

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON HOUSE LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on March 20, 1989, at 11:06 A.M.

ROLL CALL

Members Present: Twelve.

Members Excused: Fred Thomas, Duane Compton, Bob Pavlovich, and Bill Glaser.

Members Absent: None.

Staff Present: Eddy McClure, Staff Attorney.

Announcements/Discussion: We have five bills to take executive action on this morning.

DISPOSITION OF SB 429

Motion:

RICE: Moves a DO CONCUR IN SB 429.

Discussion:

None.

Amendments, Discussion, and Votes:

DRISCOLL: I would like an amendment to the bill that if the person is not found guilty then they would receive penalty and interest on their money while they waited for it. In this country, it used to be that people were innocent until proven guilty. I don't agree that people should be stealing from employers; but if this person is found innocent then they should get some penalty and interest while they are waiting for their money. If you don't pay your taxes on time you have to pay penalty and interest. If you don't pay the banker for your house payment, he charges you penalty and interest. The employee if he is innocent should receive penalty and interest, in my opinion.

WHALEN: Is that an amendment?

RUSSELL: He has moved the amendment. Is there any discussion? Rep. Driscoll, will you please repeat that amendment for Eddy?

DRISCOLL: Right now the bill says if you are charged, then the employer keeps your wages. If you are found guilty, then they can take an offset. It doesn't say anything about if you are found innocent. I would like an amendment that says if an employee is not found guilty of the offense then the employer has to pay the employee the same penalty and interest that a person would have to pay the government if he does not pay his taxes on time. I think it is 2% and then 5/16ths or 5/12ths per month or something like that.

McCLURE: Rep. Driscoll, is that like wages, plus any interest accrued, or is it different?

DRISCOLL: If it took six months for the court case to be settled, then the person would get six months' interest on the amount of money that he was waiting to get.

SIMPKINS: Say that the person was not found guilty, either the employer decided to drop the charges or you went to court and were found innocent, then you would receive interest on the unpaid wages?

WHALEN: What day would that amount come from -- from the day the wages were due or the day the wage claim was made, or what would be used?

DRISCOLL: The day the wages were due.

Vote on Amendment:

Unanimous vote in favor of the amendment.

Vote on SB 429 to DO CONCUR AS AMENDED:

Unanimous vote to DO CONCUR AS AMENDED.

Rep. Simpkins will carry the bill on the House floor.

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DISPOSITION OF SB 428

Motion:

DRISCOLL: Moved a DO PASS on SB 428.

Discussion:

Amendments, Discussion, and Votes:

DRISCOLL: On the Gray Bill, the amendments that were offered, I don't know which one it was but there was one amendment that exempted only the management. Gray Bill attached as Exhibit #1.

I move the amendments with the exception of amendment #22.

My reason for doing that is in the system (a lot of background noise and Rep. Driscoll could not be heard here)

... and pay whatever they can get the employees for, whatever they can negotiate for. The claims checkers for the state fund are way under paid from what USF&G pays.

I would hope the committee would allow the new managers to start paying these people (could not understand because of noise) ... and leave amendment #22 out of the bill, this does have some possibilities.

(About three minutes of everybody talking at once just between themselves and could not understand any of it)

DRISCOLL: (In answer to a question from Simpkins). It is agreed upon by the Commissioner of Labor, Jordon Lynch -- the only one who is against it is Ettinger to my knowledge.

(Real noisy here and I couldn't get all of what he was saying)

... somebody came in proposing an amendment and I asked George Wood, Mike Micone, Jim Murry whether or not they supported it. I told them I couldn't support the bill with that amendment, and they all said they didn't particularly care about that amendment.

(Several minutes here where Driscoll talked some more about why he didn't like the amendment, but he didn't have his microphone on and the background noise was bad so most of it could not be understood)

SMITH: I support Jerry on that amendment because I don't think there is any way this program can work right without taking that out.

DRISCOLL: The grey bill would be restored to the same language that is in the blue bill.

RUSSELL: Eddye (McClure) would you clarify that just in case we might have questions further on.

McCLURE: Back in the yellow bill it exempted not only upper echelon employees, but everyone. That's what Rep. Driscoll wants to go back to. Put the amendment that was in the yellow bill and now in the blue bill back in.

Recommendation and Vote:

RUSSELL: So we are adopting all of the amendments with the exception of the one on page 21 and going back to the blue bill language.

Vote on Amendments:

Unanimous vote to DO PASS AMENDMENTS.

Continued Discussion:

WHALEN: I wasn't here for the hearing on this, but I note that they are transferring the workers' compensation court under the auspices of the Department of Labor and Industry. I was wondering if anybody who was here could explain to me why that is being done. That makes me nervous, but I didn't hear the testimony, I guess I see a kind of a conflict. The division is under the Department of Labor and Industry and I think the court ought to be separate from the Department of Labor and Industry. Can anybody answer that question why they are transferring it over and creating an apparent conflict?

Did anybody mention anything about that specific part of the bill?

COCCHIARELLA: The only testimony I remember, Tim, that related to a problem with making that move was when Tom Schneider spoke for those people who may lose their jobs. That was the concern and that might address part of what you are worried about too.

DRISCOLL: Under executive reorganization it has to be attached to some place for administrative purposes only.

WHALEN: This is just for administrative purposes?

DRISCOLL: Yes. All of these things have to be attached to some division of the 19 or 20 divisions.

WHALEN: The court hasn't been administratively attached to anything to my knowledge in the past; could Gene Fenderson or Mike Micone address that question.

RUSSELL: Without objection from the committee.

MICONE: As Rep. Driscoll stated, every function must be attached to a department for administrative purposes. Presently it is attached to the Department of Administration. Under the proposal in 428 the workers' compensation or state mutual fund will be attached to the Department of Administration for administrative purposes; therefore, it was the belief that the workers' compensation court should be removed from that department. The first thought was to attach it to the Department of Justice, but because the Department of Justice may have to intervene in opposition to the court it was determined to move it to the Department of Labor and Industry because we will not be involved in any such situations.

WHALEN: What do you mean the Justice Department might have to intervene?

MICONE: There are certain instances where cases that the court has ruled on go before the supreme court and the Department of Justice intervenes as a friend of the court, or defends the state agency in a particular case. Under those circumstances, if it is a decision that is being rendered by the workers' compensation court they didn't feel that they should, in fact, be going against a court that is attached to their department.

WHALEN: Isn't the Department of Labor through the division sometimes a party to proceedings?

MICONE: Presently that is the case and the court is attached to the Department of Administration. The whole idea was to try to keep that all sorted out so a department isn't intervening against itself and the court.

WHALEN: Do you have any objection as to what department it is attached to?

MICONE: Not really. As a matter of fact, we would be happy to offer it to any other department that would want it.

SIMPKINS: Mike, doesn't the court operate more or less independent under different laws and is appointed by the governor?

MICONE: Yes, they do.

SIMPKINS: Even if the court was assigned to the Department of Labor, you have no jurisdiction over that court or you would have no say as to how the court proceeded, or anything like this down the line, would you?

MICONE: That's the way it is presently.

SIMPKINS: So it is an independent court operating under a different set of laws and principles and is not even involved in this bill.

I just bring this up to show Tim that no matter where you put it, it is going to be independently run by a separate set of laws that we in the legislature control.

You are just talking about administrative procedures, that's all, because it is totally independent.

WHALEN: I guess I would move that it be moved over to the Department of Justice. Doesn't the Department of Justice also administer the district courts?

MICONE: I'm sorry, I can't answer that.

Amendment, Discussion and Vote:

WHALEN: I move that SB 428 be amended to have the workers' compensation court administered by the Department of Justice, as opposed to the Department of Labor and Industry, and that way it puts it in conformity with all the other courts in the state.

RUSSELL: Eddy (McClure), we have an amendment here to move the workers' compensation court to the Department of Justice.

SQUIRES: Rep. Whalen, I understand that you are concerned about how it looks to the general public, or whoever. My understanding would be that if you would put it there it would look even worse. There would be a conflict there. The Department of Justice wants to be separate in case they have to be an intervenor or friend of the court. You are putting them under the jurisdiction of the Department of Justice; therefore, you are asking them to go against their own entity. My understanding is that the Department of Labor and the court would be just there for administrative purposes, budget only, and operate as a separate entity. I'm sorry, but I have to oppose your amendment.

WHALEN: Caroline, I would just point out that the Attorney General's office is a part of the Department of Justice and they regularly intervene, in fact they are parties oftentimes in the district court. It bothers me a lot that this thing is going to be in the Department of Labor and Industry, which is where the division is. I think it is more appropriate that it be in the Department of Justice and I don't think that will create any problems.

DRISCOLL: After we separate the division from the fund, then the division will have the responsibilities of helping the injured worker. The compliance with the insurance will stay over there and getting the injured employee his justice will still be with that portion. It is just the guys that run the money part and collect the premiums, they'll be somewhere else. My personal opinion for appearances sake, you should leave it in the Department of Labor. The way it was in the past, with the division and the fund and the court all in the same place, there was always the perception of conflict. Now you are going to have the court over there with the enforcement people and I think that is the place to leave it.

WHALEN: The problem I have, Jerry, is if a matter can't be taken care of before the division, it goes to the workers' comp court. Right now the division has original jurisdiction over all these claims. If it goes to the workers' comp court you are going to have a situation where it is all under the Department of Labor and Industry. You are going from the division to the workers' comp court, which is in

effect now an appellate court. It doesn't have any original jurisdiction any more after two years ago, whereas the division does. You have disputes going from one body, where it couldn't have been decided upon, and going to the workers' comp court. Mike, did you want to respond to that? Am I wrong about that?

MICONE: I think so, because what we must not forget is that we are separating the state fund from the Department of Labor and Industry. They are going to be a completely autonomous body, running their operation as they see fit. Previously, when the division was attached to the Department of Labor and Industry, it made sense for the workers' comp court to be attached to the Department of Administration because it gave the separation of power, so to speak. Now that we have separated the fund and have attached it to the Department of Administration, it is important that we separate the court from the Department of Administration. The Department of Labor and Industry really is not a party any longer to any cases being brought before the workers' comp court.

WHALEN: They are not a party, but they house the division which, if you can't get a dispute resolved before the division, then you go to the court and they are both under the same department, the division and the court, if this bill passes in the form that it is in. I think you are right, they are not a party, but you have got them both under the Department of Labor and Industry and one is a court you have to go to if you don't feel you got relief in the division.

MICONE: Are you speaking of the balance of the division that is going to be transferred to the department or the state fund itself?

WHALEN: I make a distinction between the division and the state fund. The state fund is an insurance company, whereas the division is a department under the Department of Labor and Industry, isn't it?

MICONE: It will be if this bill passes.

WHALEN: I think it is a good idea to separate the state fund from the division. Now we are putting the court and the division together and that concerns me because they both make a determination as to who is going to get paid benefits and who is not going to get paid benefits. If you can't get it resolved before the division, then you go to the workers' comp court, and if you are still in the same department I wonder whether or not the workers' comp court just becomes a rubber stamp for the division.

MICONE: If I can clarify that, the division will not transfer to the department. The functions of compliance will transfer to the department and the department will make a determination just how that will structure into the

department. It is my view that we don't have any intention of creating another division. We looked at putting all of our regulatory functions into one division, which would include the compliance of workers' comp. We will not have a division of workers' compensation within the department.

Very possibly we could create the regulatory function for unemployment compensation, workers' compensation and employment relations and create one regulatory division. They are just going to become another function within the Department of Labor and not a division of workers' compensation.

Most of the cases that are brought against the division today are brought against the state fund for benefits. I'm not aware of any cases that are brought to the workers' compensation court that are on the compliance function, but have always been, to my knowledge, on the benefits portion.

DRISCOLL: As I see this working, right now if you file a claim for benefits and the insurer is USF&G and for some reason you think you are getting a raw deal you go over to the workers' comp division, compliance bureau, and try to get it settled or get a lawyer. When we separate this it will probably be called the Montana State Mutual Insurance Company, Mutual Workers' Comp Insurance Company, or something. You will file your claim against that. If you don't get any action, then you will go over to this division that helps you, which will be the workers' comp bureau, or whatever they are going to call it, and then that court is going to be with them. If you put them out there a third place, somewhere else in the world, hanging off some other division, you are going to have to go three places. The idea of the whole thing is to make this so the state insurance company is similar to the private insurance companies as far as how you deal with them if you are injured, or if you don't think you are getting what the law allows you. Then those compliance people are responsible to make sure that the private insurance companies. and now this mutual insurance company of Montana, follow the laws. I think you just screw it up if you don't leave it with the Department of Labor. The insurance company is going to be over at the Department of Administration.

WHALEN: Jerry, I think you are missing the point of what I am trying to say. I understand the need to separate the fund and the division. I use the term "division" but obviously it will have a new name, but whatever the duties the division used to have are still going to be under the Department of Labor and Industry. It bothers me that the court is going to be under the same department.

Vote:

On Rep. Whalen's amendment.

The amendment FAILED. Those voting for the amendment were Whalen and O'Keefe.

Motion:

COCCHIARELLA: Move to adopt the amendment as shown on page 34, line 23 of the grey bill.

Vote:

The amendment was ADOPTED unanimously.

Motion:

MCCORMICK: Moved the bill DO PASS AS AMENDED.

Vote:

SB 428 PASSED AS AMENDED, unanimously.

Rep. Fred Thomas will carry this bill on the floor of the House.

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DISPOSITION OF SB 372

Motion:

KILPATRICK: Moved to DO CONCUR IN SB 372.

Discussion:

None

Vote:

Unanimous vote to DO CONCUR IN SB 372.

Rep. Smith will carry SB 372 on the House floor.

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DISPOSITION OF SB 309

Motion:

KILPATRICK: Moved to DO NOT CONCUR IN SB 309.

Discussion:

RICE: Question for Jerry. Is there any way we can amend this bill that will make it acceptable to the people who would like to do this? It was my understanding from bills that have been in here before, that there are certain kinds of professions that do work on the basis of four 10's or whatever. I was surprised that wasn't an option already. Do you know, Jerry, if we could work that out at all?

LEE: I have prepared an amendment that was acceptable to labor and was not acceptable to the other side, so it appears there is no middle ground that we can arrive at on this bill, so I'm not even going to offer the amendment. I tried real hard and I think we ought to just vote on the thing.

SIMPKINS: Jerry, I was looking on page 4 -- I just need your opinion there on the labor side -- down on line 12. There seems to be some question as far as whether the collective bargaining agreement or if the employees decided to overvote the collective bargaining agreement, it seems to me if we go "collective bargaining agreement." -- and then insert some new language from that point on that says "if no collective bargaining agreement exists then it would be at the consent of the employees ..." or something like that to infer that if there is a collective bargaining agreement that it must be done through the collective bargaining agreement. I think that is one of the objections they had. If there is no collective bargaining agreement, then the employees are the ones who have to do it then.

DRISCOLL: We did this for people who worked in dams and power houses in about 1983 or 1985. There were about 17 people in this one section and it was agreed that they would be paid time and a half after 40 hours and they went to three 12's. The five people who were 50 or older fought hard to not accept that portion and they lost because the younger guys outvoted them. I have had a lot of calls from older workers who say the kids can do it, but they can't.

In answer to Rep. Rice's question, in construction a lot of times there are four 10's, but nothing over 10. One person testified that he was in a control room and he could handle 12 hours, but he's probably 35 years old. When he is 55, can he still handle it? I don't know how to solve the problem. Most of these laws that are still on the books are for smelters and mines and it was power houses and dams and that got repealed, but those people aren't happy with it. The older men down there are not happy with it, they are tired by the end of the shift and they don't like it. So I think Rep. Lee is right, we have to vote it up or down, I can't find any middle ground to compromise on.

SMITH: I have some problems with this too. I know there was a reason this bill was brought in here and I would probably be

opposed to 12 hours, I think 10 is plenty. I also have a little problem with the simple majority vote, because that could be one over half and, like Jerry says, we could nail the older guys in the crew with that. So what would happen if you put a limit of 10 hours a day and it took a 3/4 vote? It's something to think about.

KILPATRICK: Remember when we had the seasonal employment matter? Just this morning I was talking to somebody who asked what we had done on that. She said her husband was on the ski patrol and his boss put so much pressure on him that he felt obligated to vote for it, even though in his heart he was against it.

This is the same idea. They can put an awful lot of pressure on a person. I think it should go down.

SIMPKINS: I looked at the schedule and the company, in this particular case, could care less. You asked the question, Tom, did you pay overtime for over 40 hours and they said yes. They are not going to save anything on overtime. They aren't saving anything on the total number of hours worked, because right now many of them are working the 48 hours a week. This is an employee bill. I have seen bills come through this House specifying what company, what place, what time and everything. Right now you are leaving a law in place that says if you exceed the eight hours you are violating the law.

KILPATRICK: Question for Jerry Driscoll. They gave a schematic out where they worked three 12-hour shifts, had four days off, worked four 12-hour shifts, had six or seven days off, then they went on back again. When they work four 12-hour shifts, that's 48 hours, for the extra eight hours they get time and a half, generally?

DRISCOLL: The Montana state law says that the employer shall designate his work week. It can be any one of the seven days for the beginning and ending of that. I would image they would probably designate a Friday and then they would work Wednesday, Thursday, Friday and the fourth day would be a Saturday and it would be the new week. I was going to ask that same question, but I left early that day. There is a time in there where they worked more than 40 hours in a work week. I'm not really familiar with this kind of shift. so I can't answer intelligently.

In a case of the other place where they went to 12 hours, they just worked 36 hours a week, they don't work 40, they work three 12's.

Motion:

MCCORMICK: Moved to TABLE SB 309.

Vote:

Vote was 12 to 4 to TABLE SB 309. Those voting against tabling 309 were Rice, Compton, Smith and Simpkins.

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DISPOSITION OF SB 255

Motion:

COCCHIARELLA: Moved to DO NOT CONCUR IN SB 255.

Discussion:

COCCHIARELLA: One reason that I make this motion is that I received two "anonymous" phone calls from highway patrolmen who asked that this bill not be passed. They don't want to be caught in the middle and asked to do this. It is not part of their original job description; that is not what they are hired for and there are other means that the state can use to take care of labor disputes. They should be taken care of between the workers and their bosses, not by the highway patrolmen.

SIMPKINS: First of all, I asked Jim Murry if it was illegal for strikers to stand on the road and stop traffic. He said it is. What we are saying here in this bill is that the highway patrol is to enforce the law only on the highways, not on private roads. We are saying that the highway patrol, the only law enforcement agency in the state of Montana, is prohibited from enforcing laws on our state highways.

Jerry told of a case where he said they blocked the highway because the trucks tried to run them down on the road when the strikers were illegal to start with. In other words, it is illegal to stand in front of the traffic on the road. The truck was illegal trying to run them down. They retaliated by making an illegal blockade on the road. We have an illegal act, creating an illegal act for an illegal act. That is the way the rationale is here.

We are saying also that the state should remain neutral in any particular labor dispute. We're not neutral. We're pro strikers illegally blocking roads, because we prohibit a law enforcement agency in this state to turn around and clear the roads. We are not remaining neutral, we are taking a side. Regardless of whether they are trained for this or not, I beg to differ with you on that, Vicki (Cocchiarella), because the attorney general stood there and said that they get exactly the same training that the sheriffs and other police officials do in this state, so the training is exactly the same. I don't see why we make one law as an exception to enforcement. That's the big thing I have here,

is that it is an exception, rather than saying that they perform a function.

WHALEN: I would like to respond by saying that right now both the employer and the union could go into court and ask for an injunction to prevent the other side from doing something. Those orders could be enforced by the court if the court grants the injunction. What you do here is you completely bypass that process, so if the union has grievances against the employer and the employer has grievances against the union, you can go into court and work it out and the court can issue an injunction or restraining order.

The second problem with this bill is that it refers to public ways. Oftentimes these public ways come right up to a place that is being picketed and it is the only road, although it is a public way, it is the only place that road goes. Not always does the employer have a large property area where you can stand on that property and picket the gate. I am satisfied, if this bill passed, that in 99% of the situations, the place that would be enforced would be right in front of an employer's gate. That is the big problem I see with this bill.

SIMPKINS: I am not a lawyer, but it says here "public highway." Public highway means I own a piece of that highway. We have also said here "...you have no right as a union or any organization to prohibit my travel on that public highway." Isn't that correct?

WHALEN: No.

SIMPKINS: Do you mean you have a right to stop me on a public highway?

WHALEN: I'm not saying that. DUI laws have gone so far as to say that if you are pulled off on the side of the road and you are in your car, you are on the public highway and even if your car is turned off, you are in control of that car, and breaking the law. These things can be construed by courts to go pretty darned far.

SIMPKINS: What I am trying to get across here, Tim, is when we are talking about public highways I don't care if it goes right into a plant, if we declare it as a public highway, under public law, it should be open for travel. Anybody blocking that highway is committing an illegal act. You have to agree, that the county sheriff can come out and police them off just because they are blocking a public highway, right?

WHALEN: I disagree that the only use of a public highway is to travel on.

DRISCOLL: You cannot picket on private property, the only place you can picket is on public property. If you get on private property you get arrested for trespassing, so you have to picket on the road. That is the National Labor Relations Board and the laws of Montana on trespassing. Where do you picket -- you picket on the edge of the road, in this particular situation. At Decker they had to restrain their pickets to the edge of the road. If you get a group of people out there and somebody comes by a little fast it makes them mad. It's not like they can't see them. If you were out there herding your cows down the road, that is an obstruction of the public highways. I have never seen a rancher arrested for that or even harassed for it in this state. If you want to see an obstruction of a public highway, go down there by Martinsdale and Lennup in about another three weeks and you will see all the president of the senate's cattle on that road and I'll bet you there won't be any cops down there arresting him.

SQUIRES: Told of her experience during a strike in Missoula.

Motion:

WHALEN: Moved to TABLE SB 255.

Vote:

Thirteen to three in favor of TABLING SB 255. Those voting against tabling were Lee, Simpkins and Compton.

Discussion:

SIMPKINS: I have to apologize. The other day I was wrong on a tabling motion because it is a non-debateable motion. A tabling motion is a temporary motion and another motion is in order even on the same day. You do not table indefinitely, so I move that the previous bill be removed from the table. The bill we just discussed.

RUSSELL: The motion right now by Rep. Simpkins is to take SB 255 off the table, is that what you are wanting to do?

SIMPKINS: That is correct. The only reason I want to do that is because I would really like to get some understanding on this committee exactly why it was tabled. Are we tabling it because we don't think it is fair to labor? Are we tabling it because we don't think the law enforcement agency should be called in by the local sheriff for assistance upon request? Are we tabling it because we don't think the state patrol people have authority on our state highways? I would like to understand and specifically state why the motion is being tabled.

DRISCOLL: This bill comes in every year. I have asked every highway patrolman who has ever stopped me, and I get lots of

\$5 tickets, if they want this authority. I have had two out of all of them who have ever stopped me say yes. In Billings they deliver an annual report. They pick an officer to deliver their annual report of the highway patrol to a legislator. I have asked these officers, who have delivered the report to me, if they want me to vote for this law. Not one of those people have ever said yes. I probably wouldn't vote for it anyway, but that is my reason, when the rank and file officers don't want it.

SIMPKINS: For my own clarification, you want it tabled because the law enforcement officers themselves don't want to enforce the law?

WHALEN: Dick, that isn't the reason I want it tabled.

RUSSELL: Are we ready to vote on the motion to take this issue off the table?

SIMPKINS: I withdraw the motion.

RUSSELL: Thank you. This concludes the executive action for today.

ADJOURNMENT

Adjournment At: 12:05 P.M.



REP. ANGELA RUSSELL, Chairman

AR/mo

6409.MIN

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-20-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Angela Russell, Chairman	✓		
Rep. Lloyd "Mac" McCormick, VC	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Duane Compton			✓
Rep. Jerry Driscoll	✓		
Rep. Bob Pavlovich			✓
Rep. Bill Glaser			✓
Rep. Tom Kilpatrick	✓		
Rep. Thomas Lee	✓		
Rep. Mark O'Keefe	✓		
Rep. Jim Rice	✓		
Rep. Richard Simpkins	✓		
Rep. Clyde Smith	✓		
Rep. Carolyn Squires	✓		
Rep. Fred Thomas			✓
Rep. Timothy Whalen	✓		

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STANDING COMMITTEE REPORT

March 20, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor and Employment Relations report that SENATE BILL 372 (third reading copy -- blue) be concurred in.

Signed: _____
Angela Russell, Chairman

[REP. SMITH WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 22, 1989

Page 1 of 10

Mr. Speaker: We, the committee on Labor report that Senate Bill 428 (third reading copy -- blue) he concurred in as amended .

Signed: _____
Angela Russell, Chairman

[REP. THOMAS WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 16.
Following: "2-18-103,"
Insert: "19-3-1002, 19-3-1007, 19-3-1202, 19-13-601, 33-1-102,"
Following: "33-2-119,"
Insert: "33-16-1005, 33-16-1011,"
2. Title, line 17.
Following: "37-72-101,"
Insert: "39-1-103,"
Following: "39-71-206,"
Insert: "39-71-207,"
3. Page 2, line 24 through page 3, line 1.
Strike: line 24 through "is." on page 3, line 1
4. Page 3, line 1.
Strike: "not"
5. Page 3, line 3.
Strike: ", except for"
Insert: "and shall insure"
6. Page 3, lines 24 and 25.
Following: "corporation." on line 24
Strike: remainder of line 24 through "not" on line 25
Insert: "The state fund is"
7. Page 4, line 1.
Following: "may"
Insert: "not"
8. Page 4, line 2.
Strike: ", except a state agency"

Insert: "unless an assigned risk plan is established under
[section 12] and is in effect"

9. Page 4, line 14.

Strike: "12"

Insert: "11"

10. Page 6, line 24.

Strike: "12"

Insert: "11"

11. Page 7, line 2.

Strike: "12"

Insert: "11"

12. Page 9, line 18.

Following: "fund."

Insert: "The state fund is not a member insurer for the purposes
of the insurance guaranty association established pursuant to
Title 33, chapter 10, part 1."

13. Page 9, lines 22 and 23.

Strike: "12" on line 22

Insert: "11"

Strike: "and" on line 22 through "12]" on line 23

14. Page 9, line 24.

Following: "(3)"

Strike: "The"

Insert: "If an assigned risk plan is established and
administered pursuant to [section 12], the"

15. Page 10, line 10 through page 11, line 5.

Strike: section 12 in its entirety

Renumber: subsequent sections

16. Page 11, lines 6 and 7.

Strike: "The commissioner of insurance shall promulgate"

Insert: "Following the date on which the provisions of [this
act] are implemented but no later than December 31, 1990, the
commissioner of the department of labor and industry may order
the establishment of"

17. Page 11, line 11.

Following: "methods."

Insert: "In determining whether to order an assigned risk plan
to be established, the commissioner shall consider the effect a
plan would have on the availability of workers' compensation"

March 22, 1989

Page 3

insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at least 6 months following the commissioner's order creating the plan."

18. Page 11.

Following: line 18

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

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

19. Page 12, line 3.

Page 14, lines 1, 2, 9, and 12.

Page 16, lines 8, 10, and 13.

Page 17, lines 15, 20, and 23.

Page 18, lines 2, 3, and 9.

Page 19, lines 8, 9, 11, and 12.

Page 20, lines 3, 14, 15, 20 (two places), and 23.

Page 21, lines 5, 6 (two places), 11, and 14.

Page 23, line 24.

Page 24, lines 4, 10, and 14.

Page 25, lines 5, 14, and 23 (two places).

Page 26, lines 5 and 9.

Page 27, line 4.

Page 28, lines 1 and 5.

Page 30, line 3.

Page 34, line 10.

Page 35, line 4.

Page 42, lines 3, 5, 6, and 14.

Page 46, line 23.

Page 47, lines 17 and 23.

Strike: "division", "division", "division", and "DIVISION"

Insert: "department"

20. Page 13, lines 10 through 12.

Strike: subsection (7) in its entirety

Renumber: subsequent subsections

21. Page 30, lines 16 and 17.

Following: "due" on line 16

Strike: remainder of line 16 through "EXPOSURE" on line 17

22. Page 37, line 22.
Following: "capacity;"
Insert: "or"

23. Page 38, line 4.
Strike: "; or"

24. Page 38, lines 5 through 8.
Strike: "(c)" on line 5 through "33-18-212" on line 8

25. Page 39, lines 11 through 16.
Strike: lines 11 through 16 in their entirety

26. Page 43, line 14.
Strike: "13"
Insert: "12"

27. Page 45, line 8.
Strike: "workers' compensation division"
Insert: "department"

28. Page 45, lines 21 through 23.
Following: "(c)" on line 21
Strike: remainder of line 21 through line 23
Insert: "'department" means the department of labor and industry;"

29. Page 46, line 25 through page 47, line 2.
Following: "(3)" on line 25
Strike: remainder of line 25 through page 47, line 2
Insert: "'Department" means the department of labor and industry."

30. Page 47, lines 14 through 16.
Following: "(1)" on line 14
Strike: remainder of line 14 through "industry" on line 16
Following: "~~2-15-1702~~"
Insert: "'Department" means the department of labor and industry"

31. Page 48.
Following: line 23
Insert: "Section 50. Section 39-1-103, MCA, is amended to read:
"39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken,

deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

~~(3) Nothing herein contained shall in any manner confer upon the commissioner the authority to interfere in any manner with the conduct of the matters under the control of the workers' compensation division, nor shall the commissioner be charged with the duty of enforcing any of the laws of the state pertaining to the affairs of the workers' compensation division or with the enforcement of the safety provisions of the Workers' Compensation Act.~~

~~(4)~~ (3) Nothing in this chapter applies to labor violations preempted by federal law or regulation."

Section 51. Section 39-71-207, MCA, is amended to read:

"39-71-207. Merit system. Employees of the ~~division, except the administrator, department~~ are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3(h) or by any other federal law or regulation."

Section 52. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs. (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~parts~~ part 21 and 23, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 53. Section 33-16-1005, MCA, is amended to read:

"33-16-1005. Membership in rating organization required -- exception -- filings with commissioner. (1) Every insurer, ~~except the division of workers' compensation including the state compensation mutual insurance fund,~~ writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization."

Section 54. Section 33-16-1011, MCA, is amended to read:

"33-16-1011. Classification and rating committee -- membership -- term. (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) three representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must reside in Montana and shall be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance agent who resides in

Montana, appointed by the Montana commissioner of insurance; and

(c) one representative of the ~~division of workers' compensation state compensation mutual insurance fund~~ who is an employee of the ~~division state fund~~ and who ~~shall be~~ is appointed by the ~~administrator of the division~~ executive director of the state fund.

(3) Each member shall hold office for a period of 3 years. Any appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a) and (2)(b) above, established private organizations representing insurance carriers and independent insurance agents may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to such names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee shall be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses."

Section 55. Section 19-3-1007, MCA, is amended to read:

"19-3-1007. Allowance for duty-related disability. (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of his final compensation. However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded ~~compensation by the workers' compensation division~~, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period.

(2) Any retired member receiving a retirement allowance on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, will be subject to the provisions of this section after July 1, 1977."

Section 56. Section 19-3-1002, MCA, is amended to read:

"19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsection (2) and 19-3-1004, a member who is not eligible for service or early retirement but has completed 5 years of creditable service and has become disabled while in active service, as defined in 19-3-1001, is eligible for disability retirement.

(2) A member age 60 or older who has completed 5 years of creditable service and has had a duty-related accident forcing him to terminate his employment but who has not received or is ineligible to receive workers' compensation benefits under Title

39, chapter 71, for the duty-related accident may conditionally waive his eligibility for a service retirement to be eligible for disability retirement. The waiver is effective only upon approval by the board of his application for disability retirement. The board shall determine whether a member has become disabled under the provisions of 19-3-1003. The board may request any information on file with the ~~workers' compensation division state~~ compensation mutual insurance fund concerning the duty-related accident. If no information is available, the board may request and the ~~division state~~ fund shall provide an investigative report on the disabling accident."

Section 57 Section 19-3-1202, MCA, is amended to read:

"19-3-1202. Amount of death benefit. The amount of death benefit is the sum of (1), (2), and (3) as follows:

- (1) the member's accumulated contributions;
- (2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of such compensation multiplied by the smaller of six or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the ~~workers' compensation division of the state of Montana~~ state compensation mutual insurance fund that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment; and
- (3) the accumulated interest on the amounts in subsections (1) and (2) of this section to the first day of the month in which the benefit is paid."

Section 58. Section 19-13-601, MCA, is amended to read:

"19-13-601. Deduction remitted to firemen's association -- member's contributions. (1) Each employer shall retain from the monthly compensation of each active member a sum equal to 1% of his monthly compensation for his services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the plan.

(2) The member's contribution to the retirement system for each active member is 6% of his monthly compensation.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of his monthly compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under this section, 19-13-604, and 19-13-605 must be based on the total compensation received by the member from his employer and

from the workers' compensation ~~division~~ during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions which would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's monthly compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Renumber: subsequent sections

32. Page 49, line 7.

Strike: "and"

Following: "through"

Strike: "12"

Insert: "11, 44, and 45"

33. Page 49, line 10.

Strike: "and"

Following: "through"

Strike: "12"

Insert: "11, 44, and 45"

34. Page 49, line 15.

Strike: "13"

Insert: "12"

35. Page 49, line 17.

Strike: "13"

Insert: "12"

36. Page 49, line 19.

Following: line 18

Insert: "(1)"

37. Page 49, line 24.

Following: line 23

Insert: "(2) It is intended that current employees of the division of workers' compensation whose functions are transferred to the state compensation mutual insurance fund shall retain employment rights consistent with their positions at the time of transfer."

38. Page 50.

Following: line 7

Insert: "NEW SECTION. Section 64. Name change -- code commissioner instruction. (1) In the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division", meaning the division of workers' compensation, are changed to "department of labor and industry" or "department", meaning the "department of labor and industry".

(2) The code commissioner shall designate, in a manner consistent with [this act], workers' compensation insurance regulatory functions allocated to the division of workers' compensation by the 51st legislature to the department of labor and industry that are not so designated by [this act].

(3) Wherever it appears in 39-71-205, 39-71-222 through 39-71-224, 39-71-613, 39-71-902, 39-71-904, 39-71-910, or in law enacted by the 51st legislature, the code commissioner is directed to change the term "administrator" or "his" to "department", meaning the department of labor and industry."

Renumber: subsequent section

39. Page 50, line 9.

Following: "~~50~~"

Strike: "~~54, 55~~"

Insert: "39, 60 through 64"

40. Page 50, line 11.

Strike: "and"

Following: "through"

Insert: "38, and 40 through"

Strike: "~~53~~"

Insert: "59"

41. Page 50, line 13.

Strike: "~~55~~"

Insert: "~~63~~"

Strike: "October 1, 1989"

Insert: "January 1, 1990"

3.22.89
3.22.89
3.22.89

STANDING COMMITTEE REPORT

March 22, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 429 (third reading copy -- blue) be concurred in as amended .

Signed: Angela Russell
Angela Russell, Chairman

[REP. SIMPKINS WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 2, line 19.

Following: "employer."

Insert: "If the employee is found not guilty of the criminal offense, the district court may order the employer to pay the employee any wages due, including interest."

Malene

STANDING COMMITTEE REPORT

March 22, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that SENATE
BILL 444 (third reading copy -- blue) be concurred in .

Signed: _____
Angela Russell, Chairman

[REP. GLASER WILL CARRY THIS BILL ON THE HOUSE FLOOR]

Gray SB428 -- Unofficial
March 17, 1989

EXHIBIT 1
DATE 3-20-89
HB 53428

1 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE STATE
2 COMPENSATION MUTUAL INSURANCE FUND TO INSURE EMPLOYERS FOR
3 WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LIABILITY;
4 PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING THE POWERS
5 AND DUTIES OF THE BOARD AND THE CHIEF EXECUTIVE OFFICER OF THE
6 STATE COMPENSATION MUTUAL INSURANCE FUND; TRANSFERRING THE
7 OFFICE OF WORKERS' COMPENSATION JUDGE TO THE DEPARTMENT OF
8 LABOR AND INDUSTRY; AMENDING SECTIONS 2-15-1014, 2-15-1702, 2-18-103,
9 19-3-1002, 19-3-1007, 19-3-1202, 19-13-601, 33-1-102, 33-2-119, 33-16-1005, 33-16-
10 1011, 33-17-502, 33-18-212, 37-72-101, 39-1-103, 39-71-116, 39-71-201, 39-71-203,
11 39-71-206, 39-71-207, 39-71-306 THROUGH 39-71-308, 39-71-403, 39-71-421, 39-
12 71-604, 39-71-704, 39-71-901, 39-71-908, 39-71-910, 39-71-911, 39-71-913, 39-71-
13 2303, 39-71-2307, 39-71-2308, 39-71-2321 THROUGH 39-71-2323, 39-71-2325, 39-
14 71-2327, 39-71-2501, 39-72-201, AND 39-72-310, 50-71-102, AND 50-73-102, MCA;
15 REPEALING SECTIONS 2-15-1702, 39-71-2301, 39-71-2302, 39-71-2304 THROUGH
16 39-21-2306, AND 39-71-2324, MCA; AND PROVIDING EFFECTIVE DATES."
17

18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because [section 8] grants
20 rulemaking authority to the newly created state fund to adopt or repeal rules or
21 amend existing rules to implement the new state compensation mutual insurance
22 fund. The chief purposes of creating the state fund as a mutual insurer and
23 placing it in a department other than the department of labor are:

24 (1) to remove the inherent conflict between the interests of the workers'
25 compensation division in regulating all workers' compensation insurers in this
26 state, including the state compensation insurance fund, and the interests of the
27 state fund as a workers' compensation insurer; and

28 (2) to ensure the solvency of the new state fund.

29 The legislature recognizes that the fund actuary has determined that at June
30 30, 1988, a full funding deficiency of \$157.3 million existed for the present state
31 compensation insurance fund. The legislature intends that the new state
32 compensation mutual insurance fund adopt rules in a manner that will assure the
33 solvency of the new fund. Rates must be set on an actuarially sound basis as
34 required by state law. ~~To further ensure the solvency of the state fund, it is not~~

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1 ~~the workers' compensation insurer of last resort, as the state fund presently is.~~
2 The new state fund would not be bound to insure all employers who apply to it
3 for workers' compensation coverage, ~~except for~~ AND SHALL INSURE state
4 agencies. ~~It could refuse to insure an employer it considered a poor risk.~~

5 As the primary means of ensuring the solvency of the state fund, it must
6 institute safety programs and set rates in a manner that awards employers who
7 provide a safe working environment and penalizes employers who do not.

8 The legislature further intends that the new state fund institute programs to
9 automate the processing of claims and payment of benefits. The state fund may
10 contract out to the private sector certain claims administration and servicing
11 functions if the state fund determines it to be cost-effective.

12 THE LEGISLATURE INTENDS THAT THE GOVERNOR SHALL IMPLEMENT
13 STAGGERED TERMS IN NAMING THE INITIAL MEMBERS OF THE BOARD.
14

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

16 NEW SECTION. Section 1. Intent and purpose of plan. It is the intent and
17 purpose of the state fund to allow employers the option to insure their liability for
18 workers' compensation and occupational disease coverage with a nonprofit,
19 independent public corporation. ~~The state fund is a domestic mutual insurer. It is~~
20 ~~not~~ THE STATE FUND IS required to insure any employer in this state
21 requesting coverage, and it may NOT refuse coverage for an employer, ~~except~~
22 ~~a state agency~~ UNLESS AN ASSIGNED RISK PLAN IS ESTABLISHED UNDER
23 [SECTION 12] AND IS IN EFFECT, ~~that the state fund determines to be a bad~~
24 ~~risk.~~ The state fund must be neither more nor less than self-supporting. Premium
25 rates must be set at a level sufficient to fund the insurance program, including
26 the costs of administration, benefits, and adequate reserves. For the purpose of
27 keeping the state fund solvent, it must implement safety programs VARIABLE
28 PRICING LEVELS WITHIN INDIVIDUAL RATE CLASSIFICATIONS to reward an
29 employer with a good safety record and penalize an employer with a poor safety
30 record.

31 NEW SECTION. Section 2. Definitions. Unless the context requires
32 otherwise, in [sections 1, 2, and 4 through 11] the following definitions apply:
33 (1) "Board" means the board of directors of the state compensation mutual
34 insurance fund provided for in [section 3].

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March 17, 1989

1 (2) "Department" means the department of administration provided for in 2-
2 15-1001.

3 (3) "Executive director" means the chief executive officer of the state
4 compensation mutual insurance fund.

5 (4) "State fund" means the state compensation mutual insurance fund
6 provided for in [section 4]. It is also known as compensation plan No. 3 or plan
7 No. 3.

8 NEW SECTION. Section 3. Board of directors of the state compensation
9 mutual insurance fund. (1) There is a board of directors of the state
10 compensation mutual insurance fund.

11 (2) The board is allocated to the department for administrative purposes only
12 as prescribed in 2-15-121. However, the board may employ its own staff.

13 (3) The board may provide for its own office space and the office space of
14 the state fund.

15 (4) The board consists of five members appointed by the governor. The
16 executive director of the state fund is an ex officio nonvoting member.

17 (5) At least three of the five members shall represent state fund
18 policyholders and may be employees of state fund policyholders. At least three
19 members of the board shall represent private, for-profit enterprises. A member of
20 the board may not:

21 (a) represent or be an employee of an insurance company that is licensed
22 to transact workers' compensation insurance under compensation plan No. 2; or

23 (b) be an employee of a self-insured employer under compensation plan
24 No. 1.

25 (6) A member is appointed for a term of 4 years. The terms of board
26 members must be staggered. A member of the board may serve no more than
27 two 4-year terms. A member shall hold office until a successor is appointed and
28 qualified.

29 (7) ~~The board is designated as~~ MEMBERS MUST BE APPOINTED AND
30 COMPENSATED IN THE SAME MANNER AS MEMBERS OF a quasi-judicial
31 ~~board for the purposes of~~ AS PROVIDED IN 2-15-124, except that the
32 requirement that at least one member be an attorney does not apply.

33 NEW SECTION. Section 4. State compensation mutual insurance fund
34

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1 created. There is a state compensation mutual insurance fund known as the
2 state fund that is a nonprofit, independent public corporation established for the
3 purpose of allowing an option for employers to insure their liability for workers'
4 compensation and occupational disease coverage under this chapter. The state
5 fund exists as a domestic mutual insurer as defined in 33-3-102.

6 NEW SECTION. Section 5. Management of state fund -- powers and
7 duties of the board. (1) The management and control of the state fund is vested
8 solely in the board.

9 (2) The board is vested with full power, authority, and jurisdiction over the
10 state fund. The board may perform all acts necessary or convenient in the
11 exercise of any power, authority, or jurisdiction over the state fund, either in the
12 administration of the state fund or in connection with the insurance business to
13 be carried on under the provisions of [sections 1, 2, and 4 through ~~12~~ 11], as
14 fully and completely as the governing body of a private mutual insurance carrier,
15 in order to fulfill the objectives and intent of [sections 1, 2, and 4 through ~~12~~
16 11].

17 NEW SECTION. Section 6. Personal liability excluded. The members of
18 the board, the executive director, and employees of the state fund are not liable
19 personally, either jointly or severally, for any debt or obligation created or
20 incurred by the state fund.

21 NEW SECTION. Section 7. Appointment of executive director --
22 management staff. The board shall appoint an executive director of the state
23 fund who has general responsibility for the operations of the state fund. The
24 executive director must have executive level experience, with knowledge of the
25 insurance industry. The executive director must receive compensation as set by
26 the board and serve at the pleasure of the board. The executive director may
27 hire the management staff of the state fund, each of whom serves at the
28 pleasure of the executive director.

29 NEW SECTION. Section 8. Powers of the state fund -- rulemaking. For
30 the purposes of carrying out its functions, the state fund may:

31 (1) insure any employer for workers' compensation and occupational disease
32 liability as the coverage is required by the laws of this state and, in connection
33 with the coverage, provide employers' liability insurance. The state fund may
34 charge a minimum yearly premium to cover its administrative costs for coverage

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EXHIBIT 1
DATE 3-20-89
HB SB428

1 of a small employer.

2 (2) sue and be sued;

3 (3) adopt, amend, and repeal rules relating to the conduct of its business;

4 (4) enter into contracts relating to the administration of the state fund,

5 including claims management, servicing, and payment;

6 (5) collect and disburse money received;

7 (6) adopt classifications and charge premiums for the classifications so that

8 the state fund will be neither more nor less than self-supporting. The state fund

9 must belong to the national council on compensation insurance and shall use

10 the classifications of employment adopted by the national council AND

11 CORRESPONDING RATES AS A BASIS FOR SETTING ITS OWN RATES.

12 (7) pay the amounts determined due under a policy of insurance issued by
13 the state fund;

14 (8) hire personnel;

15 (9) declare dividends if there is an excess of assets over liabilities.

16 However, dividends may not be paid until the unfunded liability of the state fund
17 is eliminated AND ADEQUATE ACTUARIALLY DETERMINED RESERVES ARE
18 DETERMINED.

19 (10) perform all functions and exercise all powers of a domestic mutual
20 insurer that are necessary, appropriate, or convenient for the administration of
21 the state fund.

22 NEW SECTION. Section 9. Property of the state fund -- investment
23 required. All premiums and other money paid to the state fund, all property and
24 securities acquired through the use of money belonging to the state fund, and all
25 interest and dividends earned upon money belonging to the state fund are the
26 sole property of the state fund and must be used exclusively for the operations
27 and obligations of the state fund. The money collected by the state fund may
28 not be used for any other purpose. However, state fund money must be invested
29 by the board of investments provided for in 2-15-1808.

30 NEW SECTION. Section 10. State fund a mutual insurance carrier. (1)
31 The state fund is a domestic mutual insurer controlled by the laws relating to
32 the regulation of domestic mutual insurers in this state. However, the formation,
33 incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3,
34 do not apply to the state fund. THE STATE FUND IS NOT A MEMBER

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1 INSURER FOR THE PURPOSES OF THE INSURANCE GUARANTY

2 ASSOCIATION ESTABLISHED PURSUANT TO TITLE 33, CHAPTER 10, PART 1.

3 (2) The commissioner of insurance may not terminate the operations of the
4 state fund based on insolvency due to the unfunded liability that is recognized to
5 exist on the date of passage of [sections 1, 2, and 4 through 12 11] and
6 recognized in [section 12].

7 (3) IF AN ASSIGNED RISK PLAN IS ESTABLISHED AND
8 ADMINISTERED PURSUANT TO [SECTION 12], THE state fund is subject to the
9 premium tax liability for insurers as provided in 33-2-705 BASED ON EARNED
10 PREMIUM AND PAID ON REVENUE FROM THE PREVIOUS FISCAL YEAR.

11 NEW SECTION. Section 11. Assets and liabilities of prior state fund. All
12 assets and funds held by the state compensation insurance fund established in
13 39-71-2301 through 39-71-2308 and 39-71-2321 through 39-71-2327 must be
14 transferred to the state fund, and the state fund shall assume liability for all
15 outstanding claims and indebtedness of the previously existing state fund.

16 ~~NEW SECTION. Section 12. Unfunded liability. (1) It is recognized at the~~
17 ~~date of creation of the state fund that there exists an unfunded liability that is~~
18 ~~being assumed by the newly created state fund for the prior state compensation~~
19 ~~insurance fund's liability for industrial injuries and occupational diseases that~~
20 ~~occurred prior to July 1, 1987. To assist the state fund in alleviating the~~
21 ~~unfunded liability, the premium taxes collected by the state from the following~~
22 ~~sources must be transferred to the newly created state fund:~~

23 ~~(a) the state fund;~~

24 ~~(b) excess or reinsurance policies on self-insurers writing coverage on a~~
25 ~~self-insurer's workers' compensation program under compensation plan No. 1;~~
26 ~~and~~

27 ~~(c) private insurance carriers writing workers' compensation insurance under~~
28 ~~compensation plan No. 2.~~

29 ~~(2) The premium taxes must be transferred to the state fund for payment of~~
30 ~~the unfunded liability. The premium tax payments must continue until the~~
31 ~~unfunded liability has been paid, at which time the premium taxes must be paid~~
32 ~~to the general fund.~~

33 NEW SECTION. Section 12. Assigned risk plan. (1) ~~The commissioner of~~
34 ~~insurance shall promulgate~~ FOLLOWING THE DATE ON WHICH THE

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1 PROVISIONS OF [THIS ACT] ARE IMPLEMENTED BUT NO LATER THAN
2 DECEMBER 31, 1990. THE COMMISSIONER OF THE DEPARTMENT OF LABOR
3 AND INDUSTRY MAY ORDER THE ESTABLISHMENT OF and administer a plan
4 to equitably apportion among the state fund, plan No. 3, and private insurers,
5 plan No. 2, the coverage required by this chapter for employers who are unable
6 to procure coverage through ordinary methods. IN DETERMINING WHETHER TO
7 ORDER AN ASSIGNED RISK PLAN TO BE ESTABLISHED, THE
8 COMMISSIONER SHALL CONSIDER THE EFFECT A PLAN WOULD HAVE ON
9 THE AVAILABILITY OF WORKERS' COMPENSATION INSURANCE AND THE
10 NEED TO PROVIDE COMPETITIVE WORKERS' COMPENSATION PREMIUM
11 RATES FOR EMPLOYERS IN THIS STATE. IF THE COMMISSIONER ORDERS
12 THE ESTABLISHMENT OF AN ASSIGNED RISK PLAN, IT MAY NOT TAKE
13 EFFECT UNTIL AT LEAST 6 MONTHS FOLLOWING THE COMMISSIONER'S
14 ORDER CREATING THE PLAN.

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

17 (3) If an insurer refuses to accept its equitable apportionment under the
18 assigned risk plan, the commissioner of insurance may suspend or revoke the
19 insurer's authority to issue workers' compensation ~~coverage contracts~~
20 INSURANCE POLICIES in this state.

21 (4) IF AN ASSIGNED RISK PLAN IS ESTABLISHED AND IN EFFECT, THE
22 STATE FUND, PLAN NO. 3, IS NOT REQUIRED TO INSURE ANY EMPLOYER
23 IN THIS STATE REQUESTING COVERAGE, AND IT MAY REFUSE COVERAGE
24 FOR AN EMPLOYER, EXCEPT FOR A STATE AGENCY.

25 (5) IF AN ASSIGNED RISK PLAN IS ESTABLISHED AND IN EFFECT, AN
26 EMPLOYER WHO IS REFUSED THE COVERAGE REQUIRED BY THIS
27 CHAPTER BY THE STATE FUND, PLAN NO. 3, AND BY AT LEAST TWO
28 PRIVATE INSURERS, PLAN NO. 2, MAY BE ASSIGNED COVERAGE BY THE
29 COMMISSIONER UNDER THE ASSIGNED RISK PLAN PURSUANT TO THE
30 PROCEDURE ESTABLISHED BY THE COMMISSIONER FOR THE EQUITABLE
31 APPORTIONMENT OF COVERAGE.

32 Section 13. Section 39-71-116, MCA, is amended to read:

33 "39-71-116. Definitions. Unless the context otherwise requires, words and
34 phrases employed in this chapter have the following meanings:

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

6 (2) "Beneficiary" means:

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

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

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

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

14 (e) a parent who is dependent upon the decedent for support at the time of
15 the injury (however, such a parent is a beneficiary only when no beneficiary, as
16 defined in subsections (2)(a) through (2)(d) of this section, exists); and

17 (f) a brother or sister under the age of 18 years if dependent upon the
18 decedent for support at the time of the injury (however, such a brother or sister
19 is a beneficiary only until the age of 18 years and only when no beneficiary, as
20 defined in subsections (2)(a) through (2)(e) of this section, exists).

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

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

25 (5) "Days" means calendar days, unless otherwise specified.

26 (6) "Department" means the department of labor and industry.

27 ~~(7) "Division" means the division of workers' compensation insurance~~
28 ~~compliance of the department of labor and industry provided for in 2-15-1702.~~

29 ~~(8)(7)~~ "Fiscal year" means the period of time between July 1 and the
30 succeeding June 30.

31 ~~(9)(8)~~ "Insurer" means an employer bound by compensation plan No. 1, an
32 insurance company transacting business under compensation plan No. 2, the
33 state ~~compensation insurance~~ fund under compensation plan No. 3, or the
34 uninsured employers' fund provided for in part 5 of this chapter.

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1 ~~(10)~~(9) "Invalid" means one who is physically or mentally incapacitated.

2 ~~(11)~~(10) "Maximum healing" means the status reached when a worker is as
3 far restored medically as the permanent character of the work-related injury will
4 permit.

5 ~~(12)~~(11) "Order" means any decision, rule, direction, requirement, or standard
6 of the ~~division~~ DEPARTMENT or any other determination arrived at or decision
7 made by the ~~division~~ DEPARTMENT.

8 ~~(13)~~(12) "Payroll", "annual payroll", or "annual payroll for the preceding year"
9 means the average annual payroll of the employer for the preceding calendar
10 year or, if the employer shall not have operated a sufficient or any length of
11 time during such calendar year, 12 times the average monthly payroll for the
12 current year; provided, that an estimate may be made by the ~~division~~
13 DEPARTMENT for any employer starting in business where no average payrolls
14 are available, such estimate to be adjusted by additional payment by the
15 employer or refund by the ~~division~~ DEPARTMENT, as the case may actually be,
16 on December 31 of such current year.

17 ~~(14)~~(13) "Permanent partial disability" means a condition, after a worker has
18 reached maximum healing, in which a worker:

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

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

24 ~~(15)~~(14) "Permanent total disability" means a condition resulting from injury as
25 defined in this chapter, after a worker reaches maximum healing, in which a
26 worker is unable to return to work in the worker's job pool after exhausting all
27 options set forth in 39-71-1012.

28 ~~(16)~~(15) The term "physician" includes "surgeon" and in either case means
29 one authorized by law to practice his profession in this state.

30 ~~(17)~~(16) The "plant of the employer" includes the place of business of a third
31 person while the employer has access to or control over such place of
32 business for the purpose of carrying on his usual trade, business, or occupation.

33 ~~(18)~~(17) "Public corporation" means the state or any county, municipal
34 corporation, school district, city, city under commission form of government or

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1 special charter, town, or village.

2 ~~(19)~~(18) "Reasonably safe place to work" means that the place of
3 employment has been made as free from danger to the life or safety of the
4 employee as the nature of the employment will reasonably permit.

5 ~~(20)~~(19) "Reasonably safe tools and appliances" are such tools and
6 appliances as are adapted to and are reasonably safe for use for the particular
7 purpose for which they are furnished.

8 ~~(21)~~(20) "Temporary total disability" means a condition resulting from an injury
9 as defined in this chapter that results in total loss of wages and exists until the
10 injured worker reaches maximum healing.

11 ~~(22)~~(21) "Year", unless otherwise specified, means calendar year."

12 Section 14. Section 39-71-201, MCA, is amended to read:

13 "39-71-201. Administration fund. (1) A workers' compensation administration
14 fund is established out of which all costs of administering the Workers'
15 Compensation and Occupational Disease Acts and the various occupational
16 safety acts the ~~division~~ DEPARTMENT must administer are to be paid upon
17 lawful appropriation. The following moneys ~~money~~ collected by the ~~division~~
18 DEPARTMENT shall must be deposited in the state treasury to the credit of the
19 workers' compensation administrative fund and shall must be used for the
20 administrative expenses of the ~~division~~ DEPARTMENT:

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

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

24 (c) all fees paid from an assessment on each plan No. 1 employer, plan
25 No. 2 insurer, and plan No. 3, the state insurance fund. The assessments shall
26 must be levied against the preceding calendar year's gross annual payroll of the
27 plan No. 1 employers and the gross annual direct premiums collected in
28 Montana on the policies of the plan No. 2 insurers, insuring employers covered
29 under the chapter, during the preceding calendar year. However, no assessment
30 of the plan No. 1 employer or plan No. 2 insurer shall may be less than \$200.
31 The assessments shall must be sufficient to fund the direct costs identified to
32 the three plans and an equitable portion of the indirect costs based on the ratio
33 of the preceding fiscal year's indirect costs distributed to the plans, using proper
34 accounting and cost allocation procedures. Plan No. 3 shall must be assessed

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1 an amount sufficient to fund its direct costs and an equitable portion of the
2 indirect costs as referred to above. Other sources of revenue, including
3 unexpended funds from the preceding fiscal year, shall must be used to reduce
4 the costs before levying the assessments.

5 (2) The administration fund shall must be debited with expenses incurred by
6 the division DEPARTMENT in the general administration of the provisions of this
7 chapter, including the salaries of its members, officers, and employees and the
8 travel expenses of the members, officers, and employees, as provided for in 2-
9 18-501 through 2-18-503, as amended, incurred while on the business of the
10 division DEPARTMENT either within or without the state.

11 (3) Disbursements from the administration money shall must be made after
12 being approved by the division DEPARTMENT upon claim therefor."

13 Section 15. Section 39-71-203, MCA, is amended to read:

14 "39-71-203. Powers of division DEPARTMENT -- rules -- staffing. (1) The
15 division DEPARTMENT is hereby vested with full power, authority, and jurisdiction
16 to do and perform any and all things, ~~whether herein specifically designated or~~
17 ~~in addition thereto,~~ that are necessary or convenient in the exercise of any
18 power, authority, or jurisdiction conferred upon it under this chapter.

19 (2) The division DEPARTMENT may adopt rules to carry out the provisions
20 of this chapter.

21 ~~(3) The division shall employ sufficient personnel to allow it to meet the~~
22 ~~claims processing goals contained in 39-71-604. The division shall implement~~
23 ~~staffing patterns that are supported by indicators of workload. The open file is~~
24 ~~the workload indicator for claims processing, and the number of open claims~~
25 ~~per claims examiner may not be less than 300. The claims support staff,~~
26 ~~including the file, medical pay, and new claims units, may not exceed two FTEs~~
27 ~~per claims examiner. The administrative and underwriting staffing must be based~~
28 ~~on the number of premium paying policyholders and may not exceed 1.4 FTEs~~
29 ~~per 1,000 policyholders.~~

30 ~~(4) The division administrator shall submit a revised operation plan to the~~
31 ~~budget office for review and approval and to the legislative finance committee for~~
32 ~~review whenever increases or decreases of staff are necessary to implement the~~
33 ~~provisions of subsection (3).~~

34 ~~(5) Funds from the state special revenue fund shall be used to implement~~

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1 ~~subsection (3)."~~

2 Section 16. Section 39-71-206, MCA, is amended to read:

3 "39-71-206. Legal advisers ~~adviser~~ ADVISERS of division DEPARTMENT and
4 state fund. (1) The attorney general ~~shall be~~ is the legal adviser of the division
5 DEPARTMENT and the state fund and shall represent ~~it~~ either entity in all
6 proceedings ~~whenever so~~ if requested by the division DEPARTMENT or state
7 fund any member thereof. THE DIVISION DEPARTMENT AND STATE FUND
8 MAY EMPLOY OTHER ATTORNEYS OR LEGAL ADVISERS AS THEY
9 CONSIDER NECESSARY.

10 ~~(2) The division may, in the investigation and defense of cases under plan~~
11 ~~No. 3 of the Workers' Compensation Act, employ such other attorney or legal~~
12 ~~adviser as it deems necessary and pay for the same out of the industrial~~
13 ~~insurance account in the expendable trust fund."~~

14 Section 17. Section 39-71-306, MCA, is amended to read:

15 "39-71-306. ~~Plan one employers and plan two insurers~~ Insurers to file
16 ~~duplicate receipts~~ SUMMARY REPORTS OF BENEFITS paid for injuries and
17 statements of medical expenditures. Every employer ~~coming under the provisions~~
18 ~~of compensation plan No. 1 and every insurer coming under the provisions of~~
19 ~~compensation plan No. 2~~ insurer shall, on or before the 15th day of each and
20 every month, file with the division DEPARTMENT:

21 (1) ~~duplicate receipts~~ SUMMARY REPORTS OF BENEFITS for all payments
22 made during the previous month to injured workers or their beneficiaries or
23 dependents; and

24 (2) statements showing the amounts expended during the previous month for
25 medical, surgical, and hospital services for injured workers and for the burial of
26 deceased workers."

27 Section 18. Section 39-71-307, MCA, is amended to read:

28 "39-71-307. Employers and insurers to file reports of accidents. (1) Every
29 employer ~~of labor~~ and every insurer is ~~hereby~~ required to file with the division
30 DEPARTMENT, under ~~such~~ division DEPARTMENT rules ~~as the division may~~
31 ~~from time to time make~~, a full and complete report of every accident to an
32 employee arising out of or in the course of his employment and resulting in loss
33 of life or injury to ~~such person~~ the employee. ~~Such~~ The reports ~~shall~~ must be
34 furnished to the ~~division~~ DEPARTMENT in ~~such~~ the form and ~~such~~ detail as the

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1 ~~division~~ DEPARTMENT ~~shall from time to time prescribe~~ prescribes and shall
2 ~~make must provide~~ specific answers to all questions required by the division
3 DEPARTMENT under its rules, ~~except, in case he~~ However, if an employee
4 EMPLOYER is unable to answer any such questions, ~~a good and sufficient~~
5 ~~reason shall be given for such failure~~ a question, he shall state the reason he
6 is unable to answer.

7 (2) Every ~~insurance company insurer~~ transacting business under this chapter
8 shall, at the time and in the manner prescribed by the ~~division~~ DEPARTMENT,
9 make and file with the ~~division~~ DEPARTMENT ~~such the~~ reports of accidents. as
10 the ~~division~~ DEPARTMENT ~~may require~~ requires."

11 Section 19. Section 39-71-308, MCA, is amended to read:

12 "39-71-308. Neglect or refusal of public corporation to file payroll reports --
13 arbitrary assessment by ~~division~~ DEPARTMENT. ~~Whenever any~~ If a public
14 corporation insured by the state ~~compensation insurance~~ fund neglects or
15 refuses to file prescribed payroll reports of its employees, the ~~division~~
16 DEPARTMENT may levy an arbitrary assessment upon ~~such the~~ public
17 corporation in an amount of \$75 for each ~~such~~ assessment, ~~which assessments~~
18 ~~shall~~ The assessment must be collected in the manner provided in this chapter
19 for the collection of assessments."

20 Section 20. Section 39-71-403, MCA, is amended to read:

21 "39-71-403. Plan three exclusive for state agencies -- election of plan by
22 other public corporations. (1) ~~Where~~ If a state agency is the employer, the
23 terms, conditions, and provisions of compensation plan No. 3, ~~state fund, shall~~
24 ~~be are~~ are exclusive, compulsory, and obligatory upon both employer and employee.
25 Any sums necessary to be paid under the provisions of this chapter by any
26 state agency ~~shall be~~ are considered to be ordinary and necessary expense of
27 the agency, and the agency shall make appropriation of and pay ~~such the~~ sums
28 into the state ~~compensation insurance~~ fund at the time and in the manner
29 provided for in this chapter, notwithstanding that the state agency may have
30 failed to anticipate such ordinary and necessary expense in any budget, estimate
31 of expenses, appropriations, ordinances, or otherwise.

32 (2) A public corporation, other than a state agency, may elect coverage
33 under compensation plan No. 1, employer; plan No. 2, insurer; or plan No. 3,
34 state ~~insurance~~ fund; separately or jointly with any other public corporation, other

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1 than a state agency. A public corporation electing compensation plan No. 1 may
2 purchase reinsurance. A public corporation electing compensation plan No. 1 is
3 subject to the same provisions as a private employer electing compensation plan
4 No. 1.

5 (3) A public corporation, other than a state agency, that elects plan No. 1
6 may establish a fund sufficient to pay the compensation and benefits provided
7 for in this chapter and chapter 72 and to discharge all liabilities that reasonably
8 incur during the fiscal year for which the election is effective. Proceeds from the
9 fund must be used only to pay claims covered by this chapter and chapter 72
10 and for actual and necessary expenses required for the efficient administration of
11 the fund.

12 (4) All money in the fund established under subsection (3) not needed to
13 meet immediate expenditures must be invested by the governing body of the
14 public corporation, and all proceeds of the investment shall be credited to the
15 fund."

16 Section 21. Section 39-71-421, MCA, is amended to read:

17 "39-71-421. Financial incentives to institute safety programs. ~~The state~~
18 ~~compensation insurance fund, plan No. 3, and private Private insurers, plan No.~~
19 ~~2, INSURERS~~ may provide financial incentives to an employer who implements a
20 formal safety program. ~~The insurance carrier~~ An insurer may provide to an
21 employer a premium discount that reflects the degree of risk diminished by the
22 implemented safety program."

23 Section 22. Section 39-71-604, MCA, is amended to read:

24 "39-71-604. Application for compensation. (1) ~~Where~~ If a worker is entitled to
25 benefits under this chapter, the worker shall file with the insurer or the ~~division~~
26 DEPARTMENT all reasonable information needed by the insurer to determine
27 compensability. It is the duty of the worker's attending physician to lend all
28 necessary assistance in making application for compensation and such proof of
29 other matters as may be required by the rules of the ~~division~~ DEPARTMENT
30 without charge to the worker. The filing of forms or other documentation by the
31 attending physician does not constitute a claim for compensation.

32 (2) ~~Where~~ If death results from an injury, the parties entitled to
33 compensation or someone in their behalf shall file a claim with the insurer or
34 the ~~division~~ DEPARTMENT. The claim must be accompanied with proof of death

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1 and proof of relationship, showing the parties entitled to compensation, certificate
2 of the attending physician, if any, and such other proof as may be required by
3 the division DEPARTMENT.

4 ~~(3) The goal of the division is to process all claims for compensation within~~
5 ~~14 days after initial acceptance of liability for a claim."~~

6 Section 23. Section 39-71-704, MCA, is amended to read:

7 "39-71-704. Payment of medical, hospital, and related services -- fee
8 schedules and hospital rates. (1) In addition to the compensation provided by
9 this chapter and as an additional benefit separate and apart from compensation,
10 the following ~~shall~~ must be furnished:

11 (a) After the happening of the injury, the insurer shall furnish, without
12 limitation as to length of time or dollar amount, reasonable services by a
13 physician or surgeon, reasonable hospital services and medicines when needed,
14 and such other treatment as may be approved by the division DEPARTMENT for
15 the injuries sustained.

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

20 (2) A relative value fee schedule for medical, chiropractic, and paramedical
21 services provided for in this chapter, excluding hospital services, ~~shall~~ must be
22 established annually by the ~~workers' compensation division~~ DEPARTMENT and
23 become effective in January of each year. The maximum fee schedule must be
24 adopted as a relative value fee schedule of medical, chiropractic, and
25 paramedical services, with unit values to indicate the relative relationship within
26 each grouping of specialties. Medical fees must be based on the median fees
27 as billed to the state ~~compensation insurance~~ fund during the year preceding the
28 adoption of the schedule. THE STATE FUND SHALL REPORT FEES BILLED IN
29 THE FORM AND AT THE TIMES REQUIRED BY THE DIVISION DEPARTMENT.
30 The ~~division~~ DEPARTMENT shall adopt rules establishing relative unit values,
31 groups of specialties, the procedures insurers must use to pay for services
32 under the schedule, and the method of determining the median of billed medical
33 fees. These rules ~~shall~~ must be modeled on the 1974 revision of the 1969
34 California Relative Value Studies.

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

6 (4) Notwithstanding subsection (2), beginning January 1, 1988, and ending
7 January 1, 1990, the maximum fees payable by insurers must be limited to the
8 relative value fee schedule established in January 1987. Notwithstanding
9 subsection (3), the hospital rates payable by insurers must be limited to those
10 set in January 1988, until December 31, 1989."

11 **Section 24.** Section 39-71-901, MCA, is amended to read:

12 **"39-71-901. Definitions.** As used in this part, the following definitions apply:

13 (1) "Vocationally handicapped" means a person who has a medically
14 certifiable permanent impairment which is a substantial obstacle to obtaining
15 employment or to obtaining reemployment if the employee should become
16 unemployed, considering such factors as the person's age, education, training,
17 experience, and employment rejection.

18 (2) "Certificate" means documentation issued by the ~~division~~ DEPARTMENT
19 ~~of workers' compensation~~ to an individual who is vocationally handicapped.

20 (3) "Fund" means the subsequent injury fund."

21 **Section 25.** Section 39-71-908, MCA, is amended to read:

22 **"39-71-908. Notification of fund of its potential liability under part -- review by**
23 **fund.** Not less than 90 or more than 150 days before the expiration of 104
24 weeks after the date of injury, the ~~employer, carrier, or the industrial insurance~~
25 ~~fund, as the case may be, insurer~~ shall notify the fund whether it is likely that
26 compensation may be payable beyond a period of 104 weeks after the date of
27 the injury. The fund thereafter may review, at reasonable times, such
28 information as the ~~employer, carrier, or industrial insurance fund insurer~~ has
29 regarding the accident and the nature and extent of the injury and disability."

30 **Section 26.** Section 39-71-910, MCA, is amended to read:

31 **"39-71-910. Procedure for resolving disputes as to liability under part.** (1) If
32 an employee was employed or retained in employment under the provisions of
33 this part and a dispute or controversy arises as to payment of benefits or the
34 liability therefor, the ~~division~~ DEPARTMENT shall hold a hearing and resolve all

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1 terminated for reasons other than default in payment of premiums. Every
2 employer electing to be bound by compensation plan No. 3 ~~shall~~ must receive
3 from the ~~division~~ state fund a contract or policy of insurance in a form approved
4 by the ~~division~~ DEPARTMENT. The premium ~~thereon shall~~ must be paid by the
5 employer to the ~~division~~ state fund at such times as the ~~division shall prescribe~~
6 state fund prescribes and ~~shall~~ must be paid over by the ~~division~~ state fund to
7 the state treasurer to the credit of the ~~industrial insurance expendable trust~~ state
8 mutual insurance fund."

9 Section 30. Section 39-71-2307, MCA, is amended to read:

10 "39-71-2307. Cancellation of coverage under ~~plan for default -- thirty days'~~
11 ~~notice required.~~ The ~~division is hereby authorized in its discretion to~~ state fund
12 may cancel an employer's right to operate under plan No. 3 of the Workers'
13 Compensation Act for failure to pay the premiums due ~~OR BECAUSE OF A~~
14 ~~SIGNIFICANT CHANGE IN LIABILITY EXPOSURE.~~ When the ~~division makes an~~
15 ~~order canceling~~ state fund cancels an employer's right ~~for failure to pay~~
16 ~~premiums~~ COVERAGE, the ~~division~~ it shall notify the employer of its intent to
17 cancel the employer at least 30 days before the cancellation becomes effective.
18 After the cancellation date, the employer ~~shall have~~ has the same status as an
19 employer who is not enrolled under the Workers' Compensation Act."

20 Section 31. Section 39-71-2308, MCA, is amended to read:

21 "39-71-2308. Collection in case of default. (1) If any an employer under plan
22 No. 3 ~~shall default~~ defaults in any payment to the ~~division~~ state fund, the state
23 fund may collect the sum due ~~may be collected by an action at law in a civil~~
24 action in the name of the state, ~~and such right of action shall be~~ The right of
25 action is cumulative.

26 (2) ~~When~~ If an employer's right to operate has been canceled by the
27 ~~division~~ state fund for failure to pay premiums and ~~when the division in its~~
28 ~~discretion~~ the state fund finds that the property and assets of the employer are
29 not sufficient to pay the premiums, the ~~division~~ state fund may compromise the
30 claim for premiums and accept a payment of an amount less than the total
31 amount due."

32 Section 32. Section 39-71-2321, MCA, is amended to read:

33 "39-71-2321. ~~What to be deposited in industrial insurance expendable trust~~
34 STATE fund. All premiums, penalties, recoveries by subrogation, interest earned

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1 disputes. On motion made in writing by the ~~employer, carrier, or industrial~~
2 ~~insurance fund insurer~~, the administrator shall join the fund as a party defendant.

3 (2) The division DEPARTMENT, within 5 days of the entry of an order
4 joining the fund as a party defendant, shall give the fund written notice thereof
5 not less than 20 days before the date of hearing and shall include the name
6 names of the employee and the ~~employer insurer~~ and the date of the alleged
7 injury or disability. The fund named as a defendant ~~shall have~~ has 10 days after
8 the date of notification to file objections to being named as a party defendant.

9 On the date of the hearing at which the liability of the parties is determined, the
10 hearing examiner first shall hear arguments and take evidence concerning the
11 joinder as party defendant. If the fund has filed timely objection and if argument
12 and evidence warrant, the hearing examiner shall grant a motion to dismiss.

13 (3) At the time of the hearing, the ~~employer insurer~~ and fund may appear,
14 cross-examine witnesses, give evidence, and defend both on the issue of liability
15 of the ~~employer insurer~~ to the employee and on the issue of the liability of the
16 fund.

17 (4) The hearing examiner shall make findings of fact and conclusions of law
18 determining the respective liability of the ~~employer insurer~~ and the fund."

19 Section 27. Section 39-71-911, MCA, is amended to read:

20 "39-71-911. Obligation to make payments on behalf of fund not an
21 independent liability. The obligation imposed by this part on the ~~employer,~~
22 ~~carrier, or industrial insurance fund insurer~~ to make payments on behalf of the
23 fund does not impose an independent liability on the ~~employer, carrier, or~~
24 ~~industrial insurance fund insurer.~~"

25 Section 28. Section 39-71-913, MCA, is amended to read:

26 "39-71-913. Payments by fund directly to persons entitled. If the ~~employer,~~
27 ~~carrier, or the industrial insurance fund insurer~~ does not make the payments on
28 behalf of the fund, the fund may make the payments directly to the persons
29 entitled to the payments."

30 Section 29. Section 39-71-2303, MCA, is amended to read:

31 "39-71-2303. Manner of electing -- contract or policy of insurance -- payment
32 of premium. The division state fund shall prescribe the procedure by which
33 employers an employer may elect to be bound by compensation plan No. 3, the
34 effective time of such the election, and the manner in which such the election is

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1 upon money belonging to the state fund, and securities acquired by or through
2 use of money shall must be deposited in the industrial insurance expendable
3 trust state fund."

4 Section 33. Section 39-71-2322, MCA, is amended to read:

5 "39-71-2322. Money in industrial insurance state fund held in trust --
6 disposition of funds upon repeal of chapter. The moneys money coming into the
7 industrial insurance expendable trust state fund shall must be held in trust for
8 the purpose for which such moneys were the money was collected, and if this
9 chapter shall be hereafter If this chapter is repealed, such moneys shall be the
10 money is subject to such the disposition as may be provided by the legislature
11 repealing this chapter. In default of such the absence of a legislative provision,
12 distribution thereof shall must be in accordance with the justice of the matter,
13 due regard being had to obligations of compensation incurred and existing."

14 Section 34. Section 39-71-2323, MCA, is amended to read:

15 "39-71-2323. Surplus in industrial insurance expendable trust state fund --
16 payment of dividends. If at the end of any fiscal year there exists in the
17 industrial insurance expendable trust state fund an excess of assets over
18 liabilities and a reasonable surplus, such liabilities to include necessary reserves,
19 which excess may be divided safely, then the division state fund may declare a
20 dividend in such the manner as the rules of the division may state fund
21 prescribe to those employers who have paid premiums into the industrial
22 insurance expendable trust state fund in excess of liabilities chargeable to them
23 in the fund for that year. In determining the amount or proportion of the balance
24 to which the employer is entitled as dividends, the division state fund shall give
25 consideration to the prior paid premiums and accident experience of each
26 individual employer during the dividend year."

27 Section 35. Section 39-71-2325, MCA, is amended to read:

28 "39-71-2325. Division State fund to keep accounts of segregations. The
29 division state fund shall keep an accurate account of all such the segregations
30 of the industrial insurance expendable trust state fund and shall divert from the
31 fund any sums necessary to meet monthly payments, pending the conversion
32 into cash of any security, and in such case shall repay the same out of the
33 cash realized from the security."

34 Section 36. Section 39-71-2327, MCA, is amended to read:

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1 ~~"39-71-2327. Earnings of industrial insurance expendable trust state fund to~~
2 ~~be credited to fund -- improper use a felony. All earnings made by the industrial~~
3 ~~insurance expendable trust state fund by reason of interest paid for the deposit~~
4 ~~thereof or otherwise shall must be credited to and become a part of the fund,~~
5 ~~and the making of profit, either directly or indirectly, by any person out of the~~
6 ~~use of the fund shall constitute is a felony, and on conviction thereof shall~~
7 ~~subject the person making such profit to imprisonment in the state penitentiary~~
8 ~~for a term not exceeding 2 years or a fine not exceeding \$5,000 or both such~~
9 ~~fine and imprisonment. A person convicted of an offense under this section is~~
10 ~~punishable by imprisonment in the state prison for a term not to exceed 2 years~~
11 ~~or a fine of not more than \$5,000, or both."~~

12 Section 37. Section 39-72-201, MCA, is amended to read:

13 ~~"39-72-201. Administration of chapter. This chapter shall be is administered~~
14 ~~by the division DEPARTMENT of workers' compensation."~~

15 Section 38. Section 39-72-310, MCA, is amended to read:

16 ~~"39-72-310. Occupational disease coverage under workers' compensation~~
17 ~~plans. (1) Every employer enrolled under compensation plan No. 1 (Title 39,~~
18 ~~chapter 71, part 21), every insurer writing workers' compensation coverage under~~
19 ~~compensation plan No. 2 (Title 39, chapter 71, part 22), and the state~~
20 ~~compensation insurance fund under compensation plan No. 3 (Title 39, chapter~~
21 ~~71, part 23), all provided for under the Workers' Compensation Act, are~~
22 ~~considered to also provide full coverage for claims under this chapter. Any~~
23 ~~policy of insurance for workers' compensation coverage under the Workers'~~
24 ~~Compensation Act written by a private insurance carrier or the state~~
25 ~~compensation insurance fund is considered to provide full occupational disease~~
26 ~~coverage under the provisions of this chapter.~~

27 (2) Except as provided in this chapter, the division DEPARTMENT shall
28 apply the appropriate provisions of Title 39, chapter 71, parts 21, 22, and 23, to
29 the administration of The Occupational Disease Act of Montana in the same
30 manner as they are applied to the administration of the Workers' Compensation
31 Act.

32 (3) Under compensation plan No. 3, any premiums and other receipts held
33 by the division state fund for occupational disease insurance coverage shall
34 must be transferred and become part of to the workers' compensation industrial

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1 insurance account, and payments for occupational disease claims by the state
2 fund shall must be paid out of the industrial insurance account."

3 Section 39. Section 2-18-103, MCA, is amended to read:

4 "2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to
5 the following positions in state government:

- 6 (1) elected officials;
- 7 (2) county assessors and their chief deputy;
- 8 (3) officers and employees of the legislative branch;
- 9 (4) judges and employees of the judicial branch;
- 10 (5) members of boards and commissions appointed by the governor,
- 11 appointed by the legislature, or appointed by other elected state officials;
- 12 (6) officers or members of the militia;
- 13 (7) agency heads appointed by the governor;
- 14 (8) academic and professional administrative personnel with individual
- 15 contracts under the authority of the board of regents of higher education;
- 16 (9) academic and professional administrative personnel and live-in
- 17 houseparents who have entered into individual contracts with the state school for
- 18 the deaf and blind under the authority of the state board of public education;
- 19 (10) teachers under the authority of the department of institutions;
- 20 (11) investment officer, assistant investment officer, executive director, and
- 21 three professional staff positions of the board of investments;
- 22 (12) four professional staff positions under the board of oil and gas
- 23 conservation; and
- 24 (13) assistant director for security of the Montana state lottery; and
- 25 ~~(14) executive director and employees~~ **MANAGEMENT AND UPPER LEVEL**
- 26 **SUPERVISORY POSITIONS of the state compensation mutual insurance fund."**

27 Section 40. Section 33-17-502, MCA, is amended to read:

28 "33-17-502. Prohibition on holding out as consultant -- receiving fee. (1) Any
29 person not licensed as an insurance consultant in this state who identifies or
30 holds himself out to be an insurance consultant without having been licensed
31 as an insurance consultant under this part or any person who uses any other
32 designation or title which is likely to mislead the public and holds himself out in
33 any manner as having particular insurance qualifications other than those for
34 which he may be otherwise licensed or otherwise qualified is guilty of a

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1 misdemeanor and upon conviction shall be fined \$1,500.

2 (2) Any person not licensed as an insurance consultant with respect to the
3 relevant kinds of insurance who receives any fee for examining, appraising,
4 reviewing, or evaluating any insurance policy, annuity or pension contract, plan,
5 or program or who shall make recommendations or give advice with regard to
6 any of the above without first having been licensed by the commissioner as an
7 insurance consultant is guilty of a misdemeanor and upon conviction shall be
8 fined \$1,500.

9 (3) Nothing in this part applies to:

10 (a) licensed attorneys at law in this state acting in their professional
11 capacity; OR

12 (b) an actuary or a certified public accountant who provides information,
13 recommendations, advice, or services in his professional capacity if neither he
14 nor his employer receives any compensation directly or indirectly on account of
15 any insurance, bond, annuity or pension contract that results in whole or part
16 from that information, recommendation, advice, or services; ~~or~~

17 ~~(c) a duly licensed casualty insurance agent who accepts a fee from an~~
18 ~~insured for placement through the state compensation mutual insurance fund as~~
19 ~~provided in 33-18-212."~~

20 Section 41. Section 33-18-212, MCA, is amended to read:

21 "33-18-212. Illegal dealing in premiums – improper charges for insurance.

22 (1) ~~No~~ A person shall may not willfully collect any sum as premium or charge
23 for insurance, which insurance is not then provided or is not in due course to
24 be provided (subject to acceptance of the risk by the insurer) by an insurance
25 policy issued by an insurer as authorized by this code.

26 (2) ~~No~~ A person shall may not willfully collect as premium or charge for
27 insurance any sum in excess of or less than the premium or charge applicable
28 to such insurance and, as specified in the policy, in accordance with the
29 applicable classifications and rates as filed with and approved by the
30 commissioner; or in cases where classifications, premiums, or rates are not
31 required by this code to be so filed and approved, such premiums and charges
32 shall may not be in excess of or less than those specified in the policy and as
33 fixed by the insurer. This provision shall may not be deemed to prohibit the
34 charging and collection, by surplus lines agents licensed under chapter 2, part

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3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It ~~shall~~ may not be deemed considered to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy. ~~The provision of this subsection does not prohibit the collection from an insured of a placement fee, not to exceed 7 % of the annual premium, for placement through the state compensation mutual insurance fund by a duly licensed casualty insurance agent. This placement fee is not a premium as defined in 33-15-102.~~

(3) Each violation of this section ~~shall be~~ is punishable under 33-1-104."

~~Section 42. Section 2-15-1702, MCA, is amended to read:~~

~~"2-15-1702. Division of workers' compensation insurance compliance -- head:~~

~~(1) There is a division of workers' compensation insurance compliance within the department. The division head is an administrator appointed by the governor as are directors in accordance with 2-15-111.~~

~~(2) The division is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the division may hire its own personnel, and 2-15-121(2)(d) does not apply."~~

Section 42. Section 2-15-1014, MCA, is amended to read:

"2-15-1014. Office of workers' compensation judge -- allocation -- appointment -- salary. (1) There is the office of workers' compensation judge. The office is allocated to the department of administration labor AND INDUSTRY for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by Title 3, chapter 1, part 10, for the appointment of supreme or district court judges. A vacancy shall must be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but shall must be accorded

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retirement benefits under the public employees' retirement system."

Section 43. Section 39-71-2501, MCA, is amended to read:

"39-71-2501. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of examiners created in 2-15-1007.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

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

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

(5) "State fund" means the state compensation MUTUAL insurance fund referred to in ~~39-71-2301~~.

(6) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(7) "Tax account" means the workers' compensation tax account created by 39-71-2504. (Terminates June 30, 1991--sec. 10, Ch. 664, L. 1987.)"

NEW SECTION. Section 44. STATE FUND TO SUBMIT NOTICE OF COVERAGE WITHIN THIRTY DAYS -- PENALTY FOR FAILURE. (1) THE STATE FUND SHALL, WITHIN 30 DAYS AFTER THE ISSUANCE OF AN INSURANCE POLICY, SUBMIT TO THE DIVISION DEPARTMENT THE NOTICE OF COVERAGE STATING THE EFFECTIVE DATE OF THE POLICY INSURING THE EMPLOYER AND OTHER INFORMATION THE DIVISION DEPARTMENT REQUIRES.

(2) THE DIVISION DEPARTMENT MAY ASSESS A PENALTY OF NO MORE THAN \$200 AGAINST THE STATE FUND IF, AS A GENERAL BUSINESS PRACTICE, THE STATE FUND DOES NOT COMPLY WITH THE 30-DAY NOTICE REQUIREMENT.

NEW SECTION. SECTION 45. POLICY REMAINS IN EFFECT UNTIL CANCELED OR REPLACED -- TWENTY-DAY NOTIFICATION OF CANCELLATION REQUIRED. THE INSURANCE POLICY REMAINS IN EFFECT UNTIL CANCELED. CANCELLATION MAY TAKE EFFECT ONLY BY WRITTEN NOTICE TO THE NAMED INSURED AND TO THE DIVISION DEPARTMENT AT LEAST 20 DAYS PRIOR TO THE DATE OF CANCELLATION. HOWEVER, THE POLICY

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1 TERMINATES ON THE EFFECTIVE DATE OF A REPLACEMENT OR
2 SUCCEEDING INSURANCE POLICY ISSUED TO THE INSURED. NOTHING IN
3 THIS SECTION PREVENTS THE STATE FUND FROM CANCELING AN
4 INSURANCE POLICY BEFORE A REPLACEMENT POLICY IS ISSUED TO THE
5 INSURED.

6 Section 46. Section 33-2-119, MCA, is amended to read:

7 "33-2-119. Suspension or revocation for violations and special grounds. (1)

8 The commissioner may, in his discretion, suspend or revoke an insurer's
9 certificate of authority if, after a hearing thereon, he finds that the insurer has:

10 (a) violated any lawful order of the commissioner or any provision of this
11 code other than those for which suspension or revocation is mandatory;

12 (b) reinsured more than 90% of its risks resident, located, or to be
13 performed in Montana, in another insurer. In considering suspension or
14 revocation, the commissioner shall consider all relevant factors, including
15 whether:

16 (i) after the reinsurance transaction all parties will be in compliance with
17 Montana law; and

18 (ii) the transaction will substantially reduce protection and service to Montana
19 policyholders;

20 (c) failed to accept an equitable apportionment of assigned coverage as
21 required by [section 13 12].

22 (2) The commissioner shall, after a hearing thereon, suspend or revoke an
23 insurer's certificate of authority if he finds that the insurer:

24 (a) is in unsound condition or in such condition or using such methods or
25 practices in the conduct of its business as to render its further transaction of
26 insurance in Montana injurious or hazardous to its policyholders or to the public;

27
28 (b) has refused to be examined or to produce its accounts, records, and
29 files for examination or if any of its officers have refused to give information with
30 respect to its affairs, when required by the commissioner;

31 (c) has failed to pay any final judgment rendered against it in Montana
32 within 30 days after the judgment became final;

33 (d) with such frequency as to indicate its general business practice in
34 Montana, has without just cause refused to pay proper claims arising under its

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1 policies, whether any such claim is in favor of an insured or is in favor of a
2 third person with respect to the liability of an insured to such third person, or
3 without just cause compels such insured or claimant to accept less than the
4 amount due them or to employ attorneys or to bring suit against the insurer or
5 such an insured to secure full payment or settlement of such claims;

6 (e) is affiliated with and under the same general management or interlocking
7 directorate or ownership as another insurer which transacts direct insurance in
8 Montana without having a certificate of authority therefor, except as permitted as
9 to a surplus lines insurer under part 3 of this chapter.

10 (3) The commissioner may, in his discretion and without advance notice or
11 a hearing thereon, immediately suspend the certificate of authority of any insurer
12 as to which proceedings for receivership, conservatorship, rehabilitation, or other
13 delinquency proceedings have been commenced in any state."

14 Section 47. SECTION 37-72-101, MCA, IS AMENDED TO READ:

15 "37-72-101. Construction blasting restrictions -- license required --
16 definitions -- exemptions. (1) No person may engage in the practice of
17 construction blasting unless licensed or under the supervision of a person
18 licensed as a construction blaster by the ~~workers' compensation division~~
19 DEPARTMENT.

20 (2) For the purposes of this chapter:

21 (a) "construction blaster" means a person who engages in construction
22 blasting;

23 (b) "construction blasting" means the use of explosives to:

24 (i) reduce, destroy, or weaken any residential, commercial, or other building;
25 or

26 (ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or
27 cause a change in grade of any land formation in the construction of any
28 building, highway, road, pipeline, sewerline, or electric or other utility line;

29 ~~(c) "division" means the division of workers' compensation division insurance~~
30 ~~compliance of the department of labor and industry provided for in 2-15-1702~~

31 "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND INDUSTRY;

32 (d) "explosive" has the meaning given in 50-38-101;

33 (e) "magazine" has the meaning given in 50-38-101.

34 (3) Nothing in this chapter applies to the private or commercial use of

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explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(10)(e)."

Section 48. SECTION 50-71-102. MCA. IS AMENDED TO READ:

"50-71-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the ~~division~~ DEPARTMENT under the provisions of this chapter.

(3) ~~"Division" means the division of workers' compensation insurance compliance of the department of labor and industry provided for in 2-15-1702~~
"DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND INDUSTRY.

(4) "Employee" and "worker" are defined as in 39-71-118.

(5) "Employer" is defined as in 39-71-117.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change."

Section 49. SECTION 50-73-102. MCA. IS AMENDED TO READ:

"50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) ~~"Division" means the division of workers' compensation insurance compliance of the department of labor and industry provided for in 2-15-1702~~
"DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND INDUSTRY and the state coal mine inspectors employed by the ~~division~~ DEPARTMENT.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working

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1 places, whether abandoned or in use.

2 (3) "Gassy mine" means a mine is considered to be potentially gassy. The
3 division DEPARTMENT may further define this term in its rules.

4 (4) "Mine" and "coal mine" mean all parts of the property of a mining plant
5 under one management which contribute, directly or indirectly, to the mining or
6 handling of coal.

7 (5) "Mine examiner" means a person charged with the examination of the
8 condition of the mine before the miners are permitted to enter it and who is
9 commonly known as the "fire boss".

10 (6) "Mine foreman" means a person who is charged with the general
11 direction of the underground work or both the underground work and the outside
12 work of a coal mine and who is commonly known and designated as "mine
13 boss".

14 (7) "Operator", as applied to the party in control of a mine under this
15 chapter, means the person, firm, or body corporate which is the immediate
16 proprietor as owner or lessee of the plant and, as such, is responsible for the
17 condition and management thereof.

18 (8) "Shaft" means any vertical opening through the strata which is or may
19 be used for the purpose of ventilation or escape or for hoisting or lowering of
20 men or material in connection with the mining of coal.

21 (9) "Slope" and "drift" mean respectively an incline or horizontal way,
22 opening, or tunnel to a seam of coal to be used for the same purpose as a
23 shaft."

24 SECTION 50. SECTION 39-1-103, MCA. IS AMENDED TO READ:

25 "39-1-103. Powers of department. (1) In discharging the duties imposed upon
26 the department, the commissioner or his authorized representatives may
27 administer oaths, examine witnesses under oath, take depositions or cause same
28 to be taken, deputize any citizen 18 years of age or older to serve subpoenas
29 upon witnesses, and issue subpoenas for the attendance of witnesses before him
30 in the same manner as for attendance before district courts.

31 (2) The commissioner may likewise cause to be inspected any mine,
32 factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or
33 other industrial establishment.

34 ~~(3) Nothing herein contained shall in any manner confer upon the~~

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~~commissioner the authority to interfere in any manner with the conduct of the matters under the control of the workers' compensation division, nor shall the commissioner be charged with the duty of enforcing any of the laws of the state pertaining to the affairs of the workers' compensation division or with the enforcement of the safety provisions of the Workers' Compensation Act.~~

(4)(3) Nothing in this chapter applies to labor violations preempted by federal law or regulation."

SECTION 51. SECTION 39-71-207, MCA, IS AMENDED TO READ:

"39-71-207. Merit system. Employees of the division, except the administrator, department are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3(h) or by any other federal law or regulation."

SECTION 52. SECTION 33-1-102, MCA, IS AMENDED TO READ:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs. (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~parts~~ part 21 and ~~23~~, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

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1 (7) This code does not apply to insurance funded through the state self-
2 insurance reserve fund provided for in 2-9-202.

3 (8) (a) This code does not apply to any arrangement, plan, or interlocal
4 agreement between political subdivisions of this state whereby the political
5 subdivisions undertake to separately or jointly indemnify one another by way of a
6 pooling, joint retention, deductible, or self-insurance plan.

7 (b) This code does not apply to any arrangement, plan, or interlocal
8 agreement between political subdivisions of this state or any arrangement, plan,
9 or program of a single political subdivision of this state whereby the political
10 subdivision provides to its officers, elected officials, or employees disability
11 insurance or life insurance through a self-funded program."
12

13 SECTION 53. SECTION 33-16-1005. MCA. IS AMENDED TO READ:

14 "33-16-1005. Membership in rating organization required -- exception -- filings
15 with commissioner. (1) Every insurer, ~~except the division of workers'~~
16 compensation including the state compensation mutual insurance fund, writing
17 workers' compensation insurance in this state shall be a member of a workers'
18 compensation rating organization. No insurer may, at the same time, belong to
19 more than one rating organization with respect to such insurance.

20 (2) A rating organization shall file with the insurance commissioner every
21 manual of classifications and rules and every rating plan and advisory manual
22 rates, including every modification of the foregoing. Every such filing shall state
23 the effective date thereof. Any insurer writing pursuant to compensation plan No.
24 2 shall adhere to the manual rules and classifications and rating plans of the
25 rating organization of which it is a member and may adopt by reference, in
26 whole or in part, the advisory manual rates filed under this section. Nothing in
27 this section, however, requires adherence by any insurer to any rates established
28 or published by any rating organization."
29

30 SECTION 54. SECTION 33-16-1011. MCA. IS AMENDED TO READ:

31 "33-16-1011. Classification and rating committee -- membership -- term. (1)
32 There is a classification and rating committee.

33 (2) The committee is composed of five voting members, consisting of:

34 (a) three representatives of private insurance carriers writing workers'

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1 compensation insurance in Montana. The members must reside in Montana and
2 shall be appointed by the Montana commissioner of insurance.

3 (b) one licensed independent insurance agent who resides in Montana,
4 appointed by the Montana commissioner of insurance; and

5 (c) one representative of the ~~division of workers' compensation state~~
6 compensation mutual insurance fund who is an employee of the ~~division state~~
7 fund and who ~~shall be~~ is appointed by the ~~administrator of the division executive~~
8 director of the state fund.

9 (3) Each member shall hold office for a period of 3 years. Any appointee
10 who fills the vacancy of a member whose term has not expired shall fill only the
11 remaining term and may be reappointed for a full term.

12 (4) Before appointments are to be made by the commissioner of insurance
13 under subsections (2)(a) and (2)(b) above, established private organizations
14 representing insurance carriers and independent insurance agents may submit
15 names of individuals they recommend for appointments. The commissioner of
16 insurance shall give consideration to such names submitted before appointments
17 are made. However, the commissioner of insurance is not required to appoint
18 any person from the names submitted.

19 (5) The committee shall be funded from the operations budget of the rating
20 organization. Committee members may, if they request, be paid their actual and
21 necessary travel expenses."
22

23 SECTION 55. SECTION 19-3-1007, MCA, IS AMENDED TO READ:

24 "19-3-1007. Allowance for duty-related disability. (1) The annual amount of
25 retirement allowance payable to a member eligible for disability retirement for
26 duty-related reasons and granted prior to July 1, 1977, is 50% of his final
27 compensation. However, the annual amount of retirement allowance is 25% of
28 final compensation for any period during which the member has been awarded
29 ~~compensation by the workers' compensation division~~, whether such compensation
30 is received in periodic payments or in a lump sum. The annual amount of
31 retirement allowance reverts to 50% of final compensation at the end of such
32 period.

33 (2) Any retired member receiving a retirement allowance on July 1, 1977,
34 who has previously been granted a duty-related disability under provisions in

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1 effect on June 30, 1977, will be subject to the provisions of this section after
2 July 1, 1977."

3
4 SECTION 56. SECTION 19-3-1002, MCA. IS AMENDED TO READ:

5 "19-3-1002. Eligibility for disability retirement. (1) Except as provided in
6 subsection (2) and 19-3-1004, a member who is not eligible for service or early
7 retirement but has completed 5 years of creditable service and has become
8 disabled while in active service, as defined in 19-3-1001, is eligible for disability
9 retirement.

10 (2) A member age 60 or older who has completed 5 years of creditable
11 service and has had a duty-related accident forcing him to terminate his
12 employment but who has not received or is ineligible to receive workers'
13 compensation benefits under Title 39, chapter 71, for the duty-related accident
14 may conditionally waive his eligibility for a service retirement to be eligible for
15 disability retirement. The waiver is effective only upon approval by the board of
16 his application for disability retirement. The board shall determine whether a
17 member has become disabled under the provisions of 19-3-1003. The board may
18 request any information on file with the ~~workers' compensation division state~~
19 compensation mutual insurance fund concerning the duty-related accident. If no
20 information is available, the board may request and the ~~division state fund~~ shall
21 provide an investigative report on the disabling accident."
22

23 SECTION 57. SECTION 19-3-1202, MCA. IS AMENDED TO READ:

24 "19-3-1202. Amount of death benefit. The amount of death benefit is the sum
25 of (1), (2), and (3) as follows:

26 (1) the member's accumulated contributions;

27 (2) an amount equal to one-twelfth of the compensation received by the
28 member during the last 12 months of such compensation multiplied by the
29 smaller of six or the number of years of his creditable service; provided,
30 however, that this portion of the death benefit is not payable if the board
31 receives a certification from the ~~workers' compensation division of the state of~~
32 Montana state compensation mutual insurance fund that it is paying
33 compensation because the member's death resulted from injury or disease
34 arising out of or in the course of employment; and

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1 (3) the accumulated interest on the amounts in subsections (1) and (2) of
2 this section to the first day of the month in which the benefit is paid."

3
4 SECTION 58. SECTION 19-13-601, MCA, IS AMENDED TO READ:

5 "19-13-601. Deduction remitted to firemen's association -- member's
6 contributions. (1) Each employer shall retain from the monthly compensation of
7 each active member a sum equal to 1% of his monthly compensation for his
8 services as a firefighter and shall remit this amount on a monthly basis to the
9 Montana state firemen's association for the payment of premiums on a group life
10 and accidental death and dismemberment insurance policy for members and to
11 defray expenses incurred by the association when representing members of the
12 plan.

13 (2) The member's contribution to the retirement system for each active
14 member is 6% of his monthly compensation.

15 (3) If a member receives compensation under the provisions of the Workers'
16 Compensation Act, Title 39, chapter 71, the amount received must be included
17 as part of his monthly compensation for purposes of determining contributions
18 and service credits under the retirement system. Contributions made under this
19 section, 19-13-604, and 19-13-605 must be based on the total compensation
20 received by the member from his employer and from the workers' compensation
21 division during the period of disability.

22 (4) Each employer, pursuant to section 414(h)(2) of the federal Internal
23 Revenue Code, as amended and applicable on July 1, 1987, shall pick up and
24 pay the contributions which would be payable by the member under subsection
25 (2) for service rendered after June 30, 1987.

26 (5) The member's contributions picked up by the employer must be
27 designated for all purposes of the retirement system as the member's
28 contributions, except for the determination of a tax upon a distribution from the
29 retirement system. These contributions must become part of the member's
30 accumulated contributions but must be accounted for separately from those
31 previously accumulated.

32 (6) The member's contributions picked up by the employer must be payable
33 from the same source as is used to pay compensation to the member and
34 must be included in the member's monthly compensation as defined in 19-13-

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1 104. The employer shall deduct from the member's compensation an amount
2 equal to the amount of the member's contributions picked up by the employer
3 and remit the total of the contributions to the board.
4

5 NEW SECTION. Section 59. Repealer. Sections 2-15-1702, 39-71-2301, 39-
6 71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324, MCA, are repealed.

7 NEW SECTION. Section 60. Extension of authority. Any existing authority
8 to make rules on the subject of the provisions of [this act] is extended to the
9 provisions of [this act].

10 NEW SECTION. Section 61. Codification instruction. (1) [Sections 1, 2,
11 and 4 through ~~42~~ 11, 44, AND 45] are intended to be codified as an integral
12 part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71,
13 part 23, apply to [sections 1, 2, and 4 through ~~42~~ 11, 44, AND 45].

14 (2) [Section 3] is intended to be codified as an integral part of Title 2,
15 chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to
16 [section 3].

17 (3) [Section ~~43~~ 12] is intended to be codified as an integral part of Title 39,
18 chapter 71, and the provisions of Title 39, chapter 71, apply to [section ~~43~~ 12].

19 NEW SECTION. Section 62. Reorganization procedure. The provisions of
20 sections 2-15-131 through 2-15-137 govern the creation of the state compensation
21 mutual insurance fund and the transfer of the various functions contained in [this
22 act] from the state workers' compensation INSURANCE fund to the state
23 ~~compensation mutual insurance fund.~~

24 NEW SECTION. Section 63. Implementation. (1) The governor shall by
25 executive order implement the provisions of [this act].

26 (2) The governor may by executive order assign to the state compensation
27 mutual insurance fund, in a manner consistent with [this act], functions allocated
28 to the workers' compensation state fund provided for in Title 39, chapter 71, part
29 23, by the 51st legislature and not transferred by [this act].

30 NEW SECTION. Section 64. Name change -- code commissioner
31 instruction. (1) In the provisions of the Montana Code Annotated, the terms
32 "division of workers' compensation", "division", and "workers' compensation
33 division", meaning the division of workers' compensation, are changed to
34 "department of labor and industry" or "department", meaning the "department of

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1 labor and industry".

2 (2) The code commissioner shall designate, in a manner consistent with
3 [this act], workers' compensation insurance regulatory functions allocated to the
4 division of workers' compensation by the 51st legislature to the department of
5 labor and industry that are not so designated by [this act].

6 (3) Wherever it appears in 39-71-205, 39-71-222 through 39-71-224, 39-71-
7 613, 39-71-902, 39-71-904, 39-71-910, or in law enacted by the 51st legislature,
8 the code commissioner is directed to change the term "administrator" or "his"
9 to "department", meaning the department of labor and industry.

10 NEW SECTION. Section 65. Effective dates. (1) [Sections 3, 7, 50 ~~54, 55~~
11 ~~39, 60 THROUGH 64~~, and this section] are effective on passage and approval.

12 (2) [Sections 1, 2, 4 through 6, ~~and 8 through 38, AND 40 THROUGH 49~~
13 ~~53 59~~] are effective upon signing of the executive order under [section 50 ~~55~~
14 ~~63~~] or on ~~October 1, 1989~~ JANUARY 1, 1990, whichever occurs earlier.

15
16 -END-
17