experience rating in this state unless:
4	(a) the driver in this state is certified as an
5	independent contractor as provided in 39-71-401(3); or
6	(b) the person, association, contractor, firm, or
7	corporation furnishing drivers in this state to a motor
8	carrier has obtained workers' compensation insurance on the
9	drivers in Montana both at the inception of employment and
10	during all phases of the work performed."
11	Section 3. Section 39-71-118, MCA, is amended to read:
12	"39-71-118. Employee, worker, and workman defined. (1)
13	The terms "employee", "workman", or "worker" mean:
14	(a) each person in this state, including a contractor
15	other than an independent contractor, who is in the service
16	of an employer, as defined by 39-71-117, under any
17	appointment or contract of hire, expressed or implied, oral
18	or written. The terms include aliens and minors, whether
19	lawfully or unlawfully employed, and all of the elected and
20	appointed paid public officers and officers and members of
21	boards of directors of quasi-public or private corporations
22	while rendering actual service for such corporations for
23	pay. Casual employees as defined by 39-71-116 are included
24	as employees if they are not otherwise covered by workers'
25	compensation and if an employer has elected to be bound by

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the provisions of the compensation law for these casual
 employments, as provided in 39-71-401(2). Household or
 domestic service is excluded.

4 (b) a recipient of general relief who is performing 5 work for a county of this state under the provisions of 6 53-3-303 through 53-3-305 and any juvenile performing work 7 under authorization of a district court judge in a 8 delinguency prevention or rehabilitation program;

receiving on-the-job vocational 9 (c) a person 10 rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not 11 12 under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment 13 14 from a third party. However, this subsection does not apply 15 to students enrolled in vocational training programs as 16 outlined above while they are on the premises of a public 17 school or community college.

18 (d) students enrolled and in attendance in programs of 19 vocational-technical education at designated 20 vocational-technical centers; or

21 (e) an airman or other person employed as a volunteer 22 under 67-2-105.

(2) (a) If the employer is a partnership or sole
proprietorship, such employer may elect to include as an
employee within the provisions of this chapter any member of

such partnership or the owner of the sole proprietorship
 devoting full time to the partnership or proprietorship
 business.

4 (b) In the event of such election, the employer must 5 serve upon the employer's insurer written notice naming the 6 partners or sole proprietor to be covered and stating the 7 level of compensation coverage desired by electing the 8 amount of wages to be reported, subject to the limitations 9 in subsection (2)(d). A partner or sole proprietor is not 10 considered an employee within this chapter until such notice 11 has been given.

12 (c) A change in elected wages must be in writing and is
13 effective at the start of the next quarter following
14 notification.

15 (d) All weekly compensation benefits must be based on 16 the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium 17 ratemaking and for the determination of weekly wage for 18 19 weekly compensation benefits, the electing employer may elect not less than \$900 a month and not more than $1 \frac{1}{2}$ 20 times the average weekly wage as defined in this chapter. 21 22 (3) An employee, workman, or worker in this state whose

23 services are furnished by a person, association, contractor,

24 firm, or corporation, other than a temporary service

25 contractor, to an employer as defined in section 39-71-117

1 is presumed to be under the control and employment of the 2 employer. This presumption may be rebutted as provided in 3 39-71-117(4). 4 (4) For purposes of this section, an "employee, 5 workman, or worker in this state" means: 6 (a) a resident of Montana who is employed by an 7 employer and whose employment duties are primarily carried 8 out or controlled within this state; or 9 (b) a nonresident of Montana whose principal employment 10 duties are conducted within this state on a regular basis 11 for an employer." 12 Section 4. Section 39-71-414, MCA, is amended to read: "39-71-414. Subrogation. (1) If an action is prosecuted 13 as provided for in 39-71-412 or 39-71-413 and except as 14 15 otherwise provided in this section, the insurer is entitled 16 to subrogation for all compensation and benefits paid or to 17 be paid under the Workers' Compensation Act. The insurer's 18 right of subrogation is a first lien on the claim, judgment, 19 or recovery.

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

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

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

5 (d) If the injured employee or the employee's personal 6 representative institutes the action, the employee is 7 entitled to at least one-third of the amount recovered by 8 judgment or settlement less a proportionate share of 9 reasonable costs, including attorneys' fees, if the amount 10 of recovery is insufficient to provide the employee with 11 that amount after payment of subrogation.

12 (3) If an injured employee refuses or fails to 13 institute the third party action within 1 year from the date 14 of injury, the insurer may institute the action in the name 15 of the employee and for the employee's benefit or that of 16 the employee's personal representative. If the insurer 17 institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess 18 19 of the amounts paid or to be paid under the Workers' 20 Compensation Act after the insurer's reasonable costs. 21 including attorneys' fees for prosecuting the action, have 22 been deducted from the recovery.

23 (4) An insurer may enter into compromise agreements in24 settlement of subrogation rights.

25 (5) If--the--amount--of-compensation-and-other-benefits

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1	payable-under-the-Workers1-Compensation-Acthavenotbeen
2	fullydeterminedatthe-time-the-employee;-the-employee's
3	heirs-orpersonalrepresentatives;ortheinsurerhave
4	settledinanymannerthe-action-as-provided-for-in-this
5	section7-the-department-shall-determine-whatproportionof
6	thesettlementshallbeallocated-under-subrogationThe
7	department ¹ 3-determination-may-be-appealed-totheworkers ¹
8	compensationjudge Regardless of whether the amount of
9	compensation and other benefits payable under the Workers'
10	Compensation Act have been fully determined, the insurer and
11	the claimant's heirs or personal representative may
12	stipulate the proportion of the third party settlement to be
13	allocated under subrogation. Upon review and approval by the
14	department, the agreement constitutes a compromise
15	settlement of the issue of subrogation and may not be
16	reopened by the department.
17	(6) (a) The insurer is entitled to full subrogation
18	rights under this section, even though the claimant is able

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

25 (b) If no survival action exists and the parties reach

a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is a party to the settlement agreement."

Section 5. Section 39-71-431, MCA, is amended to read: 6 7 "39-71-431. Assigned risk plan. (1) Following the date 8 on which the provisions of 39-71-2311 through 39-71-23207 and 39-71-23377-and-39-71-2330 are implemented but no later 9 10 than December 31, 1990, the commissioner of the department of labor and industry may order the establishment of and 11 administer a plan to equitably apportion among the state 12 fund, plan No. 3, and private insurers, plan No. 2, the 13 coverage required by this chapter for employers who are 14 unable to procure coverage through ordinary methods. In 15 16 determining whether to order an assigned risk plan to be 17 established, the commissioner shall consider the effect a plan would have on the availability of workers' compensation 18 19 insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If 20 the commissioner orders the establishment of an assigned 21 risk plan, it may not take effect until at least 6 months 22 following the commissioner's order creating the plan. 23 24

(2) All plan No. 2 insurers and the state fund shallsubscribe to and participate in the assigned risk plan.

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1 (3) If an insurer refuses to accept its equitable 2 apportionment under the assigned risk plan, the commissioner 3 of insurance may suspend or revoke the insurer's authority 4 to issue workers' compensation insurance policies in this 5 state.

6 (4) If an assigned risk plan is established and in 7 effect, the state fund, plan No. 3, is not required to 8 insure any employer in this state requesting coverage, and 9 it may refuse coverage for an employer, except for a state 10 agency.

11 (5) If an assigned risk plan is established and in 12 effect, an employer who is refused the coverage required by 13 this chapter by the state fund, plan No. 3, and by at least 14 two private insurers, plan No. 2, may be assigned coverage 15 by the commissioner under the assigned risk plan pursuant to 16 the procedure established by the commissioner for the 17 equitable apportionment of coverage."

18 Section 6. 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, the insurer25 shall furnish, without limitation as to length of time or

dollar amount, reasonable services by a physician or
 surgeon, reasonable hospital services and medicines when
 needed, and such other treatment as may be approved by the
 department for the injuries sustained.

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

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

15 (2) A relative value fee schedule for medical, 16 chiropractic, and paramedical services provided for in this 17 chapter, excluding hospital services, must be established 18 annually by the department and become effective in January 19 of each year. The maximum fee schedule must be adopted as a 20 relative value fee schedule of medical, chiropractic, and 21 paramedical services, with unit values to indicate the 22 relative relationship within each grouping of specialties. 23 Medical-fees-must-be-based-on-the-median-fees-as--billed--to 24 the-state-fund-during-the-year-preceding-the-adoption-of-the 25 schedule---The--state--fund--shall-report-fees-billed-in-the

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form-and-at--the--times--required--by--the--department: The 1 department may require insurers to submit information to be 2 3 used in establishing the schedule. The department shall 4 adopt rules establishing relative unit values, groups of 5 specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining 6 the median of billed medical fees. These rules must be 7 modeled on the 1974 revision of the 1969 California Relative 8 Value Studies. 9

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

16 (4) (a) Notwithstanding subsection (2), beginning
17 January 1, 1988, through December 31, 1991, the maximum-fees
18 reimbursement for medical services payable by insurers must
19 be limited to the relative value fee schedule established in
20 January 1987.

21 (b) Reimbursement for medical services by insurers for 22 calendar year 1992 may not increase more than the percentage 23 increase in the state's average weekly wage since July 1, 24 1987.

25 (c) Beginning January 1, 1993, the maximum

1	reimbursement for medical services by insurers may not be
2	increased more than the annual percentage increase in the
3	state's weekly wage;
4	(5) (a) Notwithstanding subsection (3), beginning
5	January 1, 1988, through December 31, 1991, the hospital
6	rates payable by insurers must be limited to those set in
7	January 1988.
8	(b) Hospital rates payable by insurers for calendar
9	year 1992 may not increase more than the percentage increase
10	in the state's average weekly wage since July 1, 1987.
11	(c) Beginning January 1, 1993, the maximum hospital
12	rates payable by insurers may not be increased more than the
13	annual percentage increase in the state's average weekly
14	wage."
15	Section 7. Section 39-71-741, MCA, is amended to read:
16	"39-71-741. Compromise settlements, lump-sum payments,
17	and lump-sum advance payments. (1) The biweekly payments
18	provided for in this chapter may be converted, in whole or
19	in part, into a lump-sum payment. A conversion may be made
20	only upon written application by the injured worker with the
21	concurrence of the insurer. An agreement between a claimant
22	and insurer for a partial or full conversion of benefits is
23	subject to department approval. The approval or award of a
24	lump-sum payment by the department is the exception and not
25	the rule.

1 $(\frac{1}{2})$ (a) Benefits may be converted in whole to a lump 2 sum÷ (i) if a claimant and an insurer dispute the initial 3 4 compensability of an injury;-and 5 (ii)-if-the-claimant-and-insurer-agree-to-a-settlement. 6 (b) The--agreement--is--subject-to-department-approval+ 7 The department may disapprove an agreement under this section subsection (2) only if there is not a reasonable 8 9 dispute over compensability. 10 (c) Upon approval, the agreement constitutes a 11 compromise and release settlement and may not be reopened by 12 the department or-by-any-court. 13 (d)--The-parties--failure-to-reach-an-agreement-is-not-a dispute-over-which-a-mediator-or-the--workersi--compensation 14 15 court-has-jurisdiction-16 (2)(3) (a) If an insurer has accepted initial liability 17 for an injury, permanent total and permanent partial wage 18 supplement benefits may be converted in whole to a lump-sum payment. A lump-sum conversion may not be greater than the 19 20 present value of the estimated future benefits using the 21 rate prescribed in subsection (7). 22 (b) The--conversion--may--be--made--only-upon-agreement 23 between-a-claimant-and-an-insurer-24 (c) The agreement is subject to department approval. 25 The department may approve-an-agreement-if; disapprove an

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1	agreement under this subsection (3) only if it determines
2	that the settlement amount is inadequate. If the agreement
3	is disapproved, the department must set forth in detail the
4	reasons for the disapproval.
5	(i)there-is-a-reasonable-dispute-concerning-the-amount
6	of-the-insureris-future-liability-or-benefits;-or
7	(ii)-theamount-of-the-insurer's-projected-liability-is
8	reasonablycertainandthesettlementamountisnot
9	substantiallylessthan-the-present-value-of-the-insurer's
10	liability.
11	{d}The-partiesfailure-to-reach-agreementisnota
12	disputeoverwhich-a-mediator-or-the-workersi-compensation
13	court-has-jurisdiction.
14	<pre>(e)(C) Upon approval, the agreement constitutes a</pre>
15	compromise and release settlement and may not be reopened by
16	the department or-by-any-court.
17	(4) (a) If an insurer has accepted initial liability
18	for an injury, permanent total wage supplement benefits may
19	be converted in whole to a lump-sum payment. A lump-sum
20	conversion may not be greater than the present value of the
21	estimated future benefits using the rate prescribed in
22	subsection (7).
23	(b) The department may approve an agreement under this
24	subsection if the parties demonstrate that the claimant has
25	financial need that:

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1	(i) relates to:
2	(A) the necessities of life;
3	(B) an accumulation of debt incurred prior to the
4	injury; or
5	(C) a self-employment venture that is considered
6	feasible under criteria established by the department; and
7	(ii) arises subsequent to the date of injury or arises
8	because of reduced income as a result of the injury.
9	(c) A lump sum conversion may not be given for the
10	purpose of purchasing an annuity or investing in real estate
11	for business purposes or for any type of passive investment.
12	(d) Upon approval, the agreement constitutes a
13	compromise and release settlement and may not be reopened by
14	the department.
15	(3)<u>(5)</u> (a) Permanent partial wage supplement benefits
16	may be converted in part to a lump-sum advance.
17	(b)The-conversion-maybemadeonlyuponagreement
18	between-a-claimant-and-an-inpurer;
19	(c) The-agreement-is-subject-to-department-approval;
20	(b) The department may approve an agreement under this
21	section if the parties demonstrate that the claimant has
22	financial need that:
23	(i) relates to the necessities of life or relates to an
24	accumulation of debt incurred prior to injury; and
25	(ii) arises subsequent to the date of injury or arises

because of reduced income as a result of the injury.
(d) The-parties ¹ -failure-to-reach-an-agreement-is-not-a
dispute-over-which-a-mediator-or-theworkersicompensation
court-has-jurisdiction-
(4)<u>(6)</u> Permanent total disability benefits may be
converted in part to a lump-sum advance. The total of all
lump-sum advance payments to a claimant may not exceed
\$20,000. A-conversion-may-bemadeonlyuponthewritten
applicationoftheinjured-worker-with-the-concurrence-of
the-insurerApproval-of-the-lump-sum-advance-paymentrests
inthediscretion-of-the-departmentThe-approval-or-award
of-a-lump-sum-advance-payment-bythedepartmentorcourt
mustbetheexception- It-may-be-given The department may
approve an agreement under this subsection only if the
worker has demonstrated financial need that:
(a) relates to:
(i) the necessities of life;
(ii) an accumulation of debt incurred prior to the

19 injury; or

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- 20 (iii) a self-employment venture as---set---forth---in
- 39-71-1026 that is considered feasible under criteria 21
- 22 established by the department; and
- 23 (b) arises subsequent to the date of injury or arises
- 24 because of reduced income as a result of the injury.
- 25 (5)(7) (a) An insurer may recoup any lump-sum advance

amortized at the rate established by the department, 1

2 prorated biweekly over the projected duration of the 3 compensation period.

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4 (b) The rate adopted by the department must be based on 5 the average rate for United States 10-year treasury bills in 6 the previous calendar year, rounded to the nearest whole 7 number.

8 (c) If the projected compensation period is the 9 claimant's lifetime, the life expectancy must be determined 10 by using the most recent table of life expectancy as 11 published by the United States national center for health 12 statistics.

13 (6) The Subject to other provisons of this section, the department has full power, authority, and jurisdiction 14 15 to allow, approve, or condition compromise settlements or lump-sum advances agreed to by workers and insurers. All 16 17 such compromise settlements and lump-sum payments are void 18 without the approval of the department. Approval by the 19 department must be in writing. The department shall directly notify a claimant of a department order approving or denying 20 21 a claimant's compromise or lump-sum payment.

22 (7)(9) Subject to 39-71-2401, a dispute between a 23 claimant and an insurer regarding the conversion of biweekly 24 payments into a hump-sum-advance-under-subsection-(4) lump 25 sum is considered a dispute, for which a mediator and the 1 workers' compensation court have jurisdiction to make a 2 determination. If an insurer and a claimant agree to a 3 compromise and release settlement or a lump-sum advance but 4 the department disapproves the agreement, the parties may 5 request the workers' compensation court to review the 6 department's decision."

7 Section 8. Section 39-71-2311, MCA, is amended to read: 8 "39-71-2311. Intent and purpose of plan. It is the 9 intent and purpose of the state fund to allow employers the 10 option to insure their liability for workers' compensation 11 and occupational disease coverage with a mutual insurance fund. The state fund is required to insure any employer in 12 13 this state requesting coverage, and it may not refuse 14 coverage for an employer unless an assigned risk plan 15 established under 39-71-431 is in effect. The state fund must be neither more nor less than self-supporting. Premium 16 17 rates must be set at least annually at a level sufficient to 18 ensure the adequate funding of the insurance program, 19 including the costs of administration, benefits, and 20 adequate reserves, during and at the end of the period for 21 which the rates will be in effect. In determining premium 22 rates, the state fund shall make every effort to adequately 23 predict future costs. When the costs of a factor influencing 24 rates are unclear and difficult to predict, the state fund 25 shall use a prediction calculated to be more than likely to

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1	cover those costs rather than less than likely to cover
2	those costs. Unnecessary surpluses that are created by the
3	imposition of premiums found to have been set higher than
4	necessary because of a high estimate of the cost of a factor
5	or factors may be refunded by the declaration of a dividend
6	as provided in this part. For the purpose of keeping the
7	state fund solvent, it must implement variable pricing
8	levels within individual rate classifications to reward an
9	employer with a good safety record and penalize an employer
10	with a poor safety record. An employer's payroll reporting
11	and premium history and other relevant factors may also be
12	considered in implementing variable pricing levels."
13	Section 9. Section 39-71-2339, MCA, is amended to read:
14	"39-71-2339. Cancellation of coverage thirty days'
15	notice required. The state fund may cancel an employer's
16	righttooperateunderplanNoJoftheWorkersi
16 17	righttooperateunderplanNo3oftheWorkers ¹ CompensationAct <u>coverage under this part</u> for failure to
	-
17	CompensationAct coverage under this part for failure to
17 18	CompensationAct coverage under this part for failure to report payroll or pay the premiums due or for another cause
17 18 19	CompensationAct coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. When-the-state-fund
17 18 19 20	CompensationAct coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Whenthestate-fund cancels-an-employer-s-coverage,-it-shall-notify-the-employer
17 18 19 20 21	CompensationAct coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Whenthestate-fund cancels-an-employer-s-coverager-it-shall-notify-the-employer of-its-intent-to-cancel-the-employer-at-least-30-days-before
17 18 19 20 21 22	CompensationAct coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Whenthestate-fund cancels-an-employer-s-coverage;-it-shall-notify-the-employer of-its-intent-to-cancel-the-employer-at-least-30-days-before the-cancellation-becomes-effective; Cancellation may take

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1	failure of the employer to submit payroll reports or pay a
2	premium within 30 days after the due date. The state fund
3	shall notify the department of the names and effective dates
4	of all policies cancelled. However, the policy terminates on
5	the effective date of a replacement or succeeding insurance
6	policy issued to the insured. Nothing in this section
7	prevents the state fund from canceling an insurance policy
8	before a replacement policy is issued to the insured. After
9	the cancellation date, the employer has the same status as
10	an employer who is not enrolled under the Workers'
11	Compensation Act unless a replacement or succeeding
12	insurance policy has been issued."
13	Section 10. Section 39-72-501, MCA, is amended to read:
14	"39-72-601. Medical panel. (1) The department shall
15	develop a list of physicians to serve on the occupational
16	disease medical panel. The list may include physicians
17	nominated by the board of medical examiners. A physician on
18	the panel must be certified by his specialty board or be
19	eligible for certification in the specialty area appropriate
20	to the claimant's condition in relation to this chapter.
21	(2) The department or an insurer shall select a panel
22	physician to examine a claimant, as required. The department
23	shall appoint, as required, one member of the panel to be
24	the chairman."
25	Section 11. 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.

6 (2) In order to determine the compensability of claims 7 under this chapter when an insurer has not accepted 8 liability, or questions liability or in order to determine 9 whether the claimant is totally disabled or to what extent, 10 if any, benefits must be reduced pursuant to 39-72-706, the 11 following procedure must be followed:

12 (a) The department <u>or an insurer with notice to the</u> 13 <u>department</u> shall direct the claimant to a member of the 14 medical panel for an examination. The panel member shall 15 conduct an examination to determine whether the claimant is 16 totally disabled and is suffering from an occupational 17 disease. The panel member shall submit a report of his 18 findings to the department.

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

claimant is totally disabled and is suffering from an 1 occupational disease and to what extent, if any, benefits 2 must be reduced pursuant to 39-72-706. The panel member 3 shall submit a report of his findings to the department. 4 When a second examination has been requested, the reports of 5 the examinations shall be submitted to three members of the 6 medical panel for review. A medical panel member or the 7 8 panel may, in order to assist the panel member or the panel 9 in reaching a conclusion, consult with the claimant's 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 13 disease.

14 (c) If a second examination is not requested, the 15 department shall issue its order determining whether the 16 claimant is entitled to occupational disease benefits based 17 on the report of the first examining physician. If a second 18 examination is requested, the department shall issue its 19 order based on the report of the three members of the 20 medical panel.

(d) For the purpose of reviewing the reports of the
examinations and issuing the report under subsection (2)(b),
the three members of the medical panel shall be the two
members of the panel who examined the claimant and the panel
chairman. If the panel chairman has examined the claimant,

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1 the panel chairman shall appoint another member of the

2 medical panel to be the third member."

3 NEW SECTION. Section 12. Repealer. Section 39-71-2338,

4 MCA, is repealed.

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5 NEW SECTION. Section 13. Effective date. [This act] is

6 effective July 1, 1991.

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STATE OF MONTANA - FISCAL NOTE Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0383, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act amending the workers' compensation act to create a definition for temporary service contractor and temporary worker; amending the subrogation rights of insurers and claimant heirs; requiring insurers to submit information for the development of value fee schedules; authorizing the conversion of biweekly payments into lump-sum payments; repealing 39-71-2338, MCA; and providing an effective date.

ASSUMPTIONS:

1. The proposed legislation clarifies existing statutes and provisions of the workers' compensation act.

2. The proposed legislation does not add new services or significantly change existing services.

FISCAL IMPACT:

None

ROD SUNDSTED, BUDGET DIRECTOR DATE Office of Budget and Program Planning

CECIL WEEDING, PRIMARY SPONSOR

Fiscal Note for SB0383, as introduced.

52nd Legislature

SB 0383/02

APPROVED BY COMMITTEE ON LABOR & EMPLOYMENT

RELATIONS

SENATE BILL NO. 383 INTRODUCED BY WEEDING, WILLIAMS BY REQUEST OF THE STATE FUND

"AN ACT TO REVISE CERTAIN A BILL FOR AN ACT ENTITLED: 5 OF THE WORKERS' COMPENSATION ACT; AMENDING PROVISIONS 6 39-71-118, 39-71-117, 39-71-414. 7 SECTIONS 39-71-116, 39-71-431, 39-71-7047-39-71-7417 39-71-2311, AND 39-71-2339, 8 REPEALING SECTION 9 39-72-6017--ANB--39-72-6027 MCA; AND 39-71-2338, MCA; AND PROVIDING AN EFFECTIVE DATE." 10

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

13 Section 1. Section 39-71-116, MCA, is amended to read: 14 "39-71-116. Definitions. Unless the context otherwise 15 requires, words and phrases employed in this chapter have 16 the following meanings:

17 (1) "Administer and pay" includes all actions by the 18 state fund under the Workers' Compensation Act and the 19 Occupational Disease Act of Montana necessary to the 20 investigation, review, and settlement of claims; payment of 21 benefits; setting of reserves; furnishing of services and 22 facilities; and utilization of actuarial, audit, accounting, 23 vocational rehabilitation, and legal services.

24 (2) "Average weekly wage" means the mean weekly25 earnings of all employees under covered employment, as



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section, exists).

1 defined and established annually by the Montana department 2 of labor and industry. It is established at the nearest 3 whole dollar number and must be adopted by the department prior to July 1 of each year. 4 5 (3) "Beneficiary" means: (a) a surviving spouse living with or legally entitled 6 7 to be supported by the deceased at the time of injury; (b) an unmarried child under the age of 18 years; 8 9 (c) an unmarried child under the age of 22 years who is 10 a full-time student in an accredited school or is enrolled 11 in an accredited apprenticeship program; 12 (d) an invalid child over the age of 18 years who is 13 dependent upon the decedent for support at the time of 14 injury; 15 (e) a parent who is dependent upon the decedent for 16 support at the time of the injury (however, such a parent is 17 a beneficiary only when no beneficiary, as defined in 18 subsections (3)(a) through (3)(d) of this section, exists); 19 and 20 (f) a brother or sister under the age of 18 years if 21 dependent upon the decedent for support at the time of the 22 injury (however, such a brother or sister is a beneficiary 23 only until the age of 18 years and only when no beneficiary, 24 as defined in subsections (3)(a) through (3)(e) of this

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SECOND READING

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

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

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

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

10 (8) "Fiscal year" means the period of time between July 11 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation 12 13 plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation 14 plan No. 3, or the uninsured employers' fund provided for in 15 16 part 5 of this chapter.

17 (10) "Invalid" means one who is physically or mentally 18 incapacitated.

(11) "Maximum healing" means the status reached when a 19 worker is as far restored medically as the permanent 20 character of the work-related injury will permit. 21

(12) "Order" means any decision, rule, direction, 22 23 requirement, or standard of the department or any other 24 determination arrived at or decision made by the department. 25 (13) "Payroll", "annual payroll", or "annual payroll for

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

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

16 (a) has a medically determined physical restriction as 17 a result of an injury as defined in 39-71-119; and

18 (b) is able to return to work in the worker's job pool 19 pursuant to one of the options set forth in 39-71-1012 but 20 suffers impairment or partial wage loss, or both.

(15) "Permanent total disability" means a condition 21 22 resulting from injury as defined in this chapter, after a 23 worker reaches maximum healing, in which a worker is unable 24 to return to work in the worker's job pool after exhausting 25 all options set forth in 39-71-1012.

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

4 (17) The "plant of the employer" includes the place of 5 business of a third person while the employer has access to 6 or control over such place of business for the purpose of 7 carrying on his usual trade, business, or occupation.

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

12 (19) "Reasonably safe place to work" means that the 13 place of employment has been made as free from danger to the 14 life or safety of the employee as the nature of the 15 employment will reasonably permit.

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

20 (21) "Temporary service contractor" means any person,
21 firm, association, or corporation conducting business that
22 employs individuals directly for the purpose of furnishing
23 the services of those individuals on a part-time or
24 temporary basis to others.

25 (21) "Temporary total disability" means a condition

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resulting from an injury as defined in this chapter that
 results in total loss of wages and exists until the injured
 worker reaches maximum healing.

4 (23) "Temporary worker" means a worker whose services 5 are furnished to another on a part-time or temporary basis 6 to substitute for a permanent employee on leave or to meet

7 an emergency or short-term workload.

8 (22)(24) "Year", unless otherwise specified, means
 9 calendar year."

10 Section 2. Section 39-71-117, MCA, is amended to read:

11 "39-71-117. Employer defined. (1) "Employer" means:

12 (1) (a) the state and each county, city and county, city 13 school district, irrigation district, all other districts 14 established by law, and all public corporations and 15 quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, 16 17 voluntary association, and private corporation, including 18 any public service corporation and including an independent contractor who has any person in service under any 19 appointment or contract of hire, expressed or implied, oral 20 21 or written, and the legal representative of any deceased 22 employer or the receiver or trustee thereof; and

23 (2)(b) any association, corporation, or organization
24 that seeks permission and meets the requirements set by the
25 department by rule for a group of individual employers to

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1	operate as self-insured under plan No. 1 of this chapter.
2	(2) A temporary service contractor is the employer of a
3	temporary worker for premium and loss experience purposes.
4	(3) An employer defined in subsection (1) who utilizes
5	the services of a temporary worker furnished by another
6	person, association, contractor, firm, or corporation, other
7	than a temporary service contractor, is presumed to be the
8	employer for workers' compensation premium and loss
9	experience purposes for work performed by the worker. The
10	presumption may be rebutted by substantial credible evidence
11	of the following:
12	(a) the person, association, contractor, firm, or
13	corporation, other than a temporary service contractor,
14	furnishing the services of a temporary worker to another
15	retains control over all aspects of the work performed by
16	the worker, both at the inception of employment and during
17	all phases of the work; and
18	(b) the person, association, contractor, firm, or
19	corporation, other than a temporary service contractor,
20	furnishing the services of a temporary worker to another has
21	obtained workers' compensation insurance in Montana both at
22	the inception of employment and during all phases of the
23	work perfomed for the worker.
24	(4) Notwithstanding the provisions of subsection (3), a
25	common or contract motor carrier doing business in this
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1	state who utilizes drivers in this state is considered the
2	employer, is liable for workers' compensation premiums, and
3	is subject to loss experience rating in this state unless:
4	(a) the driver in this state is certified as an
5	independent contractor as provided in 39-71-401(3); or
6	(b) the person, association, contractor, firm, or
7	corporation furnishing drivers in this state to a motor
8	carrier has obtained workers' compensation insurance on the
9	drivers in Montana both at the inception of employment and
10	during all phases of the work performed."
11	Section 3. Section 39-71-118, MCA, is amended to read:
12	"39-71-118. Employee, worker, and workman defined. (1)
13	The terms "employee", "workman", or "worker" mean:
14	(a) each person in this state, including a contractor
15	other than an independent contractor, who is in the service
16	of an employer, as defined by 39-71-117, under any
17	appointment or contract of hire, expressed or implied, oral
18	or written. The terms include aliens and minors, whether
19	lawfully or unlawfully employed, and all of the elected and
20	appointed paid public officers and officers and members of
21	boards of directors of quasi-public or private corporations
22	while rendering actual service for such corporations for
23	pay. Casual employees as defined by 39-71-116 are included
24	as employees if they are not otherwise covered by workers'
25	compensation and if an employer has elected to be bound by

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the provisions of the compensation law for these casual
 employments, as provided in 39-71-401(2). Household or
 domestic service is excluded.

4 (b) a recipient of general relief who is performing 5 work for a county of this state under the provisions of 6 53-3-303 through 53-3-305 and any juvenile performing work 7 under authorization of a district court judge in a 8 delinguency prevention or rehabilitation program;

receiving on-the-job vocational (c) a person 9 rehabilitation training or other on-the-job training under a 10 state or federal vocational training program, whether or not 11 under an appointment or contract of hire with an employer as 12 13 defined in this chapter and whether or not receiving payment 14 from a third party. However, this subsection does not apply 15 to students enrolled in vocational training programs as outlined above while they are on the premises of a public 16 17 school or community college.

18 (d) students enrolled and in attendance in programs of
19 vocational-technical education at designated
20 vocational-technical centers; or

21 (e) an airman or other person employed as a volunteer 22 under 67-2-105.

(2) (a) If the employer is a partnership or sole
proprietorship, such employer may elect to include as an
employee within the provisions of this chapter any member of

such partnership or the owner of the sole proprietorship
 devoting full time to the partnership or proprietorship
 business.

4 (b) In the event of such election, the employer must serve upon the employer's insurer written notice naming the 5 6 partners or sole proprietor to be covered and stating the 7 level of compensation coverage desired by electing the 8 amount of wages to be reported, subject to the limitations 9 in subsection (2)(d). A partner or sole proprietor is not 10 considered an employee within this chapter until such notice 11 has been given.

12 (c) A change in elected wages must be in writing and is
13 effective at the start of the next quarter following
14 notification.

(d) All weekly compensation benefits must be based on 15 16 the amount of elected wages, subject to the minimum and 17 maximum limitations of this subsection. For premium 18 ratemaking and for the determination of weekly wage for 19 weekly compensation benefits, the electing employer may 20 elect not less than \$900 a month and not more than $1 \frac{1}{2}$ 21 times the average weekly wage as defined in this chapter. 22 (3) An employee, workman, or worker in this state whose

23 services are furnished by a person, association, contractor,

24 firm, or corporation, other than a temporary service

25 contractor, to an employer as defined in section 39-71-117

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1 is presumed to be under the control and employment of the 2 employer. This presumption may be rebutted as provided in 3 39 - 71 - 117(4). 4 (4) For purposes of this section, an "employee, 5 workman, or worker in this state" means: 6 (a) a resident of Montana who is employed by an 7 employer and whose employment duties are primarily carried 8 out or controlled within this state; or 9 (b) a nonresident of Montana whose principal employment 10 duties are conducted within this state on a regular basis 11 for an employer."

12 Section 4. Section 39-71-414, MCA, is amended to read: 13 "39-71-414. Subrogation. (1) If an action is prosecuted 14 as provided for in 39-71-412 or 39-71-413 and except as 15 otherwise provided in this section, the insurer is entitled 16 to subrogation for all compensation and benefits paid or to 17 be paid under the Workers' Compensation Act. The insurer's 18 right of subrogation is a first lien on the claim, judgment, 19 or recovery.

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

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

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

5 (d) If the injured employee or the employee's personal 6 representative institutes the action, the employee is 7 entitled to at least one-third of the amount recovered by 8 judgment or settlement less a proportionate share of 9 reasonable costs, including attorneys' fees, if the amount 10 of recovery is insufficient to provide the employee with 11 that amount after payment of subrogation.

(3) If an injured employee refuses or fails to 12 institute the third party action within 1 year from the date 13 of injury, the insurer may institute the action in the name 14 15 of the employee and for the employee's benefit or that of 16 the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any 17 18 amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers' 19 20 Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have 21 22 been deducted from the recovery.

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

25 (5) If--the--amount--of-compensation-end-other-benefits

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1	payable-under-the-Workers'-Compensation-Acthavenotbeen
2	fullydeterminedatthe-time-the-employee7-the-employee's
3	heirs-orpersonalrepresentatives,ortheinsurerhave
4	settledinanymannerthe-action-as-provided-for-in-this
5	section7-the-department-shall-determine-whatproportionof
6	thesettlementshallbeallocated-under-subrogationThe
7	department*s-determination-may-be-appealed-totheworkers*
8	compensationjudge Regardless of whether the amount of
9	compensation and other benefits payable under the Workers'
10	Compensation Act have been fully determined, the insurer and
11	the claimant's heirs or personal representative may
12	stipulate the proportion of the third party settlement to be
13	allocated under subrogation. Upon review and approval by the
14	department, the agreement constitutes a compromise
15	settlement of the issue of subrogation and may not be
16	reopened by the department.

(6) (a) The insurer is entitled to full subrogation 17 18 rights under this section, even though the claimant is able to demonstrate damages in excess of the workers' 19 20 compensation benefits and the third-party recovery combined. 21 The insurer may subrogate against the entire settlement or 22 award of a third party claim brought by the claimant or his 23 personal representative, without regard to the nature of the 24 damages.

25 (b) If no survival action exists and the parties reach

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1 a settlement of a wrongful death claim without apportionment 2 of damages by a court or jury, the insurer may subrogate 3 against the entire settlement amount, without regard to the 4 parties' apportionment of the damages, unless the insurer is 5 a party to the settlement agreement."

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

7 "39-71-431. Assigned risk plan. (1) Following the date 8 on which the provisions of 39-71-2311 through 39-71-23207 9 and 39-71-23377-and-39-71-2330 are implemented but no later 10 than December 31, 1990, the commissioner of the department 11 of labor and industry may order the establishment of and 12 administer a plan to equitably apportion among the state 13 fund, plan No. 3, and private insurers, plan No. 2, the 14 coverage required by this chapter for employers who are 15 unable to procure coverage through ordinary methods. In 16 determining whether to order an assigned risk plan to be 17 established, the commissioner shall consider the effect a 18 plan would have on the availability of workers' compensation 19 insurance and the need to provide competitive workers' 20 compensation premium rates for employers in this state. If 21 the commissioner orders the establishment of an assigned 22 risk plan, it may not take effect until at least 6 months 23 following the commissioner's order creating the plan.

24 (2) All plan No. 2 insurers and the state fund shall
25 subscribe to and participate in the assigned risk plan.

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1 (3) If an insurer refuses to accept its equitable 2 apportionment under the assigned risk plan, the commissioner 3 of insurance may suspend or revoke the insurer's authority 4 to issue workers' compensation insurance policies in this state. 5

6 (4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to 7 insure any employer in this state requesting coverage, and 8 it may refuse coverage for an employer, except for a state 9 10 agency.

11 (5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by 12 13 this chapter by the state fund, plan No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage 14 15 by the commissioner under the assigned risk plan pursuant to 16 the procedure established by the commissioner for the 17 equitable apportionment of coverage."

18 Section-6:--Section-39-71-7847-MEA7-is-amended-to-read: 19 #39-71-704---Payment-of-medical7-hospital7--and--related services-----fee--schedules--and--hospital--rates---(1)--In 20 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:

(a)--After-the-happening--of--the--injury--the--insurer 24 25 shall--furnish;--without--limitation-as-to-length-of-time-or

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dollar--amounty--reasonable--services--by--e--physician---or surgeony--reasonable--hospital--services--and-medicines-when needed, and such other-treatment-as-may-be-approved -- by -- the department-for-the-injuries-sustained. (b)--The--insurer--shall--replace-or-repair-prescription eyeqlasses7--prescription---contact---lenses7---prescription hearing--aidsy--and--dentures--that-are-damaged-or-lost-as-a result-of-an-injuryy-as-defined-in-39-71-1197-arising-out-of and-in-the-course-of-employment-{c}--The-insurer-shall-reimburse-a-worker-for-reasonable travel-expenses-incurred-in-travel-to-a-medical-provider-for treatment-of-an-injury-pursuant--to--rules--adopted--by--the department.--Reimburgement--must-be-at-the-rates-allowed-for reimbursement-of-travel-by-state-employees-15 {2}--A--relative--value--fee---schedule---for---medical; 16 chiropractic -- and -paramedical-services-provided-for-in-this 17 chapter7-excluding-hospital-services7--must--be--established 18 annually--by--the-department-and-become-effective-in-January of-each-yeart-The-maximum-fee-schedule-must-be-adopted-as--a relative--value--fee--schedule-of-medical;-chiropractic;-and 21 paramedical-servicesy--with--unit--values--to--indicate--the 22 relative--relationship--within-each-grouping-of-specialties. 23 Medical-fees-must-be-based-on-the-median-fees-as--billed--to 24 the-state-fund-during-the-year-preceding-the-adoption-of-the

25 schedule_--The--state--fund--shall-report-fees-billed-in-the

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1	form-and-atthetimesrequiredbythedepartment. The
2	departmentmay-require-insurers-to-submit-information-to-be
3	<u>used-in-establishingtheschedule;</u> Thedepartmentshall
4	adoptrulesestablishingrelativeunit-values7-groups-of
5	specialties7-the-procedures-insurers-mustusetopayfor
6	servicesunderthe-scheduley-and-the-method-of-determining
7	the-median-of-billedmedicalfeesTheserulesmustbe
8	modeled-on-the-1974-revision-of-the-1969-California-Relative
9	Value-Studies.
10	(3) BeginningJanuary1719887the-department-shall
11	establish-rates-forhospitalservicesnecessaryforthe
12	treatmentofinjuredworkersApprovedrates-must-be-in
13	effect-for-a-period-of-12-months-from-the-date-ofapproval:
14	The-department-may-coordinate-this-ratesetting-function-with
15	other-public-agencies-that-have-similar-responsibilities:
16	(4)<u>(a)</u>-Notwithstandingsubsection(2),beginning
17	January-17-19887-through-December-317-19917-the-maximum-fees
18	reimbursementfor-medical-services payable-by-insurers-must
19	be-limited-to-the-relative-value-fee-schedule-established-in
20	January-1987-
21	(b)Reimbursement-for-medical-services-by-insurersfor
22	calendar-year-1992-may-not-increase-more-than-the-percentage
23	increaseinthestate's-average-weekly-wage-since-duly-17
24	1987.
25	<u>{c}BeginningJanuary1;1993;themaximum</u>

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<pre>3 state*s-weekiy-wage; 4 (5)(a)-Notwithstandingsubsection(3);beginnir 5 Januaryi;i988;throughDecember-3i;-i991;-the-hospita 6 rates-payable-by-insurers-must-be-limited-tothoseseti 7 January-1988; 8 (b)Hospitalratespayablebyinsurers-for-calende 9 year-1992-may-not-increase-more-than-the-percentage-increase 10 in-the-state*s-average-weekly-wage-since-duly-i;-1987; 11 (c)Beginning-January-1;1993;themaximumhospita 12 rates-payable-by-insurers-may-not-be-increased-more-than-th 13 annualpercentageincreaseinthe-state*s-average-weekl 14 wage;" 15 Section-7;Section-39-71-741;-MEA;-is-amended-to-read 16 #39-71-741;Compromise-settlements;-iump-sumpayment; 17 andlump-sumadvancepayment; (1)-The-biweekly-paymen; 18 provided-for-in-this-chapter-may-be-converted;-inwhole; 19 inpart;into-a-lump-sum-payment;-A-conversion-may-be-max 20 only-upon-written-application-by-the-injured-worker-with-t; 21 concurrence-of-the-insurer:-An-agreement-between-aclaima 22 andinsurer-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approval-The-approval-or-award-of-</pre>	1	reimbursementformedicalservices-by-insurers-may-not-be
4 (5)(a)-Notwithstandingsubsection(3);beginning 5 Januaryi;1988;throughBecember-3i;-1991;-the-hospita 6 rates-payable-by-insurers-must-be-limited-tothoseseti 7 January-1988; 8 (b)Hospitalratespayablebyinsurers-for-calenda 9 year-1992-may-not-increase-more-than-the-percentage-increase 10 in-the-state's-average-weekly-wage-since-July-i;-1987; 11 (c)Beginning-January-1;1993;themaximumhospita 12 rates-payable-by-insurers-may-not-be-increased-more-than-th 13 annualpercentageincrease-inthe-state's-average-weekly 14 wage:" 15 Section-7;Section-39-71-741;-MEA;-is-amended-to-read 16 "39-71-741;Compromise-settlements;-lump-sumpayment; 17 andlump-sumadvancepayment; 18 provided-for-in-this-chapter-may-be_converted;-inwhole 19 inpart;into-a-lump-sum-payment;-A-conversion-may-be-maxion-may-be-maxion-may-be-maxion-may-be-maxion-may-be-maxion-may-be-maxion-may-be-maxion-may-be-maxion-settle-insure;-An-agreement-between-aclaima 20 only-upon-written-application-by-the-injured-worker-with-t 21 concurrence-of-the-insure;-An-agreement-between-aclaima 22	2	increased-more-than-the-annual-percentageincreaseinthe
January-ly-ly-l988;throughBecember-31;-1991;-the-hospita rates-payable-by-insurers-must-be-limited-tothoseseti January-1988; (b)Hospitalratespayable-by-insurers-for-calenda year-1992-may-not-increase-more-than-the-percentage-increas in-the-state's-average-weekly-wage-since-duly_l;-1987; (c)Beginning-January-1;1993;themaximumhospita rates-payable-by-insurers-may-not-be-increased-more-than-th annualpercentageincreaseinthe-state's-average-weeki wage;" Section-7;Section-39-71-741;-MEA;-is-amended-to-read #39-71-741;Compromise-settlements;-lump-sumpayment; andlump-sumadvancepayment; provided for-in-this-chapter-may-be-converted;-inwhole inpart;into-a-lump-sum-payment;-A-conversion-may-be-ma; only-upon-written-application-by-the-injured-worker-with-t concurrence-of-the-insure;-An-agreement-between-aclaima andinsure;-for-a-partial-or-full-conversion-of-benefits- subject-to-department-approval;-The-approval;-or-awardof- tump-sumpayment-by-the-department-is-the-exception-and-n	3	state ¹ s-weekly-wage;
<pre>6 rates-payable-by-insurers-must-be-limited-tothoseseti 7 January-1968- 8 (b)Hospitalratespayablebyinsurers-for-calende 9 year-1992-may-not-increase-more-than-the-percentage-increase 10 in-the-state's-average-weekly-wage-since-July-ly-1907- 11 (c)Beginning-January-ly1993ythemaximumhospite 12 rates-payable-by-insurers-may-not-be-increased-more-than-th 13 annualpercentageincreaseinthe-state's-average-weekl 14 wager" 15 Section-7:Section-39-71-741y-MEAy-is-amended-to-read 16 "39-71-741;Compromise-settlementsy-lump-sumpayments 17 andlump-sumadvancepaymentsy (l)-The-biweekly-payment 18 provided-for-in-this-chapter-may-be-convertedy-inwhole 19 inpartyinto-a-lump-sum-payment:-A-conversion-may-be-may 20 only-upon-written-application-by-the-injured-worker-with-t 21 concurrence-of-the-insurer:-An-agreement-between-aclaima 22 andinsurer-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approval:-The-approval-or-awardof- 24 lump-sumpayment-by-the-department-is-the-exception-and-n 24 hump-sumpayment-by-the-department-is-the-exception-and-n 24 hump-sumpayment-by-the-department-is-the-exception-and-n 24 hump-sumpayment-by-the-department-is-the-exception-and-n 24 hump-sumpayment-by-the-department-is-the-exception-and-n 24 hump-sumpayment-by-the-department-is-the-exception-and-n 24 hump-sumpayment-by-the-department-is-the-exception-and-n 25 hump-sumpayment-by-the-department-is-the-exception-and-n 26 hump-sumpayment-by-the-department-is-the-exception-and-n 27 hump-sumpayment-by-the-department-is-the-exception-and-n 28 hump-sumpayment-by-the-department-is-the-exception-and-n 29 hump-sumpayment-by-the-department-is-the-exception-and-n 20 hump-sumpayment-by-the-department-is-the-exception-and-n 27 hump-sumpayment-by-the-department-is-the-exception-and-n 28 hump-sumpayment-by-the-department-is-the-exception-and-n 29 hump-sumpayment-by-the-department-is-the-exception-and-n 20 hump-sumpayment-by-the-department-is-t</pre>	4	<u> </u>
January-1988: 8 {b}Hospitalratespayable-byinsurers-for-calendary 9 year-1992-may-not-increase-more-than-the-percentage-increase 10 in-the-state's-average-weekly-wage-since-duly-ly-1987: 11 (c)Beginning-January-ly1993,themaximumhospita 12 rates-payable-by-insurers-may-not-be-increased-more-than-th 13 annualpercentageincreaseinthe-state's-average-weekly 14 wager" 15 Section-7:Section-39-71-741;-MCAy-is-amended-to-read 16 "39-71-741:Compromise-settlementsy-lump-sumpayment; 17 andlump-sumadvancepayments: 18 provided-for-in-this-chapter-may-be-convertedy-inwhole 19 inpartyinto-a-lump-sum-payment:-A-conversion-may-be-max 20 only-upon-written-application-by-the-injured-worker-with-ti 21 concurrence-of-the-insurer-An-agreement-between-aclaima 22 andinsurer-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approvalThe-approval-or-award-of- 24 lump-sumpayment-by-the-department-is-the-exception-and-n	5	January1719887throughBecember-317-19917-the-hospital
8 (b)Hospitalratespayable-byinsurers-for-calendary 9 year-1992-may_not-increase-more-than-the-percentage-increase 10 in-the-state's-average-weekly-wage-since-duly-ly-ly097- 11 (c)Beginning-danuary-ly-ly093ythemaximumhospita 12 rates-payable-by-insurers-may-not-be-increased-more-than-th 13 annualpercentageincreaseinthe-state's-average-weekly 14 wager" 15 Section-7rSection-39-71-741y-MCAy-is-amended-to-reade 16 "39-71-741rCompromise-settlementsy-lump-sumpayments 17 andlump-sumadvancepaymentsr 18 provided-for-in-this-chapter-may-be-convertedy-inwhole	6	rates-payable-by-insurers-must-be-limited-tothosesetin
9 year-1992-may-not-increase-more-than-the-percentage-increas 10 in-the-state's-average-weekly-wage-since-duly-ly-1987. 11 (c)Beginning-January-ly1993y-the-maximumhospital 12 rates-payable-by-insurers-may-not-be-increased-more-than-th 13 annualpercentageincreaseinthe-state's-average-weekly 14 wager" 15 Section-7rSection-39-71-741y-MCAy-is-amended-to-read 16 "39-71-741;Compromise-settlementsy-lump-sumpayments 17 andlump-sumadvancepaymentsy (1)-The-biweekly-paymentsy 18 provided-for-in-this-chapter-may-be-convertedy-inwhole 19 inpartyinto-a-lump-sum-payment:-A-conversion-may-be-max 20 only-upon-written-application-by-the-injured-worker-with-t 21 concurrence-of-the-insurer-An-agreement-between-aclaima 22 andinsurer-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approvalThe-approval-or-awardof- 24 lump-sumpayment-by-the-department-is-the-exception-and-n	7	January-1988-
10 in-the-state's-average-weekiy-wage-since-duly-ir-1987. 11 (c)Beginning-January-ir1993rthemaximumhospits 12 rates-payable-by-insurers-may-not-be-increased-more-than-the 13 annualpercentageincreaseinthe-state's-average-weeki 14 waget" 15 Section-7rSection-39-71-741r-MCAr-is-amended-to-read- 16 #39-71-741rCompromise-settlementsr-lump-sumpayments 17 andlump-sumadvancepaymentsr 18 provided-for-in-this-chapter-may-be-convertedr-in-whole 19 inpartrinto-a-lump-sum-paymentr-A-conversion-may-be-may- 20 only-upon-written-application-by-the-injured-worker-with-th 21 concurrence-of-the-insurer-An-agreement-between-aclaima 22 andinsurer-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approvalThe-approval-or-award-of- 24 lump-sumpayment-by-the-department-is-the-exception-and-n	8	<pre>{b}Hospitalratespayablebyinsurers-for-calendar</pre>
11 <u>fc}Beginning-January-1,1993,themaximumhospita</u> 12 <u>rates-payable-by-insurers-may-not-be-increased-more-than-th</u> 13 <u>annualpercentageincreasein-the-state's-average-week</u> 14 <u>wage</u> ." 15 Section-7Section-39-71-741,-MCA7-is-amended-to-read 16 "39-71-741Compromise-settlements7-lump-sumpayments 17 andlump-sumadvancepayments	9	year-1992-may-not-increase-more-than-the-percentage-increase
12 rates-payable-by-insurers-may-not-be-increased-more-than-the 13 annualpercentageincreaseinthe-state's-average-week; 14 waget" 15 Section-7Section-39-71-7417-MCA7-is-amended-to-read; 16 #39-71-741Compromise-settlements7-lump-sumpayment; 17 andlump-sumadvancepayments: 18 provided-for-in-this-chapter-may-be-converted7-inwhole 19 inpart7into-a-lump-sum-payment:-A-conversion-may-be-may- 20 only-upon-written-application-by-the-injured-worker-with-t 21 concurrence-of-the-insurer-An-agreement-between-aclaima 22 andinsurer-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approval-The-approval-or-award-of- 24 lump-sumpayment-by-the-department-is-the-exception-and-n	10	in-the-state-s-average-weekly-wage-since-July-17-1987-
13 annualpercentageincreaseinthe-state's-average-weeki 14 waget" 15 Section-7tSection-39-71-741t-MCAtris-amended-to-readed 16 #39-71-741tCompromise-settlementstrimp-sumpayments 17 andlump-sumadvancepaymentstrim(1)-The-biweekly-payments 18 provided-for-in-this-chapter-may-be-converted_to-readed-to-readed 19 inpartyinto-a-lump-sum-paymentt-A-conversion-may-be-may 20 only-upon-written-application-by-the-injured-worker-with-to 21 concurrence-of-the-insurett-An-agreement-between-aclaima 22 andinsuret-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approvalt-The-approval-or-award-of- 24 lump-sumpayment-by-the-department-is-the-exception-and-n	11	<pre>(c)Beginning-January-1,1993,themaximumhospital</pre>
14 wage:" 15 Section-7:Section-39-7:-74:;-MCA;-is-amended-to-read: 16 #39-7:-74::Compromise-settlements;-iump-sumpayments; 17 andlump-sumadvancepayments; 18 provided-for-in-this-chapter-may-be-converted;-inwhole 19 inpart;into-a-lump-sum-payment;-A-conversion-may-be-may 20 only-upon-written-application-by-the-injured-worker-with-t: 21 concurrence-of-the-insurer:-An-agreement-between-aclaima 22 andinsurer-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approval;-The-approval-or-award-of- 24 lump-sumpayment-by-the-department-is-the-exception-and-n	12	rates-payable-by-insurers-may-not-be-increased-more-than-the
15 Section-7Section-39-71-741,-MCA7-is-amended-to-read 16 #39-71-741Compromise-settlements7-lump-sumpayment; 17 andlump-sumadvancepayments	13	annualpercentageincreaseinthe-state's-average-weekly
16 #39-71-741Compromise-settlements7-lump-sumpayments andlump-sumadvancepayments. <u>(l)-The-biweekly-payments</u> provided-for-in-this-chapter-may-be-converted7-inwhole inpart7into-a-lump-sum-payment7-A-conversion-may-be-may only-upon-written-application-by-the-injured-worker-with-t concurrence-of-the-insurer7-An-agreement-between-aclaima andinsurer-for-a-partial-or-full-conversion-of-benefits- subject-to-department-approval-The-approval-or-award-of- lump-sumpayment-by-the-department-is-the-exception-and-n	14	waget"
17 andlump-sumadvancepayments: (1)-The-biweekly-payment 18 provided-for-in-this-chapter-may-be-converted;-inwhole 19 inpart;into-a-lump-sum-payment;-A-conversion-may-be-may 20 only-upon-written-application-by-the-injured-worker-with-th 21 concurrence-of-the-insure:-An-agreement-between-aclaima 22 andinsure:-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approval;-The-approval;-or-award-of- 24 lump-sumpayment-by-the-department-is-the-exception-and-n	15	Section-7Section-39-71-7417-MEA7-is-amended-to-read:
18 provided-for-in-this-chapter-may-be-converted;-inwhole 19 inpart;into-a-lump-sum-payment;-A-conversion-may-be-may 20 only-upon-written-application-by-the-injured-worker-with-time 21 concurrence-of-the-insurer;-An-agreement-between-aclaima 22 andinsurer-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approval;-The-approval-or-award-of- 24 lump-sumpayment-by-the-department-is-the-exception-and-n	16	#39-71-741Compromise-settlements7-lump-sumpayments7
19 inpartyinto-a-lump-sum-payment:-A-conversion-may-be-may 20 only-upon-written-application-by-the-injured-worker-with-t 21 concurrence-of-the-insurerAn-agreement-between-aclaima 22 andinsurer-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approvalThe-approval-or-award-of- 24 lump-sumpayment-by-the-department-is-the-exception-and-n	17	andlump-sumadvancepayments: <u>(l)-The-biweekly-payments</u>
20 <u>only-upon-written-application-by-the-injured-worker-with-t</u> 21 <u>concurrence-of-the-insurer-An-agreement-between-aclaima</u> 22 <u>andinsurer-for-a-partial-or-full-conversion-of-benefits-</u> 23 <u>subject-to-department-approvalThe-approval-or-awardof-</u> 24 <u>lump-sumpayment-by-the-department-is-the-exception-and-n</u>	18	provided-for-in-this-chapter-may-be-converted;-inwholeor
21 concurrence-of-the-insurer-An-agreement-between-aclaima 22 andinsurer-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approval-The-approval-or-award-of- 24 lump-sumpayment-by-the-department-is-the-exception-and-n	19	inpartyinto-a-lump-sum-paymentA-conversion-may-be-made
22 andinsurer-for-a-partial-or-full-conversion-of-benefits- 23 subject-to-department-approvalThe-approval-or-award-of- 24 lump-sumpayment-by-the-department-is-the-exception-and-n	20	only-upon-written-application-by-the-injured-worker-with-the
23 subject-to-department-approvalThe-approval-or-awardof- 24 lump-sumpayment-by-the-department-is-the-exception-and-n	21	concurrence-of-the-insurer-An-agreement-between-aclaimant
24 lump-sumpayment-by-the-department-is-the-exception-and-n	22	andinsurer-for-a-partial-or-full-conversion-of-benefits-is
	23	subject-to-department-approvalThe-approval-or-award-of-a
25 the-rule-	24	lump-sumpayment-by-the-department-is-the-exception-and-not
	25	the-rule-

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1	<pre>tl)<u>t2)</u>taj-Benefita-may-be-converted-in-whole-to-a-lump</pre>					
2	Sum:					
3	ti)if-a-claimant-and-an-insurerdisputetheinitial					
4	compensability-of-an-injury;-and					
5	(ii)-if-the-claimant-and-insurer-agree-to-a-settlement-					
6	(b)Theagreementissubject-to-department-approval-					
7	Thedepartmentmaydisapproveanagreementunderthis					
8	section <u>subsection-{2}</u> -only-if-thereisnotareasonable					
9	dispute-over-compensability.					
10	<pre>fc}Uponapprovalytheagreementconstitutesa</pre>					
11	compromise-and-release-settlement-and-may-not-be-reopened-by					
12	the-department-or-by-any-court-					
13	(d)The-partiesfailure-to-reach-an-agreement-is-not-a					
14	dispute-over-which-a-mediator-or-theworkerscompensation					
15	court-has-jurisdiction.					
16	<pre>t2tt3ttat-If-an-insurer-has-accepted-initial-liability</pre>					
17	foraninjury;permanent-total-and-permanent-partial-wage					
18	supplement-benefits-may-be-converted-in-whole-to-alump-sum					
19	payment: Alump-sum-conversion-may-not-be-greater-than-the					
20	present-value-of-the-estimatedfuturebenefitsusingthe					
21	rate-prescribed-in-subsection-(7).					
22	tb;Theconversionmaybemadeonly-upon-agreement					
23	between-a-claimant-and-an-insurer-					
24	<pre>(c)The-agreement-is-subjecttodepartmentapproval;</pre>					
25	Thedepartmentmayapprove-an-agreement-if: disapprove-an					
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1	agreement-under-this-subsection-(3)-onlyifitdetermines
2	thatthesettlement-amount-is-inadequateif-the-agreement
3	is-disapprovedy-the-department-must-set-forth-in-detailthe
4	reasons-for-the-disapproval.
5	<pre>titthere-is-a-reasonable-dispute-concerning-the-amount</pre>
6	of-the-insurer's-future-liability-or-benefits;-or
7	tit-theamount-of-the-insurer's-projected-liability-is
8	reasonablycertainandthesettlementamountisnot
9	substantiallylessthan-the-present-value-of-the-insurer's
10	liability.
11	td}The-parties1-failure-to-reach-agreementisnota
12	disputeoverwhich-a-mediator-or-the-workersi-compensation
13	court-has-jurisdiction-
14	(c) <u>(c)</u> Uponapproval;theagreementconstitutesa
15	compromise-and-release-settlement-and-may-not-be-reopened-by
16	the-department-or-by-any-court.
17	<u>(4){a}-Ifaninsurerhas-accepted-initial-liability</u>
18	for-an-injury,-permanent-total-wage-supplement-benefitsmay
19	beconvertedinwholetoa-lump-sum-paymontr-A-lump-sum
20	conversion-may-not-be-greater-than-the-present-value-ofthe
21	estimatedfuturebenefitsusingtherateprescribed-in
22	subsection-+7)-
23	tb)The-department-may-approve-an-agreement-underthis
24	subsectionif-the-parties-demonstrate-that-the-claimant-has

25 <u>financial-need-that:</u>

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1	<u>ti}relates-to:</u>
2	{A}the-necessities-of-life;
3	{B}an-accumulationofdebtincurredpriortothe
4	injury7-or
5	<u>te;aself-employmentventurethatisconsidered</u>
6	feasible-under-criteria-established-by-the-department;-and
7	<u>(ii)-arises-subsequent-to-the-date-of-injuryorarises</u>
8	because-of-reduced-income-as-a-result-of-the-injury-
9	c)Alumpsumconversionmsynotbe-given-for-the
10	purpose-of-purchasing-an-annuity-or-investing-in-real-estate
11	for-business-purposes-or-for-any-type-of-passive-investment.
12	<pre>(d)Uponapproval;theagreementconstitutesa</pre>
13	compromise-and-release-settlement-and-may-not-be-reopened-by
14	the-department.
15	t3)<u>t5)</u>M(a)-Permanentpartialwagesupplement-benefits
16	may-be-converted-in-part-to-a-lump-sum-advance.
17	<pre>tb)The-conversion-maybemadeonlyuponagreement</pre>
18	between-a-claimant-and-an-insurer-
19	(c) The-agreement-is-subject-to-department-approval;
20	<u>tb</u> Thedepartment-may-approve-an-agreement <u>under-this</u>
21	section if-the-parties-demonstratethattheclaimanthas
22	financial-need-that:
23	<pre>titrelates-to-the-necessities-of-life-or-relates-to-an</pre>
24	accumulation-of-debt-incurred-prior-to-injury;-and
25	(ii)-arisessubsequentto-the-date-of-injury-or-arises

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1	because-of-reduced-income-as-a-result-of-the-injury:
2	(d)The-parties'-failure-to-reach-an-agreement-is-not-a
3	dispute-over-which-a-mediator-or-theworkerscompensation
4	court-has-jurisdiction-
5	<pre>{4}<u>f6</u>Permanenttotaldisabilitybenefitsmaybe</pre>
6	converted in-part to-a-lump-sum-advance. Thetotalofall
7	<pre>tump-sumadvancepaymentstoaclaimantmay-not-exceed</pre>
8	\$287888A-conversion-may-bemadeonlyuponthewritten
9	applicationoftheinjured-worker-with-the-concurrence-of
10	the-insurerApproval-of-the-lump-sum-advance-paymentrests
11	inthediscretion-of-the-department,-The-approval-or-award
12	of-a-lump-sum-advance-payment-bythedepartmentorcourt
13	mustbetheexceptionIt-may-be-given The-department-may
14	approve-an-agreementunderthissubsection onlyifthe
15	worker-has-demonstrated-financial-need-that-
16	(a)relates-to:
17	ti)the-necessities-of-life;
18	tii)-anaccumulationofdebtincurredpriorto-the
19	injury;-or
20	(iii)-aself-employmentventure assetforthin
21	39-71-1026 thatisconsideredfeasibleundercriteria
22	established-by-the-department; - and
23	(b)arises-subsequent-to-the-date-of-injuryorarises
24	because-of-reduced-income-as-a-result-of-the-injury-
25	(5) <u>(7)</u> ta)-Aninsurermay-recoup-any-lump-sum-advance

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1 amortized--at--the--rate--established--by--the---department; 2 prorated---biweekly--over--the--projected--duration--of--the 3 compensation-period-4 (b)--The-rate-adopted-by-the-department-must-be-based-on 5 the-average-rate-for-United-States-10-year-treasury-bills-in 6 the-previous-calendar-yeary-rounded--to--the--nearest--whole 7 number-8 (c)--if---the---projected--compensation--period--is--the 9 claimant+s-lifetime;-the-life-expectancy-must-be--determined 10 by--using--the--most--recent--table--of--life--expectancy-as 11 published-by-the-United-States-national--center--for--health

12 statistics.

13 (6)(8)--The Subject-to-other-provisons-of-this-section; 14 the-department-has-full-powery-authorityy--and--jurisdiction 15 to--allowy--approvey--or-condition-compromise-settlements-or 16 tump-sum-advances-agreed-to-by--workers--and--insurers---All 17 such--compromise--settlements-and-lump-sum-payments-are-void 18 Without-the-approval-of--the--department---Approval--by--the 19 department-must-be-in-writing--The-department-shall-directly 20 notify-a-claimant-of-a-department-order-approving-or-denying 21 a-claimant-s-compromise-or-lump-sum-payment-

(7)<u>(9)</u>--Subject--to--39-71-24017--a--dispute--between--a
 claimant-and-an-insurer-regarding-the-conversion-of-biweekly
 payments--into--a-lump-sum-advance-under-subsection-(4) <u>lump</u>
 <u>sum</u> is-considered-a-dispute7-for-which-a--mediator--and--the

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1 workers¹--compensation--court--have--jurisdiction--to-make-a
2 determination--If-an-insurer--and--a--claimant--agree--to--a
3 compromise--and-release-settlement-or-a-lump-sum-advance-but
4 the-department-disapproves-the-agreementy--the--parties--may
5 request--the--workers¹--compensation--court--to--review--the
6 department¹s-decision¹

7 Section 6. Section 39-71-2311, MCA, is amended to read: R *39-71-2311. Intent and purpose of plan. It is the 9 intent and purpose of the state fund to allow employers the 10 option to insure their liability for workers' compensation 11 and occupational disease coverage with a mutual insurance 12 fund. The state fund is required to insure any employer in 13 this state requesting coverage, and it may not refuse 14 coverage for an employer unless an assigned risk plan 15 established under 39-71-431 is in effect. The state fund 16 must be neither more nor less than self-supporting. Premium 17 rates must be set at least annually at a level sufficient to 18 ensure the adequate funding of the insurance program, 19 including the costs of administration, benefits, and 20 adequate reserves, during and at the end of the period for 21 which the rates will be in effect. In determining premium 22 rates, the state fund shall make every effort to adequately 23 predict future costs. When the costs of a factor influencing 24 rates are unclear and difficult to predict, the state fund 25 shall use a prediction calculated to be more than likely to

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1 cover those costs rather than less than likely to cover 2 those costs. Unnecessary surpluses that are created by the 3 imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor 4 5 or factors may be refunded by the declaration of a dividend 6 as provided in this part. For the purpose of keeping the 7 state fund solvent, it must implement variable pricing 8 levels within individual rate classifications to reward an 9 employer with a good safety record and penalize an employer 10 with a poor safety record. An employer's payroll reporting 11 and premium history and other relevant factors may also be 12 considered in implementing variable pricing levels."

Section 7. Section 39-71-2339, MCA, is amended to read: 13 14 "39-71-2339. Cancellation of coverage -- thirty days' 15 notice required. The state fund may cancel an employer's right--to--operate--under--plan--No---3--of---the---Workers+ 16 17 Compensation -- Act coverage under this part for failure to 18 report payroll or pay the premiums due or for another cause 19 provided in the insurance policy. When-the--state-fund 20 cancels-an-employer's-coverage;-it-shall-notify-the-employer 21 of-its-intent-to-cancel-the-employer-at-least-30-days-before 22 the-cancellation-becomes-effective- Cancellation may take 23 effect only by written notice to the named insured at least 24 30 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by 25

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1	failure of the employer to submit payroll reports or pay a			
2	premium within 30 days after the due date. The state fund			
3	shall notify the department of the names and effective dates			
4	of all policies cancelled. However, the policy terminates on			
5	the effective date of a replacement or succeeding insurance			
6	policy issued to the insured. Nothing in this section			
7	prevents the state fund from canceling an insurance policy			
8	before a replacement policy is issued to the insured. After			
9	the cancellation date, the employer has the same status as			
10	an employer who is not enrolled under the Workers'			
11	Compensation Act unless a replacement or succeeding			
12	insurance policy has been issued."			
13	Section-10Section-39-72-601-MEAis-amended-to-read-			
14	#39-72-601:Medicalpanel:(1)Thedepartment-shall			
15	develop-a-list-of-physicians-to-serve-ontheoccupational			
16	diseasemedicalpanel;Thelistmayinclude-physicians			
17	nominated-by-the-board-of-medical-examinersA-physicianon			
18	thepanelmustbecertified-by-his-specialty-board-or-be			
19	eligible-for-certification-in-the-specialty-area-appropriate			
20	to-the-claimant's-condition-in-relation-to-this-chapter.			
21	(2)Phe-department <u>or-an-insurer</u> shall-selectapanel			
22	physician-to-examine-a-claimant;-as-required;-The-department			
23	shallappointasrequired-one-member-of-the-panel-to-be			
24	the-chairman."			
25	Section-llSection-39~72-6827-MEA7-is-amended-to-read:			

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2	formedicalexaminationwheninsurerhasnotaccepted			
3	liability(l)An-insurer-may-accept-liability-for-a-claim			
4	under-this-chapter-based-on-information-submitted-to-it-by-a			
5	claimant.			
6	t2;in-order-to-determine-the-compensability-ofclaims			
7	underthischapterwhenaninsurerhasnotaccepted			
8	liability; <u>or-questions-liability-or-in-ordertodetermine</u>			
9	whetherthe-claimant-is-totally-disabled-or-to-what-extent7			
10	if-anyy-benefits-must-be-reduced-pursuant-to-39-72-7067 the			
11	following-procedure-must-be-followed:			
12	(a)Thedepartment oraninsurer-with-notice-to-the			
13	department shall-direct-the-claimanttoamemberofthe			
14	medicalpanelforanexaminationThe-panel-member-shall			
15	conduct-an-examination-to-determine-whether-the-claimantis			
16	totally-disabledandissufferingfroman-occupational			
17	disease-The-panel-membershallsubmitareportofhis			
18	findings-to-the-department.			
19	(b) Eithertheclaimant-or-the-insurer-may;-within-29			
20	days-after-the-receipt-of-thereportbythefirstpanel			
21	member7requestthatthe-claimant-be-examined-by-a-second			
22	panel-member If-asecondexaminationisrequested, the			
23	department or an insurer with notice to the department shall			

#39-72-602---Insurer-may-accept-liability-----procedure

1

24

conduct-an-examination-to-determine-whether-he-believes--the 25

direct--the--claimant--to--a--second--panel-member-who-shall

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1	claimantistotallydisabledandissufferingfrom-an
2	occupational-disease and-to-what-extent;ifany;benefits
3	<u>mustbereducedpursuantto39-72-706</u> The-panel-member
4	shall-submit-a-report-of-hisfindingstothedepartment-
5	When-a-second-examination-has-been-requested;-the-reports-of
6	theexaminations-shall-be-submitted-to-three-members-of-the
7	medical-panel-for-reviewAmedicalpanelmemberorthe
8	panelmayin-order-to-assist-the-panel-member-or-the-panel
9	inreachingaconclusion7consultwiththeclaimant's
10	attending-physician-The-three-panel-members-shallissuea
11	reportconcerningtheelaimant-sphysicalcondition-and
12	whether-theclaimantissufferingfromanoccupational
13	disease.
14	<pre>(c)Ifasecondexaminationisnotrequested;-the</pre>
15	department-shall-issue-itsorderdeterminingwhetherthe
16	claimantis-entitled-to-occupational-disease-benefits-based
17	on-the-report-of-the-first-examining-physicianIf-asecond
18	examinationisrequested;thedepartment-shall-issue-its
19	order-based-on-thereportofthethreemembersofthe
20	medical-panel.
21	fd}Forthepurposeofreviewing-the-reports-of-the
22	examinations-and-issuing-the-report-under-subsection-(2)(b);
23	the-three-members-of-the-medicalpanelshallbethetwo
24	members-of-the-panel-who-examined-the-claimant-and-the-panel
25	chairmanIfthe-panel-chairman-has-examined-the-claimant-

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- 1 the-panel-chairman--shall--appoint--another--member--of--the
- 2 medical-panel-to-be-the-third-member-
- 3 NEW SECTION. Section 8. Repealer. Section 39-71-2338,
- 4 MCA, is repealed.

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- 5 NEW SECTION. Section 9. Effective date. [This act] is
- 6 effective July 1, 1991.

-End-

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1	SENATE BILL NO. 383			
2	INTRODUCED BY WEEDING, WILLIAMS			
3	BY REQUEST OF THE STATE FUND			
4				
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE CERTAIN			
6	PROVISIONS OF THE WORKERS' COMPENSATION ACT; AMENDING			
7	SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-414,			
8	39-71-431, 39-71-704,-39-71-741, 39-71-2311, <u>AND</u> 39-71-2339,			
9				
10	39-71-2338, MCA; AND PROVIDING AN EFFECTIVE DATE."			
11				
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:			
13	Section 1. Section 39-71-116, MCA, is amended to read:			
14	*39-71-116. Definitions. Unless the context otherwise			
15	requires, words and phrases employed in this chapter have			
16	the following meanings:			
17	(1) "Administer and pay" includes all actions by the			
18	state fund under the Workers' Compensation Act and the			
19	Occupational Disease Act of Montana necessary to the			
20	investigation, review, and settlement of claims; payment of			
21	benefits; setting of reserves; furnishing of services and			
22	facilities; and utilization of actuarial, audit, accounting,			
23	vocational rehabilitation, and legal services.			
24	(2) "Average weekly wage" means the mean weekly			

25 earnings of all employees under covered employment, as

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

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THIRD READING

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and a second second

1	SENATE BILL NO. 383	1	defined and established annually by the Montana department
2	INTRODUCED BY WEEDING, WILLIAMS	_	
	·	2	of labor and industry. It is established at the nearest
3	BY REQUEST OF THE STATE FUND	3	whole dollar number and must be adopted by the department
4		4	prior to July 1 of each year.
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE CERTAIN	5	<pre>(3) "Beneficiary" means:</pre>
6	PROVISIONS OF THE WORKERS' COMPENSATION ACT; AMENDING	6	(a) a surviving spouse living with or legally entitled
7	SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-414,	7	to be supported by the deceased at the time of injury;
8	39-71-431, 39-71-704,-39-71-741, 39-71-2311, AND 39-71-2339,	8	(b) an unmarried child under the age of 18 years;
9	39-72-6017AND39-72-6027 MCA: AND REPEALING SECTION	9	(c) an unmarried child under the age of 22 years who is
10	39-71-2338, MCA; AND PROVIDING AN EFFECTIVE DATE."	10	a full-time student in an accredited school or is enrolled
11		11	in an accredited apprenticeship program;
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	12	(d) an invalid child over the age of 18 years who is
13	Section 1. Section 39-71-116, MCA, is amended to read:	13	dependent upon the decedent for support at the time of
14	39-71-116. Definitions. Unless the context otherwise	14	injury;
15	requires, words and phrases employed in this chapter have	15	(e) a parent who is dependent upon the decedent for
16	the following meanings:	16	support at the time of the injury (however, such a parent is
17	(1) "Administer and pay" includes all actions by the	17	a beneficiary only when no beneficiary, as defined in
18	state fund under the Workers' Compensation Act and the	18	<pre>subsections (3)(a) through (3)(d) of this section, exists);</pre>
19	Occupational Disease Act of Montana necessary to the	19	and
20	investigation, review, and settlement of claims; payment of	20	(f) a brother or sister under the age of 18 years if
21	benefits; setting of reserves; furnishing of services and	21	dependent upon the decedent for support at the time of the
22	facilities; and utilization of actuarial, audit, accounting,	22	injury (however, such a brother or sister is a beneficiary
23	vocational rehabilitation, and legal services.	23	only until the age of 18 years and only when no beneficiary,
24	(2) "Average weekly wage" means the mean weekly	24	as defined in subsections (3)(a) through (3)(e) of this
25	earnings of all employees under covered employment, as	25	section, exists).
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REFERENCE BILL

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

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

6 (6) "Days" means calendar days, unless otherwise7 specified.

8 (7) "Department" means the department of labor and9 industry.

10 (8) "Fiscal year" means the period of time between July11 1 and the succeeding June 30.

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

17 (10) "Invalid" means one who is physically or mentally18 incapacitated.

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

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

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

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

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

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

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

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

4 (17) The "plant of the employer" includes the place of 5 business of a third person while the employer has access to 6 or control over such place of business for the purpose of 7 carrying on his usual trade, business, or occupation.

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

12 (19) "Reasonably safe place to work" means that the 13 place of employment has been made as free from danger to the 14 life or safety of the employee as the nature of the 15 employment will reasonably permit.

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

(21) "Temporary service contractor" means any person,
firm, association, or corporation conducting business that
employs individuals directly for the purpose of furnishing
the services of those individuals on a part-time or
temporary basis to others.

25 (21)(22) "Temporary total disability" means a condition

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resulting from an injury as defined in this chapter that 1 results in total loss of wages and exists until the injured 2 3 worker reaches maximum healing. (23) "Temporary worker" means a worker whose services 4 5 are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet 6 7 an emergency or short-term workload. (22)(24) "Year", unless otherwise specified, means 8 9 calendar year." Section 2. Section 39-71-117, MCA, is amended to read: 10 "39-71-117. Employer defined. (1) "Employer" means: 11 fl;(a) the state and each county, city and county, city 12 13 school district, irrigation district, all other districts 14 established by law, and all public corporations and 15 guasi-public corporations and public agencies therein and 16 every person, every prime contractor, and every firm, 17 voluntary association, and private corporation, including any public service corporation and including an independent 18 19 contractor who has any person in service under any 20 appointment or contract of hire, expressed or implied, oral 21 or written, and the legal representative of any deceased 22 employer or the receiver or trustee thereof; and 23 (2)(b) any association, corporation, or organization 24 that seeks permission and meets the requirements set by the 25 department by rule for a group of individual employers to

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1	operate as self-insured under plan No. 1 of this chapter,
2	(2) A temporary service contractor is the employer of a
3	temporary worker for premium and loss experience purposes.
4	(3) An employer defined in subsection (1) who utilizes
5	the services of a temporary worker furnished by another
6	person, association, contractor, firm, or corporation, other
7	than a temporary service contractor, is presumed to be the
8	employer for workers' compensation premium and loss
9	experience purposes for work performed by the worker. The
10	presumption may be rebutted by substantial credible evidence
11	of the following:
12	(a) the person, association, contractor, firm, or
13	corporation, other than a temporary service contractor,
14	furnishing the services of a temporary worker to another
15	retains control over all aspects of the work performed by
16	the worker, both at the inception of employment and during
17	all phases of the work; and
18	(b) the person, association, contractor, firm, or
19	corporation, other than a temporary service contractor,
20	furnishing the services of a temporary worker to another has
21	obtained workers' compensation insurance in Montana both at
22	the inception of employment and during all phases of the
23	work perfomed for the worker.
24	(4) Notwithstanding the provisions of subsection (3), a
25	common or contract motor carrier doing business in this

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1	state who utilizes drivers in this state is considered the
2	employer, is liable for workers' compensation premiums, and
3	is subject to loss experience rating in this state unless:
4	(a) the driver in this state is certified as an
5	independent contractor as provided in 39-71-401(3); or
6	(b) the person, association, contractor, firm, or
7	corporation furnishing drivers in this state to a motor
8	carrier has obtained workers' compensation insurance on the
9	drivers in Montana both at the inception of employment and
10	during all phases of the work performed."
11	Section 3. Section 39-71-118, MCA, is amended to read:
12	"39-71-118. Employee, worker, and workman defined. (1)
13	The terms "employee", "workman", or "worker" mean:
14	(a) each person in this state, including a contractor
15	other than an independent contractor, who is in the service
16	of an employer, as defined by 39-71-117, under any
17	appointment or contract of hire, expressed or implied, oral
18	or written. The terms include aliens and minors, whether
19	lawfully or unlawfully employed, and all of the elected and
20	appointed paid public officers and officers and members of
21	boards of directors of quasi-public or private corporations
22	while rendering actual service for such corporations for
23	pay. Casual employees as defined by 39-71-116 are included
24	as employees if they are not otherwise covered by workers'
25	compensation and if an employer has elected to be bound by

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1 the provisions of the compensation law for these casual 2 employments, as provided in 39-71-401(2). Household or 3 domestic service is excluded.

4 (b) a recipient of general relief who is performing 5 work for a county of this state under the provisions of 6 53-3-303 through 53-3-305 and any juvenile performing work 7 under authorization of a district court judge in a 8 delinguency prevention or rehabilitation program;

9 receiving on-the-job vocational (C) a person 10 rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not 11 12 under an appointment or contract of hire with an employer as 13 defined in this chapter and whether or not receiving payment 14 from a third party. However, this subsection does not apply to students enrolled in vocational training programs as 15 16 outlined above while they are on the premises of a public 17 school or community college.

18 (d) students enrolled and in attendance in programs of 19 vocational-technical education at designated 20 vocational-technical centers; or

21 (e) an airman or other person employed as a volunteer 22 under 67-2-105.

23 (2) (a) If the employer is a partnership or sole 24 proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of 25

1 such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship 2 3 business.

4 (b) In the event of such election, the employer must serve upon the employer's insurer written notice naming the 5 6 partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the 7 8 amount of wages to be reported, subject to the limitations 9 in subsection (2)(d). A partner or sole proprietor is not 10 considered an employee within this chapter until such notice 11 has been given.

12 (c) A change in elected wages must be in writing and is 13 effective at the start of the next quarter following 14 notification.

(d) All weekly compensation benefits must be based on 15 16 the amount of elected wages, subject to the minimum and 17 maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for 18 19 weekly compensation benefits, the electing employer may 20 elect not less than \$900 a month and not more than 1 1/2 21 times the average weekly wage as defined in this chapter.

22 (3) An employee, workman, or worker in this state whose 23 services are furnished by a person, association, contractor, 24 firm, or corporation, other than a temporary service 25 contractor, to an employer as defined in section 39-71-117

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is presumed to be under the control and employment of the
 employer. This presumption may be rebutted as provided in
 39-71-117(4).

4 (4) For purposes of this section, an "employee,
5 workman, or worker in this state" means:

6 (a) a resident of Montana who is employed by an
7 employer and whose employment duties are primarily carried
8 out or controlled within this state; or

9 (b) a nonresident of Montana whose principal employment
 10 duties are conducted within this state on a regular basis
 11 for an employer."

Section 4. Section 39-71-414, MCA, is amended to read: 12 13 *39-71-414. Subrogation. (1) If an action is prosecuted 14 as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled 15 to subrogation for all compensation and benefits paid or to 16 17 be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first men on the claim, judgment, 18 19 or recovery.

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

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

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

5 (d) If the injured employee or the employee's personal 6 representative institutes the action, the employee is 7 entitled to at least one-third of the amount recovered by 8 judgment or settlement less a proportionate share of 9 reasonable costs, including attorneys' fees, if the amount 10 of recovery is insufficient to provide the employee with 11 that amount after payment of subrogation.

(3) If an injured employee refuses or fails to 12 institute the third party action within 1 year from the date 13 of injury, the insurer may institute the action in the name 14 of the employee and for the employee's benefit or that of 15 the employee's personal representative. If the insurer 16 institutes the action, it shall pay to the employee any 17 amount received by judgment or settlement which is in excess 18 of the amounts paid or to be paid under the Workers' 19 Compensation Act after the insurer's reasonable costs, 20 including attorneys' fees for prosecuting the action, have 21 been deducted from the recovery. 22

23 (4) An insurer may enter into compromise agreements in24 settlement of subrogation rights.

25 (5) If--the--amount--of-compensation-and-other-benefits

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1	payable-under-the-Workers1-Compensation-Acthavenotbeen
2	fullydeterminedatthe-time-the-employee;-the-employee's
3	heirs-orpersonalrepresentatives;ortheinsurerhave
4	settledinanymannerthe-action-as-provided-for-in-this
5	section,-the-department-shall-determine-whatproportionof
6	thesettlementshallbeallocated-under-subrogation+-The
7	department's-determination-may-be-appealed-totheworkers'
8	compensation-judge Regardless of whether the amount of
9	compensation and other benefits payable under the Workers'
10	Compensation Act have been fully determined, the insurer and
11	the claimant's heirs or personal representative may
12	stipulate the proportion of the third party settlement to be
13	allocated under subrogation. Upon review and approval by the
14	department, the agreement constitutes a compromise
15	settlement of the issue of subrogation and may not be
16	reopened by the department.
17	(6) (a) The insurer is entitled to full subrogation
18	rights under this section, even though the claimant is able
19	to demonstrate damages in excess of the workers'
20	compensation benefits and the third-party recovery combined.
21	The insurer may subrogate against the entire settlement or
22	award of a third party claim brought by the claimant or his
23	personal representative, without regard to the nature of the

25 (b) If no survival action exists and the parties reach

24

damages.

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a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is

5 a party to the settlement agreement."

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6 Section 5. Section 39-71-431, MCA, is amended to read: 7 *39-71-431. Assigned risk plan. (1) Following the date 8 on which the provisions of 39-71-2311 through 39-71-23207 9 and 39-71-23377-and-39-71-2338 are implemented but no later 10 than December 31, 1990, the commissioner of the department 11 of labor and industry may order the establishment of and 12 administer a plan to equitably apportion among the state 13 fund, plan No. 3, and private insurers, plan No. 2, the 14 coverage required by this chapter for employers who are unable to procure coverage through ordinary methods. In 15 16 determining whether to order an assigned risk plan to be 17 established, the commissioner shall consider the effect a 18 plan would have on the availability of workers' compensation 19 insurance and the need to provide competitive workers' 20 compensation premium rates for employers in this state. If 21 the commissioner orders the establishment of an assigned 22 risk plan, it may not take effect until at least 6 months 23 following the commissioner's order creating the plan. 24 (2) All plan No. 2 insurers and the state fund shall

25 subscribe to and participate in the assigned risk plan.

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1

1 (3) If an insurer refuses to accept its equitable 2 apportionment under the assigned risk plan, the commissioner 3 of insurance may suspend or revoke the insurer's authority to issue workers' compensation insurance policies in this 4 5 state.

6 (4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to 7 8 insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state 9 10 agency.

11 (5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by 12 13 this chapter by the state fund, plan No. 3, and by at least 14 two private insurers, plan No. 2, may be assigned coverage 15 by the commissioner under the assigned risk plan pursuant to 16 the procedure established by the commissioner for the 17 equitable apportionment of coverage."

18 Section-6---Section-39-71-764--MEA--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;

fa)--After-the-happening--of--the--injury7--the--insurer 24 shall--furnishy--without--limitation-as-to-length-of-time-or 25

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2	surgeon ₇ reasonablehospitalservicesand-medicines-when
3	needed;-and-such-other-treatment-as-may-be-approvedbythe
4	department-for-the-injuries-sustained;
5	<pre>{b}Theinsurershallreplace-or-repair-prescription</pre>
6	eyeglasses;prescriptioncontactlenses;prescription
7	hearingaidsanddenturesthat-are-damaged-or-lost-as-a
8	result-of-an-injury;-as-defined-in-39-71-119;-arising-out-of
9	and-in-the-course-of-employment-
10	{c}The-insurer-shall-reimburse-a-worker-for-reasonable

dollar--amount---reasonable--services--by--a--physician---or

11 travel-expenses-incurred-in-travel-to-a-medical-provider-for 12 treatment-of-an-injury-pursuant--to--rules--adopted--by--the 13 department --- Reimbursement -- must -be-at-the-rates-allowed-for 14 reimbursement-of-travel-by-state-employees-

15 (2)--A--relative--value--fee---schedule---for---medical; 16 chiropractic--and-paramedical-services-provided-for-in-this 17 chaptery-excluding-hospital-servicesy--must--be--established 18 annually--by--the-department-and-become-effective-in-January 19 of-each-year--The-maximum-fee-schedule-must-be-adopted-as--a 20 relative--value--fee--schedule-of-medical;-chiropractic;-and 21 paramedical-services,--with--unit--values--to--indicate--the 22 relative--relationship--within-each-grouping-of-specialties-23 Medical-fees-must-be-based-on-the-median-fees-as--billed--to 24 the-state-fund-during-the-year-preceding-the-adoption-of-the 25 schedule_--The--state--fund--shall-report-fees-billed-in-the

-16-

1	form-and-atthetimesrequiredbythedepartment- <u>The</u>
2	departmentmay-require-insurers-to-submit-information-to-be
3	used-in-establishingthescheduler Thedepartmentshall
4	adoptrulesestablishingrelativeunit-values7-groups-of
5	specialtiesthe-procedures-insurers-mustusetopayfor
6	servicesunderthe-schedule;-and-the-method-of-determining
7	the-median-of-billedmedicalfeesTheserulesmustbe
8	modeled-on-the-1974-revision-of-the-1969-Ealifornia-Relative
9	Value-Studies:
10	<pre>(3)BeginningJanuary1719007the-department-shall</pre>
11	establish-rates-forhospitalservicesnecessaryforthe
12	treatmentofinjuredworkersApprovedrates-must-be-in
13	effect-for-a-period-of-12-months-from-the-date-ofapproval-
14	The-department-may-coordinate-this-ratesetting-function-with
15	other-public-agencies-that-have-similar-responsibilities:
16	(4) <u>(a)</u> -Notwithstandingsubsection(2),beginning
17	January-1;-1988;-through-December-31;-1991;-the-maximum-fees
18	reimbursementfor-medical-services payable-by-insurers-must
19	be-limited-to-the-relative-value-fee-schedule-established-in
20	January-1987-
21	<pre>(b)Reimbursement-for-medical-services-by-insurersfor</pre>
22	calendar-year-1992-may-not-increase-more-than-the-percentage
23	increaseinthestate's-average-weekly-wage-since-July-17
24	±987-
25	te)BeginningJanuary1;1993;themaximum

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1	reimbursementformedicalservices-by-insurers-may-not-be
2	increased-more-than-the-annual-percentageincreaseinthe
3	state's-weekly-wage;
4	<u>(5){a}</u> -Notwithstandingsubsection (3) beginning
5	January1719887throughBecember-317-19917-the-hospital
6	rates-payable-by-insurers-must-be-limited-tothosesetin
7	January-1988.
8	<pre>(b)Hospitalratespayablebyinsurers-for-calendar</pre>
9	<u>year-1992-may-not-increase-more-than-the-percentage-increase</u>
10	in-the-state's-average-weekly-wage-since-July-17-1907-
11	<pre>(c)Beginning-January-1;1993;themaximumhospital</pre>
1 2	rates-payable-by-insurers-may-not-be-increased-more-than-the
13	annualpercentageincreaseinthe-state's-average-weekly
14	<u>Mage</u> [*]
15	Section-77Section-39-71-7417-MCA7-is-amended-to-read:
16	#39-71-741Compromise-settlements;-lump-sumpayments;
17	andlump-sumadvancepayments- (1)-The-biweekly-payments
18	provided-for-in-this-chapter-may-be-converted;-inwholeor
19	inpartyinto-a-lump-sum-paymentA-conversion-may-be-made
20	only-upon-written-application-by-the-injured-worker-with-the
21	concurrence-of-the-insurer-An-agreement-between-aclaimant
22	andinsurer-for-a-partial-or-full-conversion-of-benefits-is
23	subject-to-department-approvalThe-approval-or-awardofa
24	<pre>tump-sumpayment-by-the-department-is-the-exception-and-not</pre>
25	the-rule-

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1	<pre>tlj<u>tl</u>ta)-Benefits-may-be-converted-in-whole-to-a-lump</pre>
2	Suat
3	(i)if-a-claimant-and-an-insurerdisputetheinitial
4	compensability-of-an-injury;-and
5	tii)-if-the-claimant-and-insurer-agree-to-a-settlement-
6	<pre>(b)Theagreementissubject-to-department-approval;</pre>
7	Phedepartmentmaydisapproveanagreementunderthis
8	section <u>subsection-f2}</u> -only-if-thereisnotareasonable
9	dispute-over-compensability-
10	<pre>fc}Uponapproval;theagreementconstitutesa</pre>
11	compromise-and-release-settlement-and-may-not-be-reopened-by
12	the-department-or-by-any-court-
13	<pre>td The parties - failure - to - reach - an - agreement - is - not - a</pre>
14	dispute-over-which-a-mediator-or-theworkers1compensation
15	court-has-jurisdiction-
16	{2} <u>{3}</u> {a}-If-an-insurer-has-accepted-initial-liability
17	foraninjurypermanent-total-and-permanent-partial-wage
18	<pre>supplement-benefits-may-be-converced-in-whole-to-alump-sum</pre>
19	payment: Alump-sum-conversion-may-not-be-greater-then-the
20	present-value-of-the-estimatedfuturebenefitsusingthe
21	rate-prescribed-in-subsection-(7)+
22	tb;Theconversionmaybemadeonly-upon-agreement
23	between-a-claimant-and-an-insurer-
24	<pre>tc}The-agreement-is-subjecttodepartmentapproval;</pre>
25	Thedepartmentmayapprove-an-agreement-if: disapprove-an

-19-

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agreement-under-this-subsection-{3}-only-ifitdetermine:	2
thatthesettlement-amount-is-inadequateIf-the-agreement	ŧ
is-disapprovedy-the-department-must-set-forth-in-detailth	e
reasons-for-the-disapprovait	
ti)there-is-a-reasonable-dispute-concerning-the-amoun	t
of-the-insurer+s-future-liability-or-benefits;-or	
tii)-theamount-of-the-insureris-projected-liability-i	5
reasonablycertain-andthesettlementamountisno	ŧ
substantiallylessthan-the-present-value-of-the-insurer-	3
liability.	
td;The-partiesfailure-to-reach-agreementisnot	a
disputeoverwhich-s-mediator-or-the-workerscompensatio	ħ
court-has-jurisdiction-	
fe) <u>fc]</u> Uponapproval;theagreementconstitutes	-a
compromise-and-release-settlement-and-may-not-be-reopened-t	by
the-department-or-by-any-court.	
(4)(a)-Ifaninsurerhas-accepted-initial-tiabili	ty
for-an-injurypermanent-total-wage-supplement-benefitsm	ay
beconvertedinwholetoa-lump-sum-paymentA-lump-s	um.
conversion-may-not-be-greater-than-the-present-value-oft	he
estimatedfuturebenefitsusingtherateprescribed-	in
subsection-{7}.	
(b)The-department-may-approve-an-agreement-underth	ts
subsectionif-the-parties-demonstrate-that-the-claimant-h	85
financial-need-that:	

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1	<u>tijrelates-to:</u>	1 because-of-reduced-income-as-a-result-of-the-injury:
2	<u>{A}the-necessities-of-life;</u>	2 (d)The-partiesfailure-to-reach-an-agreement-is-not-a
3	(B)an-accumulationofdebtincurredpriortothe	3 dispute-over-which-a-mediator-or-theworkersicompensation
4	injury;-or	4 court-has-jurisdiction.
5	(C)aself-employmentventurethatisconsidered	5 t4) <u>(6)</u> Permanenttotaldisabilitybenefitsmaybe
6	feasible-under-criteria-established-by-the-department;-and	6 converted in-part to-a-lump-sum-advance;-Thetotalofall
7	<u>tiij-arises-subsequent-to-the-date-of-injuryorarises</u>	7 tump-sumadvancepaymentstoaelaimantmay-not-exceed
8	because-of-reduced-income-as-a-result-of-the-injury-	8 \$20;000;-A-conversion-may-bemadeonlyuponthewritten
9	c)Alumpsumconversionmaynotbe-given-for-the	9 applicationoftheinjured-worker-with-the-concurrence-of
10	purpose-of-purchasing-an-annuity-or-investing-in-real-estate	10 the-insurerApproval-of-the-lump-sum-advance-paymentrests
11	for-business-purposes-or-for-any-type-of-passive-investment:	11 inthediscretion-of-the-departmentThe-spproval-or-award
12	(d)Uponapproval;the agreementconstitutesa	12 of-a-lamp-sum-advance-payment-bythedepartmentorcourt
13	compromise-and-release-settlement-and-may-not-be-reopened-by	13 mustbetheexception:-It-may-be-given The-department-may
14	the-department:	14 approve-an-agreementunderthissubsection onlyifthe
15	{3}<u></u>t5<u>}</u>Mfa}-Permanentpartialwagesupplement-benefits	15 worker-has-demonstrated-financial-need-that+
16	may-be-converted-in-part-to-a-lump-sum-advance-	16 ta)relates-to:
17	<pre>(b)The-conversion-maybemadeonlyuponagreement</pre>	17 (i)the-necessities-of-life;
18	between-a-claimant-and-an-insurer-	<pre>1B (ii)-anaccumulationofdebtincurredpriorto-the</pre>
19	(c) The-agreement-is-subject-to-department-approval-	19 injury;-or
20	<u>tb</u> Thedepartment-may-approve-an-agreement <u>under-this</u>	20 tiii)-aself-employmentventure assetforthin
21	<u>section</u> if-the-parties-demonstratethattheclaimanthas	21 39-71-1026 <u>thatisconsideredfeasibleundercriteria</u>
22	financial-need-that:	22 established-by-the-department; - and
23	(i)relates-to-the-necessities-of-life-or-relates-to-an	23 (b)arises-subsequent-to-the-date-of-injuryorarises
24	accumulation-of-debt-incurred-prior-to-injury;-and	24 because-of-reduced-income-as-a-result-of-the-injury-
25	(ii)-arisessubsequentto-the-date-of-injury-or-arises	25 (5) <u>(7)</u> (a)-Aninsurermay-recoup-any-iump-sum-advance

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1 amortized--at--the--rate--established--by--the---department7
2 prorated---biweeFly--over--the--projected--duration--of--the
3 compensation-period-

4 (b)--The-rate-adopted-by-the-department-must-be-based-on
5 the-average-rate-for-United-States-10-year-treasury-bills-in
6 the-previous-calendar-year-rounded--to--the--nearest--whole
7 number:

8 (c)--If---the---projected--compensation--period--is--the
9 claimant's-lifetimer-the-life-expectancy-must-be--determined
10 by--using--the--most--recent--table--of--life--expectancy-as
11 published-by-the-United-States-national--center--for--health
12 statistics:

13 (6)(8)--The Subject-to-other-provisons-of-this-section; 14 the-department-has-full-power-authority--and--jurisdiction 15 to--allowy--approvey--or-condition-compromise-settlements-or 16 lump-sum-advances-agreed-to-by--workers--and--insurers--All 17 such--compromise--settlements-and-lamp-sum-payments-are-void 18 without-the-approval-of--the--depaytment;--Approval--by--the 19 department-must-be-in-writing--The-department-shall-directly 20 notify-a-claimant-of-a-department-order-approving-or-denying 21 a-claimant's-compromise-or-lump-sum-payment-

(7)<u>(9)</u>--Subject--to--39-71-24017--a--dispute--between--a
 claimant-and-an-insurer-regarding-the-conversion-of-biweekly
 payments--into--a-lump-sum-advance-under-subsection-(4) lump
 <u>sum</u> is-considered-a-dispute7-for-which-a--mediator--and--the

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1 workers¹--compensation--court--have--jurisdiction--to-make-a
2 determination:-If-an-insurer--and--a--claimant--agree--to--a
3 compromise--and-release-settlement-or-a-lump-sum-advance-but
4 the-department-disapproves-the-agreement;--the--parties--may
5 request--the--workers¹--compensation--court--to--review--the
6 department¹s-decision;[#]

7 Section 6. Section 39-71-2311, MCA, is amended to read: *39-71-2311. Intent and purpose of plan. It is the R 9 intent and purpose of the state fund to allow employers the 10 option to insure their liability for workers' compensation 11 and occupational disease coverage with a mutual insurance 12 fund. The state fund is required to insure any employer in 13 this state requesting coverage, and it may not refuse 14 coverage for an employer unless an assigned risk plan 15 established under 39-71-431 is in effect. The state fund 16 must be neither more nor less than self-supporting. Premium 17 rates must be set at least annually at a level sufficient to 18 ensure the adequate funding of the insurance program, 19 including the costs of administration, benefits, and 20 adequate reserves, during and at the end of the period for 21 which the rates will be in effect. In determining premium 22 rates, the state fund shall make every effort to adequately 23 predict future costs. When the costs of a factor influencing 24 rates are unclear and difficult to predict, the state fund 25 shall use a prediction calculated to be more than likely to

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1	cover those costs rather than less than likely to cover
2	those costs. Unnecessary surpluses that are created by the
3	imposition of premiums found to have been set higher than
4	necessary because of a high estimate of the cost of a factor
5	or factors may be refunded by the declaration of a dividend
6	as provided in this part. For the purpose of keeping the
7	state fund solvent, it must implement variable pricing
8	levels within individual rate classifications to reward an
9	employer with a good safety record and penalize an employer
10	with a poor safety record. An employer's payroll reporting
11	and premium history and other relevant factors may also be
12	considered in implementing variable pricing levels."
13	Section 7. Section 39-71-2339, MCA, is amended to read:
14	"39-71-2339. Cancellation of coverage thirty days'
14 15	"39-71-2339. Cancellation of coverage thirty days' notice required. The state fund may cancel an employer's
15	notice required. The state fund may cancel an employer's
15 16	notice required. The state fund may cancel an employer's
15 16 17	notice required. The state fund may cancel an employer's righttooperateunderplanNot3oftheWorkers' CompensationAct coverage under this part for failure to
15 16 17 18	notice required. The state fund may cancel an employer's righttooperateunderplanNor3oftheWorkers- CompensationAct coverage under this part for failure to report payroll or pay the premiums due or for another cause
15 16 17 18 19	notice required. The state fund may cancel an employer's righttooperateunderplanNor3oftheWorkers' CompensationAct coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Whenthestate-fund
15 16 17 18 19 20	notice required. The state fund may cancel an employer's righttooperateunderplanNor3oftheWorkers- CompensationAct coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Whenthestate-fund cancels-an-employer-s-coverage7-it-shall-notify-the-employer
15 16 17 18 19 20 21	notice required. The state fund may cancel an employer's righttooperateunderplanNor3oftheWorkers' CompensationAct coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Whenthestate-fund cancels-an-employer's-coverage7-it-shall-notify-the-employer of-its-intent-to-cancel-the-employer-at-least-30-days-before
15 16 17 18 19 20 21 22	notice required. The state fund may cancel an employer's righttooperateunderplanNor3oftheWorkers' CompensationAct coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Whenthestate-fund cancels-an-employer's-coverage;-it-shall-notify-the-employer of-its-intent-to-cancel-the-employer-at-least-30-days-before the-cancellation-becomes-effective; Cancellation may take
15 16 17 18 19 20 21 22 23	notice required. The state fund may cancel an employer's righttooperateunderplanNor3oftheWorkers' CompensationAct coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Whenthestate-fund cancels-an-employer's-coverage;-it-shall-notify-the-employer of-its-intent-to-cancel-the-employer-at-least-30-days-before the-cancellation-becomes-effective; Cancellation may take effect only by written notice to the named insured at least

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1	failure of the employer to submit payroll reports or pay a
	premium within 30 days after the due date. The state fund
2	
3	shall notify the department of the names and effective dates
4	of all policies cancelled. However, the policy terminates on
5	the effective date of a replacement or succeeding insurance
6	policy issued to the insured. Nothing in this section
7	prevents the state fund from canceling an insurance policy
8	before a replacement policy is issued to the insured. After
9	the cancellation date, the employer has the same status as
10	an employer who is not enrolled under the Workers'
11	Compensation Act unless a replacement or succeeding
12	insurance policy has been issued."
13	Section-10:Section-39-72-601;-MCA;-is-amended-to-read;
14	#39-72-601Medicalpanel(l)Thedepartment-shall
15	develop-a-list-of-physicians-to-serveontheoccupational
16	diseasemedicalpanelThelistmayinclude-physicians
17	nominated-by-the-board-of-medical-examinersA-physicianon
18	thepanelmustbecertified-by-his-specialty-board-or-be
19	eligible-for-certification-in-the-specialty-area-appropriate
20	to-the-claimant's-condition-in-relation-to-this-chapter:
21	(2)The-department <u>or-an-insurer</u> shall-selectapanel
22	physician-to-examine-a-claimanty-as-requiredPhe-department
23	shallappoint;asrequired;-one-member-of-the-panel-to-be
24	the-chairman."
25	Section-llSection-39-72-6027-MCA7-is-amended-to-read:

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1	#39-72-602insurer-may-accept-liabilityprocedure
2	formedicalexa linationwheninsurerhasnotaccepted
3	lisbility{l}An-insurer-may-accept-liability-for-a-claim
4	under-this-chapter-based-on-information-submitted-to-it-by-a
5	claimant.
6	f2)In-order-to-determine-the-compensability-ofclaims
7	underthischapterwhenaninsurerhasnotaccepted
8	liability; or-questions-liability-or-in-ordertodetermine
9	whetherthe-claimant-is-totally-disabled-or-to-what-extent;
10	if-anyy-benefits-must-be-reduced-pursuant-to-39-72-7067 the
11	following-procedure-must-be-followed+
12	tajThedepartment oraninsurer-with-notice-to-the
13	department shall-direct-the-claimanttoamemberofthe
14	medicalpanelforanexaminationThe-panel-member-shall
15	conduct-an-examination-to-determine-whether-the-claimantis
16	totallydisabledandissufferingfroman-occupational
17	diseaser-The-panel-membershallsubmitareportofhis
18	findings-to-the-department-
19	<pre>tbjBithertheclaimant-or-the-insurer-may;-within-20</pre>
20	days-after-the-receipt-of-thereportbythefirstpanei
21	member;requestthatthe-claimant-be-examined-by-a-second
22	panel-memberr-if-asecondexaminationisrequested;the
23	department or-an-insurer-with-notice-to-the-department shall
24	directtheclaimanttoasecondpanel-member-who-shall
25	conduct-an-examination-to-determine-whether-he-believesthe

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1	claimantistotallydisabledandissufferingfrom-an
2	occupational-disease and-to-what-extentyifanyybenefits
3	mustbereducedpursuantto39-72-706-TThe-panel-member
4	shall-submit-a-report-of-hisfindingstothedepartment-
5	When-a-second-examination-has-been-requested;-the-reports-of
6	theexaminations-shall-be-submitted-to-three-members-of-the
7	medical-panel-for-reviewAmedicalpanelmemberorthe
8	panelmayin-order-to-assist-the-panel-member-or-the-panel
9	inreachingmconclusion;consultwiththeclaimant's
10	attending-physicianThe-three-panel-members-shallissuea
11	reportconcerningtheclaimant'sphysicalcondition-and
12	whether-theclaimantissufferingfromanoccupationsi
13	disease.
14	<pre>(c)Ifasecondexaminationisnotrequested; the</pre>
15	department-shall-issue-itsorderdeterminingwhetherthe
16	claimantis-entitled-to-occupational-disease-benefits-based
17	on-the-report-of-the-first-examining-physicianif-asecond
18	examinationisrequested;thedepartment-shall-issue-its
19	order-based-on-thereportofthethreemembersofthe
20	medical-panel-
21	{d}Porthepurposeofreviewing-the-reports-of-the
22	examinations-and-issuing-the-report-under-subsection-(2)(b);
23	the-three-members-of-the-medicalpanelshallbethetwo
24	members-of-the-panel-who-examined-the-claimant-and-the-panel
25	chairmanIfthe-panel-chairman-has-examined-the-claimant;

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the-panel-chairman--shall--appoint--another--member--of--the
 medical-panel-to-be-the-third-member:⁸
 <u>NEW SECTION.</u> Section 8. Repealer. Section 39-71-2338,

4 MCA, is repealed.

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5 NEW SECTION. Section 9. Effective date. [This act] is

6 effective July 1, 1991.

-End-