

1 Senate BILL NO. 383
 2 INTRODUCED BY W. A. ...
 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, 39-71-2339,
 9 39-72-601, AND 39-72-602, MCA; AND REPEALING SECTION
 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

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
 4 prior to July 1 of each year.

5 (3) "Beneficiary" means:

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

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

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
 25 section, exists).



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

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

10 (8) "Fiscal year" means the period of time between July
11 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.

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

22 (12) "Order" means any decision, rule, direction,
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

1 the preceding year" means the average annual payroll of the
2 employer for the preceding calendar year or, if the employer
3 shall not have operated a sufficient or any length of time
4 during such calendar year, 12 times the average monthly
5 payroll for the current year. However, an estimate may be
6 made by the department for any employer starting in business
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.

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.

1 (16) The term "physician" includes "surgeon" and in
2 either case means one authorized by law to practice his
3 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 ~~†††~~(22) "Temporary total disability" means a condition

1 resulting from an injury as defined in this chapter that
2 results in total loss of wages and exists until the injured
3 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 ~~†††~~(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 ~~†††~~(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
16 every person, every prime contractor, and every firm,
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
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 ~~†††~~(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

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 performed for the worker.

24 (4) Notwithstanding the provisions of subsection (3), a
25 common or contract motor carrier doing business in this

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

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 delinquency prevention or rehabilitation program;

9 (c) a person receiving on-the-job vocational
10 rehabilitation training or other on-the-job training under a
11 state or federal vocational training program, whether or not
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
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.

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

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

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.

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.

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

1 (c) The insurer may elect not to participate in the
 2 cost of the action. If this election is made, the insurer
 3 waives 50% of its subrogation rights granted by this
 4 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
 18 amount received by judgment or settlement which is in excess
 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 in
 24 settlement of subrogation rights.

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

1 payable under the Workers' Compensation Act have not been
 2 fully determined at the time the employee, the employee's
 3 heirs or personal representatives, or the insurer have
 4 settled in any manner the action as provided for in this
 5 section, the department shall determine what proportion of
 6 the settlement shall be allocated under subrogation. The
 7 department's determination may be appealed to the workers'
 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
 24 damages.

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

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."

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 39-71-2320,
 9 and 39-71-2337, ~~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.

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 insurer
25 shall furnish, without limitation as to length of time or

1 dollar amount, reasonable services by a physician or
2 surgeon, reasonable hospital services and medicines when
3 needed, and such other treatment as may be approved by the
4 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~~

1 ~~form and at the times required by the department.~~ The
 2 department may require insurers to submit information to be
 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
 6 services under the schedule, and the method of determining
 7 the median of billed medical fees. These rules must be
 8 modeled on the 1974 revision of the 1969 California Relative
 9 Value Studies.

10 (3) Beginning January 1, 1988, the department shall
 11 establish rates for hospital services necessary for the
 12 treatment of injured workers. Approved rates must be in
 13 effect for a period of 12 months from the date of approval.
 14 The department may coordinate this ratesetting function with
 15 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 ~~(1)(2)~~ (a) Benefits may be converted in whole to a lump
2 sum:

3 ~~(i)~~ if a claimant and an insurer dispute the initial
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
8 section subsection (2) only if there is not a reasonable
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
14 dispute over which a mediator or the workers' compensation
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
19 payment. A lump-sum conversion may not be greater than the
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

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 insurer's future liability or benefits; or~~

7 ~~(ii) the amount of the insurer's projected liability is~~
8 ~~reasonably certain and the settlement amount is not~~
9 ~~substantially less than the present value of the insurer's~~
10 ~~liability.~~

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

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

17 (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:

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†~~(5) (a) Permanent partial wage supplement benefits
 16 may be converted in part to a lump-sum advance.
 17 ~~†b†--The-conversion-may-be-made-only-upon-agreement~~
 18 ~~between-a-claimant-and-an-insurer;~~
 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

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-the-workers'-compensation~~
 4 ~~court-has-jurisdiction;~~
 5 ~~†4†~~(6) Permanent total disability benefits may be
 6 converted in part to a lump-sum advance. The total of all
 7 lump-sum advance payments to a claimant may not exceed
 8 \$20,000. ~~A-conversion-may-be-made-only-upon-the-written~~
 9 ~~application-of-the-injured-worker-with-the-concurrence-of~~
 10 ~~the-insurer;~~ ~~Approval-of-the-lump-sum-advance-payment-rests~~
 11 ~~in-the-discretion-of-the-department.~~ ~~The-approval-or-award~~
 12 ~~of-a-lump-sum-advance-payment-by-the-department-or-court~~
 13 ~~must-be-the-exception.~~ ~~It-may-be-given~~ The department may
 14 approve an agreement under this subsection only if the
 15 worker has demonstrated financial need that:
 16 (a) relates to:
 17 (i) the necessities of life;
 18 (ii) an accumulation of debt incurred prior to the
 19 injury; or
 20 (iii) a self-employment venture ~~as-set-forth-in~~
 21 ~~39-71-1026~~ that is considered feasible under criteria
 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

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 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)~~(8) The Subject to other provisions of this section,
14 the department has full power, authority, and jurisdiction
15 to allow, approve, or condition compromise settlements or
16 lump-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.

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 ~~lump-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
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

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 ~~right--to--operate--under--plan--No--3--of--the--Workers'~~
 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 ~~cancel--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
 25 nonreporting of payroll or nonpayment of a premium, by

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 39-72-601, 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:

1 "39-72-602. Insurer may accept liability -- procedure
2 for medical examination when insurer has not accepted
3 liability. (1) An insurer may accept liability for a claim
4 under this chapter based on information submitted to it by a
5 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 or an insurer with notice to the
13 department 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

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

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

5 NEW SECTION. **Section 13.** Effective date. [This act] is
6 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for 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:

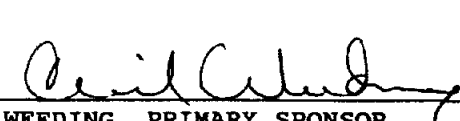
1. The proposed legislation clarifies existing statutes and provisions of the workers' compensation act.
2. The proposed legislation does not add new services or significantly change existing services.

FISCAL IMPACT:

None



ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning 2-19-91



CECIL WEEDING, PRIMARY SPONSOR DATE
Fiscal Note for SB0383, as introduced. 2/20/91

SB 383

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

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, ~~39-71-7047~~~~39-71-7417~~, 39-71-2311, AND 39-71-2339,
9 ~~39-72-6017~~~~--ANB--39-72-6027~~ MCA; AND REPEALING SECTION
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

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
4 prior to July 1 of each year.

5 (3) "Beneficiary" means:

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

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

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
25 section, exists).

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

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

10 (8) "Fiscal year" means the period of time between July
11 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.

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

22 (12) "Order" means any decision, rule, direction,
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

1 the preceding year" means the average annual payroll of the
2 employer for the preceding calendar year or, if the employer
3 shall not have operated a sufficient or any length of time
4 during such calendar year, 12 times the average monthly
5 payroll for the current year. However, an estimate may be
6 made by the department for any employer starting in business
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.

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.

1 (16) The term "physician" includes "surgeon" and in
2 either case means one authorized by law to practice his
3 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

1 resulting from an injury as defined in this chapter that
2 results in total loss of wages and exists until the injured
3 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 ~~(23)~~(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
16 every person, every prime contractor, and every firm,
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
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

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 performed for the worker.

24 (4) Notwithstanding the provisions of subsection (3), a
25 common or contract motor carrier doing business in this

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

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 delinquency prevention or rehabilitation program;

9 (c) a person receiving on-the-job vocational
10 rehabilitation training or other on-the-job training under a
11 state or federal vocational training program, whether or not
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
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.

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

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

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.

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.

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

1 (c) The insurer may elect not to participate in the
 2 cost of the action. If this election is made, the insurer
 3 waives 50% of its subrogation rights granted by this
 4 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
 18 amount received by judgment or settlement which is in excess
 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 in
 24 settlement of subrogation rights.

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

1 payable under the Workers' Compensation Act have not been
 2 fully determined at the time the employee, the employee's
 3 heirs or personal representatives, or the insurer have
 4 settled in any manner the action as provided for in this
 5 section, the department shall determine what proportion of
 6 the settlement shall be allocated under subrogation. The
 7 department's determination may be appealed to the workers'
 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
 24 damages.

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

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."

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 39-71-2320,
 9 and 39-71-2337, ~~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.

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 insurer
25 shall furnish, without limitation as to length of time or

1 dollar amount, reasonable services by a physician or
2 surgery, reasonable hospital services and medicines when
3 needed, and such other treatment as may be approved by the
4 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

1 ~~form and at the times required by the department. The~~
 2 ~~department may require insurers to submit information to be~~
 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~~
 6 ~~services under the schedule, and the method of determining~~
 7 ~~the median of billed medical fees. These rules must be~~
 8 ~~modeled on the 1974 revision of the 1969 California Relative~~
 9 ~~Value Studies.~~

10 ~~(3) Beginning January 1, 1987, the department shall~~
 11 ~~establish rates for hospital services necessary for the~~
 12 ~~treatment of injured workers. Approved rates must be in~~
 13 ~~effect for a period of 12 months from the date of approval.~~
 14 ~~The department may coordinate this ratesetting function with~~
 15 ~~other public agencies that have similar responsibilities.~~

16 ~~(4) (a) Notwithstanding subsection (2), beginning~~
 17 ~~January 1, 1987, 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, 1987, through December 31, 1991, the hospital~~
 6 ~~rates payable by insurers must be limited to those set in~~
 7 ~~January 1987.~~

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, M&A, 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 ~~{1}{2}--(a)-Benefits may be converted in whole to a lump~~
2 ~~sum:~~
3 ~~{1}--if a claimant and an insurer dispute the initial~~
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~~
8 ~~section subsection {2} only if there is not a reasonable~~
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~~
14 ~~dispute over which a mediator or the workers' compensation~~
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~~
19 ~~payment. A lump sum conversion may not be greater than the~~
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~~

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 insurer's future liability or benefits; or~~
7 ~~{ii}--the amount of the insurer's projected liability is~~
8 ~~reasonably certain and the settlement amount is not~~
9 ~~substantially less than the present value of the insurer's~~
10 ~~liability;~~
11 ~~{d}--The parties' failure to reach agreement is not a~~
12 ~~dispute over which a mediator or the workers' compensation~~
13 ~~court has jurisdiction;~~
14 ~~{c}{e}--Upon approval, the agreement constitutes a~~
15 ~~compromise and release settlement and may not be reopened by~~
16 ~~the department or by any court.~~
17 ~~{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:~~

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)(5)M(a) Permanent partial wage supplement benefits~~
16 ~~may be converted in part to a lump sum advance.~~
17 ~~(b) The conversion may be made only upon agreement~~
18 ~~between a claimant and an insurer.~~
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~~

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 the workers' compensation

4 court has jurisdiction.

5 (4)(6) Permanent total disability benefits may be

6 converted in part to a lump sum advance. The total of all

7 lump sum advance payments to a claimant may not exceed

8 \$20,000. A conversion may be made only upon the written

9 application of the injured worker with the concurrence of

10 the insurer. Approval of the lump sum advance payment rests

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

12 of a lump sum advance payment by the department or court

13 must be the exception. It may be given The department may

14 approve an agreement under this subsection only if the

15 worker has demonstrated financial need that:

16 (a) relates to:

17 (i) the necessities of life;

18 (ii) an accumulation of debt incurred prior to the

19 injury; or

20 (iii) a self-employment venture as set forth in

21 39-7i-1026 that is considered feasible under criteria

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

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-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)(8)--The Subject to other provisions of this section,
14 the department has full power, authority, and jurisdiction
15 to allow, approve, or condition compromise settlements or
16 lump-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.

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-lump-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 6.** 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
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

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'
 15 notice required. The state fund may cancel an employer's
 16 right--to--operate--under--plan--No--3--of--the--Workers'
 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
 25 nonreporting of payroll or nonpayment of a premium, by

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 39-72-601, 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:~~

1 ~~*39-72-602. Insurer may accept liability procedure~~
2 ~~for medical examination when insurer has not accepted~~
3 ~~liability. (1) An insurer may accept liability for a claim~~
4 ~~under this chapter based on information submitted to it by a~~
5 ~~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 or an insurer with notice to the~~
13 ~~department 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 29~~
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~~

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

21 ~~(d) For the purpose of reviewing the reports of the~~
22 ~~examinations and issuing the report under subsection (2)(b),~~
23 ~~the three members of the medical panel shall be the two~~
24 ~~members of the panel who examined the claimant and the panel~~
25 ~~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 8.** Repealer. Section 39-71-2338,
4 MCA, is repealed.

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

-End-

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, AND 39-71-2339,
 9 39-72-601, ~~AND~~ 39-72-602, MCA; AND REPEALING SECTION
 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

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



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, AND 39-71-2339,
9 ~~39-72-601~~, ~~AND~~ ~~39-72-602~~, MCA; AND REPEALING SECTION
10 39-71-2338, MCA; AND PROVIDING AN EFFECTIVE DATE."

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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

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
4 prior to July 1 of each year.

5 (3) "Beneficiary" means:

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

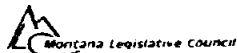
8 (b) an unmarried child under the age of 18 years;

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
25 section, exists).



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

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

10 (8) "Fiscal year" means the period of time between July
11 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.

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

22 (12) "Order" means any decision, rule, direction,
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

1 the preceding year" means the average annual payroll of the
2 employer for the preceding calendar year or, if the employer
3 shall not have operated a sufficient or any length of time
4 during such calendar year, 12 times the average monthly
5 payroll for the current year. However, an estimate may be
6 made by the department for any employer starting in business
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.

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.

1 (16) The term "physician" includes "surgeon" and in
2 either case means one authorized by law to practice his
3 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

1 resulting from an injury as defined in this chapter that
2 results in total loss of wages and exists until the injured
3 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
16 every person, every prime contractor, and every firm,
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
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

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 performed for the worker.

24 (4) Notwithstanding the provisions of subsection (3), a
25 common or contract motor carrier doing business in this

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

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 delinquency prevention or rehabilitation program;

9 (c) a person receiving on-the-job vocational
10 rehabilitation training or other on-the-job training under a
11 state or federal vocational training program, whether or not
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
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.

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

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

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.

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.

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

1 (c) The insurer may elect not to participate in the
 2 cost of the action. If this election is made, the insurer
 3 waives 50% of its subrogation rights granted by this
 4 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
 18 amount received by judgment or settlement which is in excess
 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 in
 24 settlement of subrogation rights.

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

1 payable under the Workers' Compensation Act have not been
 2 fully determined at the time the employee, the employee's
 3 heirs or personal representatives, or the insurer have
 4 settled in any manner the action as provided for in this
 5 section, the department shall determine what proportion of
 6 the settlement shall be allocated under subrogation. The
 7 department's determination may be appealed to the workers'
 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
 24 damages.

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

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."

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 39-71-2320,
 9 and 39-71-2337, ~~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
 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.

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, 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:

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

1 dollar amount, reasonable services by a physician or
2 surgeon, reasonable hospital services and medicines when
3 needed, and such other treatment as may be approved by the
4 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

1 ~~form and at the times required by the department. The~~
 2 ~~department may require insurers to submit information to be~~
 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~~
 6 ~~services under the schedule, and the method of determining~~
 7 ~~the median of billed medical fees. These rules must be~~
 8 ~~modeled on the 1974 revision of the 1969 California Relative~~
 9 ~~Value Studies.~~

10 ~~(3) Beginning January 1, 1988, the department shall~~
 11 ~~establish rates for hospital services necessary for the~~
 12 ~~treatment of injured workers. Approved rates must be in~~
 13 ~~effect for a period of 12 months from the date of approval.~~
 14 ~~The department may coordinate this ratesetting function with~~
 15 ~~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: (i) 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 ~~{1}{2}--(a) Benefits may be converted in whole to a lump~~
 2 ~~sum.~~
 3 ~~{i)--if a claimant and an insurer dispute the initial~~
 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~~
 8 ~~section subsection {2} only if there is not a reasonable~~
 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~~
 14 ~~dispute over which a mediator or the workers' compensation~~
 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~~
 19 ~~payment. A lump sum conversion may not be greater than the~~
 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~~

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 insurer's future liability or benefits; or~~
 7 ~~{ii)--the amount of the insurer's projected liability is~~
 8 ~~reasonably certain and the settlement amount is not~~
 9 ~~substantially less than the present value of the insurer's~~
 10 ~~liability.~~
 11 ~~{d)--The parties' failure to reach agreement is not a~~
 12 ~~dispute over which a mediator or the workers' compensation~~
 13 ~~court has jurisdiction.~~
 14 ~~{e){c)--Upon approval, the agreement constitutes a~~
 15 ~~compromise and release settlement and may not be reopened by~~
 16 ~~the department or by any court.~~
 17 ~~{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:~~

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)(5)(a) Permanent partial wage supplement benefits~~
 16 ~~may be converted in part to a lump sum advance;~~
 17 ~~(b) The conversion may be made only upon agreement~~
 18 ~~between a claimant and an insurer;~~
 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~~

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 the workers' compensation
 4 court has jurisdiction;
 5 (4)(6) Permanent total disability benefits may be
 6 converted in part to a lump sum advance. The total of all
 7 lump sum advance payments to a claimant may not exceed
 8 \$20,000. A conversion may be made only upon the written
 9 application of the injured worker with the concurrence of
 10 the insurer. Approval of the lump sum advance payment rests
 11 in the discretion of the department. The approval or award
 12 of a lump sum advance payment by the department or court
 13 must be the exception. It may be given The department may
 14 approve an agreement under this subsection only if the
 15 worker has demonstrated financial need that:
 16 (a) relates to:
 17 (i) the necessities of life;
 18 (ii) an accumulation of debt incurred prior to the
 19 injury; or
 20 (iii) a self-employment venture as set forth in
 21 39-71-1026 that is considered feasible under criteria
 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

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-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)(8)--The Subject-to-other-provisions-of-this-section,
14 the-department-has-full-power, authority,--and--jurisdiction
15 to--allow,--approve,--or-condition-compromise-settlements-or
16 lump-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.

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-lump-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 6.** 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
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

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'
 15 notice required. The state fund may cancel an employer's
 16 right--to--operate--under--plan--No--3--of--the--Workers'
 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
 25 nonreporting of payroll or nonpayment of a premium, by

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 39-72-601, 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:~~

1 ~~*39-72-682--insurer-may-accept-liability-----procedure~~
 2 ~~for--medical--examination--when--insurer--has--not--accepted~~
 3 ~~liability;--(1)--An-insurer-may-accept-liability-for-a-claim~~
 4 ~~under-this-chapter-based-on-information-submitted-to-it-by-a~~
 5 ~~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 or--an--insurer-with-notice-to-the~~
 13 ~~department 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~~

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

21 ~~(d)--For--the--purpose--of--reviewing-the-reports-of-the~~
 22 ~~examinations-and-issuing-the-report-under-subsection-(2)(b);~~
 23 ~~the-three-members-of-the-medical--panel--shall--be--the--two~~
 24 ~~members-of-the-panel-who-examined-the-claimant-and-the-panel~~
 25 ~~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 8. Repealer.** Section 39-71-2338,
4 MCA, is repealed.

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

-End-